

RE-DEFINING SUPERWOMAN: AN ESSAY ON OVERCOMING THE  
 “MATERNAL WALL”<sup>1</sup> IN THE LEGAL WORKPLACE

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I. INTRODUCTION

You know her when you see her. She has a successful career as an attorney in a major law firm. She has a reputation at work for always being available to help out in a pinch, and her colleagues see her as a very hard worker. She is frequently commended for her work. She always looks her best, with nice suits and never a hair out of place. She has four children, ranging in ages from three to ten, and she frequently volunteers to chaperone school field trips or bring her famous homemade brownies for school parties. She and her husband socialize frequently, and she is an impressive and gracious hostess. Her home is beautiful and spotless. Every morning, she packs lunch for her children, her husband, and herself; most nights, she makes a sit-down three-course meal from scratch. She makes Halloween costumes for her children (who often win best-costume awards), and she can handle all of the family’s alterations. She enjoys scrapbooking, and her children—all four of them, not just the first—will have impressive memory books to take with them when they leave home. Oh, and she volunteers once a week at the local soup kitchen.

Who is this woman? She is Superwoman, and most likely, she is a figment of your imagination. She does not and cannot exist, because it is not possible to be all of these things at once. So what does Superwoman have to do with the

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1. This phrase was coined by Professor Joan Williams to describe the obstacles that women face as working mothers. See JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 69-70 (2000) [hereinafter WILLIAMS, UNBENDING GENDER].

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“maternal wall?”<sup>2</sup> Most mother-attorneys try to emulate Superwoman because the maternal wall makes us feel that we have to be Superwoman to “make it” as a working mother. I am here to tell you that you do not have to be Superwoman. Allow me to explain how the current definition of Superwoman no longer meets the needs of today’s working mother-attorneys.

As Professor Joan Williams comments, most women never even approach the glass ceiling; they are “stopped dead, long beforehand, by the maternal wall.”<sup>3</sup> The maternal wall affects women with children in many aspects of their jobs, including hiring, promotions, pay, and even terminations. It is difficult for mothers to perform as ideal workers, because pregnancy, maternity leave, and the continual demands of child-rearing inevitably cause them to be absent from work. In addition, because mothers are not similarly situated to men or women without children, courts permit employers to treat them differently, which usually means they are treated more poorly.

The maternal wall affects many women in a variety of occupations. In the legal workplace, the effect of the maternal wall becomes readily apparent when female attorneys become pregnant: it is the change in assignments once the pregnancy is announced; it is the constant questions, rumors, and innuendos about whether she will return after her maternity leave; it is the receipt of a nominal or non-existent bonus during the year she has her baby. When she returns from maternity leave, the maternal wall is the non-challenging assignments she gets because everyone assumes her heart and head will be with her baby and not at work; it is the bonuses or promotions she does not get because she does not bill the same hours as her male colleagues,<sup>4</sup> who also may be new fathers but who have wives to stay at home; it is the opportunities she does not get because they involve travel, and it is assumed she will not travel; it is being treated like half of an attorney if she tries to work a reduced-hour schedule. Sometimes, it is the decision to put off motherhood until her career is well-established; and finally, it is the heartbreak when she realizes that she may have waited too long.<sup>5</sup>

Some of these practices are illegal. Most of them are not—at least not yet. A great deal has been written about discrimination against mothers, and this Essay will draw from the strength of those works.<sup>6</sup> It is not my goal in this piece

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2. See WILLIAMS, UNBENDING GENDER, *supra* note 1, at 69-70.

3. Joan Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 *FORDHAM L. REV.* 2221, 2223 (2002) [hereinafter Williams, *Canaries*].

4. The hours problem is one of the most significant problems facing mother-attorneys. Consider this:

Eighty-five percent of women become mothers during their working lives. Ninety-three percent of mothers aged 25 to 44 work fewer than fifty hours a week year round [sic]. The maternal wall results when lawyers are offered, as their only option, a schedule very, very few mothers are willing to work.

Williams *Canaries*, *supra* note 3, at 2223.

5. See Sharon Rabin Margalioth, *Women, Careers, Babies: An Issue of Time or Timing?*, 13 *UCLA WOMEN'S L.J.* 293, 295 (2005).

6. See generally Joan C. Williams, *Beyond the Glass Ceiling: The Maternal Wall as a Barrier to Gender Equality*, 26 *T. JEFFERSON L. REV.* 1 (2003) [hereinafter Williams, *Beyond the Glass Ceiling*]; Nancy E. Dowd, *Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers*, 16 *HARV. BLACKLETTER L.J.* 185 (2000); Joan Williams & Cynthia Thomas Calvert, *Balanced*

to solve the maternal wall problem or even to discuss it from a holistic perspective. Rather, my goal is quite modest. I will focus my discussion of the maternal wall on the legal workplace and explain why it is necessary to re-define Superwoman in order to succeed as a mother-attorney. I chose this focus for several reasons: First, the legal workplace is often very transparent, especially in large law firms. Second, it is a workplace in which I have a great deal of personal experience.

This Essay is divided into two parts: the “Problem” and the “Solutions.” Part II discusses the maternal wall problem in the workplace. It will demonstrate to the reader that there really is a problem, regardless of the name we give it, and that working mothers really are at a disadvantage as compared to working fathers or non-parents (men or women). Part II will also discuss how and why the maternal wall manifests itself in the legal workplace. It asks whether the term “mother-attorney” is an oxymoron and discusses the plight of the “part-time” lawyer.

Part III will discuss proposed solutions for dealing with discrimination against mothers in the legal workplace. I will discuss why litigation usually is not a viable option, what the legal culture should do to overcome the problem of the maternal wall, and how mother-lawyers can help themselves overcome the maternal wall.

## II. THE PROBLEM: THE MATERNAL WALL IN THE LEGAL WORKPLACE

In order to discuss possible solutions to the maternal wall problem, we must first establish that there is a genuine problem. I will describe generally the maternal wall problem and then discuss how it plays out specifically in the legal workplace.

### A. The Maternal Wall

One of the most dramatic changes in the workplace over the past fifty years is the increased number of women in the workforce, especially women with young children.<sup>7</sup> Despite these important gains, the number of women at the top remains despairingly low.<sup>8</sup> Furthermore, there is a significant wage gap

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*Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention, Final Report*, 8 WM. & MARY J. WOMEN & L. 357 (2002) [hereinafter Williams & Calvert, *The Project for Attorney Retention*]; Phyllis T. Bookspan, *A Delicate Imbalance—Family and Work*, 5 TEX. J. WOMEN & L. 37 (1995); Susan Bisom-Rapp, *Scripting Reality in the Legal Workplace: Women Lawyers, Litigation Prevention Measures, and the Limits of Anti-Discrimination Law*, 6 COLUM. J. GENDER & L. 323 (1996); Rebecca Korzec, *Working on the “Mommy Track”: Motherhood and Women Lawyers*, 8 HASTINGS WOMEN’S L.J. 117 (1997); WILLIAMS, UNBENDING GENDER, *supra* note 1; Joan Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN’S L.J. 77 (2003) [hereinafter Williams & Segal, *Beyond the Maternal Wall*]; Williams, *Canaries*, *supra* note 3.

7. Francine D. Blau & Ronald G. Ehrenberg, *Introduction to GENDER AND FAMILY ISSUES IN THE WORKPLACE 1* (Francine D. Blau & Ronald G. Ehrenberg eds., 1997).

8. *See id.* at 2-3.

between men and women. Family responsibilities are estimated to cause forty-five percent of that gap.<sup>9</sup>

The frequent inability of working mothers to live up to the “ideal worker” norm is a primary cause of the maternal wall.<sup>10</sup> Unless parents are wealthy enough to afford a nanny who can work unlimited hours, and they consider this to be an acceptable parenting strategy, one parent generally has primary responsibility for the children, which usually means one parent has to put his or her career behind the career of the other spouse. Because women generally make less money than men and are expected to be the primary caregivers, it is usually the wife who puts her career behind her husband’s career. This typically means that she is unable to perform as an ideal worker for several reasons: (1) she usually cannot work overtime because she needs to pick up her children from daycare or meet them after school (2) she frequently misses work due to her children’s illnesses, doctor and dentist appointments, and school events (3) she is less likely to travel because of her family responsibilities, or (4) she is unwilling to relocate because her husband is not willing to leave his job.<sup>11</sup>

Along with the increased responsibilities motherhood usually brings, women are often disadvantaged by the negative stereotyping associated with women caregivers.<sup>12</sup> One study reviewing the stereotypes involving family caregivers in the workplace compares women on two axes: “competence” and “warmth.”<sup>13</sup> Participants rated “career women as low in warmth but high in competence, similar to career men and millionaires.”<sup>14</sup> In contrast, “housewives were rated as high in warmth but low in competence, close to . . . the blind, disabled, retarded, and elderly.”<sup>15</sup> When a woman becomes a mother, she may find herself perceived more as a low-competence caregiver, rather than as a high-competence business woman.<sup>16</sup> As an example, one frustrated female attorney reported that she was given paralegal-type work when she returned from maternity leave, even though, in her words, “[she had] had a baby, not a lobotomy.”<sup>17</sup>

Another study examined the stereotypes associated with part-time work, finding that women employed part-time were viewed more like “homemakers” than were women employed full-time.<sup>18</sup> Thus, because of child-rearing responsibilities, women who work a part-time schedule risk “falling out of the ‘business woman’ category, which is considered ‘high on intelligence,

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9. WILLIAMS, UNBENDING GENDER, *supra* note 1, at 14-15, 125 (introducing the problem of a wage gap, and further noting that fathers earn 10-15% more than men without children, while mothers earn 10-15% less than women without children).

10. *Id.* at 5.

11. For instance, I am aware of one employer whose rating of its employees’ performance level is based in part on the individual employee’s ability and willingness to relocate. In fact, it was impossible to get the highest rating unless the employee was willing to relocate.

12. See Williams & Segal, *Beyond the Maternal Wall*, *supra* note 6, at 90.

13. *Id.* at 90.

14. *Id.* (internal quotations and citations omitted).

15. *Id.* (internal quotations and citations omitted).

16. *Id.*

17. *Id.* at 90-91 (citations omitted).

18. *Id.* at 91 (citations omitted).

confidence, ambition, hard work, [and] dominance,' into the 'housewife' category, which is deemed 'submissive, dependent, selfless, nurturing, tidy, gentle, and unconfident.'"<sup>19</sup> As Professor Williams has stated: "[n]o one gets promoted for being gentle and tidy."<sup>20</sup>

In addition, women may be stereotyped in ways that the stereotypers do not see as intrinsically harmful; this is also known as "benevolent stereotyping."<sup>21</sup> For instance, some managers might not consider mothers for jobs that require travel or a great deal of overtime, and when challenged, they would defend such decisions as being thoughtful or considerate of the mothers' responsibilities.<sup>22</sup> Consider the following example:

[A]fter a husband and wife who worked for the same employer had a baby, the wife was sent home at 5:30 P.M., with the solicitous sentiment that she should be at home with the child. In sharp contrast, the husband was given extra work and was expected to stay late. The additional work was meant to be helpful, for the husband now had a family to support.<sup>23</sup>

Regardless of whether the stereotyping is meant to be harmful or helpful, it deprives a woman of the power to interpret the responsibilities of motherhood for herself, assuming that she will or should make traditional choices.<sup>24</sup>

Lawsuits challenging the maternal wall exemplify the severity of the problem. In one case, the plaintiff-mother testified that the vice president of a company had repeatedly asked her "how her husband was managing given she was not home to cook for him, how work was going in light of her new child, and whether she could perform her job effectively after having a second child."<sup>25</sup> The vice-president told her that he preferred "unmarried, childless women because they would give 150% to the job."<sup>26</sup>

In another case, a vice-president told the plaintiff-mother that he "would not give her the promotion because she was married, pregnant, and a mother, and he believed she should stay at home caring for her family."<sup>27</sup> In yet another case, the plaintiff-mother "was told that she was not considered for a promotion because the new management position required extensive traveling, and it was assumed that she would not be interested because of her family obligations."<sup>28</sup>

19. *Id.* (alteration in original).

20. *Id.*

21. *Id.*; Kathryn Abrams, *Ideology & Women's Choices*, 24 GA. L. REV. 761, 782 (1990) (stating that women feel pulled between an "ideology of 'neutrality,'" teaching them that they can be as good as their male counterparts and achieve the ideal career, and an "ideology of domesticity," teaching them that a self-centered career can and will take a toll on the lives of their family).

22. Williams & Segal, *Beyond the Maternal Wall*, *supra* note 6, at 91.

23. *Id.* at 95-96 (citations omitted).

24. *Id.* at 95.

25. *Id.* at 125 (citing *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 55-58 (1st Cir. 2000)).

26. *Id.* (citing *Santiago-Ramos*, 217 F.3d at 51).

27. *Id.* at 126 (citing *Moore v. Ala. State Univ.*, 980 F. Supp. 426, 431 (M.D. Ala. 1997)). "Moreover, [the vice president] declared, looking at her pregnant belly: 'I was going to put you in charge of that office, but look at you now.'" *Id.*

28. *Id.* at 127 (citing *Trezza v. Hartford, Inc.*, No. 98 Civ. 2205 (MBM), 1998 U.S. Dist. LEXIS 20206, at \*1 (S.D.N.Y. Dec. 30, 1998)).

“The senior vice-president . . . complained to her ‘about the incompetence and laziness of women who are also working mothers,’ and also noted that women are not good planners, especially women with kids.”<sup>29</sup> One executive stated “that working mothers cannot be both good mothers and good workers, saying ‘I don’t see how you can do either job well.’”<sup>30</sup>

The statistics regarding the effect of the maternal wall are staggering: For women ages twenty-five through forty-four, the key career-building years, one in four mothers remains out of the labor force, while two in three work less than a forty-hour week year-round.<sup>31</sup> Given that only five percent of mothers aged twenty-five to forty-four work a fifty-hour week year-round, the overwhelming majority of mothers are effectively eliminated from competing in fields that require overtime, such as the legal profession.<sup>32</sup>

## B. The Maternal Wall in the Legal Workplace

While the maternal wall affects women in all professions, the legal workplace represents a particularly fertile ground upon which to discuss the maternal wall problem and to plant seeds of change. As Professor Mary Jane Mossman states, “women who are both lawyers and mothers may be especially well positioned, as *women*, to challenge the hidden assumptions that are at the root of the work and family dilemma that currently exists in North American society.”<sup>33</sup> Several writers have discussed the plight of mothers who are attorneys.<sup>34</sup> These discussions fall into two general categories: (1) the challenges that mothers face even when they are working full time, and (2) the difficulty of the “mommy-track” or working reduced hours. I will first discuss why simply becoming a mother causes women to suffer discrimination, and then I will discuss the most hotly debated issue in this area—alternative work schedules.

### 1. Mother-Lawyer: An Oxymoron?

In 1869, Myra Bradwell applied for the Illinois bar but was denied admission. Her case went to the Supreme Court, which held that a state may refuse to admit women to the practice of law under its plenary authority.<sup>35</sup> Justice Bradley wrote a famous concurrence, asserting, “[t]he paramount destiny and mission of women are to fulfill the noble and benign offices of wife and

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29. *Id.* (citing *Trezza*, 1998 U.S. Dist. LEXIS 20206, at \*5). This statement irks me the most. In my estimation, women who are accustomed to juggling caring for the children, taking care of the home, and working full-time are the best planners of all.

30. *Id.* (citing *Trezza*, 1998 U.S. Dist. LEXIS 20206, at \*5).

31. *Id.* at 115 (citations omitted).

32. *Id.*

33. Mary Jane Mossman, *Challenging “Hidden” Assumptions: (Women) Lawyers and Family*, in *MOTHERS IN LAW: FEMINIST THEORY AND THE LEGAL REGULATION OF MOTHERHOOD* 290, 290-91 (Martha Albertson Fineman & Isabel Karpin eds., 1995) (emphasis in original) [hereinafter Mossman].

34. See generally Korzec, *supra* note 6; HOLLY ENGLISH, *GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE* (2003); Bookspan, *supra* note 6.

35. See generally *Bradwell v. Illinois*, 83 U.S. 130 (1872).

mother.”<sup>36</sup> Though women are now allowed to be attorneys, the idea that women belong primarily in the home is still very prevalent. As one attorney stated, “[t]he issue begins with biology but is strengthened by traditional culture and societal mores.”<sup>37</sup>

Professor Rebecca Korzec points out that little has changed in recent years from the sentiment that women lawyers did not have children, or that if they did, they either left the workplace or gravitated to jobs with less stringent work hours.<sup>38</sup> A 1994 study revealed that, although women lawyers comprised thirty-seven percent of all lawyers admitted to practice between 1985 and 1994, only thirteen percent were law firm partners.<sup>39</sup> Korzec discovered that “[a] significantly disproportionate number of women lawyers who attain traditional success as partners, judges, or full professors are unmarried or childless.”<sup>40</sup> Overall, only forty-five percent of women lawyers have children, and nearly all of them are married to men who work full-time.<sup>41</sup> In contrast, male lawyers are likely to be married (seventy-two percent) and have children (sixty-eight percent), and nearly half are married to women who do not work outside the home.<sup>42</sup> Research also indicates that there is a differential in commitment to domestic chores and childcare among male and female lawyers, and that having children is a primary reason for gender inequality in the legal profession.<sup>43</sup>

When mother-attorneys do continue to work full-time after having a baby, they often find that traditional ideas about family inhibit their ability to succeed. They report that if they worked fewer hours than before, they were considered not as committed to their jobs, but if they worked more they were criticized for being less than fully attentive mothers.<sup>44</sup> Furthermore, comments made by various lawyers suggest that many people still believe that a woman’s top priority should be her family. One male partner at a law firm stated:

[Motherhood] is the biggest problem for [younger women] and for us, to be honest, because you have an associate with two or three children within a three or four year period. I don’t know how you can cope with those two competing [demands], because I don’t think women can say, “I’m going to ignore my family,” and she can’t say “I’m going to ignore my practice” . . . . I’m not happy

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36. *Id.* at 141 (Bradley, J., concurring in the judgment); see also Victoria Alexeeva, *Images of Women Lawyers: Over-Representation of Their Femininity in Media*, 9 CARDOZO WOMEN’S L.J. 361, 368 (2003) (discussing how Justice Bradley’s opinion in *Bradwell* remains relevant today).

37. Lynn M. Dannheisser & Steven R. Reininger, *The Challenges Facing the Lawyer-Parent: Grape Jelly Fingerprints on Your Career*, FL. BAR J., Nov. 1984, at 609.

38. Korzec, *supra* note 6, at 117 (citation omitted).

39. *Id.* at 121.

40. *Id.*

41. Dowd, *supra* note 6, at 198.

42. *Id.*

43. See *id.*

44. See ENGLISH, *supra* note 34, at 230-33; see also Donna K. Davis, *Survey Paints Shocking Picture of Gender Bias*, MONT. LAW., Apr., 1994, at 3, 12 (noting that many lawyers reported that if they worked less they were considered not as committed but if they worked more they were criticized for being less than fully attentive mothers).

when I sense that the woman has put total primacy on her legal career because I know that the family side has been [neglected].<sup>45</sup>

Conversely, men who become fathers are not seen negatively; rather, society's expectation of the father is simply to be a good breadwinner. Firms enjoy when men become fathers because they are believed to begin working harder to make a better living for their families.<sup>46</sup> Parenthood affects men and women in different ways. Once a woman becomes a mother, that role, in the eyes of the firm, trumps all others. She is primarily a mother and only secondarily an attorney.<sup>47</sup> Accordingly, the stereotypical contradiction between motherhood and competence remains in place. This is the "double bind" from which women suffer. For men who become fathers, "the paternal role is all but invisible in the workplace, respected but irrelevant."<sup>48</sup> Women are overwhelmed by their new role, but men are hardly dented.<sup>49</sup>

Another contributor to the maternal wall is the "biological clock." Not coincidentally, women generally have children exactly at the same time they try to establish careers. After all, if a woman goes to law school straight from college, she will be approximately twenty-five years old at graduation. If she waits until she is thirty years old to have children, she risks interrupting a developed career and partnership hopes. Motherhood is one reason why women are not seeking or making partnership as fast as men. One article noted that women associates have complicated views about their careers, because concerns about raising children coincide with the period when associates are most closely scrutinized for partnership and this concern creates a hesitancy toward partnership.<sup>50</sup> If a woman wants a family, she has to choose when to begin that family.<sup>51</sup> Even if she waits until she has made partner, it is not necessarily easier to juggle a family and a law career. In fact, some clients demand more of an attorney's time than do supervising partners.<sup>52</sup> Furthermore, if she does wait, she may run the risk of waiting too long.<sup>53</sup>

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45. Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 425 (1995) (citation omitted).

46. See ENGLISH, *supra* note 34, at 240.

47. *Id.* at 249.

48. *Id.*

49. See *id.*

50. See Epstein et al., *supra* note 45, at 361, 296 (noting that the first ten to twelve years after law school were crucial for establishing a career and family, and that family responsibilities seem to hinder promotion).

51. It is unacceptable to respond to this assertion by stating that she could choose not to have a family. See Dannheisser & Reininger, *supra* note 37, at 610. Having a family is a choice made by both sexes. It is fundamentally unfair that only women should bear the brunt of that decision. See WILLIAMS, *UNBENDING GENDER*, *supra* note 1, at 60 ("A central message of reconstructive feminism is that raising children is not a private frolic of one's own. Raising the next generation is important work that needs to be acknowledged and supported.").

52. See Andra Greene & Catherine Helm, *Balancing Motherhood and the Practice of Law*, *NAT'L L.J.*, Aug. 14, 1995, at C6.

53. See generally Rabin Margalioth, *supra* note 5; see also Dowd, *supra* note 6, at 198 (noting that 50% of female attorneys who have children delay doing so because of their careers, compared with only 20% of male attorneys).



For lawyers, the biggest contributor to the maternal wall may be the excessive demands of billable hours.<sup>54</sup> It is impossible to bill the 2,000-plus hours some firms require and to have enough time to be the primary, or even secondary, care-giver of your children. This is why so many women choose to leave the legal profession completely,<sup>55</sup> choose alternative legal careers, or seek an alternative schedule, commonly known as part-time.<sup>56</sup>

## 2. The Plight of the Part-Time Lawyer

In Holly English's book, *Gender on Trial*, she discusses perhaps the most hotly debated issue regarding work-life balance—part-time schedules.<sup>57</sup> The chapter is aptly titled “Real Lawyers Don't Work Part-Time.”<sup>58</sup> Because women attorneys overwhelmingly request and use part-time or reduced hour arrangements, the stereotype that part-time lawyers are not “real” lawyers mostly affects and harms women.<sup>59</sup> This makes sense when one considers that the largest proportion of women lawyers are in their child-bearing ages, which explains the more recent requests for arrangements that work.<sup>60</sup>

Part-time associates and their colleagues identify several factors that affect alternative schedules:

54. See Bookspan, *supra* note 6, at 61 (stating that the demand for hours in the legal profession puts more pressure on women because they do a disproportionate share of the childcare and housework).

55. While I wholeheartedly support any woman's (or man's) decision to stay home and care for her children full-time regardless of her education or income level, this trend is problematic. As English has observed: “Women leaving the workforce to be with their children affirm long-held stereotypes that the proper place for women is in the home. Although you might admire them and affirm the validity of traditional mothering, the reasoning goes, you should be very careful about hiring women for that very reason.” ENGLISH, *supra* note 34, at 226.

56. One of the more infuriating things about this debate is the use of the word part-time, which has a connotation of half-time and half-dedicated. There are certainly women who truly work part-time, which is significantly less than 40 hours per week. But in the legal workplace, part-time often means an 80% arrangement, where the lawyer bills 80% of the billable hours for 80% of the pay. Attorneys at large (and small) firms know that billing 80% of a 2,000 billable hour quota requires very close to, or often more than, 40 hours per week of actual work. In other words, it is difficult to bill 32 hours per week (80% of the 40-hour billable requirement to hit the 2,000 hour goal in 50 weeks) without working significantly more than 32 hours per week. There are plenty of non-billable hours that are required in any firm, regardless of how efficient the attorney is. This type of arrangement (in my opinion anyway) is properly termed “reduced-hour” rather than “part-time.” As any attorney on an 80% arrangement could attest to (as well as her children), she definitely works more than “part-time.” I am not alone in my disdain for the term “part-time.” Professor Williams agrees that the “part-time” terminology is disserving us. “What many mothers are seeking is not ‘part-time’ in any traditional sense of the term. Indeed, . . . a typical ‘part-time’ schedule at a law firm is forty hours a week. What many lawyers seek is not part-time hours, but balanced hours.” Williams, *Canaries*, *supra* note 3, at 2230 (citation omitted). Despite my dislike for the term “part-time,” using it is a difficult habit to break (and is less cumbersome than “reduced-hour arrangement”). Unless otherwise indicated, when I use the phrase “part-time,” I consider it to be synonymous with “reduced hours” or “balanced hours.”

57. ENGLISH, *supra* note 34, at 193.

58. *Id.*

59. See Nicole Buonocore Porter, *Review of Gender on Trial*, 6 U. PA. J. LAB. & EMP. LAW 467 (2004) (reviewing ENGLISH, *supra* note 34) [hereinafter Porter, *Review*].

60. See Mossman, *supra* note 33, at 290.

1. perceptions of clients regarding part-time attorneys assigned to work on their behalf;
2. impact on colleagues;
3. the quality and quantity of work assigned to part-time associates;
4. the stigma within the firm that may be associated with being a part-time lawyer;
5. the requirement to remove oneself from the partnership track.<sup>61</sup>

English identifies the two main “problems” experienced by part-time attorneys: their peers’ perception of a lack of commitment on their part (and the corresponding decline of good assignments and promotional opportunities), and their own guilt. One feeds upon the other. English states:

The “real lawyers” staunchly resist changes to the proven success formula, charging that alternative schedules are inequitable and that part-timers lack commitment. These tensions make the part-timers feel resentful for the lack of respect they get from their colleagues, but also guilty about “slacking off” on the job.<sup>62</sup>

Part-time arrangements in the legal workplace are rarely successful.<sup>63</sup> Many firms do not have a formal part-time policy, allowing these firms to treat the part-timers any way they want. Many who are granted a reduced-hour arrangement often realize it is a “death sentence.” They are viewed by their colleagues as less visible, less important, and less worthy. Their assignments become less important and enjoyable and their advancement is negatively affected.<sup>64</sup>

As stated above, one of the reasons reduced-hour arrangements fail is the perception by full-time colleagues that reduced-hour attorneys lack commitment. Sometimes the colleagues do not know that the attorney is being paid less or how much less the attorney is being paid.<sup>65</sup> Others argue that they would appreciate the opportunity to work fewer hours but believe that they do not have that option.<sup>66</sup> The full-time employees feel that they are left to pick up the slack left by the part-timer, and this perception seems to hold true even if her colleagues are rarely or never asked to fill in for her.<sup>67</sup> Some of the most heated opposition comes from other female attorneys, often older attorneys who were not given the chance to have such flexibility, and therefore resent the younger attorney’s opportunity.<sup>68</sup>

Others oppose part-time arrangements because they believe that part-timers are not as committed.<sup>69</sup> Those who work reduced hours know that they

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61. Epstein et al., *supra* note 45, at 403.

62. ENGLISH, *supra* note 34, at 195.

63. See Porter, *Review*, *supra* note 59, at 476.

64. See ENGLISH, *supra* note 34, at 203; see also Epstein et al., *supra* note 45, at 396 (noting that with part-time work comes a diminished quality of work assignments).

65. See Greene & Helm, *supra* note 52, at C6.

66. See ENGLISH, *supra* note 34, at 205.

67. See *id.* at 206.

68. See *id.* at 207.

69. See *id.* at 209.

are just as committed as full-timers to their work, but they learn to be much more efficient.<sup>70</sup> They might refuse to go out to lunch, so they can get their work done in the limited number of hours they have.<sup>71</sup> The lower pay does not seem to matter to other colleagues. The part-timers are still seen as lazy or neglectful, and some colleagues even feel betrayed by the part-timers.<sup>72</sup> This lack of respect is often difficult to tolerate, and therefore, many women choose to leave the firm altogether. Unfortunately, management does not understand that the failure to value the part-timers might cause them to leave, bringing the firm back to the same problem that prompted them to offer part-time in the first place: high turnover.<sup>73</sup>

Another contributor to the dissatisfaction of part-timers is guilt. As discussed more fully below, many women are guilt-ridden about everything, including the cleanliness of their homes, the hours they put in at work, and their participation at their children's school. It is not surprising then that these women feel guilty about not working as many hours as the attorney in the office next door.<sup>74</sup> This trend is exacerbated when firms allow all attorneys to see one another's billable hours, a common practice in some high-pressure firms.

Other authors have contributed their insight to the topic of women lawyers and what has been referred to as the "mommy-track,"<sup>75</sup> which often involves a reduced-hour arrangement. Professor Korzec argues that the "mommy-track solution" is not really a "solution" at all: "[M]ommy-tracking reinforces undesirable stereotypes. Ironically, this apparent 'solution' actually forestalls the transformations, at home and at work, which could enable women to choose both motherhood and career. Thus, 'mommy-tracking' both results from and perpetuates gender inequality because women, unlike men, still pay the cost of parenthood with their careers."<sup>76</sup>

Some view the mommy-track as a positive solution rather than a negative one. Felice Schwartz, who coined the term in 1989, argued that, since employing women is more costly than employing men, the "mommy-track"—paying mommies less—is more efficient than allowing attorneys who are mothers to perform at a lower level than their non-parent counterparts.<sup>77</sup> Even some women, like Judge Judith Kaye,<sup>78</sup> believe that the "mommy-track" is a positive development: It allows women to combine motherhood with the benefits of large law firm employment.<sup>79</sup>

70. When I was at a large law firm, I quickly learned that the only way I was going to get in my billable hours and still have any time for my family was to avoid most social opportunities and limit personal phone calls and emails. It made work less enjoyable, but it was a sacrifice I was willing to make for my family.

71. See ENGLISH, *supra* note 34, at 209-11.

72. See *id.* at 212.

73. See Porter, *Review*, *supra* note 59, at 477.

74. See *id.*

75. See generally Korzec, *supra* note 6.

76. *Id.* at 120.

77. See *id.* at 127.

78. Chief Judge of the New York Court of Appeals.

79. See Korzec, *supra* note 6, at 128.

Others, however, realize that there is not much benefit to large law firm employment if one is treated as a second-class citizen at the firm. In a survey of 3,000 women in the nation's largest law firms, sixty-seven percent reported that part-time work results in fewer opportunities.<sup>80</sup> Professor Williams, one of the leading scholars on the work/family debate, argues that the mommy-track reinforces exploitation of women by creating workplaces which are top-heavy with men and childless women, supported by a pink-collar ghetto of mother-attorneys who lack partnership status.<sup>81</sup> Part-time lawyers suffer in terms of salary, quality assignments, and advancement. Thus, they are more likely to suffer from lower self-esteem and to leave the legal profession altogether.<sup>82</sup>

Even after part-time attorneys have returned to the firm full-time, they face permanent ramifications. First, there are non-recoverable losses in lifetime earnings, which have been estimated to average one and one-half percent for each year of absence.<sup>83</sup> In one study, most associates regarded the decision to move to a part-time schedule to be a permanent departure from the partnership track.<sup>84</sup> Those who work part-time might feel that their hard work is not appreciated; even after they return to full-time, they might have their chances for advancement permanently jeopardized by negative assumptions concerning their priorities and ambitions.<sup>85</sup>

Korzec also discusses whether the mommy-track is a valid choice from the perspective of feminist jurisprudence.<sup>86</sup> Some might argue that the mommy-track is a good compromise for a woman between quitting work to stay home, thereby sacrificing her career, and working the attorney's ideal worker hours, thereby sacrificing her family life. However, Korzec and many other scholars believe that the mommy-track perpetuates harmful stereotypes about the nature of women. The mommy-track—and even the fact that it is called the “mommy-track” rather than the “parent-track”—reinforces identification of women with traditionally defined feminine characteristics.<sup>87</sup>

Although I think non-marginalized reduced-hour programs are very important, it is not difficult to figure out why law firms and their managing partners or committees generally oppose these arrangements. Viewed from the short-term, bottom-line perspective, a part-time lawyer presumably brings in significantly less revenue. Even though the firm pays her less, some overhead costs are fixed, so the firm arguably earns less profit from her than from full-time attorneys.<sup>88</sup>

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80. *See id.* at 127.

81. Joan Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 828 (1989).

82. *See id.*

83. Korzec, *supra* note 6, at 129 (citation omitted).

84. Epstein et al., *supra* note 45, at 407.

85. *See* Korzec, *supra* note 6, at 130 (citation omitted).

86. *See generally id.* at 131-34.

87. *Id.* at 133.

88. *See* Williams & Calvert, *The Project for Attorney Retention*, *supra* note 6, at 412 (“We have heard repeatedly that ‘we can’t afford part-time’ or ‘we can’t afford to have people go below 80%’ because we lose money on part-timers. Typically, what this means is that the firm calculates the cost-effectiveness of balanced hours by applying the overhead calculation allocated to full-time attorneys, often in excess of \$200,000, to each balanced hours attorney.”).

For example, the firm still provides an office, a secretary, other administrative support, and often most significantly, benefits including health and life insurance.<sup>89</sup> In an environment where the cost of benefits is rising, employers will tend to overwork existing employees rather than pay all of the fixed benefit costs associated with hiring new employees.<sup>90</sup> In the case where an attorney's reduced-hour arrangement requires the firm to hire an additional employee, it is particularly easy to see why a firm might be against such an arrangement. To make matters worse, most law firms know that their full-time attorneys will work well beyond their billable-hour quotas. Therefore, even if the reduced-hour attorney is being paid 80% of her pay (and assuming she only works 80% of her billable hour quota),<sup>91</sup> her colleagues might be paid 100% of their income to work 110% of the billable hours, making the full-time attorneys even more profitable for the firm.<sup>92</sup>

However, this economic model only tells half of the story. Most firms do not consider the high costs of turnover that are likely to result from a firm's failure to offer flexible work arrangements, such as recruitment costs, training costs, lost productivity, and so on.<sup>93</sup> English notes that many firms with concerns about the costs of reduced-hour arrangements have rarely thought out the economics of the situation, focusing instead on only the short-term effects.<sup>94</sup>

In an article culminating the Project for Attorney Retention (PAR) study,<sup>95</sup> Professors Joan Williams and Cynthia Thomas Calvert provide the economics behind their conclusion that reduced-hour arrangements—or “balanced-hours” as they call it—can work economically for a firm. First, they point out that it costs a firm at least \$200,000 to replace a second-year associate.<sup>96</sup> These costs include recruiting expenses, headhunter fees or referral bonuses, hiring or signing bonuses, bar and moving expenses, interviewing time spent by lawyers at the firm, and training costs. The cost estimate also includes other items that firms probably do not consider, such as lost productivity for each week the position is vacant, costs of the training the firm provided that are lost if the attorney leaves before he/she becomes profitable, costs of the lost knowledge and skills the attorney takes with her, possibly lost clients, and the effects of high attrition on the morale and productivity of the attorneys who remain at the law firm.<sup>97</sup> The PAR study revealed several employers who have saved millions

89. Cf. WILLIAMS, *UNBENDING GENDER*, *supra* note 1, at 111 (noting that many employers require large amounts of mandatory overtime as a way of amortizing benefit costs).

90. *Id.*

91. This is not necessarily an accurate assumption. Many reduced-hour attorneys complain about the fact that they often are forced to work beyond their scheduled hours because of client or case demands, or the demands of supervising partners. It is infuriating for these attorneys to realize that they are often working just as hard as their full-time counterparts while earning significantly less money.

92. See Porter, *Review*, *supra* note 59, at 476.

93. See ENGLISH, *supra* note 34, at 199.

94. *Id.*

95. See generally Williams & Calvert, *The Project for Attorney Retention*, *supra* note 6.

96. See *id.* at 366 (noting that this is a conservative estimate; some estimates are as high as \$500,000).

97. *Id.*

by having non-stigmatized balanced-hours programs that significantly decrease the attrition rate.<sup>98</sup> Workable balanced-hours policies are discussed below.

### III. THE PROPOSED SOLUTIONS

As stated in the Introduction, my goal is not to provide a comprehensive solution for all working mothers everywhere.<sup>99</sup> Instead, my modest goal is to discuss various solutions suggested by others or myself in an attempt to figure out which solutions are feasible for mother-attorneys. In this Part, I will address three possible solutions to this problem: (1) litigation (2) inducing legal employers to restructure the legal workplace to make room for something other than the “ideal” attorney, or (3) re-defining Superwoman. This last solution will not help to combat blatant discrimination, but it will help women learn to live with the cards that have been dealt to them, not through resignation, but through confident empowerment.

#### A. Is Litigation an Option?

The over-simplified answer to this question is “no”: Litigation is not an option in most cases. Our legal system does not recognize as illegal discrimination most of the practices that construct the maternal wall. Even in cases where litigation is an option, many lawyers are fearful of filing complaints, because they fear being blacklisted with no future opportunities to work in the profession.<sup>100</sup> Even though it is illegal for firms to retaliate or refuse to hire a lawyer because he or she has filed a lawsuit against a firm, it surely happens, and I would recommend that any woman think carefully before embarking on such a course of action.

Regardless of whether it is strategically useful for an attorney to sue her employer, it is important to discuss why it would likely not be a successful option. No federal statute prohibits discrimination against working adults with caregiving responsibilities, and only a few states provide any explicit protections.<sup>101</sup> Accordingly, a woman would have to bring her claim based on a sex-discrimination theory, and mother-attorneys have not found much success with this type of claim.

In what is perhaps the most often-cited case in this area, *Ezold v. Wolf, Block, Schorr & Solis-Cohen*,<sup>102</sup> a female attorney unsuccessfully challenged her law firm’s decision to deny her promotion to partner.<sup>103</sup> Although she prevailed at

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98. See *id.* at 367. (“Deloitte & Touche has estimated that its flexible work arrangements saved \$13 million in 1997 due to reduced attrition. Ernst & Young, LLP, conservatively estimates that it saved over \$25 million in 2001 as a result of its efforts that focus on work/life integration and gender issues in the firm.”) (citations omitted).

99. This will be my goal in a forthcoming piece.

100. See Davis, *supra* note 44, at 4.

101. Williams, *Beyond the Glass Ceiling*, *supra* note 6, at 2-3 (discussing statutes passed in Alaska and Washington, D.C.).

102. (*Ezold I*), 751 F. Supp. 1175 (E.D. Pa. 1990), *rev'd*, (*Ezold II*), 983 F.2d 509 (3d Cir. 1992), *cert. denied*, 510 U.S. 826 (1993).

103. *Ezold I*, 751 F. Supp. at 1176.

trial,<sup>104</sup> the Third Circuit reversed her victory,<sup>105</sup> holding in part that because her employer gave a specific reason for her termination—insufficient analytical ability—the trial court should not have looked at her overall skill.<sup>106</sup> One commentator, Professor Bisom-Rapp, believes that the Third Circuit’s approach is problematic for mother-attorneys whose family responsibilities frequently require them to deviate from the norms of the legal workplace.<sup>107</sup> As Bisom-Rapp notes, if a highly successful mother-attorney leaves the office at 6:00 P.M. every night to have dinner with her family, she may be perceived as less committed to her job; thus, despite her superior skills, the Third Circuit would allow her employer to fire her based solely upon that misperception.<sup>108</sup> Discussing another sex-discrimination case, *Neuren v. Adduci, Mastriani, Meeks & Schill*,<sup>109</sup> Bisom-Rapp notes that it is difficult for a plaintiff to prevail when she is required to establish that all of the relevant aspects of her employment situation were nearly identical to those of a male associate.<sup>110</sup> Because most women with children do not work as many hours as the men against whom they would be compared, it is easy to see why women with children would not be able to meet this standard.

Notwithstanding these negative results, Professor Williams believes that there is some hope on the litigation front. As discussed in the Williams scholarship, in *Trezza v. Hartford, Inc.*,<sup>111</sup> a woman lawyer sued her employer after she was repeatedly passed up for promotion after having children, despite her history of excellent evaluations. Following the “sex-plus” precedent of *Phillips v. Martin Marietta Corp.*,<sup>112</sup> the district court held that the plaintiff had stated a cause of action when she compared mothers to fathers, not merely men to women.<sup>113</sup>

Despite the plaintiff’s success in *Trezza*, most women find little success through litigation.<sup>114</sup> Lawsuits succeed or fail depending upon the type of claim the woman brings. Assume a woman with children does not get promoted to partner. If she brings a disparate-treatment sex-discrimination claim alleging that she was treated differently because she is a woman with children,<sup>115</sup> under a

104. *Id.* at 1192.

105. *Ezold II*, 983 F.2d at 513.

106. *Id.* at 533.

107. See Bisom-Rapp, *supra* note 6, at 374 (“In short, the employer has the right to pick the reason [for denial of partnership], no matter how subjective or prone to potential stereotyping, and the court may not question it.”).

108. *Id.*

109. 43 F.3d 1507 (D.C. Cir. 1995).

110. See Bisom-Rapp, *supra* note 6, at 377-78 (citing *Neuren*, 43 F.3d at 1514 (citing *Pierce v. Commonwealth Life Ins. Co.*, 40 F.3d 796, 802 (6th Cir. 1994)).

111. 1998 U.S. Dist. LEXIS 20206, at \*6. For analyses of this case, see Williams, *Canaries*, *supra* note 3, at 2238-39 and WILLIAMS, UNBENDING GENDER, *supra* note 1, at 101-102.

112. See generally 400 U.S. 542 (1971).

113. *Trezza*, 1998 U. S. Dist. LEXIS 20206, at \*16-21.

114. But see Williams & Segal, *Beyond the Maternal Wall*, *supra* note 6, at 122-61 (discussing the successes of some of these types of cases).

115. This is called a “sex-plus” case. See Nicole Buonocore Porter, *Sex Plus Age Discrimination: Protecting Older Workers*, 81 DENV. U. L. REV. 79, 84-87 (2003) (discussing the history of the “sex-plus” discrimination doctrine).

*Neuren* analysis, she has to prove that the attorneys who were promoted were similarly situated to her.<sup>116</sup> However, if she is like most mothers, she probably neither billed as many hours as those who were promoted nor developed as much business; therefore, she will struggle to meet her burden of proof.

Alternatively, if she brings a disparate-impact suit, she is likely to face similar difficulties. Generally, a disparate-impact lawsuit does not require the plaintiff to prove intentional discrimination, but rather that a characteristic-neutral policy or practice has a disproportionately negative effect on a particular class; here, the class is women.<sup>117</sup> She is likely to face three inter-related obstacles to her claim: (1) compiling the requisite statistics to show that the policy has a disparate impact on women<sup>118</sup> (2) identifying a specific policy or practice that caused the adverse employment decision, often the denial of partnership status,<sup>119</sup> and (3) rebutting her employer's defense that the policy itself is justified by a business necessity.<sup>120</sup> Because high billable hours are the status quo at most law firms, attempting to change this status quo through litigation is likely to be met with substantial resistance.

The only cases that are likely to be very successful are those in which the mother-attorney performs as an "ideal worker," but she is nevertheless discriminated against because of either stereotypical beliefs regarding women's traditional roles or outright hostility toward her personal success.<sup>121</sup> As already discussed, the caregiving responsibilities of most mothers prevent them from performing as "ideal workers;" therefore, litigation is rendered as an unpromising option. Thus, we must look to other solutions.

## B. Structural Solutions

### 1. Do Law Firms Need to Change?

In determining appropriate solutions, it is important to question whether women should agree to conform to the existing work patterns of the legal profession or whether there is a need for the profession itself to change.<sup>122</sup> Most scholars who have addressed this issue believe that law firms need to change their practices. For instance, Mary Jane Mossman questions whether the legal culture of long hours at the workplace is always necessary, or if it simply reflects a tradition that thrives on work for its own sake.<sup>123</sup> She questions whether it is possible to organize the legal workplace to deliver both highly efficient and

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116. 43 F.3d at 1514.

117. *See id.* at 105.

118. *See id.* at 106.

119. *See id.*

120. *See id.* at 105.

121. *See generally*, Joan C. Williams, *Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination*, 7 EMP. RTS. & EMP. POL'Y J. 287 (2003); Joan C. Williams, *Women's Work Is Never Done: Employment, Family, and Activism: Hibbs as a Federalism Case; Hibbs as a Maternal Wall Case*, 73 U. CIN. L. REV. 365 (2004).

122. Mossman, *supra* note 33, at 289.

123. *Id.* at 291; *see also* S. Elizabeth Foster, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1680-81 (1995) (arguing that billable-hour requirements create a disincentive to work in a time-efficient manner).



highly effective client services, while maintaining meaningful family lives for all lawyers.<sup>124</sup> The typical law firm model assumes a twelve-hour work day, sometimes six days per week.

Such a model of lawyering offers three alternatives for women: one is to have no children, a “choice” adopted by many more women lawyers than their male colleagues; another is to have children but, adopting the life pattern of the typical workaholic father-lawyer, spend little time with them and consign most of their care to someone else; or finally, to depart from the model of “ideal worker” by arranging work responsibilities so as to meet family obligations.<sup>125</sup>

Many lawyers choose this third option by going into alternative law practices, such as government work.<sup>126</sup> Mossman notes that, “[this is] interesting because the work done by lawyers employed by the government (litigating, drafting, negotiating, and creating large-scale agreements among multiple parties) is similar to that done by private-practice lawyers.”<sup>127</sup> So if the substantive work is the same, one questions why the working conditions are so different.<sup>128</sup>

Despite the very pessimistic reality that law firm life leaves women with few choices, some believe that change is still possible. Mossman argues that we must challenge the status quo of law firms and unmask the practices that depend more upon tradition than upon client needs.<sup>129</sup> A model that presumes that a worker has full-time domestic labor in the home—such as the current law firm model—is not the solution. Instead, we need a gender-neutral solution that rearranges current law firm practices.<sup>130</sup>

Some argue that no change needs to be made: Women can always choose to take non-traditional routes, and their choices thus reflect their satisfaction with these routes. In response, scholars have pointed out that the “choice” is not really a choice at all because women bear the majority of child-care responsibilities.<sup>131</sup> In fact, women who choose to be “ideal workers” often end up “‘forty-three, single, [and] childless,’” and they are becoming increasingly more common.<sup>132</sup> Of course, there is nothing wrong with choosing to forego having children, but if a woman’s choice not to have children is based on the perception that it is impossible to balance a family with a successful legal career, then this fact is a problem. To anyone who would argue that deciding to have or not to have a family is simply a “choice” a woman has to make, I would respond by asking: “Why do only women have to make that choice? Why do men still get to have both a family and a career?”

124. Mossman, *supra* note 33, at 291.

125. *Id.* at 291-92.

126. *See id.* at 292.

127. *Id.*

128. *See id.*

129. *Id.* at 293.

130. *See id.*

131. *See id.* at 293-94 (citing several studies and articles that discuss mother-attorneys’ daily struggle with this Hobson’s Choice).

132. *Id.* at 294 (quoting Martha W. Barnett, *Women Practicing Law: Changes in Attitudes, Changes in Platitudes*, 42 FLA. L. REV. 209, 217 (1990)).

Mossman argues that the law firm profession has only offered piecemeal solutions, representing token efforts to accommodate the needs of some women lawyers, without in any way challenging the underlying issues.<sup>133</sup> Accordingly, Mossman argues that any arrangement needs to be accompanied by a “commitment to rethink the nature of legal work in light of lawyers’ needs to balance their work and family lives.”<sup>134</sup> She concludes that:

[T]he legal profession needs to develop policies about work and family that both respond to the needs of women lawyers who currently experience disproportionate pressures and also to take account of the need for changes in parenting arrangements that are more suited to an integrated workforce in the legal profession . . . .<sup>135</sup>

While not offering anything concrete, Mossman argues that it is necessary to confront the model of lawyering that now creates “inconsistency between the roles of ideal worker and responsible parent.”<sup>136</sup> We need to redefine the “ideal worker” to include persons with family responsibilities.<sup>137</sup>

Korzec also believes that firms “must adopt gender-neutral models for law practice. Such models would accept the human need for a balanced life that incorporates time for familial as well as professional and social responsibilities.”<sup>138</sup> Korzec correctly identifies the real culprit in the work/life balance problem—the billable-hour method.<sup>139</sup> She argues that firms can and should adopt alternative billing methods, such as fixed-fee and value billing:<sup>140</sup>

Value-billing is a model which accommodates the expertise of counsel, the complexity of the task, and the results achieved, in addition to the time involved. The fixed fee method charges a stated or fixed fee for each particularly defined task. [These billing methods are] efficient as well as responsive to client demands for cost-containment and accountability.<sup>141</sup>

For mother-attorneys, “these alternatives provide a measure of flexibility” without the time costs inherent in the billable-hour method.<sup>142</sup>

Korzec is correct. As long as there is a billable-hour method, firms will always have a difficult time valuing anything but long hours: High billable hours equal high profits. When I left my large firm to take an in-house position, I justified my departure to my supervising partners by explaining that I need to be valued for both my quality of work and my efficiency. At a law firm based on the billable-hour method, you can do great work quickly and efficiently, but you are ultimately valued (at least by the firm management) by how many

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133. Mossman, *supra* note 33, at 297.

134. *Id.* at 298.

135. *Id.* at 299.

136. *Id.* at 302 (quoting Joan C. Williams, *Sameness, Feminism, and the Work/Family Conflict*, 35 N.Y.L. SCH. L. REV. 347, 356 (1990) [hereinafter Williams, *Sameness*]).

137. *Id.* at 302 (citing Williams, *Sameness*, *supra* note 136, at 356).

138. Korzec, *supra* note 6, at 136.

139. *Id.*; see also Foster, *supra* note 123, at 1681 (criticizing the billable hour method).

140. Korzec, *supra* note 6, at 136.

141. *Id.* (citing Foster, *supra* note 123, at 1681-82).

142. Korzec, *supra* note 6, at 136-37.

hours you bill and how much money you bring in the door. A parent with significant family responsibilities will always be less valued than an attorney without such responsibilities, who are mostly men. These men, with stay-at-home wives and a willingness to spend relatively little time with their children can put in the hours needed to become highly valued by the firm.

Aside from eradicating the billable-hour method, the only other alternative is to truly convince law firms that there is a great deal of value in retaining highly qualified women even if they are not extremely profitable at various points throughout their careers. Korzec points out that part-time lawyers typically “return to full-time employment in a short period of time.”<sup>143</sup> “Parents often work intensely for ten years, less intensely for five years [when they have little children at home], and then resume working intensely for another twenty-five years.”<sup>144</sup> “[F]irms which provide flexibility during the five-year period [of less intensity] earn dividends in worker loyalty and productivity.”<sup>145</sup> Firms rarely take into account the costs of turnover, and if they did, they might be more willing to provide flexibility for mothers and fathers in order to retain highly-qualified attorneys.

In my opinion, a reciprocal problem is that loyalty is a difficult thing to predict. A firm might offer flexible arrangements, sacrificing some amount of profitability in order to gain loyalty, and when the attorney leaves anyway, the firm loses money on its investment. If this occurs frequently, a firm may become less willing to provide such arrangements. Unfortunately, mother-attorneys frequently leave their firms because they are feeling underappreciated and under-utilized.<sup>146</sup> If the firm visibly supported reduced-hour arrangements, women might respond in kind, expressing more loyalty to the firm. Instead, the firm tries to instill loyalty by making the reduced-hour lawyer feel as if she is so fortunate to have been granted such an arrangement that she should be eternally grateful to the firm. In other words, most firms currently try to instill loyalty by making women feel guilty. This does not work because women who feel guilty about their arrangement will eventually want to escape it; more often than not, that escape involves quitting the firm altogether. Furthermore, the guilt-trip makes a woman feel resentful because she has no control over her predicament. If she stays, she has little choice but to try and make it work the best she can—unless she chooses not to have children, which, for some women, is a completely unacceptable solution.

“If ‘mommy-tracking’ is to be a viable option, women lawyers cannot be forced to pay the economic costs alone.”<sup>147</sup> For mother-attorneys, the solution to

143. *Id.* at 137.

144. *Id.* at 137 (citing FELICE N. SCHWARTZ, *BREAKING WITH TRADITION: WOMEN AND WORK, THE NEW FACTS OF LIFE* 177 (1992)).

145. *Id.* at 137 (citing SCHWARTZ, *supra* note 144, at 206); *see also* Korzec, *supra* note 6, at 138 (“Despite their greater familial commitments at certain points in their professional careers, [mother-attorneys] still have many years to devote to professional advancement.”); Dannheisser & Reininger, *supra* note 37, at 610 (“Rare is the lawyer, male or female, who does not pass through several phases during a career, with certain phases more productive than others.”).

146. *See* Korzec, *supra* note 6, at 130 (citing Sheila Nielsen, *The Balancing Act: Practical Suggestions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369, 382 (1990)).

147. *Id.* at 139.

the work/life balance question is for law firms to change their definition of the “ideal worker.” English believes that if firms are flexible with their scheduling, they will attract superior talent, and women will be more loyal to the firm; in order to attract both loyalty and talent, firms need to redefine “success.”<sup>148</sup> She postulates: “The new definition [of success] could be a practitioner who does superb quality work, who is celebrated—not patronized—for creatively organizing his or her life to include real time for parenting, and who includes criteria for success other than earning a significant amount of money.”<sup>149</sup> These are all promising goals, and the practice of law would be better off if law firm cultures changed. However, the most immediate change firms need to make is to give mothers a real option aside from billing 2,000-plus hours per year: That option is a successful reduced-hours program.

## 2. Williams & Calvert Proposal for a Workable Balanced-Hours Program

The Williams and Calvert article summarizing the Project for Attorney Retention (PAR) report is an invaluable discussion of how alternative scheduling can decrease attrition, increase morale, and foster a better lifestyle for attorneys.<sup>150</sup> It is a comprehensive report on the benefits of offering workable flexible arrangements, the disadvantages of not offering them, and most importantly, how to structure these arrangements to make them work for participating attorneys.<sup>151</sup>

In this article, the authors first demonstrate that current part-time or reduced-hour programs do not work, establishing that, while most attorneys would like to work fewer hours, they believe that doing so will hamper their advancement.<sup>152</sup> On the other hand, the authors also argue that non-stigmatized balanced-hour arrangements are valuable: In their absence, high attrition rates hurt client relationships by decreasing stability of representation and preventing the firm from retaining superior talent.<sup>153</sup> From a normative perspective, some firms acknowledge that allowing parents to spend time with their families is the “right” thing to do.<sup>154</sup>

The authors next demonstrate that the current “mommy-track” part-time arrangements do not work for several reasons. Some firms force part-timers into practice areas in which they have no interest.<sup>155</sup> Other firms will not allow lawyers on reduced-hour arrangements to advance or make partner.<sup>156</sup> Still other firms make part-timers feel guilty and under-appreciated.<sup>157</sup>

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148. See ENGLISH, *supra* note 34, at 252.

149. *Id.*

150. See generally Williams & Calvert, *The Project for Attorney Retention*, *supra* note 6.

151. See *id.* at 360-62.

152. See *id.* at 368.

153. *Id.* at 372 (“High attrition rates frustrate clients who have to train new attorneys—again and again.”).

154. *Id.* at 374 (“It responds to the widespread and uncontroversial sense that children need and deserve time with their parents, and that one’s parents and partners deserve time and attention when they are ill.”).

155. See, e.g., *id.* at 374.

156. See, e.g., *id.* at 376.

157. See, e.g., *id.*

Williams and Calvert identify the solution to these problems as creating balanced-hour programs that neither stigmatize nor marginalize the participants. By assessing the following six factors, the PAR Usability Test determines whether a firm's part-time program works:<sup>158</sup>

1. Usage rate [of the program], broken down by sex;
2. Median number of hours worked and duration of the balanced hours schedule;
3. Schedule creep;
4. Comparison of the assignments of balanced hours attorneys before, and after, they reduced their hours;
5. Comparative promotion rates of attorneys on standard and balanced hours schedules;
6. Comparative attrition rates of attorneys on standard and balanced hours schedules.<sup>159</sup>

The preferred answers to these questions are probably not intuitive to the average law firm management committee. While most firms would probably prefer to have few people on the part-time program, few attorneys using it or remaining on it for a short period of time suggests an unsuccessful program which will eventually cause users to quit.<sup>160</sup> The authors suggest a balancing test: "If firms find the median hours of balanced hours attorneys are in a range that would be considered full-time or overtime by non-law firm standards, their policies are not effective and usable."<sup>161</sup> Another factor, "schedule creep," is an example of a troublesome effect of part-time programs that do not work.<sup>162</sup> Schedule creep occurs when a part-time attorney's hours gradually increase over a period of time, to the point that she is working full-time hours on a part-time salary.<sup>163</sup>

Williams and Calvert offer a model balanced-hours policy.<sup>164</sup> They advocate detailed, written policies, which "emphasize[] the firm's commitment to providing and supporting balanced hours, and [ensure] even-handed application of the policy to all attorneys."<sup>165</sup> They recommend adopting the "Principle of Proportionality," where a lawyer receives a set percentage of pay for a set percentage of hours worked, both billable and non-billable.<sup>166</sup>

Regarding bonuses, Williams and Calvert recommend that "balanced hours attorneys [should] be eligible to receive bonuses according to the same criteria as standard hours attorneys, and that their eligibility and their bonuses [should] be adjusted on a *pro rata* basis in accordance with their reduced hours."<sup>167</sup> Rendering balanced-hours attorneys ineligible for bonuses contributes to the

158. *Id.* at 379.

159. *Id.*

160. *See id.* at 380-81.

161. *Id.* at 381.

162. *See id.* at 381, 404.

163. *See id.*

164. *See generally id.* at 383-412.

165. *Id.* at 384.

166. *Id.* at 384-85.

167. *Id.* at 387 (italics added).

stigma associated with balanced-hours programs, and it sends messages to those attorneys about “how their performance is valued and what their future is with the firm.”<sup>168</sup> Bonuses awarded for meritorious work or rainmaking should be paid to balanced-hours attorneys without regard for their part-time status.<sup>169</sup>

Similarly, proportionality should be given with respect to assignments and advancement.<sup>170</sup> Williams and Calvert recommend either having an assignment coordinator or conducting a periodic review of assignments to ensure that balanced-hours attorneys are given challenging work.<sup>171</sup> Part-time attorneys should be able to make partner, even if it takes them longer to do so, provided they have met the three criteria that typically enter into the partnership decision: (1) the attorney has attained a certain level of professional maturity and confidence, (2) the attorney has “paid her dues,” and (3) the attorney is able to generate revenue for the firm.<sup>172</sup> A part-time attorney can more easily meet these criteria if the firm has given her quality work assignments.<sup>173</sup>

The authors also recommend that firms embrace policies that are both flexible and fair. While they recognize that “[y]ou can’t solve an institutional problem with an individual accommodation,”<sup>174</sup> they also recognize that individual situations require some flexibility—meaning, balanced-hours schedules should be available to any attorney who proposes a viable business plan.<sup>175</sup> Offering non-parents the same opportunities as parents will likely reduce the backlash experienced when non-parents feel that they have to pick up the slack created by parents who work fewer hours.<sup>176</sup>

Williams and Calvert argue that, to implement a successful balanced-hours program, the program must be visibly supported from the top of the firm.<sup>177</sup> “This means not merely circulating a memo from the managing partner announcing the program, but rather demonstrating commitment from all the partners and senior administrative staff of the firm. . . . [I]t means directing a deliberate shift in firm culture.”<sup>178</sup>

I could not agree with this more. Without full support of both management and the partners, the program will fail.<sup>179</sup> Williams and Calvert suggest teaching partners both the economic impact of high attrition and the relationship between long hours and attrition,<sup>180</sup> making practice-group heads responsible for the

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168. *Id.*

169. *Id.* at 388 (quoting Bing Leverich, Partner at Covington & Burling, L.L.P.).

170. *See id.* at 388-90.

171. *See id.* at 389, 405-06.

172. *Id.* at 391-92.

173. *See id.*

174. *See id.* at 393 (quoting Anne Weisberg, Catalyst).

175. *See id.* at 393-94.

176. *See id.*

177. *See id.* at 396-97.

178. *Id.* at 396.

179. *See* Epstein et al., *supra* note 45, at 400 (noting the problems with success that one part-time associate experienced, because the partners with whom she worked had the power to ignore her part-time status and give her negative reviews, despite the fact that she was working according to the terms of her negotiated agreement).

180. *See* Williams & Calvert, *The Project for Attorney Retention*, *supra* note 6, at 396.

attrition rates of their departments,<sup>181</sup> and ensuring that partners who work alternative arrangements are very visible internally, so the other attorneys can see the range of options available to them.

In addition to training partners, firms need to train the rest of the lawyers at the firm to ensure that all attorneys understand (1) the economics of attrition, (2) how to reduce their own hours, and (3) how to supervise or work with someone who is working a reduced-hours schedule. Firms should include training to overcome unconscious assumptions that can make an otherwise well-intentioned policy unusable.<sup>182</sup> Williams and Calvert also recommend publicizing the policy to ensure its success, thereby reducing or eliminating resentment from colleagues who might not understand that the attorney has traded off part of her salary to spend more time with her family.<sup>183</sup>

The authors advise both the attorney and the firm to plan ahead to mitigate the business impact of a part-time schedule; also, they must combat schedule creep, which is one of the biggest problems facing part-time attorneys. Schedule creep occurs either because firms do not decrease the amount of work given to the attorneys or because attorneys are still trying to prove that they can carry their weight while working part-time. While lawyers' hours frequently vacillate depending on the type of practice and time of year, and part-time attorneys must be willing to put in the hours during crisis time, lawyers also must take the opportunity to take more time off after the crisis. If they do not, they will find themselves working full-time hours for part-time pay. Firms should employ Balanced Hours Coordinators to monitor hours and assignments so that schedule creep does not become a problem.<sup>184</sup>

Most importantly,<sup>185</sup> Williams and Calvert suggest that firms need to work to eliminate stigma by "changing the language of success."<sup>186</sup> They state:

A key challenge for [law] firms is to create a culture that separates the ability to work a certain schedule with being a "team player," where being a "hard charger" is not the only currency of the realm. [The problem is] that many employers confuse the issue of who has talent with the issue of who puts in more face-time.<sup>187</sup>

When the accounting firm Deloitte & Touche faced the challenge of this stigma, they conducted workshops for their accountants on "Men and Women as Colleagues."<sup>188</sup> The accountants were asked to define who was a "committed professional." The men equated commitment with long hours, assuming that those who were working flexible arrangements were less committed. Conversely, the women assumed that, given the difficulties faced both at home

181. *See id.* at 407.

182. *See id.* at 399-400.

183. *See Williams, Canaries, supra* note 3, at 2235.

184. *See Williams & Calvert, The Project for Attorney Retention, supra* note 6, at 405-06.

185. And, perhaps most unrealistically.

186. *See Williams & Calvert, The Project for Attorney Retention, supra* note 6, at 408-09.

187. *See id.* at 408. In my experience, in-house counsel positions actually make "face-time" even more important because there are no billable hours by which to judge the in-house attorneys. Instead, they are judged by the time spent in their offices.

188. *See id.*

and at work in working reduced hours, those in flexible work arrangements were more committed; otherwise, they would have already quit.<sup>189</sup> As one woman stated: “On most days I am taking care of children or commuting or working from the moment I get up until I fall in bed at night . . . . No one would choose this if they weren’t very committed.”<sup>190</sup>

While I have never thought about it in those terms, it rings true. While men supported by stay-at-home wives demonstrate a commitment to their career, so do the women who overcome significant challenges simply to show up every day. Williams and Calvert recognize that “[c]hanging institutional culture requires sustained effort and a long-term commitment.”<sup>191</sup> I think it requires a miracle, which is why I suggest that attorneys working reduced hours need to learn to control what they can control: themselves and their own attitudes.<sup>192</sup>

The authors also address several common myths about balanced hours.<sup>193</sup> In response to the oft-cited argument that balanced-hours programs cost too much money, Williams and Calvert point out that expenses, including the high costs of attrition, counterbalance the loss of revenue.<sup>194</sup> Balanced-hours attorneys also impose lower overhead costs than partners with large offices and extensive business development accounts.<sup>195</sup>

Partners should also realize that, as long as the reduced-hours attorney does not try to continue with the same work-load (i.e., the same number of cases or matters), she will still be able to give the same amount of attention to each case on which she works. Nearly every associate is a “part-time attorney” for purposes of her involvement with any particular case or partner, as most associates work with multiple other attorneys during any given period of time, making a balanced-hours associate just as valuable as a full-time associate.<sup>196</sup> Speaking from the perspective of a client (when I was in-house counsel), clients do not care if the associate is spreading her time between several cases or fewer cases and a family, as long as the attorney is doing a good job.

Finally, Williams and Calvert respond to the concern that everyone will want to go part-time if balanced-hours programs are a viable alternative.<sup>197</sup> The authors state that this fear is just that: a fear that has not come to fruition. Consultants agree that usage will top off at between five and ten percent.<sup>198</sup> In

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189. *Id.*

190. *See id.* at 408-09.

191. *Id.* at 409.

192. *See* discussion *infra*, Part III.C.

193. *See* Williams & Calvert, *The Project for Attorney Retention*, *supra* note 6, at 412-26.

194. *See id.* at 412.

195. *See id.* at 413-14 (stating that “[a]s a practical matter, balanced-hours attorneys impose only marginal costs,” because the biggest expense—office space—would still have to be paid even if the balanced-hours attorney was not working at the firm).

196. *Id.* at 415-16 (quoting Andrew Marks, Partner at Crowell & Moring LLP).

197. *See generally id.* at 421-25. I have frequently heard this fear expressed, and I also have heard non-parents’ resentful comments that they would also prefer to work fewer hours also. But when push comes to shove, I suspect that many of those people would be unwilling to take the requisite cut in pay. After all, twenty to thirty percent of a very large salary is a great deal of money.

198. *See id.* at 421-22.



any event, high usage rates are not necessarily a bad thing: Palmer & Dodge, LLP has remained highly profitable, despite an unusually high percentage of attorneys on balanced schedules—fourteen percent of associates work a balanced schedule.<sup>199</sup>

In conclusion, Williams and Calvert note that, despite the common fear that law firms cannot afford to offer part-time, the reality is that firms cannot afford not to offer usable and effective balanced-hour policies. “To keep the keepers in an era when half or more of law students are women, and in a society where the younger generation has become more insistent on work/life balance, law firms need to offer balance without career penalties.”<sup>200</sup>

### C. Re-Defining Superwoman: What Women Can Do Personally to Overcome the Maternal Wall

In this Part, I will address what I have learned from my years as a mother-attorney, as well as what I have learned from other mother-attorneys.<sup>201</sup> What I am about to say may surprise some and anger others, but I believe it must be said. The enemy is not the firm because the firm is simply acting in what it believes to be its best interests. The enemy is our own guilt. I am not sure why this is so, but it is apparent to me that women everywhere are taught to feel guilt much too easily. Even when the stars align and everything is going well, we are apt to feel guilty about something. I have no empirical support to back up this conclusion, but I suspect that many of the women reading this are nodding their heads in agreement. So the question becomes, how does this guilt manifest itself in this maternal wall issue?

The problem, as I see it, is that women with children will always be torn between two conflicting roles: “mother of the year” and “superstar attorney.”<sup>202</sup> Because it is not possible to be both (although I have seen some women come awfully close), mothers who do not quit the legal workforce altogether are likely to feel guilty almost every day of their lives. Why? Because at any given time, they will feel that they could be giving more to their children and family or that they could be giving more to their law practice. For example, a mother-attorney might feel guilty because all of the stay-at-home moms volunteer at her daughter’s classroom more than she does. When she does feel compelled to attend a field trip, she feels guilty that she has to leave work early or come in late to attend the event: “We are all too often plagued by the nagging doubt that whatever it is we are doing, we probably should be doing something else.”<sup>203</sup>

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199. See *id.* at 422.

200. *Id.* at 426.

201. One story I found particularly inspirational was the story of Dean Rebecca White. See Rebecca White, *I Do Know How She Does It (But Sometimes I Wish I Didn't)*, 11 WM. & MARY J. WOMEN & L. 209 (2005). Dean White wrote this article as part of a symposium on Attrition of Women from the Legal Profession.

202. See, e.g., Jacquelyn H. Slotkin, *Should I Have Learned to Cook? Interviews with Women Lawyers Juggling Multiple Roles*, 13 HASTINGS WOMEN'S L.J. 147, 171 (2002) (interviewing a mother-attorney who felt inadequate in both areas of her life, describing herself as “totally torn and very selfish”).

203. Dannheisser & Reininger, *supra* note 37, at 609; see also WILLIAMS, UNBENDING GENDER, *supra* note 1, at 16-17 (relaying the story of a woman who quit work because she felt guilty about not being the ideal worker).

Stories of this guilt are found everywhere. Women feel guilty about having full-time surrogate care for their children.<sup>204</sup> Some mother-attorneys feel guilty because the stay-at-home moms do not invite their children to be involved in play dates, so the mother-attorneys might feel that they are depriving their children of social opportunities.<sup>205</sup> Dean Rebecca White tells her story of feeling guilty because she knew she was performing poorly as a mother. She chose a deposition over a doctor's visit when her son was facing possible hospitalization, and she once went seven days in a row during a trial without seeing her son awake.<sup>206</sup>

The solution to this problem is two-fold. First, you must be a productive, efficient, outstanding attorney. The rest lies in an attitudinal adjustment. When I am asked how I juggle my career with my young children, my usual response is, "I just get my work done, and I don't worry about all of the perception stuff." Because I have worked in four different legal environments—judicial clerk, large firm associate, in-house counsel, and legal academia—I have learned a little bit about adjusting to each unique situation. From my experiences, I have the following advice to give:

1. Be a great attorney (and an efficient one).

You can avoid feeling guilty about not working as many hours if you are getting as much work done and if you are valuable to the attorneys and clients with whom you work. I cannot emphasize enough how important this is. That I was a valuable attorney who did high-quality work efficiently allowed me to overcome my work-related guilt of not putting in the same hours as everyone else when I was full-time. Being efficient also ensures that you are not leaving work for your colleagues to do or disappointing partners or clients. Do not think I am suggesting in this Part that women should be content with mediocrity. I believe the opposite is true: Mother-attorneys should continue to strive to be the very best attorneys they can be. They simply need to learn to work smarter, so they do not have to work longer. High billable hours are not the only determination of a great attorney. Even in law firms that do not have progressive balanced-hours programs, it is still possible to be highly valued as a great attorney without having to bill the most hours in the firm.

Once you have become a great attorney, learn how to sell yourself. Make sure that others are aware of all that you are accomplishing.<sup>207</sup> If you are on a reduced-hour arrangement, make sure that others see you when you are there and know how to get hold of you when you are not.<sup>208</sup>

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204. See Epstein et al., *supra* note 45, at 427-28.

205. See *id.* at 429.

206. See White, *supra* note 201, at 213.

207. For some advice on selling yourself to your firm, see Ellen Ostrow, *Making the Business Case for Balanced Hours*, WIS. LAW. APR. 2002, at 35, 35-36. For other suggestions on making it work as a part-time attorney, see generally Nielsen, *supra* note 146.

208. I know it seems crazy to allow yourself to be contacted at any time when you are home with your children. After all, if you wanted to be working instead of spending time with your children, you would not have sought a reduced-hour arrangement in the first place. But, in my experience, giving permission for others to contact you goes a long way, and in most cases, they will not use or abuse your permission unless they absolutely have to. If you come across a colleague or client who

## 2. Seek a schedule that works.

If you are a good attorney and you have enough confidence to know that you deserve to have sanity and balance in your life, figure out what type of schedule would work for you, and ask your firm, confidently, for the schedule you need.<sup>209</sup> Be ready to explain why it will work for the firm. You may not always get what you want. I have been denied alternative working arrangements three times, but the first two rejections did not stop me from asking the third time.<sup>210</sup> If you do not get what you want formally, have a back-up plan. Maybe you can change your schedule—even if you continue to work full-time—or maybe you need a nanny instead of day care. There is no universal combination of work schedule and day-care option that works. You need to constantly be willing to reevaluate your choices and make any necessary changes.

## 3. If you are given flexibility, take it, but leave the guilt behind.

Remember, our society makes it difficult to be a working mother, especially as an attorney. There is nothing wrong with your desire to have balance in your life. You deserve what you have been given. Do not read too much into the comments of others. I sometimes think that our guilt makes us take offense at comments that were not meant to be offensive. If you are confident in your abilities, you believe that you deserve what has been given to you, and you believe you can remain a competent, committed attorney while working reduced hours, your attitude will hopefully be contagious. If others sense that you feel guilty about your situation, they will assume you have something to feel guilty about. On the flip side, there is also nothing wrong with you if you can find balance and still work full-time. I have worked full-time almost my entire legal career. The key to working full-time is to find ways to build flexibility into your schedule. Most attorneys I know do not punch a time clock: As long as you get your hours in, most law firms do not care when or where you get your work done. If you want to be home for dinner most nights, and would rather do some more work from home after the kids are in bed, then do it. Do not feel guilty about it or worry about what your colleagues think. As long as you are doing a good job as an attorney and working the agreed upon hours—even if not one hour more—you have nothing to be ashamed of and everything to be proud of. You are, after all, a mother-attorney, and life is not easy. Enjoy any flexibility you can find for yourself.

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does cross the line, and does not understand that when you are home you prefer to not be working, see *infra* Part III.C.4.

209. For some advice on making the business case to your firm to be allowed to work reduced hours, see Ostrow, *supra* note 207.

210. Stubborn or stupid? I am not sure. In my defense, the first two times were a year apart, and I was unaware of my firm's policy that I had to be there two years before seeking reduced hours. I eventually did get a reduced-hour arrangement at my law firm, but shortly thereafter I went back to full-time—only after I convinced my husband to take a leave from his job for a while to care for our young daughter. The third rejection was from a different employer. As you can see, I constantly had to reinvent ways to make my schedule work because each time I asked for reduced hours and was denied, I had counted on being able to have that particular schedule.

#### 4. Learn to stand up for yourself.

If you do get negative remarks or your arrangement is not being honored, say something. If someone appears resentful, you might want to remind that person that you pay a significant price for your schedule, mostly in the form of reduced income. Furthermore, as noted above, one of the biggest problems with reduced hours is schedule creep. If others are giving you more work than you can comfortably take on, it is imperative you let someone know before the quality of your work starts to suffer. This advice must be given with a caveat: If you are full-time, and are therefore not being paid less than other attorneys and everyone around you is working hard, you will likely experience resentment if you refuse to take on as much work as everyone else. This is when it is vital to be efficient—learning to work efficiently is a must for making all of this work.

#### 5. Seek out similarly situated women and learn from their experiences—both their successes and mistakes.

There is definitely safety in numbers. Seek out as many parent-attorneys as you can who are going through similar situations of managing children and a law career, especially at your law firm or employer. There is so much knowledge to be shared, and perhaps more importantly, there is so much support to be given. In my bio line, I mentioned a colleague of mine from when I was in-house counsel who was a tremendous support to me. I cannot tell you how much it helped to discuss these issues with her. Even if we never came to a solution, talking about it made us realize that we were not alone in this cold, cruel world of trying to manage life as a mother-attorney. When I asked for reduced hours—a ten-percent reduction—and was refused, she learned from my mistake and knew not to ask. Seek out other women: You will be richer for it. I know I am.

#### 6. Don't feel guilty about finding enjoyment in your career.

Most attorney-mothers I know could quit if they really wanted to. It would mean they would have to move to a smaller house and change their lifestyle a little, but they could do it. Society makes women feel guilty about wanting to work when we are not forced to do so for financial reasons.<sup>211</sup> I do not feel guilty about working. I believe that working makes me a more fulfilled, happy person, which in turn, hopefully makes me more enjoyable to be around for my family. Don't get me wrong. There are times where the stress of being a working mom gets the better of me and my children and my husband do not think I am very enjoyable to be around. I just think, "they should see me if I didn't work." Although I love my children, the idea of being home full-time does not appeal to me, especially now that I have a job with ultimate flexibility and one in which I truly love what I am doing. When others tried to make me feel guilty for taking this teaching position (because it meant moving my entire family 600 miles from "home"), I was able to overcome that guilt by continually reminding myself that I have a right to be happy. You do too, and if you find fulfillment in your career, lose the guilt.

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211. See Epstein et al., *supra* note 45, at 423 (noting that women who do not have to work for money find it necessary to justify their decision to have a career).

7. Don't feel guilty about being a "good enough" mom.

Your children will not suffer if you are not a perfect mom. From their perspective, store-bought brownies are just as good as—if not better than—homemade ones, and I believe they would rather have your undivided attention at home in the evenings than have you show up at some school function, when your schedule does not permit both. My oldest daughter understands that I do not volunteer for everything at her school because I work full-time. I spend so much time taking kids to doctors and dentists and caring for them when they are sick that there simply is not always time to volunteer at their schools. I don't feel guilty about that. Children need to be cared for, and you should buy, borrow, or beg for the best care you can get for them. Children also need as much time as possible with one or both of their parents. I spend some morning hours and some evening hours with them every single day—plus weekends—so I do not beat myself up over the fact that I am away from them for eight or nine hours per day. If your job requires you to rarely see your children awake, and you are okay with that and they are in good care, then do not feel guilty about it. But if the reason you do not ask for a reduced-hour schedule is because you are afraid of not being the "superstar attorney," I believe you should rethink your priorities and stop letting the guilt over not being the ideal worker control your family life.<sup>212</sup>

8. Vacillate between "mother of the year" and "superstar attorney."

As I have said repeatedly, I believe it is impossible to be both the ideal worker and the ideal mother, under our society's current definition of both of those terms.<sup>213</sup> Hopefully, society's definition—or at least your law firm's definition—will change, but until it does, learn to recognize when you are needed as an ideal worker and when you are needed as an ideal mom. There are times I am needed after work for a law school function. This means that I might not see my kids that evening, should I return home after they are in bed. Normally, that is not an acceptable situation for me, but every once in a while it is important for me to make that sacrifice for work. Other times, I might need to back out of a work obligation because I have a sick child who needs mommy, not daddy. The key to success is learning when you are needed as a "superstar attorney" and when you are needed as "mother of the year." When you are fulfilling one of those roles, you are not going to be fulfilling the other. Deal with it and move on.

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212. As stated above, I also think you can be a "superstar attorney" without working the most hours. In my mind, being valued by your practice group is more important than being valued by your firm management, who generally cares more about the bottom line than about your abilities and the quality of your work. What firm management does not always understand is that the bottom line is directly related to the quality of your work, and not just the quantity. Quality work keeps clients happy, which is extremely important to the bottom line.

213. See, e.g., Epstein et al., *supra* note 45, at 423 ("There's not a single day that goes by that I don't think about how I could be a better lawyer if I could devote more time to lawyering and a better parent if I could devote more time to parenting. Literally not a day goes by. It's a daily conflict.").

#### 9. Ask for the help you need at home.

If you are married,<sup>214</sup> and if your husband seems to have no appreciation for all that you do and you feel that he does not help out as much as you would like him to, ask him<sup>215</sup> for the help you need. I have noticed that this is one of those areas where women feel an incredible amount of guilt. I had a mother who stayed at home and did everything around the house without ever asking for help from my dad. I used to feel guilty that I could not emulate her, until she pointed out that she could do everything because she did not work outside the home. If you both work,<sup>216</sup> there is no reason you should do more around the house than he does. You probably will, but when you have hit your limit and you need help, ask for it. Do not feel guilty about it.

#### 10. Redefine what “all” is.

Can women have it all? Yes, provided we redefine what “all” means. You *can* have both a career and a family. You might not have the cleanest house. You might order carry-out for dinner every week night. You might not be the best social hostess. You might not bill the most hours at your firm. You might not get the bigger bonuses. You might never win “mother of the year” award. You might not be the best wife. However, if you have a rewarding, challenging career and you have happy, well-adjusted children, you truly do “have it all.”

### IV. CONCLUSION

The maternal wall is not insurmountable. Motherhood can be combined with a successful career as an attorney. Although the obligations of motherhood and the pressures of the workplace often conspire to make women feel like failures at both, they are in the best position to control their own attitudes. Redefine what Superwoman means to you. If you try to emulate the “superstar attorney” who bills the most hours and never says no to anyone, and you also try to emulate “mother of the year” on the home front, you will burn out eventually. The only endeavor in which you should strive for perfection is finding balance. If you are happy, your family is happy, and your firm is happy because you do great work (even if it is less work than other attorneys), then, in my definition, you already are Superwoman.

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214. If you are a single working mother, my heart goes out to you. I was a single mom for a few years at the beginning of my law career and I know how difficult it is. I hope you have family around to help (or some really good friends). If you do, don't feel guilty about asking for help.

215. Or her. Anecdotally, I have read and heard that lesbian couples really do have a much more equal relationship than heterosexual couples when it comes to child-rearing and household work. Perhaps we should take a lesson on equality from them.

216. To make myself clear, I do not want to be on record as suggesting that men who have stay-at-home wives have the right to do nothing or that the stay-at-home moms don't have the right to ask for help. I believe that caring for children is a full-time job, and when the husband comes home at the end of the day, she deserves a break as much as he does. If they have young children, there is no break to be had, but there is also no reason why he should get one and she shouldn't.