

ON BALANCE: LEADING BY LEAVING

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INTRODUCTION

Even though women make up half of law school classes in the United States, hold half of elite judicial clerkships, and accept almost half of the jobs in large law firms, only a small number of women make partner or serve in leadership roles in those firms.¹ Much has been written about barriers to gender equality in elite law firms,² yet misconceptions persist about why time demands of “big law” disproportionately impact women.³

This Article highlights evidence contrary to those misconceptions, and argues that the women—and men—who leave large firms in search of balance are exhibiting leadership. Contrary to Sheryl Sandberg’s advice that they should “lean in” if they hope to lead,⁴ these former big law attorneys are leading by leaving.

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1. See *infra* notes 5-17 and accompanying text.

2. See, e.g., *infra* note 28 (discussing factors that contribute to gender equality in law firms).

3. See discussion *infra* Part II.

4. SHERYL SANDBERG, LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD 25 (2013) (asserting that women should “lean way in” to their careers; “Find the right career for you and go all the way to the top”).

Following this introduction, Part I looks at the number of women in the pipeline from law school to elite law firms, and how the numbers drop off precipitously before women achieve partnership or take on leadership positions. Next, Part II considers and refutes two common misconceptions about why women have not succeeded in big law: (1) that women lack ambition; and (2) that women cannot shoulder the dual demands of lawyer and primary caregiver. The reality is that these women *are* ambitious, and both women and men leave elite firms for similar reasons—better balance in their professional and personal lives. Balance is the focus of Part III, which argues that lawyers leaving large firms in search of work-life balance are exhibiting leadership.

Turning to the topic of this symposium, Part IV concludes with suggestions about how law school leadership education can address issues of work-life balance and gender disparities in the profession. Rather than framing these as women's issues, Part IV suggests presenting these as issues that both men and women should consider as they plan their professional and personal lives.

I. WOMEN IN LARGE LAW FIRMS

Barriers that once prevented women from entering the legal profession are gone.⁵ For the past fifteen years, women have represented approximately half of the entering law school classes in U.S. law schools.⁶ These numbers have translated into roughly equal numbers of women and men joining the largest law firms in the country.⁷

5. See Deborah L. Rhode, *Women and the Path to Leadership*, 2012 MICH. ST. L. REV. 1439, 1440-47 (2012) (describing the obstacles to women entering law school and practice from the late 1800s through the 1970s); see also Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 300-01 (2008) (noting the historical barriers women faced in securing legal education and employment up until the 1970s).

6. Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 391 (2006); see also Kay & Gorman, *supra* note 5, at 300 (“By 2006, women had achieved near parity with men in law school.”).

7. See Lauren Stiller Rikleen, *Women Lawyers Continue to Lag Behind Male Colleagues: Report of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms*, NAT'L ASS'N WOMEN LAW., Oct. 27, 2015, at 2 [hereinafter *9th Annual NAWL Survey*] (finding that women made up 45% of associate positions in 2006 and 44% in 2015). The stated goal of the annual NAWL survey is “to address the gap in objective statistics regarding the advancement of women lawyers into the highest levels of private practice.” *Id.* at 4.

Despite this pipeline of women entering elite law firms, women do not stay.⁸ For the past decade,⁹ the number of women in equity partnership positions in Am Law 200 law firms¹⁰ has shifted upward only slightly: from sixteen percent in 2006 to eighteen percent in 2015.¹¹ The impact of this slow pace of progress is perhaps best understood in these terms: “At this rate, women equity partners will reach 30 percent by 2081.”¹²

The same is true for non-equity partnerships, with women representing twenty-six percent of non-equity partners in 2006 and only twenty-eight percent in 2015.¹³ In the National Association of Women Lawyers (“NAWL”) Ninth Annual Survey, large law firms were asked to report the number of associates elevated to non-equity partnership by graduation class year.¹⁴ For classes that graduated in 2004 and later, sixty-two percent of non-equity partners were men and thirty-eight percent were women.¹⁵

8. See Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 *FORDHAM L. REV.* 291, 313 (1995) (noting the small percentage of women partners in the early 1990s, despite roughly equal hiring of women and men); Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 *FORDHAM L. REV.* 2245, 2252 (2010) (explaining that, though female lawyers who entered the profession in the 1970s and 1980s gained entry into elite law firms, the next generation who entered in the 1990s and 2000s “consistently fail[ed] to achieve equal representation at the partnership level”).

9. The past decade is significant because, in 2006, the National Association of Women Lawyers (“NAWL”) issued a challenge to large law firms to double the number of female equity partners within ten years. *2006 Report: NAWL’s First National Survey on Retention and Promotion of Women in Law Firms*, NAT’L ASS’N WOMEN LAW., Oct. 25, 2006, at 2. At the time, the goal seemed achievable because, since 1991, women had made up half of law school graduating classes and half of new associate classes. Julie Friedman, *A Few Good Women*, AM. LAW., May 28, 2015, at 1.

10. An “Am Law 200 law firm” is a firm ranked by *The American Lawyer* as one of the top 200 U.S. law firms by revenue. In 2015, the size of these firms ranged from 150 to 4,000 lawyers, and firm revenues ranged from \$85 million to \$2 billion. *The Am Law 200*, AM. LAW., <http://www.americanlawyer.com/law-firm-profiles> (last visited Apr. 27, 2016). The NAWL National Survey is sent to Am Law 200 firms; in 2015, only 73 of these firms responded to the survey. *9th Annual NAWL Survey*, *supra* note 7, at 13 (showing that this is the lowest response rate since NAWL released its first survey in 2006).

11. *9th Annual NAWL Survey*, *supra* note 7, at 2.

12. Friedman, *supra* note 9, at 1.

13. *9th Annual NAWL Survey*, *supra* note 7, at 2. The number of women holding the position “of counsel” has moved from twenty-eight percent in 2006 to thirty-four percent in 2015. *Id.*

14. *Id.* at 6.

15. *Id.*

It is unsurprising, then, that women are also underrepresented in firm governance in the largest firms in the United States. Firms responding to the NAWL Ninth Annual survey reported, on average, eight men and two women on their governance committees.¹⁶ For firms with a single managing partner, women held only eighteen percent of those positions.¹⁷

II. MISCONCEPTIONS ABOUT HOW TIME DEMANDS CREATE A GENDER DISPARITY IN LARGE LAW FIRMS

Attorneys in large law firms are expected to have little life and few obligations outside of the firm.¹⁸ Time—particularly, the amount of time billed—is everything in big law; as Anne-Marie Slaughter put it, “Nothing captures the belief that more time equals more value better than the cult of billable hours afflicting large law firms across the country.”¹⁹ More specifically, law firms value “continuous and full time work” and expect lawyers to be available on demand—twenty-four hours a day, seven days a week.²⁰ Eli Wald has described the ideology of the modern elite law firm as “hypercompetitive,”²¹ characterized by well-credentialed lawyers working around the clock in pursuit of their clients’ interests.²² The ideal candidates for big law are those who can meet the firms’ “merit

16. *Id.* at 10 (further noting that 35% of respondents had 0-1 women, 41% of respondents had 2-3 women, and 24% of respondents had 4 or more women).

17. *Id.*

18. Richard Collier, *Naming Men as Men in Corporate Legal Practice: Gender and the Idea of “Virtually 24/7 Commitment” in Law*, 83 *FORDHAM L. REV.* 2387, 2387 (2015) (quoting Lord Neuberger as stating, “The truth is that the top law firms require a virtually 24/7 commitment from their employees and partners . . . Solicitors with family responsibilities almost inevitably work fewer hours, and therefore do not carry the same heft as those sad people who have no life but their work.”).

19. Anne-Marie Slaughter, *Why Women Still Can’t Have It All*, *ATLANTIC MONTHLY*, July-Aug. 2012, at 21. Slaughter concludes the thought with, “and providing exactly the wrong incentives for employees who hope to integrate work and family.” *Id.*

20. Kay & Gorman, *supra* note 5, at 308 (citing Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 *CAP. U. L. REV.* 923, 923-27 (2002)).

21. Wald, *supra* note 8, at 2271 (describing the mid-1980s to the present as the hypercompetitive ideology time period).

22. *Id.* at 2271-72 (“The ideology turned increasingly long hours and around-the-clock service mentality into elements proving the commitment of lawyers to their clients, and reestablished the claim of large law firms to elite status, ironically because it defined elite status and excellence in terms of the absolute loyalty and commitment its clients demanded.”).

credentials,” and who are “willing to sacrifice personal lives, indeed to allow their professional identity to overtake and consume their personal identity.”²³

In a large U.S. law firm, the minimum billable hours for an associate is roughly 2,000 per year.²⁴ If an attorney works five days a week, for fifty weeks of the year, the math works out to a minimum requirement of eight billable hours a day. Anyone who has billed time, however, knows that it takes far more than eight hours in the office to bill eight hours of time.²⁵ A typical attorney will work ten to twelve hours a day—including many weekends—to bill the minimum 2,000 hours a year.²⁶ Unfortunately, attractive flexible and part-time options are not available to attorneys who practice in most of these firms.²⁷

These time demands contribute to women leaving large law firms before they achieve partnership and leadership positions.²⁸ But why do time demands impact women at a higher rate than men? This

23. *Id.* at 2272.

24. *See, e.g., The Truth About the Billable Hour*, YALE L. SCH., <https://www.law.yale.edu/student-life/career-development/students/career-guides-advice/truth-about-billable-hour> (last updated May 2015) (describing average, minimum, or target billable hours in the range of 1,700 to 2,300 hours, but advising that firms do not always provide this information outside of the firm).

25. *See id.*

26. *See, e.g.,* Amelia J. Uelmen, *The Evils of “Elasticity”: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 *FORDHAM URB. L.J.* 81, 81-82 (2005) (describing the daily ten or eleven hour workdays necessary to bill 2,000 hours a year and complete non-billable, but required, tasks); *Truth About the Billable Hour*, *supra* note 24 (calculating that it will likely take around 3,058 hours in the office to bill around 2,200 hours a year, and around 2,434 hours in the office to bill around 1,800 hours).

27. *See infra* notes 38-41 and accompanying text.

28. Wald, *supra* note 8, at 2255 (noting that the numbers clearly reveal that women leave large firms at a higher rate than men, and that men are more likely to achieve partnership than women). Undoubtedly, the interplay of a number of factors—some unrelated to big law’s time demands—explain the gender disparity in big law firm partnership, including bias and stereotypes, lack of mentorship and sponsorship for women, and sexual harassment. *See id.* at 2256-57 (listing these factors, and also “workplace structures” and law firms’ professional ideology, as barriers to women in elite law firms). *See also* JOANNA BARSH & LAREINA YEE, MCKINSEY & CO., *UNLOCKING THE FULL POTENTIAL OF WOMEN IN THE U.S. ECONOMY* 4 (2011) (explaining that reasons women leave include lack of role models and sponsors, exclusion from informal networks, and entrenched beliefs about women); Triedman, *supra* note 9, at 2 (describing law firms efforts to address unconscious gender bias in promotions and compensation). This Article does not attempt to quantify whether time-related issues, or other factors, more significantly contribute to the underrepresentation of women in law firm leadership.

section addresses two common misconceptions of the issue, and explains why these misconceptions are a barrier to solving the problem.

A. *Lack of Ambition*

Facebook COO Sheryl Sandberg famously urged women to “lean in” to gain leadership roles in corporate America.²⁹ In her book by the same name, she describes an “ambition gap” between men and women that results in women choosing not to participate fully or lead in the workplace.³⁰ A recent study reveals that professionals widely share the belief that women value career less than men.³¹ The conventional wisdom is that “a woman’s primary career obstacle is herself” through her choices to “forgo opportunities, projects, and jobs.”³²

But there is reason to doubt that professional women who leave large law firms lack ambition.³³ Women who join these firms are ambitious; they attended the best law schools, received the best grades, and participated in key extracurricular activities, such as law review.³⁴ In U.S. law schools, women hold just over half of leadership positions on law reviews, and just under half of editor-in-chief positions.³⁵ Further, many women who join large law firms held prestigious judicial clerkships after graduation.³⁶ During the

29. SANDBERG, *supra* note 4, at 25.

30. *Id.* at 15-16.

31. Robin J. Ely et al., *Rethink What You “Know” About High-Achieving Women*, HARV. BUS. REV., Dec. 2014, at 6 (“Despite the fact that men and women actually have pretty similar career priorities, the belief that women value career less is widespread.”); *see also* Wald, *supra* note 8, at 2254 (asserting that a prevalent perspective on gender disparities in elite law firms is not a problem because the numbers are explained by women’s choice to opt out).

32. *Id.* at 15.

33. Slaughter, *supra* note 19, at 15 (“[M]undane issues—the need to travel constantly to succeed, the conflicts between school schedules and work schedules, the insistence that work be done in the office—cannot be solved by exhortations to close the ambition gap. . . . America’s social and business policies, rather than women’s level of ambition, [explains] the dearth of women at the top.”).

34. Wald, *supra* note 8, at 2272 (describing large firm hiring practices in the modern era as recruiting from elite law schools and insisting on “top educational credentials and extracurricular activities”).

35. *A Current Glance at Women in the Law*, A.B.A.: COMM’N ON WOMEN PROF., July 2014, at 4 (citing statistics from 2012 and 2013).

36. Women hold just over half of judicial clerkships at all court levels. *Id.* at 5 (noting that, for the Class of 2009, 51% of all clerkships were held by women, including 45.6% of federal clerkships).

time they practice in large law firms, women continue to demonstrate their ambition; for example, men and women have similar levels of billing in these firms.³⁷

Further, if a lack of ambition were the problem, then the standard “off track” part-time and flexible time programs would be a solution. But that has not been the case.³⁸ Many lawyers who transition to part-time complain that the work they receive is uninteresting and does not utilize the full range of their skills.³⁹ Beyond that, many firms attach a stigma to part-time lawyers⁴⁰ and provide no real opportunity for advancement.⁴¹ This new work environment can be particularly frustrating for women who have always succeeded academically and professionally. Unsurprisingly, many women would rather leave big law than work in these second-class positions.

B. Motherhood and the Primary Caregiver Burden

Another popular explanation for the male-female imbalance in big firm partnership and leadership is that it is a consequence of

37. 9th Annual NAWL Survey, *supra* note 7, at 9-10.

38. Friedman, *supra* note 9, at 1 (noting that flextime and part-time options have not resulted in firms successfully retaining women with children).

39. Uelmen, *supra* note 26, at 82-83 (describing her desire to hone her “craft” as a “sticky issues analyst” and continue to work on those cases, but instead being assigned to an enormous document review project immediately following her switch to part-time); *see also* Ely et al., *supra* note 31, at 8 (reporting on a Harvard Business School survey in which respondents recounted similar problems with part-time options, particularly a lack of “intellectually fulfilling” work).

40. Rhode, *supra* note 5, at 1457-58 (explaining that part-time attorneys find “[t]heir schedules aren’t respected, their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as ‘slackers’”).

41. Friedman, *supra* note 9, at 2 (“Many younger women are so cognizant of [the] ‘mommy track’ stigma that they would prefer to leave the firm rather than go part time.”); *see also* Fiona M. Kay et al., *Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice*, 20 IND. J. GLOBAL LEGAL STUD. 1223, 1232 (2013) (noting that lawyers do not take advantage of part-time options “for fear of damaging their career”); Susan Saltsonstall Duncan, *Why Aren’t There More Women Leaders and Why Should Firms Care?*, INFOCUS (Sept. 10, 2013), <http://www.rainmakingoasis.com/index.php/insights/blog/entry/why-aren-t-there-more-women-at-the-to-p-and-why-should-firms-care> (explaining that marginalization, denial of quality assistants, and part-time wages for “nearly full-time hours” were reasons why successful women in part-time positions opted to leave their firms).

motherhood and the desire to be the family's "primary caregiver."⁴² When female professionals become mothers, they typically assume the role of primary caregiver and try to "do it all."⁴³ Often, they will not ask or expect a spouse to share equally in parenting tasks (or if they do, they are likely disappointed).⁴⁴ As a result, female lawyers are overwhelmed working as both full-time lawyers and mothers.⁴⁵ Eventually, something has to give, and it is usually career.⁴⁶ Lynne Hermle, an employment litigation partner at Orrick, Herrington & Sutcliffe, a global law firm, has described the issue as this: "We lose [women] to families The issue is the roles we play as mothers and caregivers and how difficult that is in the work that we do."⁴⁷ Other commentators advise women that instead of leaving their professional careers to deal with the time demands of motherhood, they should expect more from their partners.⁴⁸

But the "primary caregiver" explanation for gender imbalance in large firms does not align with reality. All lawyers who become parents—men and women alike—face a dilemma. Even when a child is in daycare or school⁴⁹ for ten to twelve hours a day, the child still requires care the other twelve to fourteen hours each day. But, based on the time demands of big firm lawyers, they can reliably play—at best—a small supporting caregiver role.⁵⁰ In other words, the

42. Friedman, *supra* note 9, at 2 ("In the early 2000s, firms began grappling with the reality that most of their women lawyers were dropping out when they had children—often around the time they were being considered for promotion.")

43. One Harvard Business School alumna explained the "deep-rooted attitude[] that a woman should be the primary caregiver, so it is 'understood' that her career may have to take a backseat for a while as similar male colleagues move ahead at a more rapid pace." Ely et al., *supra* note 31, at 6.

44. See, e.g., *id.* at 13 ("[Female Harvard Business School graduates] were more likely to have egalitarian expectations [about spousal division of child care responsibilities and career priority]—and to see their expectations dashed.")

45. SANDBERG, *supra* note 4, at 15 ("Our partners did not share the housework and child rearing, so . . . [my generation of women] found ourselves with two full-time jobs. The workplace did not evolve to give us the flexibility we needed to fulfill our responsibilities at home. We anticipated none of this. We were caught by surprise.")

46. *Id.* (describing the plight of women in professional settings when they try to "do it all").

47. Friedman, *supra* note 9, at 3.

48. SANDBERG, *supra* note 4, at 104-20; Ely et al., *supra* note 31, at 17.

49. For those who believe parenting will be easier and less demanding in the high school years, see Slaughter, *supra* note 19, at 19 (arguing that a parent's availability is equally important during a child's teenage years as a child's early years).

50. See *supra* notes 18-27 and accompanying text (describing the time demands

problem is not that the big law attorney needs a life partner willing to split the parenting enterprise fifty-fifty.⁵¹ Rather, she or he needs a spouse willing to handle *all* (or at least the vast majority) of the parenting.⁵²

The parents most likely to leave big law are those whose spouses are also trying to maintain a career (i.e., the reason the spouse cannot do the vast majority of the parenting).⁵³ The parents most likely to remain in big law are those whose spouses are willing to forego a career to become a primary caregiver for the family, including the lawyer.⁵⁴ Statistically speaking, male attorneys are much more likely than female attorneys to have spouses willing to do so.⁵⁵ It then follows that many more male than female parents remain in partnership or partnership-track positions.⁵⁶

Ultimately, when big firm lawyers are confronted with division of parenting duties, some male lawyers stay, some male lawyers leave, and most female lawyers leave. This is a reality driven by the lawyers' spouses or partners (and their respective careers) as much as by the lawyers themselves.⁵⁷ When Sheryl Sandberg and others

of big law).

51. Sheryl Sandberg suggests that finding a partner willing to take an egalitarian approach to breadwinning and caregiving is the answer. SANDBERG, *supra* note 4, at 104-20.

52. Kay & Gorman, *supra* note 5, at 311 (noting research that suggests long work hours are more problematic for female attorneys, as they are less likely to have stay-at-home spouses).

53. Rhode, *supra* note 5, at 1458 (reporting results of an MIT study finding that one-third of male lawyers, and over two-thirds of female lawyers, had spouses or domestic partners "equally or more committed to their careers"). *See also* Slaughter, *supra* note 19, at 9 (describing a conversation with a woman in a large New York law firm who looked for "role models" who had achieved work-life balance and reported, "[I] can't find any").

54. Of course, another option is to have live-in help, such as a nanny. *See infra* note 61 and accompanying text.

55. Judith G. McMullen, *Spousal Support in the 21st Century*, 29 WIS. J.L. GENDER & SOC. 1, 14 (2014) (citing a Pew Research study in which "30% of mothers but only 6% of fathers stay home to care for children").

56. *See* Nanette Fondas, *Couples Want to Lean In Together, But They Need Employers to Change Too*, PACIFIC STANDARD (Mar. 17, 2015), <http://www.psmag.com/health-and-behavior/couples-want-to-lean-in-together-but-they-need-employers-to-change-too> (noting that, while a majority of surveyed men and women reported a desire to share breadwinning and caregiving duties equally, "long hours and overwork norms . . . push parents into choosing sex-stereotyped jobs and family arrangements that are far from equal").

57. *See, e.g.,* Ely et al., *supra* note 31, at 14-15 (describing different expectations about career priority and childcare duties for male and female Harvard Business School millennials—and suggesting a disconnect in expectations—but

tell women that they need “a real partner,” they miss the point.⁵⁸ Women (and men) do not just need a fifty-fifty parenting partner in order to “lean in” to big law; they need a stay-at-home spouse or a live-in nanny to handle most of the caregiving.⁵⁹ However, having a stay-at-home spouse is not a feasible option for most professional women with children, or for men whose partners value their own careers.⁶⁰ Additionally, full-time help is not a palatable option for many of these parents.⁶¹

III. ON BALANCE: LEADING BY LEAVING

As long as large law firms demand that their lawyers have no lives outside of the law, many women and men will leave. But that does not mean that they are failures. When lawyers leave big law in search of more balanced lives—whether they seek time to parent or to pursue other personal interests—they are demonstrating leadership. This Part considers what individuals leaving big law are seeking and where they are finding it. This discussion concludes with thoughts on the leadership qualities demonstrated by lawyers making the choice to leave big law.

Balance can be a loaded word. Professionals often hear that there is no such thing as “balance.”⁶² Because it is elusive, it should

failing to acknowledge that we cannot determine whether expectations are realistic without knowing more about the survey participants’ partners).

58. See, e.g., Ely et al., *supra* note 31, at 17 (“[O]ur survey results make us think that Sheryl Sandberg’s other slogan—“Make your partner a real partner”—is . . . perhaps more apt for young, achievement-oriented women who aspire to have meaningful, fully valued careers.”).

59. See Slaughter, *supra* note 19, at 9 (sharing an anecdote from a woman who said that all of the “top professional women she knew . . . relied on round-the-clock nannies”); Paul Sullivan, *Work-Life Balance Poses Challenges Regardless of Wealth*, N.Y. TIMES (Oct. 9, 2015), http://www.nytimes.com/2015/10/10/your-money/work-life-balance-poses-challenges-regardless-of-wealth.html?_r=0 (recounting a high-pressure career couple’s work-life struggles and their perpetual reliance upon nanny services); see also SANDBERG, *supra* note 4, at 111 (acknowledging that being able to afford “exceptional child care” is essential to her dual-career family).

60. See Rhode, *supra* note 5, at 1458 (explaining that many successful professionals have spouses or partners with equally successful careers).

61. Susan B. Share, *Mediating My Life: Confessions of a 24/7 Law Mom*, in IT’S HARDER IN HEELS: ESSAYS BY WOMEN LAWYERS ACHIEVING WORK-LIFE BALANCE 87-94 (2007) (describing the reasons she and her spouse (also a lawyer) decided not to hire a nanny).

62. See, e.g., Jennifer Dulski, *There’s No Such Thing as Work-Life Balance*, FORTUNE (Oct. 14, 2014), <http://fortune.com/2014/10/14/theres-no-such-thing-as-work-life-balance/> (referring to work and life as a “mashup,” and stating, “I have

not be a goal. But that misses the point; lawyers in other workplaces can have a more balanced life than those in big law. A career that does not leave time for personal errands, attending children's activities, or having interests or hobbies outside of work is not balanced.⁶³ And this is the life of most associates and partners in large law firms.⁶⁴

Many high-performing professionals leave large law firms (and other sacrifice-everything-for-work careers) to seek personal fulfillment on other fronts.⁶⁵ They want a life outside of work *and* a meaningful career.⁶⁶ Outside of big law, many lawyers are finding balance.⁶⁷

Significantly, lawyers leaving big law are not leaving law entirely.⁶⁸ Most of these departing lawyers continue practicing in a different setting.⁶⁹ Opportunities include positions in government, non-profits, and companies as in-house counsel.⁷⁰ Unlike jobs in

accepted that work and life are layers on top of each other, with rotating levels of emphasis . . .”).

63. See *supra* notes 24-27 and accompanying text (describing the time commitment necessary to bill over 2,000 hours a year).

64. See *id.*

65. See Uelmen, *supra* note 26, at 82 (describing her motivation to seek a part-time option in a large law firm so that she could “clean the house, cook dinner, attend church, read non-law books, work in the yard, and keep up with friends and community activities outside of the law firm,” and continue all of this while maintaining an interesting law practice); Kate Bolick, *Single People Deserve Work-Life Balance, Too*, ATLANTIC (June 23, 2012), <http://www.theatlantic.com/business/archive/2012/06/single-people-deserve-work-life-balance-too/259071/> (discussing the choice of unmarried and childless people to leave their careers to achieve better work-life balance, freeing time for activities like dating, exercise, volunteering, and familial caregiving).

66. Brigid Schulte, *Millennials Want a Work-Life Balance. Their Bosses Just Don't Get Why*, WASH. POST (May 5, 2015), https://www.washingtonpost.com/local/millennials-want-a-work-life-balance-their-bosses-just-dont-get-why/2015/05/05/1859369e-f376-11e4-84a6-6d7c67c50db0_story.html (discussing a millennial who says work-life balance is “necessary for success,” and who turned down higher paying positions to stay with an employer that let him work remotely).

67. See BARSH & YEE, *supra* note 28, at 3 (reporting that women in the survey change jobs to “pursue greater satisfaction across all parts of their lives” and that a “sizable percentage” of male college graduates surveyed “reported the same motivation to gain greater balance”).

68. See Triedman, *supra* note 9, at 5 (discussing the new legal positions women took on upon leaving large firms); cf. Ely et al., *supra* note 31, at 7 (finding that only 11% of Generation X and Baby Boomer women left the work force entirely to care for their children fulltime).

69. See Triedman, *supra* note 9, at 5.

70. *Id.*; see also Susan B. Myers, *Moebius Strip of Work-Life Balance, in IT'S*

large law firms, lawyers report that these positions provide a “clearer path to advancement” and more predictable schedules.⁷¹ Others find solo practice or academia to be attractive alternatives to big law.⁷² In both of these career paths, attorneys largely control their schedules, and can continue to use their lawyering skills in an area of the law that they enjoy.⁷³ Alternatively, other departing big firm lawyers join boutique firms, an attractive option for well-credentialed attorneys who want to continue doing interesting work in a setting that may require less face time in the office.⁷⁴

In sum, former big firm lawyers can find fulfillment in new workplaces that allow them to continue to perform at a high level. Lawyers want to keep using the skills they developed in big law, and continue (or start) working on issues that are interesting or meaningful to them.⁷⁵ Finding a career that involves meaningful work and allows the development of mastery contributes to professional motivation and happiness.⁷⁶ Even though they are

HARDER IN HEELS, *supra* note 61, at 100 (describing her choice, after becoming a parent, to leave a large law firm for a “somewhat more manageable” in-house position); Kira Dale Pfisterer, *When Three Fill Two: Part-Time Strategies For Full-Time Jobs*, ADVOCATE, Feb. 2008, at 15-16 (describing how two women and one man fill two full-time federal clerkship positions as a way to achieve work-life balance).

71. Triedman, *supra* note 9, at 5. *But see* Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407, 408-09 (2012) (making the case that in-house counsel positions are not a haven for people seeking work-life balance, diversity, and equality in the workplace).

72. *See* Slaughter, *supra* note 19, at 6-7. Recognizing that she was able to balance career and family as a professor, but not in the inflexible and demanding world of the State Department, lawyer Anne-Marie Slaughter explained, “[H]aving it all . . . depended almost entirely on what type of job I had.” *Id.*; *see also* Randall C. Rechs, *Teamwork Works for Us*, in SHARING THE PANTS: ESSAYS ON WORK-LIFE BALANCE BY MEN MARRIED TO LAWYERS 75-80 (2009) (describing his solo practice as the alternative to fifty and sixty hour weeks he worked at the beginning of his legal career, so that he could be involved in his children’s lives and support his wife’s legal career).

73. Slaughter, *supra* note 19, at 6-7; *see also* Rechs, *supra* note 72, at 75-80.

74. *See* Debra Cassens Weiss, *Some BigLaw Firms Face Associate Shortages; Boutiques are Partly to Blame*, A.B.A. J. (Feb. 26, 2016), http://www.abajournal.com/news/article/some_biglaw_firms_face_associate_shortages_boutiques_are_partly_to_blame/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email (noting that big firms were hiring more entry-level associates in 2016, which could be a byproduct of midlevel associates leaving for opportunities in boutique firms).

75. *See supra* note 40 and accompanying text (explaining that big firm part-time arrangements are unsuccessful because they fail to give lawyers interesting, engaging work that utilizes their skills).

76. *See* DANIEL H. PINK, DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US 108-48 (2009) (describing mastery and purpose as two components of motivation).

making less money, lawyers are fulfilled in these positions, in part, because of they continue to use their talents and handle work that matters.⁷⁷

Perhaps even more importantly, lawyers gain autonomy when they make such a move.⁷⁸ When attorneys control their time, they stand to gain both personally and professionally. On the professional front, autonomy is third in the trifecta of factors that shape workplace motivation.⁷⁹ On the personal front, autonomy means the ability to juggle priorities between work and home.⁸⁰ Indeed, studies recognize that shared parenting and financial responsibility benefits men, women, and families alike.⁸¹

Attorneys leaving elite firms to find balance are not failures. Seeking balance demonstrates self-awareness and vision—key qualities associated with leadership.⁸² For an over-achiever to leave the money and prestige of practicing law at a large firm in order to obtain balance and fulfillment in their lives demonstrates leadership.⁸³ While these lawyers could have sacrificed balance for career advancement, they made a different choice. Because of that choice, they can serve as role models for the next generation of lawyers, as they plan to strike the right balance of personal and professional success.

Further, these balance-seeking lawyers are leaders because they can influence structural change in large law firms.⁸⁴ Eventually, the

77. *See id.*

78. Slaughter, *supra* note 19, at 6-7 (quoting Mary Matalin, who stepped down after two years in the White House to spend more time with family, as saying, “Having control over your schedule is the only way that women who want to have a career and a family can make it work.”).

79. PINK, *supra* note 76, at 85-108 (describing the part that autonomy plays in motivation).

80. *See* Kay & Gorman, *supra* note 5, at 307 (citing a survey of San Diego County lawyers that revealed “balance and flexibility” were a priority for women lawyers with children, and that this “translated into different choices of legal employment, plus good child care, as well as supportive spouses and family, to make legal careers work”).

81. SANDBERG, *supra* note 4, at 24 (citing SHARON MEERS & JOANNA STROBER, GETTING TO 50/50: HOW WORKING COUPLES CAN HAVE IT ALL BY SHARING IT ALL (2009)) (“The data plainly reveals that sharing financial and child-care responsibilities leads to less guilty moms, more involved dads, and thriving children.”).

82. DEBORAH L. RHODE, LAWYERS AS LEADERS 4 (2013) (explaining that characteristics of leadership cluster in five categories: values, personal skills (including self-awareness), interpersonal skills, vision, and technical competence).

83. *See id.*

84. *See generally* Slaughter, *supra* note 19, at 38-39 (discussing the potential

continuing exodus of talented attorneys should cause large firms to adapt.⁸⁵ The following section considers how leadership education can introduce these lessons to students of both genders.

IV. LEADERSHIP EDUCATION: WORK-LIFE BALANCE AND GENDER DIVERSITY IN THE PROFESSION AS “ATTORNEYS’ ISSUES” AND NOT “WOMEN’S ISSUES”

We do our students a disservice if we frame issues of work-life balance and gender disparity as “women’s issues.”⁸⁶ Male lawyers have a stake in addressing these issues, too.⁸⁷ As highlighted throughout this Article, these problems impact both genders.⁸⁸ Moreover, gender equality impacts the legal profession as a whole.⁸⁹ A diverse law firm is a better law firm.⁹⁰ It is illogical to think that one gender can address these issues, irrespective of the actions of the other. Law school is the ideal time to start a discussion about how to address these issues.

Law students should explore why working toward balance is a worthy and necessary goal for both career success and personal

for a shift in law firm culture).

85. See generally Weiss, *supra* note 74 (noting the change in hiring trends of large firms to accommodate the flight of mid-level associates).

86. See Wald, *supra* note 8, at 2247-48 (arguing that the glass ceiling problem is compounded by “a common perception that the underrepresentation of women lawyers is a ‘women-issue’”).

87. Some people believe that men have been “having it all”—the career and the family—for years. See, e.g., Slaughter, *supra* note 19, at 13 (asserting that a balanced life is more elusive for women than men, as evidenced by the number of men in top positions with children). But that is not accurate. The men at the top have had the career, but most have not had the time to care for themselves or their families—other than financially. See DEBORAH RHODE & AMANDA K. PACKEL, LEADERSHIP LAW, POLICY, AND MANAGEMENT 422-24 (2011).

88. See discussion *supra* Parts II-III.

89. See, e.g., RHODE & PACKEL, *supra* note 87, at 412 (describing the social costs of gender inequalities); Avivah Wittenberg-Cox, *Gender at Work is Not a Women’s Issue*, HARV. BUS. REV. (Nov. 17, 2015), <https://hbr.org/2015/11/gender-at-work-is-not-a-womens-issue/> (asserting that millennials are framing the issue of gender balance as an issue that unites men and women); Avivah Wittenberg-Cox, *Gender Balance is Hard, but It’s Not Complicated*, HARV. BUS. REV. (Oct. 15, 2014), <https://hbr.org/2014/10/gender-balance-is-hard-but-its-not-complicated/> (explaining that businesses need their own “fact-based explanation” for why gender balance is good for business).

90. RHODE, *supra* note 82, at 146-48 (making the case for gender equity in law firm leadership).

happiness.⁹¹ They should be encouraged to explore and identify their values to determine the balance that makes sense in their lives.⁹² Stories of lawyers who left big law provide important insight for law students to consider when charting out their future paths.⁹³ We should also encourage students to forge new paths. In a changing market for legal services, entrepreneurial lawyers will find success by developing innovative (and less time-consuming, hourly-billing-focused) ways to serve clients.⁹⁴

Law school is an ideal time for this planning and reflection. It may be easier for a law student to be rational before his or her perspective is skewed by life, and rewards, inside a large firm. While, theoretically, attorneys may like the idea of work-life balance, it is easy for competitive individuals to shift their focus in order to succeed in the firm environment. Before being immersed in that world, it is useful for students to make a plan to achieve the things that are important to them.⁹⁵

Law students should also explore the consequences of imbalance. Beyond personal sacrifices of health, happiness, and family, a lack of balance can impact the profession as a whole. Lawyers who devote all of their time to a demanding workplace perpetuate a system without room for those who need to have a life outside of the law. If the firm norm is an attorney who spends 3,000 hours a year in the office, and is supported by a fulltime, at-home caregiver, then attorneys with any responsibilities or interests outside of the firm will not be able to keep up. Attorneys should understand that devoting everything to the firm makes it harder for other attorneys to have balance, and ultimately makes it more difficult for firms to achieve gender diversity.

Students considering a career in big law should recognize their potential for changing an environment that currently makes gender equality difficult to achieve.⁹⁶ Workplace norms and structures can

91. Bolick, *supra* note 65, at 2 (“[S]eeking out a more balanced life isn’t just a women’s issue, it’s a human issue, and we’d *all*—men and women—be a lot better off if we addressed . . . the issue that way.”).

92. See, e.g., Doug Blaze, Sarah Derrington & Brad Morgan, Syllabus, *Leading as Lawyers: Trans-Pacific Perspectives, Self-Awareness, Wellness, and Balance* (on file with author).

93. See *supra* notes 65-74 and accompanying text.

94. See BENJAMIN H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION 221-22 (2015) (describing the opportunities for entrepreneurial lawyers in a time of change in the market for legal services).

95. See Blaze, Derrington & Morgan, *supra* note 92.

96. See Rhode, *supra* note 5, at 1449 (“Organizations’ tendency is to attribute racial, ethnic, and gender differences in leadership to differences in choices,

evolve.⁹⁷ While most baby boomers (those occupying management positions today) do not have full-time working spouses, the vast majority of millennials are part of dual income partnerships, and many seek work-life balance.⁹⁸ While millennials will face resistance, they may have sufficient numbers to effect change in the legal workplace.⁹⁹

To achieve that culture shift within big law, however, lawyers of both genders must seek more reasonable (i.e. “part-time” or “flexible” by current big firm standards) schedules.¹⁰⁰ Men and women alike must demand positions that allow them to use their full skillset while maintaining a measure of control over their schedules.¹⁰¹ As Deborah Rhode has explained, “Gender hierarchies will persist until concerns about the quality of life become more central professional priorities”¹⁰²

While these options will not be as lucrative, the other attributes of such positions are more important to many people.¹⁰³ Further, these flexible and part-time options should not exclude a person

capabilities, and commitment that the organization has limited ability or responsibility to influence.”); Slaughter, *supra* note 19, at 41 (arguing that for women to achieve equality, we must “stop accepting male behavior and male choices as the default,” and must instead “chang[e] social policies . . . to accommodate . . . [women’s] choices”).

97. See Kay et al., *supra* note 41, at 1233 (explaining the need for not only workplace policies to change, but also workplace culture that puts so much emphasis on high billable hours); Slaughter, *supra* note 19, at 38-39 (noting that more male law students are interested in work-life balance, and acknowledging that “[a]bstract aspirations are easier than concrete trade-offs,” but asserting “once work practices and work culture begin to evolve, those changes are likely to carry their own momentum”).

98. See Schulte, *supra* note 66 (citing results from a survey of over 10,000 workers: close to 80% of millennials are part of a dual income couple, and members of that age group were most likely to report that they would “take a pay cut, forgo a promotion, or be willing to move to manage work-life demands better”).

99. *Id.*

100. See generally Uelmen, *supra* note 26, at 81-84 (explaining the perils of women seeking a shift to “part-time” (i.e. forty hours a week) in big law).

101. See *supra* notes 75-81 and accompanying text.

102. Deborah L. Rhode, *Gender and Professional Roles*, 63 *FORDHAM L. REV.* 39, 64 (1994).

103. See PINK, *supra* note 76, at 9 (arguing that businesses assumptions about pay for performance are “outdated, unexamined, and rooted more in folklore than in science”); see also Kay & Gorman, *supra* note 5, at 307 (explaining that when “balance and flexibility” were a priority for women lawyers with children, it “translated into different choices of legal employment, plus good child care, as well as supportive spouses and family”).

from partnership.¹⁰⁴ Again, law firm partners working fewer hours will not enjoy the same compensation as full-time partners, but the partnership designation need not be solely about money. It signifies recognition of the lawyer's contribution to the firm, and gives the lawyer a seat at the table for decision-making and future leadership positions. While certain leadership positions cannot be held by part-time attorneys, keeping those attorneys in the firm, and elevating them to partner while working reduced schedules, ensures leadership is an option in the future.¹⁰⁵

Lawyers, and firms, that make flexible and part-time work possible will have success keeping talented women and men who would otherwise leave big law.¹⁰⁶ Accordingly, legal educators should prepare lawyers for the roles that they can play in seeking balance and leading their firms to accept new models for the practice of law.

104. See Ely et al., *supra* note 31, at 8 (discussing a woman's decision to leave part-time work at her firm because she received less challenging work and "being part-time took me out of the structured review and promotion ladder").

105. Rhode, *supra* note 5, at 1459-60 (arguing that workplace structures must adapt, so that lawyers can work reduced hours to accommodate family needs and be allowed to cycle back into full-time work and leadership positions when personal obligations decrease).

106. *But see* Wald, *supra* note 8, at 2286 (asserting that gender equality is unlikely in the near future in elite law firms "given their dominant inhospitable professional ideology").