Red Light, Green Light: Assessing the Stop and Go in the Advancement of Women in the Legal and Business Sectors

Megan Erb

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ABSTRACT

The purpose of this note is to identify the problems professional women have in building a career while caring for a family, and to provide the basis for creating a solution. Part I of this note addresses the various types of problems that force women out of the workplace, as well as the difficulties women have in reentering the job market. Part II of this note compares the alternative work schedules offered in the legal and business communities. Part III focuses on the success the business firms have had, with the help of business schools, in finding a practical solution for working women. Legal firms today are not as progressive as business firms. Finally, this note discusses why the legal sector should promote change and how it can implement an alternative work schedule that benefits both women and private legal firms.

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INTRODUCTION: IDENTIFYING THE PROBLEM — WHY DO WOMEN LEAVE?

They are the inevitable questions every woman must ask herself: “Can I successfully balance a family and a career?” “Can I be a good mother and a partner in a private firm?”

This note explores the challenges women face as attorneys. Part I discusses the barriers built into the structure of the legal field that restrict women's abilities to pursue career advancements and force women out of the work force, effectively preventing women from achieving both a successful career and a healthy family life. As a result of the growing attrition rate for female attorneys, Part II of this note explains and critique Deborah Rhode's ideal alternative work schedule. Alternative work plans, when properly implemented, aim to improve the retention rate in private firms. Part III of this note addresses the beginning stages of success in the business community with respect to the work-family balance. A number of companies and business schools are already exploring ways to accommodate family needs in the workplace. Finally, Part IV explores how to apply the business community's strategies to the legal field. More specifically, who needs to take responsibility for making the changes and ending sex discrimination against working mothers?

I. WHY WOMEN LEAVE AND DON'T COME BACK

The first step in formulating a solution is to identify what is causing women to leave the workforce and the problems women have upon reentry into the workplace. The percentage of women choosing to enter the legal field has substantially increased in the last twenty years. Today, men and women are equally represented in law schools and the legal community. In contrast, the number of female attorneys that remain in a law firm during the “prime” of their career, the time when attorneys are typically promoted to partners, has plummeted.

1. CATALYST, WOMEN IN THE LAW: MAKING THE CASE 7 (2001). For example, “enrollment of women in top-tier law schools has steadily increased over . . . time, reaching 40 percent in 1985, and almost 50 percent in 2000.” Id.

2. Id. at 7, 48. The number of males and females who begin working at a law firm are roughly equivalent. While the number of men and women who work in corporate legal departments are the same, their positions are not; see also Timothy L. O’Brien, Up the Down Staircase, N.Y. TIMES, Mar. 19, 2006, § 3, at 1.

3. Rebecca Korzec, Gender Bias: Continuing Challenges and Opportunities, 29 LITIG., Spring 2003, at 14, 14 [hereinafter Korzec, Gender Bias]. The reason there are fewer female partners is that women are pushed out of the firm in mid-career, at the same time male attorneys are taking the largest strides. Id.; Sylvia Ann Hewlett & Carolyn Buck Luce, Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success,
One-quarter of mothers between ages twenty-five and forty-two (what are considered the prime years in a career) leave and remain out of the labor force; two-thirds of mothers opt to work a part-time or flexible schedule. A study conducted by the National Association for Law Placement (NALP) found that only 17.29% of law firm partners are women. There are several explanations for this drastic decrease, but it appears that the current structure of the legal field does not embrace women who choose to have a family and a career.

A. Conflicting Images: Traditional Lawyer vs. Working Mother

Why do women have problems staying on the career track in law firms? One reason is that the demands of a law firm are in constant tension with the needs of a family. Long hours, traveling, and the pressure to conform to societal female stereotypes take away from the role a mother is supposed to play in a conventional family.

Excessive hours are a powerful influence driving women out of the workforce. In 2003, new associates in law firms were often required to meet a quota of more than 2,000 billable hours. These “sweatshop schedules” are expected of attorneys striving for a leadership position. Because firms equate a lawyer’s dedication to the practice with the number of hours billed, associates enter a “rat race” competition, challenging each other to work harder and longer. Veteran attorneys pressure the new associates, asking: “Would you rather sleep or win?” The grueling work schedule is simply the nature of the beast.


9. Id. at 16 (quoting Renee M. Landers, James B. Rebitzer, & Lowell J. Taylor, Rat Race Redux: Adverse Selection in the Determination of Work Hours in Law Firms, 86 Am. Econ. Rev. 329 (1996)).


Courthouse schedules, client deadlines, advanced technology, and legal developments take control of an attorney’s schedule.\textsuperscript{12}

Traveling adds to the intensity of the job.\textsuperscript{13} A national client-base forces attorneys to spend a significant amount of time away from home. According to society’s conventional family structure, the mother’s duties are to care for her children, while the father is cast as the “breadwinner.”\textsuperscript{14} In fact, one study found that two-thirds of the general public believed women should be the primary caretakers, while some went as far as to say women should be stay-at-home mothers.\textsuperscript{15} This becomes increasingly difficult for female attorneys facing the constant uncertainty of where and when the workday ends. There are documented patterns of gender bias against women who do not conform to their traditional roles and, instead, prioritize a career over child care.\textsuperscript{16}

The motherly role manifests itself as a negative stereotype attached to women across the board.\textsuperscript{17} A woman’s commitment to her job is questioned by either the potential for, or the existence of, a family.\textsuperscript{18} Employers operate under the assumption that once a woman has a family, she will be more dedicated to her children than the firm, rendering her virtually incompetent as an employee.\textsuperscript{19} The legal field categorizes competence and warmth as mutually exclusive characteristics: “[o]nce a woman’s status as a mother becomes salient . . . she may begin to be perceived as a low-competence caregiver rather than as a high-competence business woman.”\textsuperscript{20}

This theory trickles into every aspect of a woman’s career.\textsuperscript{21} Increased absences due to caring for sick children, shorter hours in order to pick the kids up from school, and an inability to travel due to family priorities reinforce this presumption.\textsuperscript{22} Women develop reputations as “not being tough enough,” “too passive,” and “too emotional” to be effective leaders.\textsuperscript{23}

\begin{thebibliography}{99}
\bibitem{12} Rhode, \textit{Balanced Lives}, supra note 6, at 14.
\bibitem{13} Korzec, \textit{Gender Bias}, supra note 3, at 15.
\bibitem{14} Joan Williams, \textit{Unbending Gender: Why Family and Work Conflict and What To Do About It} 20 (Joan Williams ed., 2000) [hereinafter \textit{Williams, Unbending Gender}].
\bibitem{15} \textit{Id.} at 49.
\bibitem{16} Joan C. Williams & Nancy Segal, \textit{Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job}, 26 \textit{Harv. Women’s L.J.} 77, 90 (2003).
\bibitem{18} \textit{Id.} at 47.
\bibitem{19} \textit{Id.}
\bibitem{20} Williams & Segal, supra note 16, at 90.
\bibitem{21} Porter, \textit{supra} note 4, at 58.
\bibitem{22} \textit{Id.}
Women in the legal field are constrained by such generalizations. Those who take a risk and start a family while working at a law firm are often placed on the "mommy track" career path.\textsuperscript{24} The mommy track has its advantages.\textsuperscript{25} It provides women with the opportunity to continue working while caring for a family.\textsuperscript{26} This plan comes at a price, however, and women who are placed on the "mommy track" are denied many of the benefits, promotions, and salaries that come with a rising career.\textsuperscript{27} The end result is an economy that is "divided into mothers and others," effectively eliminating a middle ground for a woman to have it all.\textsuperscript{28}

\textbf{B. Failed Attempts at Change}

In general, law firms make the initial effort to accommodate a family-friendly environment. An estimated ninety-six percent of firms offer part-time work schedules.\textsuperscript{29} Unfortunately, the arrangements have proven unsuccessful.\textsuperscript{30} Only 3.9\% of attorneys pursue the option to work a flexible schedule.\textsuperscript{31} This is a result of a "persistent institutional resistance," which discourages women from investigating possible alternative work schedules.\textsuperscript{32} Negative consequences deter any potential female leader from taking advantage of a family friendly schedule, for fear it will "prejudice a climb up the corporate ladder."\textsuperscript{33} The Glass Ceiling Commission stated that attorneys seeking a promotion are essentially required to work above and beyond the standard number of hours, which excludes anyone working a flexible schedule.\textsuperscript{34}
The Commission identified three substantial drawbacks to working part-time: schedule creep, dull work assignments, and minimized chances of receiving a promotion.\textsuperscript{35}

Schedule creep occurs when a lawyer is working a part-time schedule, but her initial reduced hour task load continues to increase to the point where she is working extra days without additional compensation.\textsuperscript{36} There is a discrepancy between the original alternative work schedule agreement and the actual execution of the agreement.\textsuperscript{37}

When attorneys decide to work part-time, they take a cut in pay proportional to the decrease in billable hours.\textsuperscript{38} Problems arise when an employee is constantly given more work than can be done in her specified part-time hours.\textsuperscript{39} Because firms do not adjust the amount of work to fit the reduced hours, the employee is essentially working full-time for part-time pay.\textsuperscript{40} This problem is exacerbated by the fact that a legitimate part-time schedule still requires a substantial time commitment.\textsuperscript{41}

A negative stigma attaches to women who opt for a flexible work schedule.\textsuperscript{42} The phrase “negative stigma” refers to the assumption that female attorneys who work reduced hours are viewed as less serious and committed to the job.\textsuperscript{43} Because these female lawyers are not at the office full-time, they are commonly given lower quality work assignments.\textsuperscript{44} “Assignments determine skills, skills determine advancements.”\textsuperscript{45} Smaller projects, coupled with reduced hours, render


\textsuperscript{36} Korzec, Gender Bias, supra note 3, at 16; Williams, Canaries in the Mine, supra note 29, at 2224-25.

\textsuperscript{37} Korzec, Gender Bias, supra note 3, at 16; Williams, Canaries in the Mine, supra note 29, at 2224-25.

\textsuperscript{38} WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 21.

\textsuperscript{39} Id. at 34-35.

\textsuperscript{40} Id. at 34.

\textsuperscript{41} Id. at 17. This article suggested that in the Washington, D.C. area the reduced hours schedule consisted of at least forty hours per week. Id.

\textsuperscript{42} Id. at 38.

\textsuperscript{43} Korzec, Gender Bias, supra note 3, at 16; Williams, Canaries in the Mine, supra note 29, at 2224-25.

\textsuperscript{44} WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 18; see also Williams, Canaries in the Mine, supra note 29, at 2224. Williams' interviews with attorneys shows that part-time lawyers are given "smaller, less sophisticated" assignments under the assumption that they are not deserving of the big, complex assignments. Another interview discussed an attorney's opinion that part-time employees are not taken seriously and thus given lower quality work. Id.

\textsuperscript{45} CATALYST, ADVANCING WOMEN IN BUSINESS: THE CATALYST GUIDE 28 (1998).
women virtually ineligible for promotions and partnership. The lack of part-time attorneys who are promoted to partner sends a clear message to all employees that a full-time schedule is mandatory if a leadership position is sought. In fact, one study revealed that only one percent of part-time lawyers are able to become partners.

At face value, most firms offer women the choice to work part-time. In reality, the consequences of opting for a flexible schedule deter women from considering it as a legitimate alternative. Rather than survive the challenges faced by working part-time, women tend to leave the legal field altogether.

C. Why Is It Hard for Women to On-Ramp Back into Work?

As discussed, an increasing number of women are dropping out of the private legal field. The next issue to address, then, is how to integrate women back into the job market after they take time off to raise a family. “On-ramping” is defined as creating a path to re-acclimate women into the workplace. It typically involves bringing out-of-date skills “up to snuff,” reviving neglected professional networks, and working a flexible schedule. This is not an easy task. The same factors that cause women to off-ramp also make it difficult to on-ramp. Roughly four in ten women take an “off-ramp” or exit the labor force to care for a family. Studies published in the Harvard Business Review show that, soon after taking leave, ninety-three percent of women want to “on-ramp.” Despite great efforts, out of those ninety-three percent, only forty percent recapture full-time professional jobs, and twenty-four percent settle for part-time jobs. As a result, approximately twenty-five percent of professional women are unable to find suitable employment after “off-ramping.”

46. WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 14, 19.
47. Id. at 19.
49. RHODE, BALANCED LIVES, supra note 6, at 12.
51. See Porter, supra note 4, at 63.
52. See supra notes 3-28 and accompanying text.
54. Id.
55. See Hewlett & Luce, supra note 3, at 44.
56. Id. at 45.
57. Id. at 46.
58. Id.
Some difficulties in returning to work are inevitable. Significant market changes may occur in the time women are out of the job field. A woman's skills may be outdated, or her exact position may not be available anymore. Technology is a particularly challenging obstacle.\(^5\) For example, within one year, the Blackberry flooded the legal field and altered the entire line of communication for professionals.\(^6\)

Employers may also be reluctant to hire these women because of the negative stigma that is associated with stay-at-home moms.\(^6\) The challenges female attorneys faced while employed still exist when they try to re-enter the work force.\(^6\) When on-ramping, women still have families to care for and priorities outside of work, and “their hard work often goes unrewarded and unrecognized.”\(^6\) Employers are under the impression that it takes too much time and money to integrate a stay-at-home mom back into the firm.\(^6\) Losing a considerable number of qualified employees has a substantial, detrimental effect on the firm and the overall economy.\(^6\)

D. Why Does It Matter? What Effect Do Off-Rampers Have on the Economy?

It is in an employer's interest to hire professional women on-ramping back into the workforce.\(^6\) Simply looking at raw numbers, women make up one-half of the labor force.\(^6\) Only two-thirds of women, as opposed to three-fourths of men, enter the private legal sector,\(^6\) and by 1991 more than thirty-three percent of women left the private field before the end of three years.\(^6\) In fact, twenty-two percent of first year associates plan to leave private practice after less than one year of work.\(^6\) A study conducted by Catalyst in 2000, reported that because the quality and size of the legal profession is

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60. Id.
61. See Korzec, *Working on the “Mommy Track,”* supranote 24, at 130. Women who return to a full-time status after taking part-time leave believe they have lost opportunities for advancement and promotions. Id.
62. Id. at 118.
63. Id. at 130.
64. See Schwartz, supranote 26, at 65.
65. RHODE, BALANCED LIVES, supranote 6, at 20.
66. Id.
67. CATALYST, supranote 1, at 9.
69. CATALYST, supranote 1, at 23.
70. NALP, AFTER THE JD, supranote 68, at 53.
growing at such a high speed, it is imperative for employers to retain women in order to keep up with market trends. 71 The same study also showed that women have a higher attrition rate than men. 72 Accordingly, women who work part-time have the highest attrition rate of any subgroup: twenty-three percent. 73 These findings are not surprising, based on the problems women face working a part-time or flexible schedule. 74

Firms incur both quantitative and qualitative costs as attrition rates for female attorneys increase. 75 There is significant expense in the hiring and training process. 76 In order to effectively compete in the recruitment process, firms fly students back and forth for interviews, supply first class hotel accommodations, and pay for pricey restaurant/bar tabs. 77 Typically, firms also pay for the students to study and sit for the Bar. 78 After a student accepts a job offer, the firm must put time and money into a training program. 79 The firm shoulders the cost of having mentors and senior associates spend unbillable hours working with new hires instead of billing clients. 80 An associate's mentor has the additional responsibility of ensuring the associate feels comfortable and is progressing as expected. 81

Once the training is complete, the firm has invested a substantial amount of money in the new associates, making them an acquired asset of the business. 82 New associates are trained with the expectation that they will be used to generate revenue for the firm. 83 It takes approximately three years for the firm to reap the benefits of its investments. 84 If an attorney leaves before the three-year mark, the firm loses twice that amount of money because the investment was made, but no profit was gained. 85 Even after an attorney reaches the

71. CATALYST, supra note 1, at 8.
72. Id. at 23.
73. WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 19 (quoting a study by the Women's Bar Association of Massachusetts in 2000 that considered the problems associated with part-time employment policies).
74. See supra Part I.A-B (referring to the effects of schedule creep, stereotypes, and perceived lack of commitment to work).
75. Williams, Canaries in the Mine, supra note 29, at 2227.
76. Id.
77. See CATALYST, supra note 1, at 24.
78. See WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 7.
79. Id. at 7-8.
80. CATALYST, supra note 1, at 24.
82. CATALYST, supra note 1, at 24-25.
83. Id.
84. WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 7.
85. Id.
three-year mark, her productivity level is still lower than that of a veteran lawyer. When an associate quits, the lost productivity is at least fifty percent of the employee's compensation for each week the position goes empty. An article in the New York Law Journal estimated that the cost of replacing an associate was at least $200,000. Thus, it would appear that the longer the attorney has been employed at the firm, the greater the loss.

Another significant loss in revenue comes from client dissatisfaction. Clients prefer to have a longstanding relationship with lawyers who know and understand the business. Firms are aware that stable and consistent lawyer relations are a top priority for clients. Studies show that women are superior to men at building and maintaining these relationships, creating a positive rapport and securing a client base. The opportunity to establish these relationships, however, only comes after a woman has worked past the three-year mark. Female attorneys begin to have children at exactly the same time they are establishing these relationships.

The biological clock starts ticking when the firm is finally capable of capitalizing on the attorney's work and, at the same time, the attorneys are being evaluated for career advancements. This timing pressures women to choose between pursuing career opportunities or starting a family and risking the almost certain loss of a promotion. Because a high percentage of women are opting out of their full-time jobs as attorneys to begin families, client disapproval is growing. Firms need to improve the attrition rate in order to keep women employed and their clients happy. Additionally, as turnover decreases,

86. Id. at 8.
87. Id. at 7.
89. CATALYST, supra note 1, at 24.
90. Williams, Canaries in the Mine, supra note 29, at 2228.
91. Id. Clients do not wish to educate new attorneys each time the female attorney representing them leaves the firm. Id.
92. See Epstein et al., supra note 81, at 332, 339.
93. See Porter, supra note 4, at 62.
94. Id.
95. Id.
96. Id. at 60, 62-63. Statistics indicate that one in four women stay out of the labor force and two in three women work less than the forty hour work week between the ages of twenty-five and forty-four. Porter interprets these statistics to mean that the choice to have a family, for the most part, eliminates a woman's possibility of advancing in the firm. Id. at 60.
97. Williams, Canaries in the Mine, supra note 29, at 2228-29.
98. Id. at 2229.
the firm is not pressured to continuously hire large numbers of new associates and in turn will spend less on recruiting costs.99

Retaining female attorneys also has qualitative advantages.100 By using their networks and connections, women attract a different clientele to the firm than men.101 It also sends a positive message to potential female associates.102 Today's lawyers admit that seeing a greater number of women at the firm, especially those working part-time and receiving promotions, factored into their decision about where to work.103 Seeing other female attorneys implied that they, too, would have the same opportunities, which are currently rare in the legal field.104 These types of firms have a competitive advantage over others: the best and brightest women tend to work for employers who provide both a family-friendly work environment and the prospect of advancement.105

Based on the current rigid work schedule utilized in law firms, one can assume that many employers have not considered the detrimental financial impact of high attrition rates. Economically, firms would increase revenue and capitalize on their human investments if they could retain female attorneys. Providing women with the chance for career advancements and flexible schedules is a step in the right direction.

II. IS AN ALTERNATIVE WORK SCHEDULE THE SOLUTION?

Methods law firms have used in the past have been, for the most part, unsuccessful. Deborah Rhode created a model "Alternative Work Schedule" to offer lawyers a non-traditional work plan.106 The model may be universally applied or tailored to fit the needs of individual attorneys.107

The following sections of Rhode's plan describe approaches to providing a usable alternative work schedule.108 It articulates reasonable means of determining a part-time salary, which appear to appropriately compensate the attorney.109 Along with the assurance of proper

99. Id. at 2227.
100. See Epstein et al., supra note 81, at 339.
101. Id.
102. CATALYST, supra note 1, at 27, 40.
103. Id. at 27, 43.
104. Id. at 43.
105. Id. at 44.
106. RHODE, BALANCED LIVES, supra note 6, at 33.
107. Id.
108. Id. at 13.
109. Id. at 43-44. For associates, compensation will be determined by salaries within a range. A percentage multiplier is used to determine the reduced hour salary based on prior
payment, the plan instructs that part-time employees shall receive the same work assignments as full-time employees.\textsuperscript{110} This policy was formed to minimize the effects of negative stigma, which limit a part-time lawyer's work to small and routine assignments.\textsuperscript{111} Rhode's model also authorizes an attorney to apply for a flexible schedule after working for one year.\textsuperscript{112} One section of critical importance states that working on a flexible schedule will not affect an attorney's partnership status.\textsuperscript{113} In addition to a secure place on the partnership track, the firm also guarantees that voting and equity participation for existing partners will not be affected by a change to a non-traditional work schedule.\textsuperscript{114} 

There are, however, flaws in the model plan.\textsuperscript{115} The first problem lies in the requirement for billable hours. According to the plan, lawyers are permitted to cut back in hours, days, weeks, months, or on a transactional basis.\textsuperscript{116} A greater number of options improves the chance of success in finding a plan that works. But lawyers are still required to work at least fifty percent of the average billable and non-billable hours completed in past years.\textsuperscript{117} While fifty percent may seem like a drastic reduction, attorneys are not truly working part-time average billable and nonbillable hours. The other method to calculate compensation for associates is to adjust salary on a pro rata basis. \textit{Id.}

\textsuperscript{110}. \textit{Id.} at 44.  
\textsuperscript{111}. Williams, \textit{Canaries in the Mine}, supra note 29, at 2224-25.  
\textsuperscript{112}. RHODE, \textit{BALANCED LIVES}, supra note 6, at 43-44. Even though a firm may offer a part time schedule to attorneys who have only been at the firm for one year, the hierarchy will inevitably play an important role in determining which women the partners allow, if any, to work on an alternative schedule. The general belief is that there are a limited number of attorneys who may opt to work part-time and the firm's decision will be partly based on both client and financial demands. \textit{Id.}

\textsuperscript{113}. \textit{Id.} at 44. Epstein's study quotes an associate at a large firm: "If there are two people who are up for the same job, or are up for partnership and they are both equally qualified, somebody who is going to give more time is going to get it — and probably rightfully so." \textsc{Cynthia Fuchs Epstein et al., The Part-Time Paradox: Time Norms, Professional Life, Family, and Gender} 56 (1999). Trying to overcome this presumption is one of the most difficult tasks of implementing a successful alternative work schedule. \textit{See, e.g., RHODE, BALANCED LIVES, supra note 6, at 36-37; WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 17.}

\textsuperscript{114}. RHODE, \textit{BALANCED LIVES}, supra note 6, at 44.  
\textsuperscript{115}. Belinda M. Smith, \textit{Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change}, 11 \textsc{Columbia J. Gender and L.} 271, 305 (2002) ("Entrenched time norms and an inflexible working culture can thwart efforts to balance work and family even where there are formal work-family policies and an apparent openness to alternative arrangements.").

\textsuperscript{116}. RHODE, \textit{BALANCED LIVES}, supra note 6, at 43.  
\textsuperscript{117}. \textit{Id}. Women who decide to work an alternative schedule inevitably have difficulty staying on the "partner track." Working the minimum fifty percent of the prior average billable hours provides separate obstacles to overcome. It is reasonable to assume that supervising attorneys expect "more" than the minimum, making it harder for women to prove their dedication to the firm. \textsc{Williams, Unbending Gender, supra note 14, at 72-75.}
when cutting down a fifty or sixty hour work week to a minimum of thirty hours per week.\textsuperscript{118} In large cities, a part-time schedule for an attorney in a private firm is typically forty hours per week.\textsuperscript{119} To solve this problem, a firm should allow an attorney to select the hours and details of the flexible work schedule without minimums or limitations.\textsuperscript{120}

The second problem is also related to scheduling. The model states that it will not \textit{consistently} expect an attorney to work during off hours, with the condition that the attorney remain open to schedule changes, including the possibility of working or traveling during off hours.\textsuperscript{121} Variations in the agreed upon part-time schedule are based on the demands of the clients, the courts, and other attorneys.\textsuperscript{122} The unpredictable nature of the flexible schedule inevitably produces a new work-family conflict in itself.\textsuperscript{123} To suggest that attorneys are constantly “on-call” strips a working mother of her structured schedule and expected stay-at-home time.\textsuperscript{124} A parent’s availability may be limited by the accessibility of child care.\textsuperscript{125} A lawyer paying for only daytime child care will have a difficult time dealing with “emergency” client situations or late nights at work.\textsuperscript{126} It is at this point that the

\begin{footnotes}
\footnotetext[118]{\textsuperscript{118} Williams, \textit{Canaries in the Mine}, supra note 29, at 2223 ("[I]n the law, the ideal worker is defined as someone who starts to work in early adulthood, and works fifty or sixty hours a week, without a break, for the next forty years.").}
\footnotetext[119]{\textsuperscript{119} \textit{Id.} at 2230.}
\footnotetext[120]{\textsuperscript{120} Williams and Calvert’s report for the Project for Attorney Retention quotes a study where roughly half of large firm attorneys work more than sixty hours per week. A balanced hour schedule at these firms was considered working at eighty percent, or forty-eight hours per week. In essence, a part-time lawyer works the same number of hours as a full-time employee not in the legal field. \textit{Williams & Calvert, Balanced Hours, supra note 35, at 17. A more effective balance might be to allow a lawyer to work only fifteen to twenty hours per week for a set number of months, contingent on family needs.}}
\footnotetext[121]{\textsuperscript{121} \textit{Rhode, Balanced Lives, supra note 6, at 43.}}
\footnotetext[122]{\textsuperscript{122} \textit{Id.}}
\footnotetext[123]{\textsuperscript{123} \textit{Id.} One purpose of the alternative work schedule plan is to minimize, if not eliminate, the work-family conflict. If an attorney who works a reduced hour schedule refuses to work additional hours or take on extra assignments, it may further damage the attorney’s career. Rhode’s work schedule requires an attorney to be “sufficiently available” and to remain in contact during off hours. \textit{Id.}}
\footnotetext[124]{\textsuperscript{124} Attorneys are attracted to the idea of working fewer hours in order to spend more time with their children. Parents working part-time are able to create a family schedule and a lifestyle independent of their work schedule. If a firm has the power to take control of the family schedule at a whim, the attorney is again faced with the choice of neglecting his or her family or neglecting his or her job.}
\footnotetext[125]{\textsuperscript{125} \textit{Epstein et al., supra note 113, at 74.}}
\footnotetext[126]{\textsuperscript{126} \textit{Id.} Some lawyers are limited in their ability to afford child care outside of regular work hours. “Certainly, lawyers who can rise to a crisis and work at unscheduled times are more likely to be regarded as committed and ambitious and to have more opportunity to rise in their organization.” \textit{Id.}}}
problem of schedule creep enters the picture.\textsuperscript{127} Epstein's case study of large firm employees highlighted a female attorney who worked a reduced "five-day 9-to-6 schedule."\textsuperscript{128} Like many other working mothers, her day was "stretched" and she often worked late into the night in order to keep up with her high-profile, more demanding client assignments.\textsuperscript{129} She worked full-time hours for part-time pay.\textsuperscript{130}

There is an important distinction between creating and enforcing an alternative work schedule. It will take extensive efforts by the entire firm to execute a new policy.\textsuperscript{131} Surveys show that attorneys who do not choose to work part-time resent those who do, viewing them as " slackers" or lawyers who are not "dedicated."\textsuperscript{132} Coworker disapproval stems from the idea that working mothers are "neither fish nor fowl," meaning a working mother is neither a good mother nor a good attorney.\textsuperscript{133} By destigmatizing part-time employees through openly publicizing the alternative work plan as an acceptable option for all attorneys, the firm diminishes the resentment a full-time employee may feel towards part-time coworkers.\textsuperscript{134}

Third parties may also play an important role in the implementation process of alternative work schedules.\textsuperscript{135} A client's objective assessment of a lawyer's job performance may be a valuable indication of whether part-time lawyers are able to fulfill job responsibilities.\textsuperscript{136} Surveys focusing on client needs, expectations, and preferences may establish a foundation for the firm to decide which attorneys, and attorney schedules, best fit a particular client.\textsuperscript{137} Past studies have not shown that part-time attorneys have a negative impact on client

\begin{itemize}
  \item Williams, \textit{Canaries in the Mine}, supra note 29, at 2224-25.
  \item EPSTEIN ET AL., supra note 113, at 4.
  \item Id.
  \item Id.

  131. Hewlett & Luce, \textit{supra} note 3, at 50-54. "To tap this all-important resource, companies must understand the complexities of women's nonlinear careers and be prepared to support rather than punish those who take alternate career paths." \textit{Id.} at 54; \textit{see also} Williams, \textit{Canaries in the Mine}, \textit{supra} note 29, at 2234-38. Williams lists the following as strategies for implementation: support from the top, down, having a policy that is widely publicized, a policy that is universally applied, and supervisors that are trained to properly execute the policy. \textit{Id.}


  133. EPSTEIN ET AL., \textit{supra} note 113, at 4. Epstein discussed three women's experiences as well as other attorneys' feelings about these women. Many attorneys felt part-time attorneys were neither good mothers nor good lawyers. It created a catch-22 for women. A woman who wanted a career and a family could not be a great mother and a great attorney. To have both meant she must not be good at either. \textit{Id.}

  134. Smith, \textit{supra} note 115, at 293-95.


  136. \textit{Id.} at 2229.

  137. CATALYST, \textit{supra} note 1, at 67.
\end{itemize}
satisfaction.\textsuperscript{138} Regular client evaluations could end the debate over the capabilities and competency of part-time, as opposed to full-time, attorneys.\textsuperscript{139}

In-house evaluations, along with client reports, serve as tools to further the integration and acceptance of alternative work schedules. In-house evaluations give attorneys an opportunity to criticize or praise how well the senior attorneys are complying with the flexible schedule arrangements.\textsuperscript{140} "Supervisors' attitudes can frame a receptivity to part-time work and define it as legitimate."\textsuperscript{141} Partners need to hold themselves and other supervisors accountable for the proper execution of alternative work schedules and, in turn, attrition rates of female attorneys.\textsuperscript{142}

A separate set of in-house evaluations should be used to decide if individual attorneys are fulfilling their obligations set out in the plan. If the attorney is unable to meet the requirements, a new agreement should be drafted so that the firm still receives a financial benefit from keeping the lawyer on staff. To test the effectiveness of the alternative work schedule, the most objective standard for measuring productivity is compensation as related to work product.

\section*{III. Success in the Business Community}

The business sector has recognized the need to discover solutions to the work-family conflict.\textsuperscript{143} Some alternative work schedules and implementation strategies have already shown signs of success in certain corporations.\textsuperscript{144} Businesses have experimented with seminars and campaigns, new firm policies, and networking.\textsuperscript{145} Several businesses have also financed organizations such as Corporate Voices for Working Families and the Hidden Brain Drain Task Force to devise company policies and strategies that "embrace flexibility."\textsuperscript{146}

\begin{footnotes}
\item 139. Positive evaluations would refute a firm's argument that part-time employees are not as effective or hard working as full-time employees.
\item 140. Hewlett & Luce, supra note 3, at 51 (using Ernst & Young as an example of how a "People Point Survey" was used to objectively and subjectively assess managers' application of a flexible work schedule); Williams, Canaries in the Mine, supra note 29, at 2234-38.
\item 141. EPSTEIN ET AL., supra note 113, at 43.
\item 142. See, e.g., WILLIAMS & CALVERT, BALANCED HOURS, supra note 35, at 37.
\item 143. Hewlett & Luce, supra note 3, at 50-54.
\item 144. See, e.g., id. at 50-51, 52 (describing Ernst & Young and Booz Allen Hamilton's actions).
\item 145. Id. at 50-54.
\item 146. Amy Nassisi, The Business Case for Flexibility: Fasten Your Seatbelts for the Age of the Flex Exec, PBWC CONNECTIONS, Spring 2006, at 10, 10-11.
\end{footnotes}
A. Seminars and Campaigns

Corporations organized campaigns to "woo" professional women back into the workforce after off-ramping.\textsuperscript{147} The campaigns are drawing both full-time and part-time employees.\textsuperscript{148} Returning to work part-time tends to have a greater appeal because women are capable of finding a balance between time spent with family and on work.\textsuperscript{149}

Businesses also put together seminars designed to refresh women's business "know-how,” bringing “out-of-date skills up to snuff and reviv[ing] [their] neglected professional networks.”\textsuperscript{150} The seminars are meant to lower the work barriers with targeted recruitment, special retraining, mentoring, and new types of employment relationships designed to keep ex-employees tied to the firms.\textsuperscript{151} Lehman Brothers was one of the businesses to host successful seminars.\textsuperscript{152}

1. Lehman Brothers

Lehman Brothers began a campaign for its program, \textit{Encore}, in November 2005.\textsuperscript{153} The company actively recruited seventy-one “fast-track dropouts” to attend a seminar and luncheon, where it offered a short preparation course about new business developments.\textsuperscript{154} After the seminar, Lehman Brothers arranged call-back interviews with some participants and made special accommodations to ensure that these mothers were considered competitive members of the applicant pool for any available position.\textsuperscript{155} The hiring success of the luncheons motivated Lehman Brothers to host a similar seminar in London.\textsuperscript{156} Between November 2005 and February 2006, Lehman Brothers hired fifteen women from \textit{Encore}.\textsuperscript{157} To facilitate the transition into the workforce, Lehman Brothers invested money in innovative technology programs to enable trading from home.\textsuperscript{158} Susan Siverson was one

\textsuperscript{147} See, e.g., Shellenbarger, \textit{supra} note 53 (stating that Lehman Brothers, Booz Allen Hamilton, and Deloitte & Touche are among the leaders); see also Jenny Anderson, \textit{The Fork in the Road}, N.Y. TIMES, Aug. 6, 2006, § 3, at 1.
\textsuperscript{148} Shellenbarger, \textit{supra} note 53.
\textsuperscript{149} Hewlett & Luce, \textit{supra} note 3, at 50-54.
\textsuperscript{150} Shellenbarger, \textit{supra} note 53.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Anderson, \textit{supra} note 147.
\textsuperscript{154} Id.
\textsuperscript{155} Id. As the article explains, one accommodation was to prevent hiring partners from ignoring women's resumes that had career gaps — specifically the period of time when the woman was a stay-at-home mother.
\textsuperscript{156} Id.
\textsuperscript{157} Anderson, \textit{supra} note 147.
\textsuperscript{158} Id.
of Lehman Brothers' success stories. Siverson left her first job to raise a family but was wooed back into the workplace by Lehman Brothers. By repeatedly contacting her and offering her flexible work options, Lehman Brothers persuaded Siverson to work as a part-time consultant on a project-by-project basis.

2. Merrill Lynch

Merrill Lynch sponsored three comparable seminars in 2005. The purpose of the job fairs was to educate women on how to find jobs after leaving the workforce. It was titled What To Do When Mother Is On Your Resume. Approximately 400 women attended, and, as a result, Merrill Lynch interviewed eighty of the participants.

B. New Firm Policies

Booz Allen Hamilton took a holistic approach to recruiting and retaining women as employees. There are two aspects of its “ramp up, ramp down” policy. It created an adjunct program to keep women connected to the company and, in 2004, 148 ex-employees were rehired on a project-by-project basis. Booz Allen offered classes in career planning. Adjunct employees could also apply for full-time positions and could be selected based on recent project performance.

The corporation used a new strategy called “unbundling” to form flexible hour schedules. Unbundling separates projects into parts that must be completed at work and parts that can be finished outside the office or on the employee’s own time. According to Booz Allen, this policy has great potential for success. The employee receives a “manageable amount of the kind of work they do best,” and the

159. Shellenbarger, supra note 53.
160. Id.
161. Id.
162. Id.
163. Id.
164. Id.
165. Id.
166. Hewlett & Luce, supra note 3, at 52. The firm “recognized that it isn’t simply a workday, or a workweek, that needs to be made more flexible. It’s the entire arc of a career.” Id.
167. Id.
168. Shellenbarger, supra note 53.
169. Id.
170. Id.
171. Hewlett & Luce, supra note 3, at 52.
172. Id.
173. Id.
employer is able to “maintain ties to consultants who have already proved their merit in a challenging profession.”

The driving force behind many new corporate policies, including those of Booz Allen, is to maintain ties between mothers and businesses. A positive working relationship may motivate women to on-ramp and work only for her former employer, instead of starting over at another business. For companies, it lowers the cost of recruiting and training new employees.

Following this trend, Deloitte & Touche developed a Personal Pursuits program. In 2004, it allowed twenty-eight top employees to “opt out” for a few years under the condition that the employees maintain a working relationship with Deloitte. This partnership consisted of short-term assignments, training to keep the employees up to date, and a mentor to help the employee stay on track for advancement. After hosting the program, Deloitte anticipated that many participants were intent on returning to work at Deloitte.

C. Networking

Booz Allen uses forums as another method of advancing women’s careers. The forums focus on networking, mentoring, and career path development. Forums are a great way to connect women to each other within Booz Allen and to reconnect women with the business community as a whole. By encouraging women to create and run these forums, the corporation is openly expressing its support for female business employees and mothers. Maintaining these

174. Id.
175. Id. Booz Allen did this under the presumption that “many of these talented women will eventually return to full-time consulting employment. Booz Allen wants to be their employer of choice — and to keep their skills sharp in the meantime” Id.; see also Nassisi, supra note 146, at 10 (discussing Deloitte & Touche's Personal Pursuits Program that strives to keep women connected during leave through mentors, career coaches, networking assignments, and short term work assignments).
176. Hewlett & Luce, supra note 3, at 52.
177. This refers to the high cost of attrition rates that both law firms and corporations must pay with each female employee that off-ramps.
178. Nassissi, supra note 146, at 11; Shellenbarger, supra note 53.
179. Shellenbarger, supra note 53.
180. Id. Advancing in a corporation is the equivalent of pursuing partnership in a law firm. Id.
181. Id.
183. Id.
184. Id.
185. Id.
connections between a woman and ex-employer or the business community in general is a major step in the process of helping women on-ramp back into the work force. Some companies have developed an “old girls network” to build these connections. Networks play two important roles: they “enhance client connections” and “provide the infrastructure within which women can earn recognition.”

D. Company Support and Policies

The most important thing a corporation can do to encourage women to on-ramp, and to deter off-ramping, is to openly express friendly company policies. Hewlett and Luce conclude in the Harvard Business Review that “policies, practices, and attitudes at work” are prime reasons why women leave, and, conversely, why women stay. Deloitte & Touche explicitly set out its company policies in the Women’s Initiative 2005. Each policy, such as leadership goals or proportional representation goals, was followed with “action steps” to carry out these goals. Deloitte listed more generalized goals, such as job sharing, career development, flexibility in work schedules, and increasing use of technology for out of office work. Deloitte’s progressive policies resulted in an elimination of the gender turnover gap, a decreased retention rate for women so that it is equal to that of men, and recognition as the leader of the Big Four accounting firms in promoting women to partners. The Women’s Initiative Report of 2006 details the methods Deloitte used to achieve its significant successes. One key aspect of Deloitte’s policy was “enhanced flexible work arrangements and increased day to day

186. Hewlett & Luce, supra note 3, at 52.
187. Id. at 54. Many companies, like GE and Goldman Sachs, are developing “‘old girls networks’ that build skills, contacts, and confidence. They link women to inside power brokers and to outside business players and effectively inculcate those precious rain-making skills.” Id.
188. Id.
189. Id. at 52 (“One particularly dramatic finding of our survey deserves special mention: only 5% of highly qualified women looking for on-ramps are interested in rejoining the companies they left. In business sectors, that percentage is zero.”).
190. Id. at 53.
192. Id. at 24.
193. Id. at 14.
195. Id.
flexibility [that] will help men and women control their schedules and their lives.” 196

It is important for law firms to realize, as some corporations already have, that women want to return to work after staying at home with their children for a number of years. A woman’s career should not end simply because she has prioritized having a family over her career. One working woman is quoted as saying, “[t]he travel, the places I’ve been, the people I’ve worked with — I wouldn’t trade it for anything. . . . The only question is whether I can have it again.” 197

Women are ready and excited to go back to work, and it is up to businesses, and ultimately law firms, to capitalize on this untapped resource.

E. Ideal Alternative Work Schedule vs. Business Policies

The business community’s design for the alternative work schedule closely reflects Deborah Rhode’s model plan. 198 Several aspects of the plan are important to both the legal and business fields: flexible hours, individualized projects, networking, mentoring, technological aid, and career advancement. 199 The success in the business community comes from policy implementation strategies. Support for the use of flexible schedules must come from the top down to filter through the entire firm, holding each supervisor accountable for properly executing the part-time plan. 200 An encouraging and cooperative management team that plays an active role in applying the alternative work schedules will make the difference between flexible schedules that merely “exist” and those that are actually put into practice.

F. A Glimpse of Change in the Legal Community

A few firms have recognized the problems that stem from offers of unusable flexible schedules and a high associate attrition rate. 201 Some have initiated changes patterned after the implementation methods used by businesses. Warner Norcross & Judd started building

197. Anderson, supra note 147.
199. Hewlett & Luce, supra note 3, at 50-54; Shellenbarger, supra note 53.
201. See Andrew R. Dunn, Associate Attrition: Departure Rates Not Always Related to Salary, N.Y. L.J., Nov. 28, 2000, at 5.
an active support system for working mothers and promoting a positive attitude toward lawyers opting to work a part-time schedule.202 Warner also had one of the lowest law firm attrition rates in 2000.203 Almost half of Warner’s associates are females, and several hold advanced positions within the firm.204 The firm offers an associate a flex time policy that includes reduced hour schedules, job sharing, telecommuting, career development programs, and paid time off, which encourages women to continue working while raising a family.205 Warner is the epitome of a successful firm that has created a work-family balance for its employees, mirroring the policies found in the business sector.

Two other top law firms, Kirkland & Ellis206 and Pillsbury Winthrop Shaw Pittman,207 are experimenting with alternative work schedules and helping employees find a better work-family balance. Both are applying strategies that, when used by other firms and businesses, resulted in a higher retention rate for female attorneys.208 Both Pillsbury and Kirkland attribute the success of a higher retention rate to the execution of alternative work schedules.209

G. How Business Schools Help Moms “On-Ramp” Into the Workforce

Corresponding with efforts by various corporations, business schools have also “discovered [the] new niche: stay-at-home moms.”210 Graduate schools, such as Dartmouth and Harvard, target women who left the workplace to raise a family as potential students.211 A study by the Center for Work-Life Policy revealed:

203. Dunn, supra note 201.
205. Id.
208. Id.
209. Kirkland, supra note 206; Pillsbury, supra note 207.
211. Id.
93% of highly qualified women who are out of the work force want to resume their careers. . . . [Not all of them] manage to do so. Part of the problem is that rapid changes in many fields — from securities laws to accounting regulations to technology — have meant that women who take even a few years off can fall behind.\textsuperscript{212}

In general, the classes are set up to educate women on the changes in the business community that have taken place since they off-ramped.\textsuperscript{213} Business schools have added a personal spin on the classes by addressing non work-related problems with restarting a career, such as business fashion and makeup.\textsuperscript{214} Women must not only be qualified for the jobs but must also look the part in order to be hired.

Harvard offered its first business program in April 2006.\textsuperscript{215} It was a one-week crash course to refresh mothers' competitive skills and compose new career plans.\textsuperscript{216} Harvard's program was originally only available to female graduates of the Harvard Business School and a few other select institutions.\textsuperscript{217} The opening statement of the Harvard Business School's Executive Education website states: "Are you one of thousands of professional women who have put their careers on hold to raise a family or pursue other personal interests? If you're ready to renew and reenergize your career, Harvard Business School (HBS) has a program that will help you to achieve your goals."\textsuperscript{218} The program is an "action-oriented" plan that helps a woman find a job that best fits her lifestyle and ambition, whether it be to return to work full-time, part-time, or on a flexible schedule.\textsuperscript{219}

The Tuck School of Business at Dartmouth had a similar intention when it began an executive education program.\textsuperscript{220} Dartmouth's class, \textit{Back in Business: Invest in Your Return}, lasts for eleven days.\textsuperscript{221} To enroll in the course, a woman should have either an M.B.A. or "MBA-equivalent experience" in a professional business career.\textsuperscript{222} Dartmouth plans to involve corporations as program sponsors to

\textsuperscript{212} Id.
\textsuperscript{213} Id.
\textsuperscript{214} Id.
\textsuperscript{215} Id.
\textsuperscript{217} Id.
\textsuperscript{218} Id.
\textsuperscript{219} Id.
\textsuperscript{221} Id.
\textsuperscript{222} Id.
lower the costs of the course and as a way to directly connect women to potential future employers. The class covers a wide variety of topics such as recently passed legislation and resume writing.

Ideally, these courses are offered to help women on-ramp into new careers. But business schools also benefit from the increased enrollment and publicity that comes with offering these courses. The corporations profit financially and receive good public relations by supporting these new programs and by providing working mothers with flexible schedules. Ernst & Young stated that it “increase[d] employee commitment” and “divisions with high employee commitment scores have 7% higher revenue performance.” Deloitte & Touche saved “$41.5 Million in turnover costs” by giving working mothers the option to work a flexible schedule.

Business schools may alleviate some of the pressure and responsibilities on corporations. The university courses were created after the companies increased their efforts to lure professional women away from home and back into the office. Companies are “closely watching the business-school efforts as a possible bridge to these women.” Citigroup has gone so far as to fund a portion of the class at Dartmouth and plans to hire some of the women who complete the class.

With the help of business schools, women have a head start in finding and capitalizing on opportunities to re-enter the work force. The combined efforts of business schools and corporations will inevitably increase the probability of success for mothers on-ramping into a career.

H. How to Implement Business Strategies into the Legal Field

Firms should follow down the path that corporations and business schools have laid out. Both firms and law schools have the potential to offer comparable programs. Applying the strategies of the business community to the legal field is a feasible, reasonable goal that will
have positive long-term effects, as already shown in the business sector. Current female attorneys will be less likely to leave the job force when they become working mothers; stay-at-home mothers will be more likely to on-ramp into the legal field. The financial benefit to a firm is one of several positive results of keeping women working. The challenge to tweak these methods to apply to law firms, instead of corporations, can be overcome if the correct policies are implemented.

I. Case Law

Corporations and business schools have joined in an effort to attract women back into the business community. This prompts the final question: Who is responsible for initiating these changes in the legal community? There are three possible answers to the question: the women who seek the changes, the individual law firms, or the courts.

Several lawsuits regarding discrimination against working mothers have been brought before the courts, but few have been successful. Litigation is simply not a good option for women in attempting to stop an employer's discriminatory behavior. Claims are difficult to prove, partly because courts and legislatures do not view discrimination against women with families as unlawful. Federal statutes provide minimum protection, and only a handful of states currently afford any explicit relief to women who sue their employer. Rightfully so, women are reluctant to fight the battle. While it is technically illegal for firms to retaliate or refuse to hire women who have taken action against an employer, blacklisting happens in the legal community, and women will inevitably find it more difficult to find other employment.

Title VII of the Civil Rights Act of 1964 is the statute women use to state a claim of gender discrimination. Women are members of
a protected class, and there is indisputable evidence that working mothers are discriminated against in the job force.\textsuperscript{242} An employer, however, has a number of defenses available to refute a claim of intentional discrimination.\textsuperscript{243} An employer may justify a decision as a business necessity or argue the decision was based upon job criteria reasonably related to an important work qualification.\textsuperscript{244} Employers can produce evidence that the female attorney was not as experienced, not as well qualified, or had not shown as much dedication and face time at work as her male counterpart.\textsuperscript{245} Billable hours serve as objective evidence indicative of an attorney's performance and dedication to the practice.\textsuperscript{246}

Women may attempt to counter the employer's defense, arguing that its justifications are a pretext for discrimination.\textsuperscript{247} However, the reality of the situation is that working mothers cannot spend as much time at work or gain the extra edge that comes with more experience because of family responsibilities.\textsuperscript{248} In this sense, women are fighting an uphill battle. Men have an advantage because they generally have fewer family responsibilities and are able to spend more time at work.\textsuperscript{249} A lawsuit's success is often contingent on whether the attorney can prove by a preponderance of the evidence that she is the ideal worker who is substantially and unquestionably more qualified than her male counterpart.\textsuperscript{250} She must fit the mold of what a lawyer should be.\textsuperscript{251} The irony is that in order to be an ideal lawyer and competitor, a woman must postpone starting a family and play the same role as men in the office.\textsuperscript{252} If the courts enact a legal standard that erases gender and forces men and women to compete on equal ground, it destroys the purpose of having an anti-discrimination law. Raising a family inherently places men and women on unequal grounds, hindering women's ability to compete before the competition

\begin{footnotes}
\footnote{employers with 15 or more employees from discriminating on the basis of race, color, religion, sex or national origin.” \textit{Id.} Cases based on gender discrimination claims “are conceptualized as occurring when there is sufficient proof that the employer acted with both impermissible (discriminatory) and legitimate reasons.” \textit{Id.} at 325 n.5.}
\footnote{242. \textit{See Porter, supra} note 4, at 68.}
\footnote{244. \textit{Price Waterhouse, 490 U.S. at 242-43.}}
\footnote{245. \textit{See Porter, supra} note 4, at 56.}
\footnote{246. \textit{Id.}}
\footnote{247. \textit{See Ezold v. Wolf, Block, Schorr, & Solis-Cohen, 983 F.2d 509, 513 (3d Cir. 1992).}}
\footnote{248. \textit{See Porter, supra} note 4, at 65; Williams & Segal, \textit{supra} note 16, at 101.}
\footnote{249. \textit{See Bisom-Rapp, \textit{supra} note} 241, at 336; Porter, \textit{supra} note 4, at 58-59.}
\footnote{250. \textit{See Williams & Segal, \textit{supra} note} 16, at 107.}
\footnote{251. Porter, \textit{supra} note 4, at 61-62.}
\footnote{252. \textit{Id.}}
may begin. In order to make changes, courts must recognize that erasing gender from the legal standard only furthers discrimination.

_Ezold v. Wolf, Block, Schorr, & Solis-Cohen_ is often cited as the representative case of discrimination against working mothers. In _Ezold_, a female associate alleged her law firm discriminated against her by denying her partnership status. The U.S. Court of Appeals for the Third Circuit reversed the lower court's decision in favor of Ezold. Written evaluations by members of the firm offered sufficient evidence for the Third Circuit to find that the firm had a legitimate reason for denying Ezold a promotion. Ezold provided other evidence to support her argument that, taken as a whole, she was just as qualified and successful as the male attorneys. But the court refused to insert its own judgment to decide which promotion criteria were most important and which attorneys were best qualified.

The _Ezold_ decision created a "loophole" for employers asserting an affirmative defense against gender discrimination charges. It appears as though the court granted too much deference to the employer, and consequently upheld arbitrary or discriminatory employment decisions. By not further inquiring as to an employer's true motivations behind an employment decision, the court unintentionally diminished a woman's chance to prevail in this type of gender discrimination claim. The court stood by its decision even in the face of staggering statistics, claiming that the statistics were not probative of an overall employment promotion practice. Ezold could not satisfy her burden of proof because of the deference the court gave to the employer's business decisions.

The employee in the _Neuren v. Adduci, Mastriani, Meeks & Schill_ case took a different approach than the employee in _Ezold_, but nonetheless failed on her discrimination claim. The U.S. Court of Appeals for the District of Columbia required the employee to produce
evidence that, in every aspect of the job, she was “nearly equivalent” to a male attorney.\(^{267}\) On its face, this was a reasonable requirement. Neuren, however, experienced the same difficulties Ezold did: how can a woman compete and prove she is as equally qualified when she is not given the same opportunities because she is a working mother? Neuren’s negative interpersonal skill evaluations overshadowed her positive work product evaluations.\(^{268}\) One partner’s report labeled Neuren as a “bitch.”\(^{269}\) The D.C. Circuit declined to characterize the comment as discriminatory and instead characterized the partners entire comment as “gender-neutral concerns about Neuren’s interpersonal relation with co-workers.”\(^{270}\) The court concluded that the indirect evidence Neuren provided was inadequate to prove discrimination, again giving deference to the employer.\(^{271}\) She lost the case in spite of the sexist comments and discriminatory practices of her employer.\(^{272}\)

The performance evaluations played an important role in both Neuren’s and Ezold’s cases. “[I]f [a female attorney] 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.”\(^{273}\) It is difficult to prove you are the ideal worker when you must balance work with family.

In recent years, the chances of success for a discrimination claim have increased slightly.\(^{274}\) Courts are inadvertently helping women prevail in discrimination claims. By bringing a greater volume of cases into court, women are exposing more employers to potential liability.\(^{275}\) Bad publicity follows discrimination lawsuits against working mothers and may deter law firms from continued discrimination.\(^{276}\) Additionally, key pieces of evidence are found in the few cases where the mother prevails. Clear and convincing statistics support accusations of disparate treatment; careful and creative pleadings may persuade a judge or jury; demographic research can evidence unlawful stereotypes filtering into employment decisions.\(^{277}\)

\(^{267}\) Id. at 1514.
\(^{268}\) Id. at 1509-10.
\(^{269}\) Id. at 1510.
\(^{270}\) Id. at 1513.
\(^{271}\) Id. at 1513-14.
\(^{272}\) Id. at 1515.
\(^{273}\) Porter, supra note 4, at 70.
\(^{274}\) Williams & Segal, supra note 16, at 81.
\(^{275}\) See id.
\(^{276}\) Id.
\(^{277}\) Id. at 130-33.
The *Trezza v. Hartford* case is an illustration of a successfully built discrimination claim.\(^{278}\) The court held that the working mother would be permitted to provide evidence to prove she was denied a promotion based on her status as a female with children.\(^{279}\) Job evaluations were a key piece of evidence used to prove that Trezza was an outstanding employee and more qualified than men with children or other women without children.\(^{280}\) In *Trezza*, management assumed Trezza was not interested in the promotion because she had a family.\(^{281}\) Trezza's case, however, is atypical with respect to the evidence she presented at trial. There were several "smoking guns" that were virtually impossible for the court to ignore.\(^{282}\) While this case was a success in fact, it was only a small step towards helping other women achieve victory through the court system.

The courts were not the mechanism for change in the business community. Deloitte & Touche's Women's Initiative resulted from "the CEO's perception that a gender gap in the promotion and turnover rate signaled a problem with the firm's capacity to compete effectively for [female] talent," and not from the threat of litigation.\(^{283}\) While one incentive for beginning the Initiative was to avoid potential law suits, the economic and ethical motivations provided stronger motivations for change.\(^{284}\)

The battle against discrimination of working mothers has seen minimal results in the judicial system.\(^{285}\) While the courts may play a small role, the responsibility falls on both the shoulders of the women trying to find a life balance and the law firms setting the agenda. Women cannot alter years of tradition in the operation of a standard law firm. In order for a substantial change to occur, the firms need to share responsibility with the women to end discrimination in the workplace.

**CONCLUSION**

Today, a woman aspiring to become an attorney must still ask herself: "Can I successfully balance a family and a career?" Many

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279. Id. at *20-21.
280. Id. at *6-7.
281. Id. at *3.
282. Id. at *5-7.
284. Id. at 492-99.
women admit the answer is no. The legal community, specifically private firms, has not created a path to allow a working mother to continue pursuing a career. Studies have shed light on the significant impact a high attrition rate for female attorneys has on a law firm. Firms are losing money and client satisfaction as more women off-ramp in order to raise families. The business community has started exploring possible solutions to this growing problem. After only a few years, flexible and alternative work schedules have produced positive results. Business schools rose to the challenge and actively recruit stay-at-home mothers. The legal community can only benefit from making changes to accommodate the women who answer "yes" and take the risk of becoming working moms.

Megan Erb*

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286. See Hewlett & Luce, supra note 3, at 43.
287. CATALYST, supra note 1, at 24.
289. Dunn, supra note 201.

* Megan Erb, J.D. Candidate 2008, William and Mary School of Law; B.A. Psychology and Political Science 2004, Miami University. Thanks to my family who inspired my topic and my colleagues for their help and support. Additionally, I'd like to say thank you to those friends who continue to challenge me.