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# The Focus Factor

B. Glenn George

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## THE FOCUS FACTOR

B. Glenn George\*

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### I. Introduction

Legal training, we like to tell our students, will give you a new way of looking at the world; you will approach problems differently and think about them from a more critical perspective. You will organize your analysis and marshal your arguments in ways that may impact your efforts to address any number of issues, legal and otherwise. For women law students who have taken the bait—or at least are attempting to model that behavior if it has yet to become ingrained—the issue of work and family may present a different kind of challenge for critical analysis. What are the pros and cons, the pluses and minuses, the costs and benefits, the options presented? Or perhaps you have always known or assumed that you wanted to be a mother and have a family. How will you reconcile your lawyer ambitions with that fundamental life choice?<sup>1</sup>

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1. My interest in pursuing these issues in print (having already pursued them in life) was triggered by years of tentative discussions on these topics with female students, by the

Statistically speaking, most women will enter the realm of motherhood, although those numbers decline for high-achieving women in high profile jobs. Thus, few women who enter law school or the legal profession will escape the decision—or, more accurately, series of decisions—that inevitably attach to females in our culture: Will you be a mother? If so, when? How many children do you want? Would you have a child alone if unattached to a spouse/partner/significant other? Would you adopt if unable to have your own biological child (assuming you have even considered the possibility of infertility)? How will that decision impact your goal of being a successful lawyer? What are your expectations about taking time off or working part-time? How do those expectations fit with the job/career you have or the job/career you want? How far will your firm/company go in accommodating those competing goals?

Both the popular and scholarly presses have produced a respectable stack of books and articles in the last two decades, documenting and discussing the struggles to successfully combine work and family. These studies/discussions/anecdotes document what many women already knew or suspected: most women will have children, most women will have jobs, and most women continue to perform the lioness's share of the childcare and the housework. The options for maintaining a successful career while parenting are expanding but are still far from satisfactory.

For women fortunate enough to have the education, training, and skills needed to pursue lofty career goals as highly respected and paid professionals, the "compromise" of part-time work in "high-powered" careers is not readily available; when it can be arranged, there is often a steep price to pay in terms of income, advancement, opportunity, and respect. Some mothers—whose economic circumstances permit—are opting to stay home and put those fancy graduate degrees aside, at least for a while. Getting back on the career track after such a hiatus is difficult. On the other side of the fence, those who have chosen to put their careers first sometimes find that the opportunity for a family has passed them by. Finally, although somewhat less well documented, most women will experience various degrees of conflict, guilt, resentment, and inadequacy as

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many books and articles exploring the need for policies and options in the world of work to accommodate these life decisions, and by Sylvia Ann Hewlett's widely discussed – and criticized – book about the experiences of high achieving women "missing" the chance to be mothers.

My own experience includes one miscarriage, eighteen months of fertility treatments, three children (the last born two days shy of my fortieth birthday), one pregnancy that included three months of bed-rest, one pregnancy that included two months of hospitalization in addition to the bed-rest, and one premature birth (by about two months). I have three daughters whose very existence so outshines any case I have ever won, any article I have ever written, and any class I have ever taught that it belongs in another solar system.

a result those choices and compromises.<sup>2</sup>

The array of literature, from personal anecdotes to serious scholarly endeavors, may provide helpful information and comforting empathetic assurances for women at every stage of this journey. Many, if not most, of these discussions also attempt to provide a range of solutions to address the problem. Solutions offered frequently center on the need for legal and policy changes in the workplace. Some of these proposals suggest important steps or resources to ease the conflicts for mothers working in lower paid jobs out of economic necessity. Accessible and affordable high quality daycare, for example, provided or subsidized by the employer or the community, could solve the most immediate problem of many lower or middle class working mothers. Mandatory paid maternity and childcare leave might also permit these mothers to spend more time at home with young children without losing necessary income on which the family depends.<sup>3</sup>

For the "elite" at issue in this discussion, however—the aspiring lawyers, doctors, and other professional mothers—the solutions proposed may be simplistic or unrealistic. Resources are generally less of an issue; these mothers often can afford good day care and (with a high earning spouse) can even afford to take unpaid time away from work. The work/family conflicts thus may be more complex questions of personal priorities, career goals, and emotional well-being that are less easily addressed. Typical solutions proposed by scholars for these women focus on flexibility and options for part-time work and career breaks, making it easier for women to exit and enter the workforce. Even when available, however, these kinds of solutions have often proven unsuccessful. While some might contend that this lack of success is due largely to employers' resistance, this article suggests that the issue is far too complex for such convenient blame.

Part of the problem in fashioning solutions for these "elite" mothers may be a refusal to acknowledge (or perhaps a rejection of) the inherent antithesis of most truly "high powered" professions and concepts of "breaks" or "cutting back." Most professionals who have reached the top echelons of their field have done so through much hard work, many long hours, and limited time flexibility. Hiring a "temporary" or "part time" manager or law partner may not be as easily accomplished or a complete

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2. The model of a "stay at home" parent certainly has not disappeared, but it is less prevalent. When there is a "stay at home" parent, however, it is wife/mother in the vast majority of cases.

3. Although these options may be within the realm of possibility, the economic and political barriers to enacting such legislation are substantial. The Family Medical Leave Act of 1993 does require an employer to grant up to 12 weeks of leave per year for maternity and childcare, but the legislation does not require *paid* leave. 29 U.S.C. §§ 2601 et. seq. (107 Stat. 6 (1993), as amended 109 Stat. 3 (1995)). In addition, small employers (employing less than 50 employees) are excluded from coverage. *Id.*

substitute for the absent employee who is taking a break or is reducing her hours, apart from the expense for the firm (especially if the employer is expected to provide paid leave while paying someone else to do the work). This article also suggests that the issue is not just one of time and flexibility. A second problem—an issue largely ignored in the solutions proposed—is one of focus and attention. Pursuing a high level career can require an intensity of focus that may be hard to sustain once children have entered your emotional center.

*A. Caveat I: The Privilege of the Privileged*

“Nothing more clearly marks a contemporary American woman as middle- or upper-middle class, after all, than stay-at-home breastfeeding motherhood. No one else can afford to do it.”<sup>4</sup>

To be sure, only a small subset of women can even consider the full range of options discussed by many of these authors; for most mothers, working is a necessity, not a choice. Even raising the issue of part-time employment or career “breaks” speaks of privilege. Not surprisingly, women who have the time, circumstances, and education to share their angst and struggles in these books and articles are women who do have options. These women often already have achieved some measure of career success and just as often are married to high-earning husbands—in other words, their relative financial security permits options most mothers could never realistically contemplate.

Professor Arlie Russell Hochschild, a respected scholar and author in the field, captures the issue in the lives of Sue Carpenter and Becky Winters. Both work in unskilled or semi-skilled factory jobs at an hourly wage.<sup>5</sup> Sue is a single mother of two small children living in a trailer with virtually no help or support from her extended family, although her ex-husband remains a good friend and heavily involved in the lives of his daughters. Becky Winters, also a single mom with two small children, works overtime to maintain the mortgage on the family home so that her children will have a back yard. Her mother helps out with childcare, and her ex-husband remains involved, but relations are tense, and child support is overdue. Neither Sue nor Becky struggle with career goals or demand the opportunity to work part-time or flextime. They are, instead, hoping to keep their jobs and work overtime whenever possible to maximize their limited incomes.

For women like Sue or Becky, the broad ranging proposals for reconciling the roles of employee and parent are related primarily to easing

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4. FAULKNER FOX, *DISPATCHES FROM A NOT-SO-PERFECT LIFE, OR HOW I LEARNED TO LOVE THE HOUSE, THE MAN, THE CHILD* (Harmony Books 2003), at 148-49.

5. ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* 145-62 (1997) [hereinafter *THE TIME BIND*].

the inevitable problem and burden of childcare.<sup>6</sup> Part-time or extended leaves are luxuries they simply could not afford even if available, and flextime is just not in the cards for factory work. The idea of taking a "career break" is also not a rational concept from their perspective. These women are, instead, concerned with maximizing income and hanging onto the jobs that they do have. Even a paid childcare leave might be some cause for anxiety, apart from the loss of overtime opportunities; these women likely understand that they can be easily replaced and may not feel secure that a job will be waiting when they return.

Alternately, this discussion is about a much smaller subset of women who are already blessed with some economic freedom and career options—those women who want to be mothers; who want to realize at least some of those dreams that led to those years of education and degrees; who want to be fully engaged parents on hand for lessons, games, and recitals; who want to continue working and growing in their careers; who want to travel between those two lives with a minimum of guilt; who want someone else to empty the dishwasher every now and then.

### *B. Caveat II: Just for Women*

"I can't be the only observer who has noticed the lack of articles on stress suffered by working fathers (even those whose wives 'pitch in.'). . . . the term "working father" is unknown. . . . The task of reconciling marriage with fatherhood . . . is an item on nobody's agenda."<sup>7</sup>

This discussion and much of the literature is full of familiar stereotypes: the assumption (and proof) that these struggles of time, attention, and focus are relegated to mom. As with any stereotype, there are exceptions that will defy every generalization—the family in which dad has taken over all of the cooking, the laundry, and the doctors' appointments; the dad who has cut back on his work to take responsibility for the home and children while his wife takes on new challenges at work requiring more and more of her time and attention. But surveys, studies and research establish over and over again that these situations remain the exception.

There are surely many dads that struggle with the same issues of guilt, but they either rarely admit it or simply do not discuss it with quite the same angst that pervades the discussions by and about women. Popular women's magazines and serious scholarly journals regularly publish

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6. No doubt both women would benefit from free or low cost childcare, but the image of the typical 7:30 a.m. to 6:00 p.m. daycare just doesn't help. Becky works a rotating seven day shift, which includes night shift work. A daycare to meet Becky's needs (and the needs of many of her colleagues) would have to operate 24/7 – literally.

7. SUSAN MAUSHART, *WIFEWORX: WHAT MARRIAGE REALLY MEANS FOR WOMEN*, 118, 120 (2002).

articles on these issues from the mother's perspective. You will search much harder to find an article about fathers' struggles to balance career and family. That discussion will be left to someone else's essay; this discussion is for the other half of the population.

*C. Caveat III: Finding Your Own Way*

"It depends."

When my first year Civil Procedure students are struggling with the concepts of personal jurisdiction in those early weeks of law school, I sometimes assure them that they always have a correct answer available to them: the safe answer to any complex legal issue is, "It depends." The kinds of questions and issues we debate in class invariably "depend" on array of factors, such as the jurisdiction, the judge, the jury, and, of course, the underlying facts that led to the dispute in question. These very personal decisions about career and family are no less complex and no less "case specific."

A final caveat for the discussion of these issues is the underlying sense that moral judgments are being made just below the surface. Many authors are simply unable to resist justifying their own choices and sacrifices. The author who has chosen to put her career on hold while staying home with her young children seems compelled to insist that having a parent at home in the early years is critical for a child's development and well-being, if it is economically feasible.<sup>8</sup> This is a pattern that is important to identify early on in your thinking, as you will find it repeated in many of your personal encounters with family, friends and professionals. Many, if not most, of these individuals will have opinions about whether you should have children, when you should have children, how many children you should have, how many (if any) hours of daycare are acceptable, how much you should be working, etc., etc. These are important sources of information but there are no magic formulas, any more that there is one way to quiet a colicky infant. You will need to find your own answers and take what comfort there is in knowing others have agonized over the same questions.

**II. A Sampling**

The books attempting to expose, discuss, explain, examine, empathize, criticize, ponder, remedy, and/or reject the complexities of working and motherhood are numerous.

Different authors have highlighted various aspects of the "problem."

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8. See, e.g., DEBORAH FALLOWS, *A MOTHER'S WORK* 218 (1985) (identifying as the "first principle" in addressing this struggle is that "whenever possible, parents should care for their children themselves").

Some authors seek personal peace by sharing their own experiences and struggles. Others conduct studies and surveys to document the disparities and conflicts. These studies offer "proof" of what most working mothers experience daily: wives and mothers continue to be responsible for most of the of domestic and childcare responsibilities, even when working hours comparable to their mates and in spite of much touted changes resulting from the women's movement. Some scholars attempt to probe more deeply into the underlying questions of where these stereotypes come from and why they are so pervasive and tenacious. Many, if not most, of these books attempt to offer some solutions or suggestions to ease the conflict for the next generation of women professionals.<sup>9</sup> And there are yet other books for those women who have put career first but are dismayed to find that motherhood may no longer be an option due to problems of infertility associated with aging.

Faulkner Fox, for example, offers largely personal accounts of her own struggles and observations in *Dispatches From a Not-So-Perfect Life*.<sup>10</sup> Readers drawn to individual stories may also enjoy the broader range of offerings found in the collection of essays aptly titled *The Bitch in the House*.<sup>11</sup> Judith Warner, in *Perfect Madness*,<sup>12</sup> contends that our mothering expectations for ourselves are completely out of control. Personal anecdotes are reinforced by the research in Susan Maushart's *Wifework*,<sup>13</sup> Ann Crittenden's *The Price of Motherhood*,<sup>14</sup> and Arlie Russell Hochschild's *The Second Shift*.<sup>15</sup> Dr. Hochschild's more recent offering,

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9. The sample of books discussed here is both small and random in its selection. There are a number of other titles that could have been included and have much to offer for a reader seeking a more complete review of the literature. Other titles include *A MOTHER'S WORK*, *supra* note 8; *THE WORK-FAMILY CHALLENGE: RETHINKING EMPLOYMENT* (Suzan Lewis & Jeremy Lewis eds., 1996) (collection of articles on workplace culture and policies related to the work/family balance); TERRI APTER, *WORKING WOMEN DON'T HAVE WIVES: PROFESSIONAL SUCCESS IN THE 1990'S* (1993); FRANCINE M. DEUTSCH, *HALVING IT ALL: HOW EQUALLY SHARED PARENTING WORKS*, (1999); *IT'S ABOUT TIME: COUPLES AND CAREERS* (Phyllis Moen ed., 2003). Or perhaps to truly appreciate the fiction of supermom, fiction itself may provide the most insight. *I Don't Know How She Does It* offers a fictional account of a woman who attempts to juggle her responsibilities as a good wife, a good mother, and a successful executive. ALLISON PEARSON, *I DON'T KNOW HOW SHE DOES IT: THE LIFE OF KATE REDDY, WORKING MOTHER* (2002).

10. Fox., *supra* note 4.

11. *THE BITCH IN THE HOUSE: 26 WOMEN TELL THE TRUTH ABOUT SEX, SOLITUDE, WORK, MOTHERHOOD, AND MARRIAGE* (Cathi Hanauer, ed., 2002) [hereinafter *THE BITCH IN THE HOUSE*].

12. JUDITH WARNER, *PERFECT MADNESS: MOTHERHOOD IN THE AGE OF ANXIETY* (Riverhead Books, 2005).

13. MAUSHART, *supra* note 7.

14. ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* (2001).

15. ARLIE RUSSELL HOCHSCHILD, WITH ANNE MACHUNG, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* (Viking Penguin, 1989).

*The Time Bind*,<sup>16</sup> documented what might be described as the cultural, corporate and personal failures of one company's efforts to offer a flexible and family-friendly work environment. The efforts of women attorneys to arrange part-time work to strike a better life balance were described by Professor Cynthia Epstein and others in *The Part-Time Paradox*.<sup>17</sup> Joan Williams' work in *Unbending Gender*<sup>18</sup> attempts to apply feminist legal theory to this seemingly entrenched problem.

None of these books, filled with surveys, interviews and anecdotes, suggest that any of these mothers would have skipped the kids if they had it to do over in order to really concentrate on their careers. They wanted both a rich family life, with plenty of quality time for the children, and the various rewards promised by graduate degrees and the resulting careers. Reinforcing that fundamental choice is Sylvia Ann Hewlett's recent addition to the arena. *Creating a Life: Professional Women and the Quest for Children*<sup>19</sup> highlights the regret and sometimes anger of a selected group of successful professional women who have missed those work/family conflicts by not having children. The more recent offering of Julie Vargo and Maureen Regan, *A Few Good Eggs: Two Chicks Dish on Overcoming the Insanity of Infertility*,<sup>20</sup> presents the personal experiences of two women's struggles with infertility. *A Few Good Eggs* is loaded with much more practical advice and information about fertility treatments, but the authors also preach many of the same messages as Dr. Hewlett.

This range of books will be reviewed briefly as a mere sample of the extensive literature documenting these issues and searching for solutions. Two books are singled out—Dr. Hochschild's *The Time Bind*<sup>21</sup> and Dr. Hewlett's *Creating a Life*.<sup>22</sup> This discussion highlights these two particular books, not because they are the best of the bunch, but because they effectively illustrate two fundamental problems that permeate much of the literature and debate in this area. *Creating a Life*, both intentionally and inadvertently, provides multiple examples of the kinds of mixed messages and intractable conflicts that plague working mothers. *The Time Bind*, as a "real life" study of the kinds of family-friendly employment policies that many authors propose to "fix" the problem, demonstrates why such

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16. HOCHSCHILD, *THE TIME BIND*, *supra* note 5.

17. CYNTHIA FUCHS EPSTEIN, CARROLL SERON, BONNIE OGLENSKY, AND ROBERT SAUTÉ, *THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL LIVES, FAMILY, AND GENDER* (1999).

18. JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (Oxford University Press, 2000).

19. SYLVIA ANN HEWLETT, *CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN* 149 (2002) [hereinafter "CREATING A LIFE"].

20. JULIE VARGO & MAUREEN REGAN, *A FEW GOOD EGGS: TWO CHICKS DISH ON OVERCOMING THE INSANITY OF INFERTILITY* (2005).

21. *Supra* note 5, discussed *infra* at notes 117-131.

22. HEWLETT, *supra* note 4, discussed *infra* at notes 65-85, 92-105.

proposals may create unrealistic expectations and fail to address the complexity of the dilemmas for the professional working mom.

### A. Personal Conflict

I doubt my skills as a mother every day. I measure myself against a Platonic motherhood ideal and I'm always coming up short. You could argue that the doubt itself makes me try harder, means I continue to strive. But the doubt is also what makes me irrational, moody, even angry when faced with the chaos that accompanies such fundamental childhood joys as jumping on Mommy and Daddy's newly made bed.<sup>23</sup>

Faulkner Fox's *Dispatches From a Not-So-Perfect Life*<sup>24</sup> describes her struggles to maintain some semblance of a career (as a writer and a teacher) while juggling the demands of a three year old and an infant. Her husband, working hard to finish a book and get tenure in his teaching position, needed significant work time to accomplish those important goals, while Ms. Fox's work was more flexible and less immediate and critical. Ms. Fox was one of the elite. Her spouse worked full time and earned an income sufficient to permit her the "freedom" to cut back her work time in order to devote more time to her children.<sup>25</sup> Yet Ms. Fox was missing the "glow" of motherhood, and her unhappiness with the mix of things triggered an emotion which permeates the discussions in many of these books—guilt.<sup>26</sup>

Although Ms. Fox was also working on a book, she did not have a tenure-track teaching position and thus was not facing the same type of "make or break" deadline as her husband.<sup>27</sup> Ms. Fox experienced the all too familiar dilemma of so many professional women. Like so many other mothers, she resented her husband's ability to focus "full time" on his

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23. Kristin van Ogtrop, *Attila the Honey I'm Home*, in *THE BITCH IN THE HOUSE*, *supra* note 11, at 159, 168.

24. FOX, *supra* note 10.

25. *Id.* at 43-114. Before getting to that point, however, Ms. Fox shares her mixed experiences with pregnancy, childbirth, midwives, doctors and hospitals (a full seventy pages worth). Although these accounts arguably are distracting and irrelevant to the questions Ms. Fox is ultimately addressing, the experiences may also be read to reflect the way in which women may be "devalued" as individuals from the earliest months of motherhood.

26. *Id.* at 1. Indeed, one study reports that the most professionally successful mothers are those that "have done extremely well at setting aside guilt, regret, and ambivalence about the choices they have made." DAPHNE DE MARNEFFE, *MATERNAL DESIRE: ON CHILDREN, LOVE, AND INNER LIFE* 53 (2004), citing Deborah J. Swiss & Judith P. Walker, *Smart Women, Smart Choices*, *WORKING MOTHER* (1996) at 22.

27. FOX, *supra* note 10, at 152-53.

career and resented her own lack of time and progress on her work. She felt guilty both about time away from her small children when she did carve out time for her work and about the conflicting reaction that she would rather be working (or doing anything just for herself) than mothering. To make things worse, much of this caretaking activity was filled, not with the joy of watching her children grow and develop (often referred to in current lingo as "quality time"<sup>28</sup>), but rather with mundane chores and menial labor. "Come to think of it, I figured I was either working like a maid or a cow about 90 percent of the time. . . . I cleaned, grocery-shopped, prepared meals, and breast-fed. My daily work came entirely from my body while [my husband's] came primarily from his mind."<sup>29</sup>

Ms. Fox struggled to find the right role and found difficulty locating a model. The "good mothers" seemed more selfless and less aware of "self" than she could accept. "I was referring to the women I perceived as meeting new-millennial expectations for good motherhood: long-term breast-feeding, no work during children's preschool years, ferrying children to several enriching activities per week, infrequent use of baby-sitters."<sup>30</sup> Ms. Fox found herself crying often, losing her battle for a clean and organized household, and feeling generally unhappy with her life. And the unhappiness itself was a tremendous source of guilt.

Guilt, and its frequent companion, anger, are openly admitted to and

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28. See DE MARNEFFE, *MATERNAL DESIRE*, *supra* note 26, at 175 ("One of the difficult aspects of stay-at-home motherhood can be knowing how precious your children are and how fleeting this bit of life is but being unable to feel appreciative because you feel too overwhelmed. This is an occasional lament of mothers who have stopped working to stay home with their children and who find that, instead of reveling in the slower pace, smelling the roses and responding to their child, they are caught up in an endless round of needs and chores with little ready relief.").

29. FOX, *supra* note 10, at 148. Ms. Fox references here a point of significant discussion in the literature about our society/culture's failure to "value" caretaking and parenting – the argument that the low status of this important societal work leads inevitably to the failure of the workplace to account for and accommodate this activity (see, e.g., WILLIAMS, *supra* note 18, at 40-63; HOCHSCHILD, *THE TIME BIND*, *supra* note 5, at 191-92). Ms. Fox goes on to note, "In this way, we defined people of different classes. [My husband] had held on in the middle class, and I'd been demoted." *Id.* Ms. Fox's connection between class and labor is an interesting one that is sometimes unstated in the arguments of others that "caretaking" is undervalued (*but see, e.g., WILLIAMS, supra* note 18, at 150-61). Our society values physical, unskilled labor less than intellectual pursuits across the board – but we are reluctant to describe "caretaking" in those terms. Instead, we seek to focus on the nurturing and teaching aspects of the endeavor. Clothes can be washed, houses can be cleaned and meals can be cooked by others; but mom is the one who knows that the shirt with the sheep is her child's favorite, that the yellow blanket with the holes must be within reach at all times, and that green beans are the only vegetable she will touch. Nonetheless, in terms of "time spent," Ms. Fox is no doubt correct that the maid functions may often consume a larger share of that caretaking role. While a full discussion of this particular "sub-conflict" is beyond the scope of this piece, it may well be worth further exploration.

30. FOX, *supra* note 10, at 195.

examined by several contributors to the aptly entitled collection, *The Bitch in the House*.<sup>31</sup> While there are a variety of pieces dealing candidly with a range of relationship issues (long distance relationships, sex, "open" marriage, divorce, to name a few), several of the offerings focus explicitly on the kind of conflict and anger explored by Ms. Fox. "Attila the Honey I'm Home" may be one of the best examples, for both content and title. Author Kristin van Ogtrop focuses on the apparent contrast between her ability to handle work issues and the "short fuse" she often exhibits on the home front. The stress of juggling her career with the overload of house and child responsibilities at the end of the work day finds "release" in the relatively more private and safer environment of the family. She compares comments from fellow employees ("You're unflappable." "Are you ever in a bad mood?") with comments made by her children ("Mommy is always grumpy." "You're too mean to live in this house and I want you to go back to work for the rest of your life!"). As one of her friends points out, this dichotomy reflects the common experience of almost every working parent—the child who behaves well at daycare or preschool, only to dissolve into stubborn, irrational tantrums as soon as he or she is safely home.<sup>32</sup>

In a passage that is funny, sad, and so very familiar, Ms. Van Ogtrop describes her failure as a mother in forgetting to send in an object in a brown paper bag for a "touch unit" in one of her son's kindergarten class:

Standing alone in the kitchen, I started to cry . . . feeling miserable for Owen, miserable for me, miserable for [the] lovely, [the] infinitely patient [kindergarten teacher]. Then I climbed the stairs, cornered [my husband], and cried some more. Is that appropriate? To cry for an hour and then have a long, tedious, completely unproductive discussion with an equally sleep-deprived husband about All The Things We're Doing Wrong? How did I turn into this?<sup>33</sup>

It is embarrassingly comforting to find you are not alone in this seemingly unending cycle of juggled and dropped balls.<sup>34</sup>

31. THE BITCH IN THE HOUSE, *supra* note 11.

32. Ogtrop, *supra* note 23, at 161-162. One of the author's friends offers a surprisingly insightful analogy: "My behavior simply reproduces, in the adult world, the perfect-at-school/demon-at-home mother phenomenon that is acted out daily among children throughout America."

33. *Id.* at 163.

34. For those looking for more personal, anecdotal accounts, options include books such as Deborah Fallows' 1985 offering A MOTHER'S WORK (*supra* note 8). Thanks to her first child's lengthy naps, Dr. Fallows managed during the first two years of motherhood to complete her PhD dissertation and take a full time job as an assistant dean at Georgetown University. While pregnant with a second child, however, Dr. Fallows made the decision to stay home full time. Needless to say, Dr. Fallows was a member of the designated "elite" — a mother with a supportive spouse who was making a sufficient income to make this a

One might characterize author Judith Warner's take on the problem as an admonition to "get over it." In *Perfect Madness: Motherhood in the Age of Anxiety*,<sup>35</sup> Ms. Warner offers a dark view of the experiences of twenty-first century women attempting to juggle the expectations of motherhood imposed by the society surrounding them. Much like Faulkner Fox, Ms. Warner was dismayed by her own experiences as a mother living in the suburbs of D.C. and decided to turn those feelings into a writing and research project.<sup>36</sup> She graphically describes the plight of twenty-first century motherhood as a "choking cocktail of guilt and anxiety and resentment and regret."<sup>37</sup> Certainly her claim that motherhood has become a "mess" is consistent with the feelings expressed by both Ms. Fox and the contributors to *The Bitch in the House*. Ms. Warner takes a slightly different tack, however; she argues that we focus too much of our energies in these discussions on the aspiring CEO or managing partner.<sup>38</sup>

Ms. Warner readily concedes that Superwoman is unattainable, that you cannot have it all:

We can't do it all because we can't *be* it all, worldly ambition and motherly ambition having long proven to be mutually exclusive. . . . [T]he kinds of problems that Women Who Should Take Over the World have are, for the most part, intractable. You can't conduct a top-flight career on the Mommy Track. You can't scale down a climb to the top.<sup>39</sup>

Rather, Ms. Warner argues that our focus should be on accommodating motherhood with "a more average kind of ambition"— "[t]he kind of ambition that most women (and most men) have: which is to work a sufficient number of hours to earn a sufficient amount of money to buy their families a sufficiently good standard of living."<sup>40</sup> While there is much that rings true in Ms. Warner's observations, her goals for "most

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possibility. *Id.* at 9-11. She then turned that time into a project of examining her own feelings and experiences, grounded in a survey of daycare options. *Id.* at 61-119.

Dr. Fallows' final conclusions and suggestions were familiar in some respects — she lists among her concluding principles the need for "practical protections" for women who leave the workforce to care for children and the importance of high quality daycare. *Id.* at 219. But she also indicts those who had her options but choose differently: her "first principle" in addressing this struggle is that "whenever possible, parents should care for their children themselves." Her second principle attempts to attack the imbalance of housework — "an insistence that the balance between parenthood and career be worked out by both parents, father as well as mother" — yet she offers no real advice for accomplishing that goal and acknowledges the practical economic problem that fathers often earn more than mothers. *Id.* at 218-19.

35. WARNER, *PERFECT MADNESS*, *supra*, note 12.

36. *Id.* at 12-20.

37. *Id.* at 4.

38. *Id.* at 258-63.

39. *Id.* at 260-61.

40. *Id.* at 261.

mothers” also rings a bit hollow. It would seem that there is significant unacknowledged territory between earning a reasonable living and aspiring to be a CEO. For women pursuing graduate professional degrees, career ambitions are likely to be somewhat loftier than earning a reasonable amount of money, even if managing partner or CEO is not the ultimate expectation or goal.

*B. Paying the Price: Enlightened Men Don't Empty the Dishwasher*

Does a man in love feel guilty about falling behind in the dusting? Does he assume 94 per cent of all child care tasks, refusing to use day care because ‘he didn’t become a father to let somebody else look after his kids’? Does a truly devoted family man feel terminally conflicted about juggling paid and unpaid work commitments? And will he ever in a billion trillion years cop flak if he forgets his mother-in-law’s birthday?<sup>41</sup>

Arlie Russell Hochschild’s widely read book *The Second Shift*<sup>42</sup> brought to the limelight the disparity between the roles of working mothers and working fathers. The book illuminated and documented the typical life of employed mothers, who regularly work two full “shifts,” having been delegated or assumed most of the childcare and housework after a full day of paid employment. The feminist movement and the routine entry of mothers into the work force had done little to alter stereotypical gender roles of the 1950s.

Reinforcing Professor Hochschild’s work a decade later, Ann Crittenden’s *The Price of Motherhood*<sup>43</sup> repeats many of the same themes. Dr. Crittenden documents and marvels at the surprising tenacity of traditional wife and mommy tasks in spite of dramatic changes in women’s roles attributable to the women’s movement. Women now aspire, with increasing success, to all of the most demanding professions and careers on the spectrum, yet they continue to take primary responsibility for the mundane details of family life. They continue to spend significantly more time than their husbands performing household and child care duties.<sup>44</sup> And it is mom in the vast majority of cases who struggles to balance (and often derails) career plans and goals with the responsibilities of parenting.<sup>45</sup> *Even when the husband becomes unemployed*, he rarely contributes more than thirty percent as his share of the domestic labor while his working

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41. *Id.* at 35.

42. HOCHSCHILD, *THE SECOND SHIFT*, *supra* note 15.

43. CRITTENDEN, *supra* note 14.

44. *Id.* at 22.

45. *Id.* at 26-27.

wife continues to perform the largest share of the homework.<sup>46</sup>

Susan Maushart's *Wifework* describes the reality of marriage, or rather being a wife, as a "nasty shock."<sup>47</sup> Weaving together her own experiences (two divorces, the second leaving her as a single parent with three children under the age of five) with research studies, Dr. Maushart makes the case that marriage is often a bad deal for women in virtually every respect, while men reap significant benefits from the arrangement.<sup>48</sup> "If you are female, marriage will make a huge difference—and a surprising proportion of that difference will be negative. Becoming a wife will erode your mental health, reduce your leisure, decimate your libidom, and increase the odds that you will be physically assaulted or murdered in your own home."<sup>49</sup>

According to one study, marriage means fifty percent more laundry, seventy-three percent more cleaning and forty-nine percent more cooking for the wife.<sup>50</sup> The husband, on the other hand, reduces his time on such tasks compared to his single state. Thus, the presence of the husband adds to the wife's workload (eight hours per week, according to one study) without bringing with it the "extra help" a "modern" woman might expect—or at least without bringing as much help as the eight hours he is adding to burden.<sup>51</sup> And Dr. Maushart is talking here just about housework without the additional commitment of childcare. Add children to the mix, and mom is performing five times as much childcare duties as dad.<sup>52</sup> Another study described husbands' avoidance of laundry as "notorious." Even when both husband and wife work, the wife does all of the laundry in eighty-five percent of these relationships.<sup>53</sup>

Whether or not the wife is employed has surprisingly little impact on the balance of housework performed by a married couple. Indeed, the difference between men with working wives and men with nonworking wives comes down to ten minutes—men with working wives perform ten minutes more housework per day than men with non-working wives.<sup>54</sup> Other studies report a *negative correlation* for men between the number of hours worked and the hours spend in domestic work; in other words, fewer hours worked by the husband translates into less work done around the

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46. *Id.* at 24.

47. MAUSHART, *supra* note 7, at 4.

48. *Id.* at 3-18.

49. *But see* Sylvia Ann Hewlett's book which refutes these conclusions, claiming that more recent research demonstrates that married women are happier and healthier than their single counterparts. HEWLETT, *CREATING A LIFE*, *supra* note 4, at 171-74.

50. MAUSHART, *supra* note 7, at 91, citing MICHAEL BITTMAN & JOCELYN PIXLEY, *THE DOUBLE LIFE OF THE FAMILY* (1997).

51. *Id.* at 90, citing ANTHONY MCMAHON, *TAKING CARE OF MEN* 15 (1999).

52. *Id.* at 91, citing BITTMAN & PIXLEY, *supra* note 48.

53. *Id.* at 93, citing REBECCA ABRAMS, *THE PLAYFUL SELF* 15 (1997).

54. *Id.* at 101, citing JANICE M. STEIL, *MARITAL EQUALITY* 97 (1997).

house.<sup>55</sup> To the extent that studies indicate a more balanced division of labor when both husband and wife have demanding careers, the balance is explained by the fact that the wife is "off-loading" more of her domestic labor hours to paid help (help generally arranged by the wife); the husband rarely contributes by shouldering an increasing load.<sup>56</sup>

Dr. Maushart's colorful style captures the essence of these statistics with enough humor to soften the depressing reality. In discussing the culturally ingrained practice of "performing services" as a way for women/wives to express their love, for example, she notes the apparent absence of the proverbial two-way street:

Is there a husband alive who shows how much he cares by steam-pleating his wife's skirts, or making sure she always has enough bras in her underwear drawer? Does a man in love feel guilty about falling behind in the dusting? Does he assume 94 per cent of all child care tasks, refusing to use day care because 'he didn't become a father to let somebody else look after his kids'? Does a truly devoted family man feel terminally conflicted about juggling paid and unpaid work commitments? And will he ever in a billion trillion years cop flak if he forgets his mother-in-law's birthday?<sup>57</sup>

Other scholars report similar findings on the home front, regardless of race, class or culture. As one scholar concluded after a review of available studies, "Little will be said about variations associated with race or social class differences, or differences between the various countries for which substantial data are available. . . . This is not due to lack of interest or lack of space, but because *there is a great deal of evidence that these matters are barely, if at all, relevant.*"<sup>58</sup>

In one particularly revealing incident reported in a study by Dr. Francine M. Deutsch, Dr. Deutsch reports on a family in which both parents work full time, but the wife worked significantly longer hours than her husband. The wife worked an average of seventy-five hours per week as a clinical social worker, while her husband averaged 41 hours per week

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55. *Id.* at 108.

56. *Id.* at 102-03.

57. *Id.* at 35. Other gems include "... while there have been sightings of husbands who will dump clothes in the washing machine, the man who will retrieve them afterwards for any purpose - let alone to complete the full circle of drying, sorting, folding or ironing, and putting away - is a *rara avis*." *Id.* at 93; "The task of reconciling marriage with fatherhood, by contrast, is an item on nobody's agenda. It's much like the problem of working fathers (i.e., there is no problem)." *Id.* at 120; "I can't be the only observer who has noticed the lack of articles on stress suffered by working fathers (even those whose wives 'pitch in.' . . . the term 'working father' is unknown." *Id.* at 118.

58. ANTHONY MCMAHON, *TAKING CARE OF MEN, SEXUAL POLITICS IN THE PUBLIC MIND* 12 (1999) [citations omitted] (emphasis added).

as a speech pathologist.<sup>59</sup> Yet, in spite of this significant disparity of time availability, the wife continued to do most of the housework. When asked to explain this apparent anomaly, the husband responded that he "didn't enjoy and wasn't interested in doing the cooking or laundry."<sup>60</sup> How does one even begin to respond?

### C. Missed Opportunities

#### 1. A Different Kind of Time Bind: Aging and Infertility

No one ever told us about old eggs. Instead, women have been told they can have it all, and many of us believed that. Well, sister, you can have it all, but you have got to get the priorities right early on, or you may really miss out on the most important part of "all." To get that career/couple/kids equation that many of us think of as the life plan, Super Woman needs to hang up her cape for a while and focus on family earlier, rather than later.<sup>61</sup>

When the "headhunter" firm of Korn/Ferry researched the profile of the female senior executive in the 1980s, it discovered that over half of these women were unmarried and over sixty percent had no children. By comparison, ninety-five percent of their male counterparts were married with children, with the majority of that group relying on non-working wives to manage the home front.<sup>62</sup> Professor Joan Williams reports similar findings in *Unbending Gender* more than a decade later—ninety percent of men in upper-level corporate management positions have children and a "stay-at-home" wife. Women in comparable positions are far less likely to marry or have children, let alone enjoy the support of a spouse to stay at home with a family.<sup>63</sup> Professor Williams reports that thirty percent of those successful women do not have children.<sup>64</sup> Those kinds of numbers set the stage for Dr. Sylvia Ann Hewlett's contribution entitled *Creating a Life*<sup>65</sup> as a U.S. publication and, perhaps more aptly, called *Baby Hunger* in

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59. DEUTSCH, *supra* note 9, at 151.

60. *Id.*

61. VARGO & REGAN, *supra* note 20, at 46.

62. APTER, *supra* note 9, at 210-11.

63. WILLIAMS, *supra* note 18, at 72-73. The number of stay-at-home husbands may be on the rise, however, *Fortune* magazine reported in 2002 that, of the 187 women executives who participated in the magazine article entitled "Most Powerful Women in Business Summit," thirty percent had "househusbands." Betsy Morris, *Trophy Husbands*, *FORTUNE*, Oct. 15, 2002, at 78. Interestingly, the subtitle of the article declared "While their fast-track wives go to work, stay-at-home husbands mind the kids. They deserve a trophy for trading places." *Id.* One can hardly imagine such a statement in reference to the stay-at-home wife whose fast-track husband goes to work.

64. WILLIAMS, *supra* note 18, at 72-73.

65. HEWLETT, *CREATING A LIFE*, *supra* note 4.

the British version.<sup>66</sup>

Although Dr. Hewlett's book has been one of the more controversial contributions in this area (and has been widely criticized in the feminist community), it offers almost a caricature of the range of mixed messages that underlie much of this literature.

Depending on where you stand in the world of gender, career, age, and parenthood, reading *Creating a Life: Professional Women and the Quest for Children*<sup>67</sup> by Sylvia Ann Hewlett may be a well-timed warning, a painful reminder of missed or unavailable options, or a "sigh of relief" confirmation that you are one of the lucky ones. The real target of the book, however, is those women who are at the "front end" of these decisions about careers, marriage and families. To the extent anyone continues to think that women of the new millennium can concentrate on their career through their thirties and then turn to motherhood and family in their forties as established professionals, Dr. Hewlett attempts to sound the alarm.

Dr. Hewlett's initial project, as she describes it, was to celebrate the accomplishments of the "breakthrough generation"—those women who had reaped the benefits of the women's movement by breaking through the glass ceiling. To that end, she selected fifty women who had become prominent leaders in their fields. In exploring these successes, she found herself derailed by a startling fact: *none of the women she interviewed had children*.<sup>68</sup> These women have no child with whom to spend quality time, no need to leave early to get to soccer practice, no one to nag about the upcoming deadline for a seventh grade science project. As it turns out, these are not women who made career and lifestyle choices to forego the responsibilities of motherhood. None of these women, according to Dr. Hewlett, had consciously chosen to forego motherhood for their careers.<sup>69</sup> Not a single woman claimed to have made the conscious decision to reject the responsibilities and distractions of motherhood in order to pursue her career dreams.<sup>70</sup> Rather, time and circumstances whittled away those opportunities until they just were not there anymore.

Dr. Hewlett's discovery led her to conduct a more widespread survey of 1168 "high-achieving career women"—defined as those employed full time and earning an income in the top ten percent of their age group—\$55,000 for twenty-eight to forty year olds, and \$65,000 for forty-one to

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66. SYLVIA ANN HEWLETT, *BABY HUNGER: THE NEW BATTLE FOR MOTHERHOOD* (2002).

67. HEWLETT, *CREATING A LIFE*, *supra* note 4.

68. *Id.* at 2.

69. *Id.*

70. This is not to suggest that there are no women who make that choice. Dr. Hewlett puts that number at fourteen percent, based on her own survey. *Id.* at 5. She reports that the 1992 Census Bureau reported that only nine percent of women reported the intent not to have children. *Id.* at 312, n. 4.

fifty-five year olds.<sup>71</sup> For comparison purposes, she added "high-achieving non-career women," who were well-educated but not working full time, and a group of "high achieving career men," also working full time and earning in the top ten percent of their age group.<sup>72</sup> Dr. Hewlett's survey revealed that a full third of high achieving women between forty and fifty-five were childless. For those with corporate jobs, the rate was over forty percent.<sup>73</sup>

Dr. Hewlett's survey paints a grim picture for ambitious women planning to combine a high-powered career and motherhood. In the category of "ultra-achievers"—defined as those earning in excess of \$100,000 a year—almost half of the respondents reported having no children.<sup>74</sup> For those planning to delay a family until after establishing a career, the numbers were not encouraging.

Of the high achievers in Dr. Hewlett's survey, only one percent had a first child after age thirty-nine, and none of the ultra high-achievers had a first child after age thirty-six.<sup>75</sup> With respect to marriage, only eight percent were married for the first time after age thirty, and only three percent were married after age thirty-five.<sup>76</sup> The numbers are even starker for African-American women; she reports only one-third are currently married and only forty-three percent have children.<sup>77</sup> Dr. Hewlett points to other studies which confirm her findings. A 1995 study tracking women who graduated between 1969 and 1979 found that only thirteen to seventeen percent were able to have both children and a career by age forty.<sup>78</sup>

At least part of the explanation for these numbers may be age-related infertility. Women who have delayed a family in pursuit of a career may find their options diminished when they decide the time is "right." Fertility decreases with age, and advances in fertility treatments are promising, yet pregnancies remain statistical long-shots for older women. "Fertility rates begin to drop after age thirty, then plunge after age thirty-five. According to figures put out by the Mayo Clinic, peak fertility occurs between ages twenty and thirty. Fertility drops twenty percent after age thirty, fifty

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71. *Id.* at 310-11, n. 1.

72. "Highly educated" is defined by Hewlett as having "completed a bachelor's degree with high honors, or completed graduate school/profession school, or obtained a CPA qualification." *Id.* The earnings floor for high-achieving men was \$80,000 for the twenty-eight to forty year old age group and \$95,000 for the forty-one to fifty-five year old age group, or those with graduate or professional degrees. *Id.* The complete survey, with a more detailed explanation of the methodology, can be found in the survey itself. *High-Achieving Women*, 2001, NATIONAL PARENTING ASSOCIATION (April 2002).

73. *Id.* at 33.

74. *Id.* at 292.

75. *Id.* at 85.

76. *Id.* at 87.

77. *Id.* at 88.

78. *Id.* at 93.

percent after age thirty-five, and ninety-five percent after age forty.”<sup>79</sup> Add to this the “myth” that the latest fertility treatments now allow women to conceive and become mothers well into their forties,<sup>80</sup> and the “older” woman’s odds of adding children to her full plate of challenging work are exceedingly small indeed.

Dr. Hewlett’s goal is to expose the false sense of security offered by fertility treatments and the highly-publicized stories of women becoming first time mothers well into their forties. Although the results of her extended research are somewhat less startling than the 100 percent childless rate that Dr. Hewlett’s original interviews suggested; the central theme of regret remains strong, much amplified by the anecdotal tales of individual interviewees. Combining the two, Dr. Hewlett weaves together the sobering realities of trying to “have it all.” Dr. Hewlett provides example after example of successful women who, in one way or another, never had—or took—the chance to have children and are now regretting that choice or consequence.

In sum, Dr. Hewlett’s message goes something like this: If you fail to plan carefully, you will miss out on having children, something that will haunt you for the rest of your life. A successful career is not likely to feel like a worthwhile trade-off. Hurry up and find a husband in your twenties, start that family in your late twenties or early thirties at the latest (to simplify the issue of children well before fertility begins to decline with age). And try to find a career with time flexibility. If you get behind in this schedule, your odds of having a marriage and a family will plummet. Get moving.<sup>81</sup>

Needless to say, Dr. Hewlett’s message was not warmly embraced by all members of the feminist community. Some disputed her numbers and statistics, while others decried the more general message—focus your attention on finding a husband and starting a family—which could be interpreted as a return to the middle of the last century.<sup>82</sup> One

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79. *Id.* at 216.

80. *Id.* at 183-222.

81. *Id.* at 260-61. One woman, who defied the odds by having three children and a successful part-time career as a literary agent, strikes a much more positive note, but her advice is not all that different:

One piece of advice for young women. Do a whole lot of planning early on. Be as strategic about your personal life as you are about your career. And find an occupation where you can bend the rules. Then, work hard enough to deserve having those rules bent for you.

*Id.* at 81-82, 88.

Dr. Hewlett’s concluding list is only slightly more subtle and includes statements like “give urgent priority to finding a partner. This project is extremely time-sensitive and deserves special attention in your twenties” and “have your first child before 35.” *Id.* at 261.

82. Well-known feminist Susan Faludi is a long-time critic of Dr. Hewlett’s views. Long before authoring *Creating a Life*, Dr. Hewlett had taken on the women’s movement in

commentator described her book as arguing, "in effect, that women have to choose between career success and family success."<sup>83</sup> For a woman law student (or medical student or MBA student), Dr. Hewlett's advice may be daunting, if not depressing. Focusing on the completion of professional school, finding the right job opportunity, and working hard (and long hours) to fit in and make a good impression on the new boss may seem like more than enough stress to occupy your time and energy.

In spite of the criticisms, Dr. Hewlett's "reality check" on the success rates and risks of fertility treatments for older women cannot be so easily dismissed. There is general agreement that fertility declines with age, and the odds of conceiving and carrying a healthy baby to term after forty are much diminished. The miracle of invitro fertilization has a success rate of only three to five percent for women over forty (success being defined as resulting in a life birth, not simply getting pregnant).<sup>84</sup> It is also hard to argue with the impression that only the "success" stories become news—well known actresses having children in their mid-forties or the thriving McCaughey septuplets. We are far less likely to read about a woman's struggle with repeated miscarriages and failed fertility treatments or the multi-fetal pregnancies resulting in the premature birth of underweight infants who do not survive. When these tiny infants do survive, many face life-long physical and cognitive problems.<sup>85</sup>

*A Few Good Eggs: Two Chick Dish about Overcoming the Insanity of Infertility*<sup>86</sup> echoes a number of the warnings found in Dr. Hewlett's observations, although in a style and format less likely to raise the same amount of feminist ire. Authors Julie Vargo and Maureen Regan share their own painful experiences with infertility and provide a useful resource manual along the way. The book is full of personal stories about the authors' own struggles it is laced with facts, figures, definitions, and lots of practical advice about approaching and handling the issue. The authors are unconcerned about career struggles and balancing acts; their goal is rather to provide information and encouragement in the quest for children. But

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another book, *A Lesser Life: The Myth of Women's Liberation in America* (SYLVIA ANN HEWLETT, *A LESSER LIFE: THE MYTH OF WOMEN'S LIBERATION IN AMERICA* (1986)). Dr. Faludi's feminist classic *Backlash* devotes an entire section, entitled "The Neofeminist's Lesser Work," to Dr. Hewlett's work. See SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1992).

As described by Dr. Faludi, Dr. Hewlett argues, for example, that the ERA might actually hurt "ordinary women" who wanted and appreciated the "protective benefits" that equality would eliminate. *Id.* at 313. Dr. Faludi criticizes Hewlett's "research" as vague and questions what little is offered (e.g., Dr. Hewlett's reference to a conversation with a textile worker at a mill in Atlanta at a time when only one Atlanta mill remained open with a skeletal staff). *Id.*

83. PHYLLIS MOEN, *Introduction to It's ABOUT TIME*, *supra* note 9, at 1.

84. *Id.* at 195-96.

85. *Id.* at 197-99.

86. VARGO & REGAN, *supra* note 20.

the implicit, and sometimes explicit, message is much the same as Dr. Hewlett's. Once women are past their twenties, fertility begins to drop and risks of complications and birth defects rise.<sup>87</sup> While high-tech fertility treatments can help, they are also less successful as age progresses—the real problem is “old” eggs, the authors remind us, regardless of what kind of shape you are in. Forty year old eggs are still forty year old eggs, even if you have twenty-five year old abs.<sup>88</sup> The authors' planning advice is much like Dr. Hewlett's:

If you want to have children, then work your family life plan backward to determine where you currently are in the groove. Begin with where you want to be when you are old. . . . To have grandchildren, you will have to find a man willing to be the father of your children by the time you are in your early thirties. This means that your mid-to-late twenties should be devoted to finding that partner.

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[N]o one ever told us about old eggs. Instead, women have been told they can have it all, and many of us believed that. Well, sister, you can have it all, but you have got to get the priorities right early on, or you may really miss out on the most important part of “all.” To get that career/couple/kids equation that many of us think of as the life plan, Super Woman needs to hang up her cape for a while and focus on family earlier rather than later.<sup>89</sup>

## 2. Mixed Messages

Above and beyond the studies and statistics found in *Creating a Life* (and reaffirmed in *A Few Good Eggs*), Dr. Hewlett offers numerous anecdotes from both her own life and those of her “research subjects.” While the intent of these stories is to drive home her themes and messages, they often prove too much by revealing the kinds of unrealistic expectations, if not outright delusions, that seem all too common in the literature.

Wendy Wasserstein, one of the women targeted in Dr. Hewlett's original project, is symbolic of many of the mixed messages that permeate much of Dr. Hewlett's discussion. Ms. Wasserstein is a renowned playwright, whose credits and honors include a Pulitzer Prize.<sup>90</sup> When she reached forty without a mate or a child, she decided to become a single mother and spent *seven years* in increasingly invasive and expensive

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87. *Id.* at 102.

88. *Id.* at 30-39.

89. *Id.* at 44, 46.

90. HEWLETT, *CREATING A LIFE*, *supra* note 4, at 41.

fertility treatment.<sup>91</sup> These procedures left her "more depressed than at any other time in [her] life."<sup>92</sup> However, the procedures finally worked and Ms. Wasserstein became a first-time mother at the age of forty-seven. There is much to celebrate here—the success of a woman playwright and the wonders of fertility treatments. But the odds of repeating Ms. Wasserstein's success, at least on the motherhood front, are small and shrink with each passing year. As already noted, only three to five percent of women over forty who turn to fertility treatments actually have a child.<sup>93</sup> And far fewer women have the financial ability to pay for seven years of multiple treatments—most, if not all, of which are unlikely to be covered by health insurance.

The other side of this story, and the statistically far more common outcome, is illustrated by the experiences and words of a successful female academic. This woman had married "late" (age thirty-seven) and spent most of her resources—both financial and emotional—on unsuccessful fertility treatments. Three failed invitro fertilization attempts, funded by a second mortgage, left her disappointed, if not bitter. Her experience may be at least mildly alarming to those who aspire to "have it all." She states: "I'm forever telling my women students: 'Don't be afraid of letting go of a half-built career. We are smart, well-educated, and life is long. *Career opportunities can be recaptured.* Don't waste that small window of fertility. Don't live to regret not having had a child.'"<sup>94</sup>

This professor warns her students not to be cavalier in their approach to family planning, but her advice suggests she may be overcompensating for her own sadness by an equally cavalier attitude about career options. Is her belief that career opportunities can be "recaptured" realistic? This particular individual had just been offered the position of a department chair at a large, respected public university. Had she "let go" at an earlier point in her career, as she advises, would she still have accumulated the scholarship and experience to be considered for this prestigious position? She might well respond that it would not have mattered; she would gladly exchange the career opportunity for a child. But the point remains that she might not have been able to have both—that "recapturing" this career opportunity would not have been a realistic option five or ten or fifteen years down the road.

Dr. Hewlett confirms this message just a few pages later: women who left terrific jobs to be with their young children were finding it almost impossible to find challenging work when they attempted to re-enter the

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91. *Id.* at 43.

92. *Id.* at 40.

93. *Id.* at 34.

94. *Id.* at 48 (emphasis added).

labor market several years later.<sup>95</sup> At this juncture, Dr. Hewlett's focus is on the failure of the workplace to accommodate the efforts of women to combine careers and families. Her example, however, once again may suggest far more than she intended. As one woman described her situation, "... I've failed to find a way back in despite a bunch of fancy credentials. And it's not for want of trying. I've applied for dozens of jobs and I've networked like crazy, but *no one seems interested in hiring an executive who wants to work 35-40 hours a week.*"<sup>96</sup>

An applicant for an executive position who wants to limit her work to thirty-five hours a week? Perhaps this mother's failure to land a job is related to discrimination against a woman who has taken a career break, supporting Dr. Hewlett's point that there need to be more accommodating exits and re-entries for a mother's career path.<sup>97</sup> Perhaps this mother's time out of the job market may have left her out of touch with developments in her field, which may depend on the nature of her credentials and the kind of jobs in question. But at least as likely is the possibility that "executive" and "thirty-five to forty hours a week" simply do not compute in most workplaces, regardless of the nature of the business. Surely few businesses are interested in hiring a new management level employee with those kinds of restrictions.

The most striking of hidden and mixed messages, however, may be found in Dr. Hewlett's own story. As an example of her own struggles to combine family and career, Dr. Hewlett relates a very difficult time during her early years as an non-tenured professor at Barnard College in New York. Barnard had no maternity leave, and Dr. Hewlett returned to work just ten days after her first child was born.<sup>98</sup> Two years later she lost twins in the sixth month of her pregnancy, leaving her with both the grief of two lost children and the guilt that she had "failed to protect [her] babies" by not taking time off of work.<sup>99</sup> Eighteen months after that tragic event, she was denied tenure:

Despite a stellar record, the Ad Hoc Committee at Columbia University denied me tenure because I was not sufficiently committed. In the words of one committee member, I had

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95. *Id.* at 110-11.

96. *Id.* at 291-92 (emphasis added).

97. *Id.* at 281.

98. *Id.* at 14.

99. At one point, Dr. Hewlett goes so far as to say that, "if I had been able to take some 'parenting leave,' those babies might well have survived." *Id.* at 17. One can only hope that she does not truly blame herself for the tragic loss of her twins. She goes on, however, to claim she was "beaten back" in her efforts to organize a committee to fight for parenting leave. *Id.* at 17-18. Well-known feminist Susan Faludi disputes a similar claim apparently made by Dr. Hewlett in her earlier work, *A Lesser Life* (HEWLETT, *A LESSER LIFE*, *supra* note 81). See FALUDI, *BACKLASH*, *supra* note 81, at 317 (quoting Jane Gould, director of the Barnard's Women Center at the time).

"allowed childrearing to dilute my focus." I found myself wishing I had been a Barnard faculty member in the 1930s, when the Dean of the College, Virginia Gildersleeve, had a deeper appreciation of the value of a balanced life. In 1937 she wrote, "Neither the men nor the women on our staff should be forced into celibacy, and cut off from that great source of experience, joy, sorrow and wisdom which marriage and parenthood offer."<sup>100</sup>

Dr. Hewlett's characterization of events is puzzling on several levels. Her self-described "stellar record" would suggest she was entitled to tenure under anyone's standard; she had not allowed her joyful and tragic maternity experiences to sidetrack her academic progress. Yet the next few sentences suggest something very different—almost a resentment that her efforts to balance her career and her family were not given sufficient credit or accepted as an explanation for her lack of focus and productivity. Her wish is for an institution with a "deeper appreciation" of a "balanced life."

Is Dr. Hewlett implying that the charge of a diluted focus was untrue or unfair—her "stellar record" supporting a fairly straight-forward charge of discrimination? Or is she implying unfairness in the committee's failure to understand and make allowances for her efforts to have a family and establish a career at the same time? Is it possible to carry and deliver one's first child, mother an infant, and then lose twins in the second trimester of pregnancy—all within a two year period—and still be fully focused on one's job and career during that same time period? I would hope not.

Dr. Hewlett would have presented an easy case for the outraged response she is seeking here if she had accomplished the superwoman feat of handling all of these events in her personal life while still keeping up the quick pace of scholarly output, teaching, and committee work carried on by her peers. One guesses, however, that Dr. Hewlett *was* less focused and *did* accomplish less than colleagues without similar physical and emotional demands. This is not to say that Dr. Hewlett was necessarily less "committed" than her colleagues; it is to say that her career during this period likely did not benefit from the same focus and hours as did the careers of her colleagues whose personal lives were not in the same upheaval.

After leaving Barnard, Dr. Hewlett became the executive director of a private sector think tank (and had "several more children"<sup>101</sup> in the interim) but left several years later after struggling with the balance between her job and the demands of her small children.<sup>102</sup> She acknowledges she was lucky to have had the choice—a spouse who earned enough to support the family and a writing career with flexible hours that could be pursued from

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100. HEWLETT, CREATING A LIFE, *supra* note 4, at 17.

101. *Id.* at 18.

102. *Id.* at 18-19.

home.<sup>103</sup> Then, she made a decision that provoked much ire from some of her critics. Dr. Hewlett—now in her mid-forties—began a four-year journey through escalating and presumably expensive fertility treatments to have one more child.<sup>104</sup> She gave birth to her daughter just after her fifty-first birthday.<sup>105</sup>

Having repeatedly warned the reader of the “false promises” of successful fertility treatments later in life, she seems unaware of the irony of her own odds-defying experience. Dr. Hewlett’s success in having a child *at the age of fifty-one* threatens to undermine much of her message. At later moments in the book, when Dr. Hewlett provides us with the grim statistics of fertility rates and fertility clinic success for women over forty (only three to five percent),<sup>106</sup> one is hard-pressed to ignore the fact that it can and does happen as Dr. Hewlett herself has proven to us. If Dr. Hewlett can have a child at fifty-one, having a child at forty-one seems that much more realistic. The “false hope” that fertility clinics can “fix” whatever problems may stand in the way of an over-forty pregnancy, one might conclude, is not so false after all.

#### D. Looking for Answers

Most of the commentators and scholars who have written in this area include some attempt at solving the problem. The proposals are generally predictable variations on the common themes of time and flexibility. In *The Price of Motherhood*,<sup>107</sup> for example, Dr. Crittenden challenges employers to redesign the workplace with the parenting role in mind, providing, for example, a year of paid leave from one’s job and proportional pay and benefits for part time work.<sup>108</sup> Government programs should include equalizing social security for spouses, providing preschool for three and four year olds, altering the tax code, and providing universal health care coverage for children.<sup>109</sup>

In *Creating a Life*, Dr. Hewlett focuses on the need for more career “off-ramps” and “on-ramps.”<sup>110</sup> In other words, the workplace needs to better accommodate itself to the cycles of motherhood by providing opportunities for breaks, pauses, and “slow downs” without permanently

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103. *Id.*

104. *Id.* at 22.

105. After such details of motherhood, it seems odd that one is left not knowing exactly how many children Dr. Hewlett actually has. We are given specifics of the first and last children, but only this remarkably vague reference to “several more” in the interim.

106. *Id.* at 32.

107. Crittenden, *supra* note 14.

108. *Id.* at 258-61.

109. *Id.* at 262-67.

110. Hewlett at 281.

derailing one's career. Included on her list are paid parenting leave,<sup>111</sup> the creation of high level jobs with reduced hours,<sup>112</sup> and opportunities for unpaid extended leaves with job protection to facilitate a return to the workforce. Her suggestions include a "time bank" of six months of paid leave<sup>113</sup> (an improvement on the Family Medical Leave Act suggested by a number of others); restructured retirement plans "to eliminate the penalty for career interruptions;" "career breaks" of up to three years with the right to return to one's job; part-time but high level career tracks; separate listings for part time opportunities in newspapers, etc.; tax breaks or subsidies to support "reentry programs;" and "alumni status" for past employees to help them stay connected to their profession.<sup>114</sup>

Professor Joan Williams focuses her work somewhat more sharply on the economic and legal aspects of the work/family dilemma. In *Unbending Gender: Why Work and Family Conflict and What to Do About It*,<sup>115</sup> Professor Williams attempts to expose the gender norms imbedded in our treatment of paid market work and unpaid domestic/childcare work. Child care is relegated to the family without economic recognition, while the family, in turn, relegates that work to the mother. Lack of social, government, legal, or economic support for those responsibilities is inherent in our workplace rules and culture (the "ideal-worker norm").<sup>116</sup> Professor Williams attempts to refocus the debate in fundamental ways, but also offers concrete solutions. She proposes, for example, a structure for part-time work that purports to "demarginalize" its current role, including proportional benefits and opportunities to pursue high level careers on reduced hours.<sup>117</sup>

This demand for "family friendly" employers began long before this most recent batch of books and articles attempting to justify and demand justify some "relief." Professor Hochschild's *The Time Bind*<sup>118</sup> attempted to evaluate the success of that movement, using one particularly "family-

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111. *Id.* at 279.

112. *Id.* at 280.

113. *Id.* at 279.

114. *Id.* at 281-89. Dr. Hewlett's list of family-friendly employer policies breaks little new ground, and the research on this front seems particularly self-serving. Her suggestions can be found in a variety of other sources in one form or another. These proposals were overwhelmingly (80% plus) supported by the survey respondents. It seems to me this is something like asking employees if they would like a higher salary. Why wouldn't they agree to such benefits? Perhaps the only reason the support rate was less than 100% is the fact that some of these women (maybe from their own perspectives as managers) recognized how very difficult some of these benefits would be to administer. Holding a job open for three years? Continuing pension contributions for an employee who is not working?

115. WILLIAMS, *supra* note 18.

116. *Id.* at 64-113.

117. *Id.*

118. Hochschild, *THE TIME BIND*, *supra* note 5.

friendly” company.<sup>119</sup> Professor Hochschild examined the Amerco company—a “living” example of many of the policies advocated by a number of scholars in this area. Amerco created a range of family friendly policies and formally announced a “mission” to reconcile work and family pressures. The company offered its own child care center to allow parents worry-free time at work, while flexible hours, job sharing and reduced schedules were intended to allow more time with the family.<sup>120</sup> An employee was hired to make the Work-Life Balance program work and integrate those values into the corporate culture.<sup>121</sup> The only problem was that the program never really worked.<sup>122</sup>

Professor Hochschild found that, in spite of genuine efforts by Amerco to make these policies a reality, almost no one was using them (with the exception of the company daycare).<sup>123</sup>

The reasons were varied—some obvious and some not so apparent. For single parents (mothers, in most cases) working in factory jobs at an hourly rate, the explanation was often about money. These employees could not afford to work reduced hours because of the reduction in income.<sup>124</sup> Absent a program that continued to pay them for both the regular and overtime hours worked, the option to take a leave or cut back was no option at all. Amerco had not provided extended paid childcare leave, presumably because of the cost. With women comprising such a large percentage of the workforce, could any employer reasonably afford to pay double for working mothers (one paycheck for the leave and another paycheck for the replacement)?

For management level employees—those that are the focus of this paper – money was only part of the explanation. For these parents, Professor Hochschild reported concerns about job security and perceived commitment.<sup>125</sup> Managers worried that working a reduced schedule might suggest less commitment and make it more apparent that they were “expendable” in hard economic times. Professor Williams might respond that this type of workplace culture is at the heart of the problem. Employers need to understand that mothers can remain fully committed to their careers even while taking time off or cutting back hours in order to be more involved with their children. But the underlying reality sensed by these Amerco employees is hard to refute. In times of consolidation, cutback, reorganization or even consideration for promotion, the employer

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119. *Id.* at 22-23. For another source of studies and discussions about work culture and family-friendly policies, see LEWIS & LEWIS, *supra* note 9.

120. HOCHSCHILD, *THE TIME BIND*, *supra* note 5 at 22-23.

121. *Id.* at 8.

122. *Id.* at 197.

123. *Id.* at xviii, 25.

124. *Id.* at 197.

125. *Id.* at 97, 197

presumably is looking to reward his or her hardest workers, as well as select individuals who can "step up" to the new responsibilities that any of these decisions likely entail. As the decision-maker, would you select for that challenge and reward the employees who have been working part-time or the employees who have been consistently working long hours and going the extra mile for the company?

Some of these employees reported a very different reason for working full shifts and even overtime, however; work was more relaxing and rewarding than the stress awaiting them at home.<sup>126</sup> "In this new model of family and work life, a tired parent flees a world of unresolved quarrels and unwashed laundry for the reliable orderliness, harmony, and managed cheer of work . . . [T]he emotional magnets beneath home and workplace are in the process of being reversed."<sup>127</sup> As captured by one of Professor Hochschild's interviews (from a mother with three children, ages one, three and five):

I always tell people here that I come to work to relax. I know to some people this sounds mean, but to me it's eight hours of relaxation. I can go to work and the kids aren't right in front of me to worry about. [My husband], too, will tell you it's relaxing to work. At work, I can do more of what I want. At home, I have to do what the kids want.<sup>128</sup>

For women in management positions, these feelings are likely to be amplified by the relatively larger domestic workload awaiting them each evening on the home front. Similar to the experiences described earlier by Kristin van Ogrtop,<sup>129</sup> mothers in every social class report more positive emotional feelings at work than at home.<sup>130</sup> Another study found that problems at home upset women more than problems at work.<sup>131</sup> As one employee put it, "At work, we get paid and promoted for doing well. At home, when you're doing the right thing, chances are your kids are giving you hell for it."<sup>132</sup>

For women law students who may be envisioning the option of part-time practice once children become part of your life, *The Part-Time*

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126. *Id.* at 37-44. As one study concluded, "because women are constantly 'on call' to the needs of other family members, they are less able to relax and recreate at home in the way men do." *Id.* at 40-41 (quoting Reed Larson, Maryse Richards, and Maureen Perry-Jenkins, *Divergent Worlds: The Daily Emotional Experience of Mothers and Fathers in the Domestic and Public Spheres*, 67 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 1034, 1035 (1994)).

127. *Id.* at 44.

128. *Id.* at 186.

129. See discussion at *supra* notes 30-33.

130. Hochschild, *THE TIME BIND*, *supra* note 5, at 40, citing LARSON, RICHARDS, PERRY-JENKINS, *supra* note 106..

131. *Id.* at 41.

132. *Id.* at 44.

*Paradox*<sup>133</sup> provides a discouraging view of such arrangements for (primarily) women lawyers. Professor Williams wrote in *Unbending Gender* of the need to “demarginalize” part-time work;<sup>134</sup> these authors illustrate the reality of that demarginalization in the legal profession. Professors Epstein, Seron, Oglensky, and Saute attempted to study some of the individuals in that small percentage of attorneys (just 2.6 percent, according to the National Association of Law Placement<sup>135</sup>) who practice part-time. The study involved both in-depth interviews and surveys with lawyers who had elected (and been permitted) to work part-time.<sup>136</sup> Not surprisingly, the vast majority of the study subjects were women and most (over eighty percent) of them had sought part-time work in order to balance parenting responsibilities.

Professor Epstein’s study confirms much of what one would have guessed. Seeking part-time hours may be perceived as a lack of commitment, which can have long-term impacts on assignments, advancement, job security, and income.<sup>137</sup> To make matters worse, part-time in a law firm looks much like full time in many other jobs; the demands of clients or particular cases will sometimes stretch those arrangements to include significant “overtime.” Other colleagues may resent such arrangements and question the “fairness” of the “extra” work they are performing—a situation aggravated by the more limited “social” time a part-time attorney may spend in the halls of the office.<sup>138</sup> Perhaps most instructive, all but one attorney in the study began by working full time.<sup>139</sup> In other words, these lawyers had established a relationship and proven their professional “worth” before requesting the opportunity to cut back.<sup>140</sup>

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133. EPSTEIN, et al., *supra* note 17.

134. WILLIAMS, *supra* note 18, at 72-74, 274.

135. Epstein, et al., THE PART-TIME PARADOX, *supra* note 17, at 5.

136. See *id.* at Appendix A, for a description of the study methodology.

137. *Id.* at 66, 74, 75, 98-99.

138. *Id.* at 67. Successful part-time arrangements are particularly tricky in the traditional law firm environment but generally work much better in the more structured arrangement of government jobs.

139. *Id.* at 42.

140. *Id.* at 42. On the more cynical side, some have suggested a more directed solution to the problem if a high-powered career remains your primary goal: find a husband willing to be your “wife” and eliminate the concept of guilt from your life. See RHONA MAHONY, KIDDING OURSELVES: BREADWINNING, BABIES, AND BARGAINING POWER (1995) at 139-48 (recommending that women look for househusbands, if they are serious about their careers) and DE MARNEFFE, *supra* note 26, at 53 (reporting on a survey conducted by Working Mother magazine, which concluded that the most successful professional mothers in high powered positions “have done extremely well at setting aside guilt, regret, and ambivalence about the choices they have made.”).

### III. The Focus Factor

[The nanny] does not, however, write notes to the teacher or plan vacations or figure out where we're going to put the hamster Owen desperately wants. And [my husband], God bless him, is terrible at those things. I used to think it was lack of training; now I think it's that Y chromosome. [My husband] is spectacular at spelling Kyrgyzstan and remembering who won the 1976 World Series. Ask him the first name of Hugo's nursery school teacher and he's stumped. Ask him to remember to pick up cat food and it goes in one ear and out the other; on really frustrating days he'll deny ever being told at all.<sup>141</sup>

"It is precisely this mental work—the 'remembering, planning and scheduling' thing—that is the most arduous of all parenting tasks. It also happens to be the work that married fathers steadfastly avoid doing."<sup>142</sup>

Present, but somewhat buried, in this array of literature is an issue that may be far more intractable than convincing the new age man that it is his turn to do the laundry or convincing the employers that more flextime is one of their obligations in creating a more family-friendly workplace. The wifework/childwork burden shouldered by most women goes far beyond the role of maid and babysitter. It includes the responsibility for all of those tasks—the arranging, the scheduling, and the inherent decisions that must be made in managing a family on a daily basis. Closely connected to that function, I would argue, is a level of emotional involvement that may have the capacity to derail even the most ambitious of women. This "focus factor" distracts and diverts a mother's attention from her job and career in two respects—the management responsibility and the worry responsibility.

First, the management responsibility for the homework/childwork includes a significant amount of time and mental energy in deciding what needs to be included in the children's schedules (appointments, lessons, practices, carpools, etc.). Getting the child to and from the appointments or practices or lessons themselves is only a part of the problem. At the last dentist appointment (yet another scheduling task), the dentist mentioned that Sarah might need braces. A good orthodontist must be found (network with other mothers to see who they use), appointments must be made, research may be required to determine if the cost will be covered by dental insurance, and a decision must be made about proceeding with treatment. Many mothers add to that burden of scheduling and transportation by taking on a few extra related responsibilities (such as soccer team manager

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141. OGTROP, *supra* note 23, at 166.

142. MAUSHART, *supra* note 7, at 131.

or classroom volunteer) to assuage some of the guilt for their supermom shortcomings and to prove to themselves (or the coach and the teacher) their status as involved parents. These are issues not just of time but of attention.

The responsibility component of the focus factor is documented in at least some of the research on women and childcare. Studies reviewed by Susan Maushart, for example, address this issue as a second, more subtle point concerning the disproportionately high percentage of childcare performed by mom.<sup>143</sup> According to one study, she reports, seventy percent of dads assume *none* of the responsibilities of childcare.<sup>144</sup> This is not to say that dad fails to spend time with his children or provide childcare; rather he is not “taking charge.”<sup>145</sup> Dad will care for the baby while mom takes Tommy to his violin lesson, but it is mom who found the violin teacher, scheduled the lesson and verified that dad could be home to “cover” the childcare during that hour.<sup>146</sup>

In Professor Hochschild’s *The Second Shift*, she includes in her study (in depth interviews with 145 individuals) three categories of homework—“housework, parenting, and management of domestic life.”<sup>147</sup> The management category, equating closely to the “taking charge” of responsibilities discussed by Dr. Maushart, involved the “remembering, planning, and scheduling.” Women in her study reported doing eighty percent of these tasks.<sup>148</sup> Another study found that only eight percent of the fathers took responsibility for two or more child-care tasks, when responsibility is defined as “remembering, planning and scheduling.”

It is precisely this mental work—the ‘remembering, planning and scheduling’ thing—that is the most arduous of all parenting tasks. It also happens to be the work that married fathers steadfastly avoid doing. Married mothers not only carry out the lioness’s share of parenting work, whether they work for pay or not. They shoulder the additional burden of administering the endless minutiae of family life—a task which consumes untold gigabytes of a woman’s intellectual hard-drive. . . . Dad may consent happily to supervise when [baby] has a friend to play [with] on the weekend... But the odds that he will take responsibility for cultivating her social life are somewhere between poor and nil. And the same goes for taking her

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143. See *id.* at 130-31

144. *Id.*

145. *Id.* at 13, citing ANTHONY MCMAHON, *TAKING CARE OF MEN* (1999).

146. See *id.* at 131-32.

147. HOCHSCHILD, *THE SECOND SHIFT*, *supra* note 15, at 276.

148. *Id.*

shopping for new sneakers, or noticing that she needs them, seeing to it that her room is navigable, keeping tabs on her homework assignments or dental appointments, paying the piano teacher (or even remembering the piano teacher's name).<sup>149</sup>

Anecdotes highlight the problem in more concrete ways. In *The Second Shift*, one dad (in a family of two working parents) reported on his limited role in planning his daughter's fifth birthday: "I've done nothing for Alexandra's birthday party this weekend except wrap a few gifts. Nina's the one who has had to write out the invitations, order the cake, buy Alexandra all her presents, figure out where we're going, figure out the lunch menu for the kids."<sup>150</sup> Dr. Maushart relates the story of a woman coming home after an evening out to discover her husband put the kids to bed in their clothes.<sup>151</sup> She was frustrated but felt guilty complaining since dad had cared for them and spent time with them, but she also admitted that she would fire a babysitter who did the same thing.<sup>152</sup> How many moms have come home after an evening out to dirty kids who are still awake long after bath and bed time, not to mention a kitchen full of unwashed dishes? Dad is feeling generous for taking over the childcare so mom could enjoy an evening with her friends. Yet when dad comes home late from a business meeting or night out, he finds a clean kitchen with clean kids tucked in bed wearing pajamas.

Apart from the time associated with performing both the scheduling and the tasks themselves, managing a family provides abundant opportunities for thoughtful concern—the "worry responsibility." I include within this concept both garden-variety worrying (an often not useful and unhelpful emotion about things outside of your control) and the more constructive concept of problem solving. Some of that worry is absorbed from your child's anxiety—if Jack is worried about whether or not he will "make" the baseball team, then you are likely to worry, too. Your worry is different, of course—you know his life will be neither made nor ruined by the outcome of these tryouts. But you do worry about how unhappy he will be and how successfully and constructively he will handle that disappointment. You may also spend time thinking about the issue as a kind of problem to be solved and investigating other alternatives—are there other teams he might join? Are there other sports he should be encouraged to try? Should you look for ways for him to improve his baseball skills (hoping for better results next time) or should you encourage him to explore other activities instead? And should you even be "taking on" these

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149. MAUSHART, *supra* note 7, at 131.

150. HOCHSCHILD, *THE SECOND SHIFT*, *supra* note 15, at 79.

151. MAUSHART, *supra* note 7 at 110-11.

152. *Id.* at 111.

issues at all? Is this just part of life he should/needs to learn to handle on his own without your interference or attempt to "fix" it for him? I do not know the answers to any of these questions and, even if I did, they would be my answers. They would not necessarily be your answers.

*The Time Bind* relates a story about Connie, a secretary who had worked for Amerco for fourteen years. Connie's ideal schedule, putting aside the issue of money, would be to arrive home when the kids get home from school.<sup>153</sup> The specific incident in question involves Connie's need to leave work early on Wednesdays to take her son for asthma shots.<sup>154</sup> As Professor Hochschild describes it, "Connie didn't want to hire someone to pick up the children, as . . . other top women managers did. She wanted to be that person."<sup>155</sup> Her boss asked her to make other arrangements, letting someone else take her son to the doctor, because she was needed at her desk.<sup>156</sup> Connie refused, telling her boss that "there are no other arrangements."<sup>157</sup> Professor Hochschild reports, however, that her defense was not really accurate.<sup>158</sup> "The truth was Connie could have made other arrangements. Her mother and husband had both offered to take Kenny for his shots. But Connie wanted to do it herself, and she wanted credit as well for all of the other times when she had made 'other arrangements' in order to stay at work."<sup>159</sup>

Connie's "need" to participate in her son's doctor appointments illustrates the complexity of the mother/work dilemma in a way that the professional mother may understand but be hard-pressed to fully articulate or explain. For many mothers, it is a "need" that is central to their sense of identity, and that "mother identity" ultimately may be more fundamental than a career identity.<sup>160</sup> Consciously or unconsciously, that career identity has been compromised, but time constraints are only a part of the problem. Rather, it is the emotional and intellectual demands of motherhood that may force a more diminished role for the sense of career identity.

#### IV. Bliss

No one was ever heard to say on their death bed, "I wish I had spent

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153. HOCHSCHILD, *THE TIME BIND*, *supra* note 5, at 135

154. *Id.* at 136.

155. *Id.* at 135.

156. *Id.* at 137.

157. *Id.* at 138.

158. *Id.*

159. *Id.*

160. See DE MARNEFFE, *MATERNAL DESIRE*, *supra* note 26, at 21-22 ("...caring for small children is compellingly central to many women's sense of themselves to a degree still not experienced by many men.") and 127 ("A problem many couples confront is that partners have differing levels of desire to care for the children, and differing levels of perceived deprivation when they do not.").

more time at the office.”<sup>161</sup>

So, here it is: odds are high that the perfect and enlightened mate you have met, will meet, or hope to meet will contribute only modestly on the home front. From a pure workload perspective (emotional well-being aside), the deal may well be more trouble than it's worth; in other words, the work his presence creates may outweigh the helping hand he adds. Even if you do manage a fairly even split of the household chores, the addition of children is likely to derail that delicate balance. And should your partner with that rare mate/father that is indeed willing to assume the physical and mental load of parenting, you will still need to sit yourself down and figure out how you feel about this “freedom” to pursue your career goals, paid for with less time to spend and connect with your children.

Part of the issue is time, as so many scholars have discussed and documented. Having another parent to drive the carpool, get Susie to the orthodontist, or pick Timmy up from basketball practice, not to mention get dinner on the table, would help mom devote more time and energy to her career. But time is not the only problem; like Connie, mom may feel that she wants or even “needs” to be there—hearing the carpool chatter in order to find out what is going on at school; reassuring Susie that braces don't “hurt;” finding out what the doctor has to say about the cough that will not go away; or waiting to hear how practice went when Timmy is having problems with his coach. Knowing dad is doing all those things is more reassuring than hiring a driver, but it is not a complete substitute.

There is, of course, no universal answer or solution to this tension; there is only your answer. Unlike Professor Hochschild and Dr. Hewlett, I have not distributed any surveys or systematically conducted interviews. I do, however, have women friends, colleagues and acquaintances who are also mothers. We discuss these issues both casually and seriously, in jest and in earnest. From my completely unscientific sample, I can tell you that not one of these women—not one—has avoided a relatively constant sense of conflict, if not guilt, that comes from the worry that the child or children are being shortchanged and the career is being stagnated.

This is not to say that you cannot or should not “have it all” in your own world plan. This is not to say that we should give up on or ignore efforts by Professor Williams and dozens of other scholars who challenge workplace norms and cultures that make these issues harder for women that they need to be. But it is to say that, career issues aside, every parent soon learns that being a “good” mother requires frequent reassessments and recalculations and compromises on numerous levels. Reconciling career aspirations those parenting goals likely will require similar re-evaluations

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161. I have heard and seen this quote, or a version of it, on a number of occasions without attribution, but the source may be author Rob Parsons.

on a regular basis.

When one of my children is facing a particularly stressful challenge, I no longer have to wonder if my work is suffering from my own distraction; I am sure it is. Would I be able to put that distraction aside if I knew my spouse was just as worried as I was? Not a chance. A fellow worrier may be comforting but can rarely function as a replacement. There may be a substitute driver for getting a kid to soccer practice, but there is no such thing as a stand in for love. Even when I know my distraction is of no use whatsoever in dealing with the issue, there it is.

Wherever you may be in this cycle of work and motherhood, these thousands of pages of reflections and advice are unlikely to change your decisions or alter your course. The one exception may be critical medical information referenced by authors Hewlett, Vargo and Regan. If you have delayed motherhood by design or default, you should be cognizant of the fertility issues inevitably associated with aging. Odds are high (and increase each passing year) that a decision to delay motherhood until your mid-thirties or later may mean you will be unable to have your own biological child. If you do succeed in beating these odds, you should be equally aware of the higher risks of birth defects, pregnancy complications, premature delivery, and a wide range of mild to serious long-term physical challenges often faced by premature infants saved by the miracle of modern medicine. Other options are available, of course (donated eggs, surrogates, adoption), but financial and emotional costs can be debilitating.

Fertility issues aside, the challenges that remain are daunting, inevitable and as commonplace as having a family. You may choose to become and remain a "stay at home" parent, but far more likely is a crooked career path of surges, breaks, and fighting like heck just to stay even. Being a good lawyer is a demanding job that can be virtually all consuming. Being the family manager and a connected parent, even with a fully engaged partner and children whose lives are largely free of truly significant problems, will also consume huge chunks of your brain and attention. For single parents and parents struggling with more serious issues, such as debilitating illness or physical/mental developmental challenges, the energy and attention required is surely overwhelming to the mortal parent.

On a good day, the guilt—you have not cooked a truly balanced meal since last Thanksgiving; the kids are six months overdue for a trip to the dentist; your job has not had your *full* attention since you lost your mind with those raging hormones during the first trimester of your first pregnancy—is kept to a mild subconscious rumbling. On a good day, you recognize that your career, your accomplishments as a lawyer, are respectable, and maybe even admirable, but perhaps less than what they might have been without the detours the rest of your life has required. However, you gladly accept that reality and reject the very idea that this

was a "compromise." On a good day, you marvel at your luck and good fortune and hard work to have the amazing joy of a family. Pure bliss. At least it will be as soon as you get the playroom organized and finish that long overdue project at work . . . .