

2002

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Recommended Citation

Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 Fordham L. Rev. 2207 (2002).

Available at: <https://ir.lawnet.fordham.edu/flr/vol70/iss6/16>

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Balanced Lives for Lawyers

Cover Page Footnote

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LECTURE

BALANCED LIVES FOR LAWYERS

*Deborah L. Rhode**

Shortly before the turn of the twentieth century, Lelia Robinson, the first woman admitted to the Massachusetts State Bar, raised the question: “Is it practicable for a woman to successfully fulfill the duties of wife, mother and lawyer at the same time?”¹ At the turn of the twenty-first century, when the American Bar Association (“ABA”) put similar questions, about one-third of surveyed female lawyers doubted that it was realistic to combine successfully the roles of lawyer, wife, and mother, and only one-fifth were “very satisfied” with the allocation of time between their personal and professional needs.²

While these concerns are longstanding, they have attracted new urgency. When Lelia Robinson raised the issue a century ago, she was one of only about 200 women practicing law in the entire nation, and few of the profession’s predominantly male members were assuming significant obligations in the home.³ There are now close to 400,000 women practicing law and many of the nation’s approximately 600,000 male attorneys are taking on substantial family responsibilities. Like other workers, lawyers also are increasingly likely to have caretaking obligations for elderly family members.⁴

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1. Lelia Josephine Robinson, *quoted in* Task Force on Prof. Challenges and Family Needs, Boston Bar Ass’n, *Facing the Grail: Confronting the Cost of Work-Family Imbalance* 24 n.5 (1999), available at http://www.bostonbar.org/workfamily_challenges.htm [hereinafter *Facing the Grail*].

2. ABA Young Lawyers Division, *Career Satisfaction Survey 28* (2000) (Table 20) [hereinafter *Career Satisfaction Survey 2000*]; Terry Carter, *Paths Need Paving*, A.B.A. J., Sept. 2000, at 35.

3. Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History* 66 (1998).

4. U.S. Dep’t of Labor, *Meeting the Needs of Today’s Workforce, Childcare*

Legal practice has not caught up to the concerns of this “sandwich generation,” trapped between the needs of both parents and children. Workplace hours have increased dramatically over the last two decades but what has not changed is the number of hours in the day.⁵ Technological innovations have been as much part of the problem as the solution. Attorneys remain perpetually “on call,” tethered to the workplace by cell phones, e-mail, fax machines, and beepers, and expectations of total availability are the norm rather than the exception.⁶

Although most employers have made some significant efforts to help lawyers balance personal and professional commitments, these initiatives have fallen short. About half of surveyed practitioners doubt that their employers truly support flexible workplace arrangements.⁷ Few are fully satisfied with their allocation of personal and professional time.⁸ Although the vast majority of legal employers endorse pro bono work in principle, many fail to do so in practice, and most lawyers make no substantial contributions.⁹

These inadequacies in workplace structure carry considerable cost, not only for individual attorneys, but also for their employers, their profession, and the public. For lawyers, excessive workloads are a leading cause of disproportionately high rates of stress, substance abuse, reproductive dysfunction, and mental health difficulties.¹⁰

Practices (2000); National Alliance for Caregiving, *Family Caregiving in the U.S.: Findings from a National Survey* (1997); Mona Harrington, *Care and Equality* 36-39, 58-59 (1999); Amy Joyce, *Elder Care Experts Fill Timely Need*, Wash. Post, Sept. 20, 2000, at 5.

5. See *infra* text accompanying notes 16-18. The increase is not unique to law. See Juliet B. Schor, *The Overworked American: The Unexpected Decline of Leisure* 1-5, 79-82 (1993).

6. Cynthia Fuchs Epstein et al., *The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender* 5 (1999) [hereinafter Epstein et al., *Part-Time Paradox*]; Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* 29 (2000) [hereinafter Rhode, *Interests of Justice*]; Carol Hymowitz & Rachel Erma Silverman, *Can Workplace Stress Get Worse?*, Wall St. J., Jan. 16, 2001, at B1; Wendy Liebowitz, *Technology and Telecommuting: Is Home Just Another Extension?*, Nat'l L.J., June 16, 1997, at B11. The problem is not unique to law. Jill Andresky Fraser, *White-Collar Sweatshop* 79-83 (2001); Barbara Garson, *The Electronic Sweatshop* (1988).

7. See figures compiled by Epstein et al., *Part-Time Paradox*, *supra* note 6, at 5 and the National Association of Law Placement (“NALP”), *discussed in* Martha Neil, *Lawyers Shun Firms' Offers of Part-Time Work*, Chi. Daily L. Bull., Dec. 18, 2000, at 1. See Catalyst, *A New Approach to Flexibility: Managing the Work Time Equation* 16, 25-27 (1997) [hereinafter Catalyst, *A New Approach*]; Catalyst, *Flexible Work Arrangements III: A Ten-Year Retrospective of Part-Time Arrangements for Managers and Professionals* 27 (2000) [hereinafter Catalyst, *Flexible Work*]; Abbie F. Willard & Paula B. Patton, NALP Found., *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring* 99 (1999).

8. See ABA Young Lawyers Division, *Career Satisfaction Survey* 10-11 (1995); *supra* text accompanying note 2.

9. See *infra* text accompanying notes 47-51.

10. Nancy Dart & Marilyn Tucker, *Workaholic Lawyers*, Wash. Law., Jan./Feb.

These, in turn, contribute to performance problems that are widely shared.¹¹ Inflexible schedules are a primary cause of early attrition and glass ceilings for women in law firms.¹² Employers also pay a price in excessive recruitment and training expenses, and an inability to insure diversity in positions of greatest status, security, and influence.¹³ Inadequate pro bono policies deprive needy individuals of crucial services and practitioners of opportunities to express the values that led them to law in the first instance.¹⁴

These problems cannot be easily resolved. But neither can they be easily evaded. Increasing numbers of women—and men—with substantial family commitments are entering the profession. We urgently need to address the problems that they confront. To that end, the following discussion explores three of the primary challenges facing the profession: excessive hours, inadequate workplace schedules and family policies, and insufficient pro bono opportunities. As this discussion makes clear, these are not exclusively women's issues, but they are ones in which women have a particular stake.

Nor are they issues just for lawyers. Similar challenges arise in most workplace contexts, and the non-professional staff of legal employers confronts many of the same problems as attorneys, only with fewer

1990, at 36, 40-41. An estimated one-third of American attorneys suffer from depression or from alcohol or drug addiction, a rate two to three times higher than the general population. See sources cited in Rhode, *Interests of Justice*, *supra* note 6, at 8, 216 n.7. Almost half of women lawyers, and almost two-thirds of those working more than forty-five hours per week, report such stress levels have adverse effects on reproductive health. See generally Marc B. Schenker et al., *Self-Reported Stress and Reproductive Health of Female Lawyers*, 39 J. Occupational & Envtl. Med. 556 (1997); see also Mary Beth Grover, *Daddy Stress*, *Forbes*, Sept. 6, 1999, at 202 (noting problems for men). Adequate time for significant family involvement helps to buffer problems experienced in the workplace. Faye J. Crosby, *Juggling: The Unexpected Advantages of Balancing Career and Home for Women and Their Families* 102-07 (1991); Stewart D. Friedman & Jeffrey H. Greenhaus, *Work and Family—Allies or Enemies?* 5 (2000); Rosalind Chait Barnett & Janet Shibley Hyde, *Women, Men, Work, and Family: An Expansionist Theory*, 56 *Am. Psychol.* 781, 785 (2001); David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *Law & Soc. Inquiry* 251, 254 (1989). For general discussion of the health costs of excessive workloads, see Fraser, *supra* note 6, at 36-37; and Families and Work Inst., *Feeling Overworked: When Work Becomes Too Much* 6-8 (2001) [hereinafter *Families and Work Inst.*].

11. It is estimated that substance abuse and mental health difficulties figure in sixty to eighty percent of discipline and malpractice cases. See sources cited in Deborah L. Rhode & David Luban, *Legal Ethics* 843 (2001). For general discussion of the effects of overwork on job performance, see *Families and Work Inst.*, *supra* note 10, at 8.

12. Debra Baker, *Cash-and-Carry Associates*, A.B.A. J., May 1999, at 41 (citing National Association for Law Placement, *Keeping the Keepers: Strategies for Associate Retention in Times of Attrition* (1998)).

13. *Facing the Grail*, *supra* note 1, at nn.49-50; Joan Williams, *Unbending Gender* 88 (2000); see *Catalyst, A New Approach*, *supra* note 7, at 20-21.

14. Deborah L. Rhode, *Cultures of Commitment: Pro Bono for Lawyers and Law Students*, 67 *Fordham L. Rev.* 2415, 2415-16 (1999).

economic resources for solutions.¹⁵ Although this Article focuses on attorneys, the difficulties that it explores and the proposals that it recommends have broader application.

I. THE SCOPE OF THE PROBLEM

A. *Excessive Hours*

Forty years ago, an American Bar Association Lawyer's Handbook reported that "[t]here are only approximately 1300 fee-earning hours per year" for an attorney with a "normal" schedule.¹⁶ What is now normal is closer to 2000 hours.¹⁷ To charge honestly at current levels often requires a sixty-hour work week and the obligations in many organizations are even higher.¹⁸ Last summer, during the ABA's annual meeting, the managing partner of one Wall Street firm acknowledged the importance of balanced lives, but concluded that his firm's quota of 2400 billable hours, "if properly managed," was "not unreasonable."¹⁹ Well, perhaps for him, particularly if, as was reported, he had a full-time nanny and wife at home. But when that conclusion has been discussed at meetings of women attorneys, virtually everyone present responds with a different experience and a different view. Women can do the math. As one associate working those hours responded to a bar survey about her quality of life, "This is not a life."²⁰ Most lawyers feel that they do not have sufficient time for themselves or their families.²¹ Particularly in large firms, where sweatshop schedules are most common, some women report finding it "difficult to have a cat, much less a family."²²

Bar leaders often pledge allegiance to balanced lives, at least in theory. But in practice, many view oppressive hours as the inevitable

15. For a discussion of issues concerning balanced lives in workplaces generally, see Deborah L. Rhode, *Balanced Lives*, 102 Colum. L. Rev. (forthcoming 2002).

16. Women's Bar Ass'n of Mass., *More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms 7* (2000) [hereinafter *Women's Bar Ass'n of Mass., More than Part-Time*].

17. See Rhode, *Interests of Justice*, *supra* note 6, at 10; see also sources cited in Rhode, *Interests of Justice*, *supra* note 6, at 217 n.21.

18. *Id.* at 10; see Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 58 Vand. L. Rev. 871, 891-95 (1999).

19. Edward Fennell, *The Lure of the Yankee Dollar*, London Times, July 18, 2000, at Law 13 (quoting Andrew Wilkinson, the managing partner of Cadwalder, Wickersham & Taft's London office).

20. Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 Fordham L. Rev. 291, 385 (1995) [hereinafter Epstein et al., *Glass Ceilings*].

21. Career Satisfaction Survey 2000, *supra* note 2, at 28 (Table 20).

22. Suzanne Nossel & Elizabeth Westfall, *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms 295* (1998).

consequence of a competitive legal workplace. A common assumption is that client service requires total accessibility. The attitude, as celebrated litigator David Boies puts it to his legal team, is: "Would you rather sleep . . . or win?"²³

But except in rare circumstances, that need not be the choice. Oppressive schedules are not inherent by-products of effective representation. Clients do not get efficient service from bleary burned-out lawyers. The problem has more to do with the priority of profit, the escalation of salary expectations, and the lack of value placed on family values. For many legal employers, time assumes symbolic as well as economic significance: lawyers' willingness to work long hours becomes a proxy for harder-to-measure qualities such as commitment, ambition, and reliability under pressure.²⁴ Some firms even circulate periodic "productivity reports" to increase pressure for billable hours.²⁵ The consequences are often corrosive. Attorneys may respond not only by working oppressive hours but also by fudging their time sheets or "faking face time."²⁶ Strategies include calling themselves on an office intercom late at night from outside the office or changing time settings on their computer to send emails at 3 a.m.²⁷

The result of such billing pressures is a "rat-race equilibrium" in which most lawyers feel that they would be better off with shorter or more flexible schedules, but find themselves within institutional structures that resist such alternatives.²⁸ A pervasive attitude is that captured in a recent New Yorker cartoon. It features a well-heeled professional explaining to his younger associate: "All work and no play makes you a valued employee."²⁹

Yet a growing number of lawyers, particularly new entrants to the profession, have a different view, and the result is a culture clash across generations. Most of those who reach managerial positions are men or women who have not attempted to assume major family

23. David Okrent, *Get Me Boies!*, Time, Dec. 25, 2000/Jan. 1, 2001, at 104.

24. See Facing the Grail, *supra* note 1, at 31; Epstein et al., Part-Time Paradox, *supra* note 6, at 56; Cynthia Fuchs Epstein & Carol Seron, *The Symbolic Meanings of Professional Time, in Legal Professions: Work, Structures and Organization 79-94* (Jerry Van Hoy ed., 2001); Renee M. Landers et al., *Rat Race Redux: Adverse Selection in the Determination of Work Hours In Law Firms*, 86 Am. Econ. Rev. 329, 329 (1996); Neil, *supra* note 7, at 22 (quoting Patton).

25. Ross Guberman, *Running From the Law*, Washingtonian, Oct. 2001, at 51.

26. For face time strategies, see *id.* at 53. For inflated time reports see sources cited in Rhode, *Interests of Justice*, *supra* note 6, at 171, 248 nn.69-72; William G. Ross, *The Honest Hour: The Ethics of Time Billing by Attorneys 23-31* (1996); Lisa Lerman, *Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 Geo. J. Legal Ethics 205, 259-62 (1999); Margaret A. Jacobs, *Problem of Overbilling by Many Large Firms is Confirmed in Surveys*, Wall St. J., Sept. 18, 1995, at B8.

27. Guberman, *supra* note 25, at 53.

28. Landers et al., *supra* note 24, at 329-30.

29. Leo Cullum, cartoon, The New Yorker, Apr. 30, 1998, available at <http://www.cartoonbank.com>.

responsibilities. Some question whether mothers ought to be working at all in demanding positions, although few are as candid as the partner who announced that “law is no place for a woman with a child.”³⁰ A more commonly expressed view among firm leaders is that if they managed without special treatment, so can everyone else. As one lawyer in the New York Bar Glass Ceiling Study put it: “I have a family. I didn’t get time off to do that. Why should you?”³¹

By contrast, professionals who are now in the process of building their careers see no reason to replicate the sacrifices of their predecessors. In recent surveys, most men as well as women indicate a willingness to take lower salaries in exchange for more time with their families.³² A cross-national study of some 2500 university students also found that over half identified “attaining a balance between personal life and career” as their primary professional goal.³³ In another related survey, the job characteristic that employees most often described as very important was having a work schedule that allowed them to spend time with their families.³⁴ A generation of lawyers who grew up expecting equal opportunity in the workplace is

30. Marilyn Tucker, *Will Women Lawyers Ever Be Happy?*, Law Prac. Mgmt., Jan./Feb. 1998, at 45, 47; see also Epstein et al., Part Time Paradox, *supra* note 6, at 34-35 (quoting advice: “If you want to be a lawyer, be a lawyer. If you want to be a mother, be a mother.”); Catalyst, *Flexible Work*, *supra* note 7, at 52 (1998) (quoting observation that “There are good ‘ole boys born every day. There are still a lot of them that think we [working moms] belong at home.”).

31. Epstein et al., *Glass Ceilings*, *supra* note 20, at 409; Nossel & Westfall, *supra* note 22, at 126; see also Mona Harrington, *Women Lawyers: Rewriting the Rules* 87 (1994) [hereinafter Harrington, *Women Lawyers*]; Nossel & Westfall, *supra* note 22, at 9, 44, 102, 187, 251, 266, 277, 297; Amy Bach, *Nolo Contendere*, N.Y. Mag., Dec. 11, 1995, at 49, 54; Jim Oliphant, *X-ing Out Tradition*, Broward Daily Bus. Rev., June 5, 1998, at A5; Amy Saltzman, *Woman versus Woman*, U.S. News & World Rep., Mar. 25, 1996, at 50.

32. The Family & Work Institute’s National Study of the Changing Workplace, involving some 2800 workers, found that workplace flexibility and family support was the most significant factor in job satisfaction, with job quality following as a close second. Nearly two-thirds of all workers would reduce their work week by an average of 10 hours. Steven Ginsberg, *Raising Corporate Profits by Reaching Out to Families*, Wash. Post, Apr. 19, 1998, at H7; *Study Finds More Workers Want to Reduce Hours*, Wall St. J., Apr. 15, 1998, at A10. For discussion of the generational shift in priorities within law and accounting firms as both young men and women express greater desire for time with their families, see Douglas McCracken, *Winning the Talent War for Women*, Harv. Bus. Rev., Nov./Dec. 2000, at 159, 161; Bruce Baltestier, *‘Mommy Track’: No Career Derailment*, N.Y. L.J., June 9, 2000, at 24; Terry Carter, *Your Time or Your Money*, A.B.A. J., Feb. 2001, at 26. One survey by Harris Interactive and the Radcliffe Public Policy Center found that almost three-quarters of men in their middle thirties, compared to only a quarter of men over sixty-five, would be willing to take lower salaries in exchange for more time available for their family. Kirstin Downey Grimsley, *Family a Priority for Young Workers: Survey Finds Changes in Men’s Thinking*, Wash. Post, May 3, 2000, at E1.

33. Sue Shellenbarger, *Work and Family: What Job Candidates Really Want to Know: Will I Have a Life?*, Wall St. J., Nov. 17, 1999, at B1.

34. Radcliffe Pub. Pol’y Ctr., *Life’s Work: Generational Attitudes Toward Work and Life Integration* 3 (2000).

increasingly unwilling to settle for less, or to give up satisfying personal and family lives to achieve it.

B. *Alternative Work Arrangements and Family Policies*

What stands in the way are not only sweatshop schedules, but also inadequate family policies and alternative work arrangements, such as part-time or flexible schedules. Research by a broad array of organizations, including Catalyst, the National Association for Law Placement, and prominent bar associations, finds a substantial gap between formal policies and workplace practices. Although about ninety-five percent of law firms have policies that allow part-time work, only three percent of lawyers in fact work part time.³⁵ Three-quarters of surveyed attorneys believe that taking an alternative schedule would jeopardize prospects for partnership.³⁶ To many professionals, “part-time” means a “fast track to obscurity” or ending up “permanently out to pasture.”³⁷

Those predictions are not without basis. In Cynthia Fuchs Epstein’s recent study of part-time lawyers, only one percent had become partners.³⁸ Assumptions about the inadequate commitment of attorneys on reduced schedules often influence performance evaluations, promotion decisions, and opportunities for both the mentoring relationships and challenging assignments that are prerequisites for advancement.³⁹ Although some part-time lawyers report respect and support from colleagues, many recount frustration, isolation, and marginalization.⁴⁰ “Schedule creep” is a common pattern. Reduced hours are not respected; “unexpected emergencies” become expected events, and attorneys can often end up with full-time work for part-time pay.⁴¹ The problems are compounded when

35. See figures compiled by NALP for over one thousand law firms, *discussed in* Epstein et al., *Part-Time Paradox*, *supra* note 6, at 5; Willard & Patton, *supra* note 7, at 99; Neil, *supra* note 7, at 1.

36. Catalyst, *Women in Law: Making the Case* 19 (2001); Jennifer Martin, *Part Time Lawyers Suffer Overwork; Are Perceived as Being Less Devoted*, B. Leader, Spring 2001, at 11.

37. Nossel & Westfall, *supra* note 22, at 14, 255, 371; *see* Lotte Bailyn, *Breaking the Mold: Women, Men, and Time in the New Corporate World* 24 (1993); Harrington, *Women Lawyers*, *supra* note 31, at 33; Michael D. Goldhaber, *Part Time Never Works*, Nat. L.J., Dec. 4, 2000, at A31; Neil, *supra* note 7, at 1 (quoting NALP Executive Director, Paula Patton).

38. Epstein et al., *Part-Time Paradox*, *supra* note 6, at 56.

39. Nossel & Westfall, *supra* note 22, at xxii; *see* Catalyst, *Flexible Work*, *supra* note 7, at 46; Epstein et al., *Glass Ceilings*, *supra* note 20, at 298; Deborah L. Rhode, *Myths of Meritocracy*, 65 *Fordham L. Rev.* 585, 588 (1996). In the NALP survey, half of the women believed that female attorneys were considered less committed than their male colleagues. Willard & Patton, *supra* note 7, at 37.

40. Linda Bray Chanow, *Women’s Bar Ass’n of D.C., Lawyers, Work & Family: A Study of Alternative Schedules at Law Firms in the District of Columbia* 14-15 (2000); *Women’s Bar Ass’n of Mass., More than Part-Time*, *supra* note 16, at 21-28.

41. *See* Deborah L. Rhode, Report Prepared for the ABA Commission on

employers fail to make adequate arrangements concerning back-up coverage. Colleagues who are already working extended hours become understandably resentful when forced to assume additional responsibilities due to others' reduced schedules.⁴²

Related problems involve the inadequacy of parental leave and childcare assistance. Although the vast majority of legal employers provide paid maternity leave, the duration is often inadequate and only about ten to fifteen percent of surveyed law firms and Fortune 1000 companies offer the same opportunities to men.⁴³ Whatever their formal entitlements, too many women end up working through too much of their maternity leaves. Hospital rooms with all the comforts of offices are a depressingly familiar occurrence.⁴⁴

By contrast, parents who distance themselves from their workplaces for any significant period often discover that their career commitment is questioned and that the quality of their work assignments declines.⁴⁵ Relatively few legal employers have followed the lead of other public and private sector organizations in offering assistance with additional family-related needs, such as on-site child care, emergency back-up assistance, or referrals for child and eldercare.⁴⁶

C. Pro Bono Policies

A similar inadequacy involves pro bono policies. The American Bar Association's Model Rules of Professional Conduct establish an aspirational standard of fifty hours per year of service primarily to individuals of limited means or to groups assisting such individuals.⁴⁷

Women and the Profession, *Balanced Lives: Changing the Culture of Legal Practice* 24 (2001) [Rhode, hereinafter *Balanced Lives*]; Women's Bar Ass'n of Mass., *More than Part-Time*, *supra* note 16, at 21-24; Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 *Fordham L. Rev.* 2221 (2002); Caroline V. Clarke, *Getting Flexible About Work Schedules*, *Am. Law.*, Apr. 1991, at 34.

42. Cynthia L. Cooper, *Moms v. Non-Moms: Does Law Firm Culture Widen the Rift?*, *Perspectives* (ABA Comm'n on Women in the Prof.), Winter/Spring 2002, at 8, 9.

43. The ABA Commission on Women in the Profession suggests a standard leave package including six weeks of paid disability leave, ten weeks of paid caretaking leave, and two months of unpaid caretaking leave. Rhode, *Balanced Lives*, *supra* note 41, at 51. Not all employers' policies are as generous; nor are the recommended policies of other bar associations. *Id.* at 57-59. For the inadequacy of paternity policies, see Families and Work Inst., *Business Work-Life Study* (1998); John Turrettini, *Mommie Dearest*, *Am. Law.*, Apr. 1 2000, at 19; see also Julie Schachner Chanen, *Daddy's Home*, *A.B.A. J.*, Nov. 2000, at 90, 91.

44. Rhode, *Balanced Lives*, *supra* note 41, at 17; see Su-Jin Yim, *Laboring Through Maternity Leave*, *Oregonian*, July 9, 2001, at C1.

45. Rhode, *Balanced Lives*, *supra* note 41, at 54.

46. *Id.* at 14. For discussion of other organizations, see Nat'l Council of Jewish Women, *Opening a New Window on Child Care: A Report on the Status of Child Care in the Nation Today* 14 (2000); U.S. Dep't of Labor, *supra* note 4; and Nancy Duff Campbell et al., Nat'l Women's Law Center, *Be All that We Can Be: Lessons from the Military for the Nation's Childcare System* (2000).

47. Model Rules of Prof'l Conduct R. 6.1 (1990); Model Code of Prof'l

Yet most lawyers make no significant pro bono contributions, and the average for the bar as a whole is less than half an hour per week.⁴⁸ For members of the most profitable firms, who could best afford a substantial commitment, the average is only about eight minutes per day.⁴⁹ Over the past decade, when these firms' revenues grew by over fifty percent, their average pro bono hours decreased by one-third.⁵⁰ Salary wars have pushed compensation levels to new heights, but this affluence has eroded, not expanded, support for public service. Rather, most employers have increased billable hour expectations, and reduced their willingness to count pro bono work fully in meeting hourly quotas.⁵¹ That, in turn, has reduced lawyers' willingness to spend increasingly scarce free time on public service.

The absence of support for pro bono service shortchanges thousands of individuals with pressing unmet needs, as well as thousands of lawyers who rank public interest contributions among their most rewarding professional experiences. According to ABA surveys, young lawyers' greatest source of dissatisfaction with their legal careers is a lack of connection to the social good.⁵² For attorneys with substantial caretaking responsibilities, the tradeoffs are particularly painful, and women are the group most adversely affected.

II. THE GENDER DIMENSIONS OF WORKPLACE POLICIES

Although the inadequacy of workplace policies carries a cost for all lawyers, women pay a disproportionate price. Most male attorneys have spouses who assume the bulk of family responsibilities; most female attorneys do not. Almost half of women in legal practice are unmarried, compared with fifteen percent of men, and few women have partners who are primary caretakers.⁵³ Despite a significant increase in husbands' assumption of domestic work over the last two

Responsibility EC 2-25, 8-3 (1980).

48. Deborah L. Rhode, *Access to Justice*, 69 *Fordham L. Rev.* 1785, 1809-10 (2001).

49. Aric Press, *Eight Minutes*, *Am. Law.*, July 2000, at 13.

50. *Id.*

51. Kate Ackley & Bryan Rund, *Pro Bono: Casualty of Salary Wars?*, *Legal Times*, Apr. 10, 2000, at 1; Anthony Perez Cassino, *Skyrocketing Pay and Public Service*, *N.Y. L.J.*, Mar. 31, 2000, at 24; Mark Hansen, *Trickle-Away Economics? Cost of High First-Year Salaries May be Borne By Pro Bono Recipients*, *A.B.A. J.*, July 2000, at 20; Roger Parloff, *Too Rich To Give*, *Am. Law.*, Apr. 2000, at 15; Greg Winter, *Legal Firms Cutting Back on Free Services for Poor*, *N.Y. Times*, Aug. 17, 2000, at A1.

52. Career Satisfaction Survey 2000, *supra* note 2, at 21.

53. Epstein et al., *Part-Time Paradox*, *supra* note 6, at 24; Nancy E. Dowd, *Resisting Essentialism and Hierarchy: A Critique of Work/Family Strategies for Women Lawyers*, 16 *Harv. BlackLetter L.J.* 185, 198 (2000); Deborah Arron, *Connection Gaps*, *A.B.A. J.*, Oct. 1999, at 60.

decades, wives in dual career couples continue to shoulder the larger burden.⁵⁴

For employed women, who still spend about twice as much time on domestic matters as employed men, extended hours result in double standards and double binds. Female attorneys who seem willing to sacrifice family needs to workplace demands appear lacking as mothers. Those who want extended leaves or reduced schedules appear lacking as lawyers. Such mixed messages leave many women with high levels of stress, and the uncomfortable sense that whatever they are doing, they should be doing something else.⁵⁵ “Good mothers” should be home; “good lawyers” should not. Guilt is unavoidable when a six-year-old child announces “When I grow up, I want to be a client.”⁵⁶ So too, professionals who do not have spouses or significant family commitments often have difficulty finding time for relationships that might lead to them. As unmarried associates in a recent law firm survey noted, they end up with disproportionate work because they have no acceptable reason for refusing it.⁵⁷

Yet all too often, attorneys have accepted the inevitability of existing workplace structures and the glass ceiling that they impose. A common assumption is that gender differences in leadership positions reflect gender differences in personal priorities. A recent New York Times Magazine profile of female Wall Street lawyers captured widespread views. As one associate explained, although she was “very serious about pursuing a career in law,” she also wanted a family, and she saw no way of reconciling parental obligations with a demanding legal job, at least when her children were young.⁵⁸ In her view, the responsibility for addressing the conflict rested with her, not

54. The extent of the inequality is estimated differently by researchers using different methodologies. Compare studies cited in Williams, *supra* note 13, at 71 (citing studies suggesting that women perform about seventy percent of the tasks), in Deborah L. Rhode, *Speaking of Sex* 7-8, 149 (1997) (citing studies suggesting that employed women spend about twice as much time on family matters as employed men) [hereinafter Rhode, *Speaking of Sex*], and in Friedman & Greenhaus, *supra* note 10, at 31 (finding that surveyed women professionals spent three times as many hours on childcare as their husbands), with Tamar Lewin, *Men Assuming Bigger Share at Home, New Survey Shows*, N.Y. Times, Apr. 15, 1998, at A18 (citing James T. Bond et al., *The 1997 National Study of the Changing Workforce* (1998)); Joan Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* 192-93 (2001); and Comm. on Women in the Prof., *A Report on the Need for, Availability, and Viability of Flexible Work Arrangements in the New York Legal Community*, *The Record*, 50 N.Y.C. Bar Ass'n 522, 528 (1995).

55. Rhode, *Speaking of Sex*, *supra* note 54, at 153; Harrington, *Women Lawyers*, *supra* note 31, at 20-23; Cynthia Fuchs Epstein, *Women in the Legal Profession*, 49 Kan. L. Rev. 733, 752 (2001); Schenker et al., *supra* note 10, at 556; Women's Bar Ass'n of Mass., *More than Part-Time*, *supra* note 16, at 53.

56. Lisa Brennan, *Women Having It All*, Nat'l L.J., Aug. 17, 1998, at A1.

57. See Nossel & Westfall, *supra* note 22, at 90, 259, 270.

58. Emily Nussbaum, *Great Expectations*, N.Y. Times, Sept. 9, 2001, at 118 (Magazine) (quoting Lindsay K. Smith).

her firm. "You just have to prioritize . . . so if I don't get to the top, it will be because of my own personal choices."⁵⁹

But choice on these terms is not a solution; it is part of the problem.⁶⁰ When lawyers with significant family commitments drop out of the pool of potential leaders, their departures leave behind a decision-making structure buffered from caretaking concerns. Those most likely to reach positions of greatest influence are those who have accepted the sacrifices that advancement requires and who have the least stake in institutional change.

Although these issues involving balanced lives are women's issues, they are not only issues for women. Men face similar problems for somewhat different reasons. Workplaces that are reluctant to accommodate working mothers are generally even more resistant to fathers. To be sure, the situation has improved in recent years. The traditional expectation, as one director of law firm professional development put it, was that men with newborn infants would "just go to the hospital, take a look, and come right back to work."⁶¹ Now fathers generally feel free to take a few weeks—but only a few. As noted earlier, legal employers seldom offer men the same paid parental leaves as women, and male lawyers rarely take reduced schedules or extended leaves for family reasons.⁶² As one father explained to a Boston Bar Association Task Force, it may be "okay [for men] to say that [they] would like to spend more time with the kids, but it's not okay to do it, except once in a while."⁶³

Workplace policies that disadvantage men also disadvantage women. By discouraging male attorneys from assuming an equal division of household responsibilities, such policies reinforce gender roles that are separate and by no means equal. As long as work/family problems are viewed as problems primarily for women, potential solutions may receive inadequate attention in decision-making structures dominated by men.

III. BALANCED LIVES AND BOTTOM LINES

We can and must do better. And it is in employers' economic self-interest to do so. A wide array of research indicates that part-time employees are more efficient than their full-time counterparts, particularly bleary-eyed, burned-out practitioners with oppressive schedules.⁶⁴ Alternative work arrangements, humane working hours,

59. *Id.*

60. The problem is not unique to law. For a broader discussion, see Rhode, *Speaking of Sex*, *supra* note 54, at 152-53.

61. Bailyn, *supra* note 37, at 23.

62. Families and Work Inst., *supra* note 43; Turrettini, *supra* note 43, at 19; see also Chanen, *supra* note 43, at 90, 91.

63. Facing the Grail, *supra* note 1, at 15.

64. Rhode, *Balanced Lives*, *supra* note 41, at 23; Bailyn, *supra* note 37, at 80-84;

and childcare assistance can also help reduce excessive recruitment and retention expenses, along with lawyers' disproportionate rates of stress, substance abuse, and other health-related disorders.⁶⁵ Current law firm attrition rates of themselves demonstrate the business case for more balanced lives. As bar association studies and management consultants consistently note, most associates do not begin to generate profits until their third or fourth years.⁶⁶ At that point, almost half have left their first employer, and quality of life concerns are a substantial reason, particularly for women.⁶⁷ Firms are paying a heavy price in disrupted client and collegial relationships as well as in recruitment and retraining expenses. Some recent estimates suggest that every dollar invested in family-friendly policies results in two dollars saved in other costs.⁶⁸ Similar studies indicate that the benefits of providing child care assistance more than justify the expense.⁶⁹ Balanced lives boost bottom lines.

IV. STRATEGIES FOR REFORM

Promising proposals are not in short supply. The ABA Commission report includes a wealth of research, recommendations, and sample policies concerning quality of life. These materials address issues such as flexible, compressed, or reduced schedules, telecommuting, short-term leave, childcare and eldercare assistance, and pro bono work.⁷⁰ Other bar associations and non-profit organizations have similar proposals.⁷¹ Although the details of effective policies will vary across organizations, the guiding principles

Chanow, *supra* note 40, at 8; Bailyn, *supra* note 37, at 80-84; Facing the Grail, *supra* note 1, at 21; Williams, *supra* note 13, at 113; M. Diane Vogt & Lori-Ann Rickard, *Keeping Good Lawyers: Best Practices to Create Career Satisfaction*, 2000 A.B.A. Sec. L. Prac. Mgmt. 55.

65. See *supra* note 10.

66. Rhode, *Balanced Lives*, *supra* note 41, at 20.

67. In the most recent survey by NALP, thirty-eight percent of associates left by the end of their third year, and sixty percent by the end of their fifth year. NALP Found., *Beyond the Bidding Wars: A Study of Associate Attrition, Departures, Destinations, and Workplace Initiatives* 17 (2001).

68. Richard Elsberry, *The Family-Friendly Office*, Off. Sys., Mar. 1, 1999, at 42; Mackenzie Carpenter, *A Few Ounces of Prevention: Nationally Companies Recognize the Need to Help with Family Care*, Pittsburgh Post Gazette, June 5, 1996, at A1; see Friedman & Greenhaus, *supra* note 10, at 4; Keith Cunningham, Note, *Father Time: Flexible Work Arrangements and Law Firms' Failure of the Family*, 53 Stan. L. Rev. 967, 1004 (2001).

69. Suzanne W. Helburn & Barbara R. Bergmann, *America's Child Care Problem: The Way Out* (2002); Nat'l Council of Jewish Women, *supra* note 46, at 16; Sonya Michel, *A Tale of Two States: Race, Gender, and Public/Private Welfare Provision in Postwar America*, 9 Yale J.L. & Feminism 123 (1997).

70. Rhode, *Balanced Lives*, *supra* note 41, at 22-25, 33-64.

71. Catalyst, *A New Approach*, *supra* note 7; Facing the Grail, *supra* note 1; Women's Bar Ass'n of Mass., *More than Part-Time*, *supra* note 16; Project on Attorney Retention, *discussed in Williams*, *supra* note 41.

are mutual commitment, flexibility, accountability, and proportionality.⁷²

In terms of commitment, lawyers need to make sure their arrangements work for clients and colleagues. Employers need to make sure that alternative arrangements work for lawyers. With respect to flexibility, when emergencies arise, attorneys on leave or alternative schedules should make every effort to provide assistance. Their colleagues should, in turn, avoid taking undue advantage of that flexibility, and should prevent unpredictable demands from becoming predictable occurrences. Efforts should be made to minimize any collegial resentment by ensuring broad availability of alternative arrangements and preventing unreasonable allocations of work.

In terms of accountability, organizations should monitor the satisfaction of employees on alternative schedules, the effects on colleagues, and the willingness of other workers to use or accommodate such schedules. Systematic information should be compiled on matters such as comparative promotion and attrition rates of full and part-time attorneys. Special positions or committees should be created to evaluate policies affecting quality of life and to ensure adequate compensation, work assignments, and advancement opportunities for lawyers on alternative schedules. The basic principle should be proportionality: pay, benefits, and bonuses should be proportional to hours worked. A reduced schedule should not be a bar to partnership status or to consideration for partnership. Policies should be formalized to promote both the fact and appearance of fairness. Supervisors should be accountable for effective implementation of these policies, and reward structures should reflect performance on these dimensions.⁷³

Other institutions have responsibilities as well. Law schools should educate and empower their students to demand a balanced life. Bar associations should put pressure on employers to provide it, and offer assistance to those with management responsibilities.⁷⁴ More efforts should focus on developing "best practices" concerning quality of life, and on educating educators—law professors, administrators, and career services personnel—about addressing these issues in law school. More systematic information also needs to be available to students and practitioners about where and how to find gender-friendly workplaces. Anyone can now log on to a Greedy Associates

72. Facing the Grail, *supra* note 1, at 36; Catalyst, Flexible Work, *supra* note 7, at 55; Women's Bar Ass'n of Mass., More than Part-Time, *supra* note 16, at 47-49.

73. For strategies of one highly profitable law firm, Pillsbury Winthrop, see Williams, *supra* note 41, at 2236-37.

74. For example, the Boston Bar Association is working with about two dozen large firms to help develop more effective policies and practices concerning balanced lives and to monitor their effectiveness. See Jennifer Martin, *The Next Step: Boston Bar Encourages Law Firms to Implement Family-Friendly Policies*, B. Leader, Spring 2001, at 8.

website or pick up an American Lawyer magazine survey and find instant information about who is paying what to whom. No comparable sources are available to evaluate employers on criteria that are equally or more important than income in insuring workplace satisfaction and balanced lives.

This is not a modest agenda. Talk is cheap but good policies are not. Yet the absence of good policies imposes far greater, if less visible, expenses for both lawyers and their employers. Moreover, the policies necessary to promote balanced lives are not ones beyond our commitment or capacity to achieve. If, as Janet Reno has noted, "We can put a man on the moon, surely we can create a workplace where it is possible to have a meaningful life and do right by those we love."⁷⁵

We have, after all, made enormous progress in the quarter century since I graduated from law school. I can still recall one interview when I was seeking a summer job. A senior partner at a leading Chicago firm assured me that there was no "woman problem" among his colleagues. Why just that past year, this firm of some seventy attorneys had made its first woman partner, and she had no difficulty reconciling her personal and professional lives. In fact, she had just given birth. It happened on a Friday, and she was back in the office the following Monday. Since that time, these faster than a speeding bullet maternity leaves are becoming legendary. The current record may go to the woman drafting interrogatories while timing her contractions. Her theory was that if you are billing at six minute intervals anyway, why waste one?

We now recognize that these attitudes constitute a "woman problem," and that the problem is not unique to women. The challenge remaining is to find solutions and to make balanced lives a priority in our profession.

75. Janet Reno, unpublished remarks, Press Conference at the Women's Leadership Summit, sponsored by the ABA, the ABA Commission on Women in the Profession, and the Leadership Program at the Kennedy School, Harvard University, Apr. 2001 (Cambridge, Mass.), *quoted in* Press Release, A.B.A., *Balanced Lives* (Oct. 18, 2001) (on file with the *Fordham Law Review*).