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Northwestern University School of Law's Two Year Work Requirement and its Possible Effects on Women: Another Tile in the Glass Ceiling?

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NORTHWESTERN UNIVERSITY SCHOOL OF LAW'S TWO YEAR WORK REQUIREMENT AND ITS POSSIBLE EFFECTS ON WOMEN: ANOTHER TILE IN THE GLASS CEILING?

KATHLEEN KUNKLE GILBERT*

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INTRODUCTION

In April of 2001, when the governor of Massachusetts, Paul Celucci, accepted an ambassadorship to Canada, Jane Swift began to make history.¹ When Celucci went to Canada, Swift, then lieutenant governor, took over the governorship reins.² In becoming acting governor, Swift became the first female governor of Massachusetts³ and the youngest governor in the nation, at age thirty-six.⁴ Swift also became the first pregnant governor in our nation's history⁵ and, subsequently, the first governor to give birth while in office.⁶ She gave birth to fraternal twin girls.⁷

In making all this history, Swift has been under constant criticism from members of the press and public.⁸ In causing such a "ruckus,"⁹

1. See Sally Abrahms, *Governor Mom (Massachusetts governor Jane Swift)*, LADIES HOME J., Aug. 1, 2001, at 82 (describing how Jane Swift became governor of Massachusetts and gave birth during her tenure in office); Leonard Pitts, *Motherhood 'Crisis' Reveals Ignorance*, L.A. BUS. J., June 4, 2001, at 41 (noting that the negative response to Swift's pregnancy indicates that gender equity is still an obstacle that many working mothers must face).

2. See Abrahms, *supra* note 1, at 82; see also *60 Minutes* (CBS television broadcast, Jan. 20, 2002).

3. See Abrahms, *supra* note 1, at 82 (noting the many barriers Swift overcame during her term as first female governor).

4. Pitts, *supra* note 1, at 41.

5. Abrahms, *supra* note 1, at 82.

6. Pitts, *supra* note 1, at 41.

7. *Id.*

8. See Kathleen Parker, *Swift Should 'Retire,' Then Reemerge in Three Years*, TELEGRAM & GAZETTE (Worcester), June 3, 2001, at C3 (explaining that critics and supporters of Governor Jane Swift holding office while pregnant need to find a more reasonable response in the middle: let her resign and run for the office in the future when her children are older). But see Pitts, *supra* note 1, at 41 (suggesting that Swift should not have to make a choice between being a mother and being governor); Corinne Wood, *Pregnancy Doesn't Affect Ability to Govern*, CHI. SUN-TIMES, May 29, 2001, at 30 (arguing that forcing Swift out of office proves that "women executives have to work harder, smarter, and longer to prove [they] can compete"); *60 Minutes*,

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Governor Swift was even the subject of a *60 Minutes* segment.¹⁰ Swift had a hard time balancing her equally demanding professional and family commitments. Swift was accused of utilizing her staff as babysitters and “using a state police helicopter to beat holiday traffic jams” in order to get home more quickly to be with her children.¹¹ She even conducted state business from her maternity ward bed, prompting the Governor’s Council to ask the Massachusetts Supreme Court if it was constitutional for Swift to conduct their meetings by speakerphone.¹²

One radio talk show listener voiced the opinion of many of Swift’s critics: “She can’t make up her mind. Is she going to be a governor or is she going to be a mother?”¹³ Why does she have to choose? In the eyes of many Americans, Jane Swift has to choose between a job she presumably loves and being a mother, presumably another job she loves. In fact, Swift withdrew from the race for governor in 2002, indicating “she could not successfully juggle the increasing—and often competing—duties of gubernatorial candidate, chief executive and mother.”¹⁴ Why do women have to choose between family and career in general? In 1897, Charlotte Perkins Gilman stated:

We have so arranged life, that a man may have a home and family, love, companionship, domesticity, and fatherhood, yet remain an active citizen of age and country. We have so arranged life, on the other hand, that a woman must ‘choose’; must either live alone, unloved, uncompanioned [sic], uncared for, homeless, childless, with her work for sole consolation; or give up all world-service for the joys of love, motherhood, and domestic service.¹⁵

For example, one of the most famous and talented female attorneys risked losing custody of her children. Marcia Clark prosecuted O.J. Simpson for the murder of his wife.¹⁶ After the trial was over, Clark’s

supra note 2.

9. Pitts, *supra* note 1, at 41.

10. *60 Minutes*, *supra* note 2.

11. *Id.*

12. Pitts, *supra* note 1, at 41.

13. *60 Minutes*, *supra* note 2.

14. Pamela Ferdinand & Dan Balz, *Swift Drops Out of Mass. Governor’s Race; GOP Applauds Surprise Move, Which Clears Path for Olympics’ Romney*, WASH. POST, Mar. 20, 2002, at A02.

15. JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 42 (2000) (citing Charlotte Perkins Gilman, *quoted in* DELORES HAYDEN, THE GRAND DOMESTIC REVOLUTION 198 (1988)); *see also* SYLVIA ANN HEWLETT, CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN 293-94 (2002) (citing DELORES HAYDEN, THE GRAND DOMESTIC REVOLUTION 197 (1988)).

16. *See* WILLIAMS, *supra* note 15, at 139 (using the situation of lawyer Marcia Clark to show that after divorce, a woman’s hardship is not due to lack of child

husband sued for custody of their two children.¹⁷ He argued that “[Clark] spent all her time at work.”¹⁸ “Like all moms, Marcia Clark can’t have it all,” concluded an article in the *Detroit News*, glossing over the fact that fathers have always had both jobs and children.¹⁹ Men do not have to choose between career and family. So why should women have to choose?

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . . The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother.²⁰

Women have made great strides in achieving equality with men since Justice Bradley penned this famous, or rather infamous, passage when the United States Supreme Court affirmed the Illinois Supreme Court’s decision to deny Myra Bradwell’s application to practice law in Illinois.²¹ Women now account for almost half (46%) of the national workforce.²² In the 1970s and 1980s, there was a “virtual closing of the gap in education and skills between men and women.”²³ “Since 1984, the number of women in graduate schools has exceeded the number of men.”²⁴ In fact, while the number of male full-time

support but a double application of the ideal-worker norm).

17. *Id.*

18. *Id.*

19. *Id.* at 139 (emphasizing that despite her work commitments, Marcia Clark ultimately retained custody of her children).

20. See *Bradwell v. State*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

21. See *id.* at 139 (holding that Myra Bradwell’s claim for a law license fell outside the purview of the Fourteenth Amendment because she was a citizen of the state taking action and because the Fourteenth Amendment protection did not apply to the regulation of law licenses).

22. See WILLIAMS, *supra* note 15, at 67 (indicating that women have entered into male-dominated professions in large numbers).

23. *Id.*

24. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS, 2001 (2001), at <http://www.nces.ed.gov/pubs2002/2002130c.pdf> (last visited Mar. 17, 2004).

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graduate students increased by only 18% between 1989 and 1999, the number of female full-time graduate students increased by 59% for the same time period.²⁵ In the legal profession in particular, almost 30% of attorneys nationwide are female.²⁶ According to the national census, women accounted for 28.8% of all attorneys in 1999, up from 15.3% in 1983.²⁷ The total number of female lawyers rose from 94,000 in 1983 to 260,000 in 1997.²⁸ Also, according to the American Bar Association, women now account for almost half of all summer associates in law firms (46.26%), and a little over 40% of all associates in law firms (41.69%).²⁹ In fact, the majority of Northwestern Law graduates take employment with private law firms upon graduation.³⁰

But have women truly advanced past the separate spheres ideology described by Justice Bradley in 1872? Susan Estrich tells the story of how she asks her law students "How many of you expect to be partners in ten years?"³¹ Estrich reports that while all the male students raised their hands, only five female students last year and two female students this year raised their hands.³² Only 5% of Estrich's female students (two out of forty) expect to be partners in law firms within ten years.³³ Professor Estrich explains that this stark difference between her female and male students' career expectations derives from a choice between career and family. The female students say "they're choosing not to pursue partnership because they don't want

25. *Id.*

26. See Kristen Schmidt, *The Times, They Are . . . Being a Woman Business Lawyer Today—Eight Tales*, 9 BUS. L. TODAY 39, (Mar./Apr. 2000) (relating several stories of how women business lawyers work in a "man's world," but are breaking new ground and increasing in the ranks), available at <http://www.abanet.org/buslaw/blt/blt00mar-times.html> (last visited Mar. 17, 2004); see also UNITED STATES CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2001 (2001), at <http://www.census.gov/prod/2001pubs/statab/sec13.pdf> (last visited Mar. 17, 2004).

27. UNITED STATES CENSUS BUREAU, *supra* note 26.

28. See Schmidt, *supra* note 26, at 39 (citing the 1997 United States Statistical Abstract).

29. ABA COMMISSION ON WOMEN IN THE PROFESSION, A GLANCE OF WOMEN IN THE LAW (2002), at <http://www.abanet.org/women/currentglance.pdf> (last visited Mar. 17, 2004).

30. NORTHWESTERN UNIVERSITY SCHOOL OF LAW, OFFICE OF ADMISSIONS AND FINANCIAL AID, CLASS OF 2000 EMPLOYMENT STATISTICS (on file with author) (reporting that 87% of 2000 class accepted employment with private law firms).

31. Susan Estrich, *Girls, Interrupted*, J.D. JUNGLE, May 2001, at 36. Susan Estrich's latest work is SEX AND POWER (2000). She is the Robert Kingsley Professor of Law and Political Science at the University of Southern California Law School. See UNIVERSITY OF SOUTHERN CALIFORNIA, FACULTY OF LAW BIOGRAPHY: SUSAN ESTRICH, at <http://www.usc.edu/dept/law/faculty/sestrich.htm> (last visited Jan. 13, 2002).

32. See Estrich, *supra* note 30, at 36 (arguing that women need to change the system to make it easier for others to integrate).

33. *Id.*

to sacrifice family life.”³⁴ Female law students are choosing between being mothers and being partners. Today, just over 15% of partners at big law firms are women.³⁵ In 1995, in the 1160 largest law firms, according to the National Law Journal, only 13% of the partners and 7% of the equity partners were women.³⁶ According to one American Bar Association poll of attorneys, “only 64.5% of female lawyers said it was very or somewhat realistic to combine the role of lawyer with those of wife and mother, down from 81% in 1983.”³⁷ In fact, 88% of women surveyed in 1995 “believed it was their primary responsibility to take care of the family.”³⁸

However, women are combining work with having children; “nearly 90 percent of women become mothers during their working lives.”³⁹ In 1999, while the mean earnings of men with doctorate degrees was \$82,619, the mean earnings of women with doctorate degrees was only \$54,552.⁴⁰ As will be discussed more thoroughly later in this article, various studies have documented a wide wage gap in terms of the compensation received as between male and female attorneys, with women making, on average, less than their male colleagues.⁴¹ One study found that in 1984, male attorneys earned on average 18.7% more than female attorneys did, and in 1990, male attorneys made on average 11.3% more than their female colleagues.⁴² The

34. *Id.*

35. *See id.* at 36; *see also* ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 28.

36. *See* ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 37 (2001) (observing that women have come a long way in terms of pay equity, but mothers in business, in particular, face much greater challenges).

37. *See* Terry Carter, *Paths Need Paving*, 86 A.B.A. J. 34, 35 (2000) (discussing how women have doubled their ranks decade by decade, but still have a long way to penetrate the male domination of the legal profession).

38. WILLIAMS, *supra* note 15, at 31 (citing DEBORAH FALLOWS, *A MOTHER'S WORK* 22 (1985) and NANCY LEVIT, *THE GENDER LINE* 33 (1998)).

39. *Id.* at 2 (citing Jane Waldfogel, *The Effect of Children on Women's Ages*, 92 AM. SOC. REV. 209, 209 (1997)).

40. UNITED STATES CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES: 2001, EARNINGS BY HIGHEST DEGREE EARNED: 1999*, NO. 252 (2002), *available at* <http://www.census.gov/prod/2001pubs/statab/sec04.pdf>.

41. *See* Stephen J. Spurr, *Sex Discrimination in the Legal Profession: A Study of Promotion*, 43 INDUS. & LAB. REL. REV. 406, 409 (1990) (revealing evidence of bias against women in promotions to partnership in large law firms); Robert G. Wood et al., *Pay Differences among the Highly Paid: The Male-Female Earnings Gap in Lawyers' Salaries*, 11 J. LAB. ECON. 417, 422-23 (1993) (indicating a male-female pay difference using information on graduates of the University of Michigan Law School). *See generally* Wynn R. Huang, *Gender Differences in the Earnings of Lawyers*, 30 COLUM. J. L. & SOC. PROBS. 267 (1997) (discussing how a study of graduates from four different law schools reveals a gender wage gap in the field of law).

42. Huang, *supra* note 41, at 274, (citing BERNARD F. LENTZ & DAVID LABAND, *SEX*

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researchers of one such study concluded that 41% of the wage gap is "due to women's greater child-care responsibilities," or working part-time or taking time off from work to care for children.⁴³ Fifteen years after graduating from law school, the female subjects of the study made only 61% of what their male counterparts made (with the women making on average \$86,335 annually, and the men making on average \$140,917 annually), due to the fact that the female graduates spent fewer years practicing law; worked more months part-time to care for children; and took more time off of work to care for children.⁴⁴ Most of the wage gap is a result of women actually having children and taking on childcare responsibilities during their careers.⁴⁵

The subject of this article is the issue of women being penalized in the legal profession for having children and taking care of children. This project focuses on the choices female attorneys make with respect to family and career. More precisely, a new "strategic plan" currently being implemented by Northwestern University School of Law ("Northwestern Law") ignores the fact that women have only a finite amount of time in which to have children.⁴⁶ This plan is designed to produce better law students and better law graduates.⁴⁷ One element of this strategic plan is to have 100% of Northwestern Law students having had a minimum of two years of non-legal work experience post-college and pre-law school.⁴⁸ The purpose of this project is to determine what kind of impact this element of the plan, which will hereinafter be referred to as "the two year work requirement," will have on female Northwestern law students and graduates. This two year work requirement will make women, on average, older when they matriculate in law school. As a result, they will be older when they begin their legal careers, and will ultimately be older when and if they decide to have children. The effect of the two year work requirement will be to make childbearing decisions for female attorneys more difficult than they currently experience. The

DISCRIMINATION IN THE LEGAL PROFESSION 186 (1995)).

43. Wood et al., *supra* note 41, at 438.

44. *Id.* at 422-23.

45. *Id.* at 422-23, 427, 439.

46. NORTHWESTERN UNIVERSITY SCHOOL OF LAW, CENTER FOR CAREER STRATEGY AND ADVANCEMENT, NEW LAWYERS FOR THE CHANGING WORLD: 10 REASONS TO LOOK AT NORTHWESTERN, at i (on file with author) [hereinafter NEW LAWYERS].

47. See Interview with David E. Van Zandt, Dean of Northwestern University School of Law, in Chicago, IL. (Oct. 16, 2001) [hereinafter Van Zandt interview]; see also NEW LAWYERS, *supra* note 46, at i.

48. NEW LAWYERS, *supra* note 46, at 5.

result of this oversight is that female graduates of Northwestern Law will have an even harder time choosing both family and career.

The two year work requirement ignores the issue of whether women are able take two years to enter and perform in a non-legal career without those two years affecting their ability to have children and have a successful legal career. This oversight is inherently founded upon an ideal male student and worker, one who enjoys benefits and supports that female students and workers do not enjoy.⁴⁹ The two year work requirement will have an adverse impact on female law students and attorneys because it will make their ability to choose family and career paths much more difficult. Ultimately, this adverse impact could have the effect of discouraging women from applying to Northwestern Law and other law schools generally, thus preventing them from pursuing law as a profession. We cannot allow this to happen just as women are breaking into the legal profession in large numbers.

Part I of this article examines in depth the two year work requirement of the Northwestern Law strategic plan and compares the requirement to what students are voluntarily doing nationally. Part II will discuss the argument that women's choice between career and family is really not a voluntary choice because the legal profession is based upon an ideal male worker norm, a type of worker that many women simply cannot meet. Part III of this article will present various studies, which have established that the wage gap between male and female attorneys is directly related to and caused by women having children and taking care of those children. Part IV will address the disparate impact that the two year work requirement will have on Northwestern Law female students and graduates in general, in terms of earnings potential, attrition rates, and age. Part V presents the methodology and findings of my empirical study, highly suggesting that Northwestern Law's two year work requirement will have a disadvantageous effect on women, specifically with regard to their ability to have children and a successful legal career.

I. THE TWO YEAR WORK REQUIREMENT AND THE STRATEGIC PLAN

In 1998, three years after becoming dean of Northwestern University School of Law, David E. Van Zandt set the law school upon a new path.⁵⁰ That year, Dean Van Zandt and the law school

49. See WILLIAMS, *supra* note 15, at 1-2 (claiming that domesticity created a new market structure that still remains entrenched).

50. See NORTHWESTERN UNIVERSITY SCHOOL OF LAW, MARKETING PRESENTATIONS, EMPLOYER PRESENTATION, slide 2 (on file with author) [hereinafter EMPLOYER

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announced “the strategic plan,” which was meant generally to “build[] the great law school for the changing world.”⁵¹ Through this plan, which will be “widely recognized by employers, by applicants, and by the world at large as the superior model,” Northwestern Law “will produce more successful students because they are better prepared for the increasingly competitive world.”⁵² Through this plan, Northwestern Law hopes to produce lawyers who are “conversant in their client’s business,”⁵³ because “law and business [are] becoming increasingly integrated.”⁵⁴ Northwestern graduates will be able to “advise clients about every aspect of a business” due to their training in various areas as “teamwork, . . . effective communication of legal reasoning, . . . litigation experience, and . . . business concepts.”⁵⁵ The strategic plan provides that “We [Northwestern Law] will empower our graduates to adapt to and master the challenges of the changing world better than those of any other law school and to advance to the very top tier of law schools in the nation and the world.”⁵⁶

One element of the strategic plan is substantial work experience.⁵⁷ “[Northwestern’s] [l]ong-term goal is that all entering students will have at least two years of post-college work experience.”⁵⁸ In addition, these two years of work experience must be in a “non-legal” field in which the student/worker has “substantial responsibility.”⁵⁹ Throughout this article, this work experience element of the strategic plan will be described as the “two year work requirement.” Dean Van Zandt notes that to be admitted to the Kellogg School of Management (Northwestern University’s business school and one of the leading business schools in the country),⁶⁰ students must attain at a minimum almost four years of work experience.⁶¹ Dean Van Zandt

PRESENTATION]; see also NEW LAWYERS, *supra* note 46, at i.

51. David E. Van Zandt, *The Northwestern Law Approach to Strategic Planning*, 31 UNIV. TOL. L. REV. 761, 763 (Summer 2000).

52. *Id.*

53. *Id.* at 764.

54. EMPLOYER PRESENTATION, *supra* note 50, slide 4.

55. NEW LAWYERS, *supra* note 46, at 6.

56. EMPLOYER PRESENTATION, *supra* note 50, slide 2.

57. NEW LAWYERS, *supra* note 46, at 5.

58. *Id.*; see also Van Zandt interview, *supra* note 47; EMPLOYER PRESENTATION, *supra* note 50, slide 7.

59. Van Zandt interview, *supra* note 47.

60. See *Schools of Business: The Top Schools*, U.S. NEWS & WORLD REP., Apr. 15, 2002, at 56 (indicating that Northwestern University’s Kellogg Business School is ranked fifth in the nation).

61. Van Zandt interview, *supra* note 47.

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explains that students with substantial work experience “generally perform better” in law school and in the legal profession.⁶² These students with work experience will be “more attractive to employers, more open to new ideas,” will take more risks, and will be “more entrepreneurial.”⁶³

By working in the “real world,” students who come to Northwestern Law will be more mature than those students who come to law school straight from undergraduate instruction.⁶⁴ They will have made a “more reasoned decision about coming to law school.”⁶⁵ They will “not [be] coming to law school because they have nothing else to do.”⁶⁶ In fact, Northwestern Law “prefers” students who “give up something to come back” to school.⁶⁷ Northwestern is looking for those students who have to make a “sacrifice” to come to law school.⁶⁸

Northwestern Law is currently implementing the strategic plan, including the requirement that all admitted students have at least two years of work experience.⁶⁹ In October 2003, Northwestern Law published a Strategic Plan Progress Report.⁷⁰ In fact, students will not be admitted to the class of 2005 without one or two years of work experience unless the student can prove in his or her interview that he or she is mature enough to attend Northwestern Law.⁷¹ In addition, the law school has become much more “aggressive in deferring students” who do not already have work experience.⁷² Northwestern University School of Law is “unaware of any other school doing this.”⁷³ However, Dean Van Zandt possesses a set of statistics comparing Northwestern Law with other top law schools in the country in terms of how many of their students have work experience.⁷⁴ Dean Van Zandt indicates that these statistics are

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. NORTHWESTERN UNIVERSITY SCHOOL OF LAW, THE STRATEGIC PLAN: A PROGRESS REPORT FROM THE DEAN 1, (Oct. 2003) [hereinafter ANNUAL REPORT], available at http://www.law.northwestern.edu/depts/communicate/dean/progress_report.pdf (last visited Mar. 2, 2004).

71. Van Zandt interview, *supra* note 47.

72. *Id.*

73. *Id.*

74. *Id.*

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confidential and declined to produce them.⁷⁵ Donald Rebstock, Associate Dean of Enrollment Management and Career Strategy, also possessed these figures but declined to produce them for this project.⁷⁶

Northwestern University School of Law boasts that 80% of its students enter the school with full-time work experience.⁷⁷ This 80% figure is then juxtaposed with the statistic that “only 60 to 65 percent [of students] at most top law schools” enter law school with work experience.⁷⁸ Over the past few years, Northwestern Law has admitted more and more students who have prior work experience. In 1996, 34% of the entering class had no years of work experience; 34% of the class had one or two years of work experience; and 32% had more than two years of work experience.⁷⁹ For the entering class in 1998, 26% had no work experience; 40% had one or two years of work experience; and 34% had more than two years of work experience.⁸⁰ For the entering class of 2000, only 22% of the students had no work experience; 36% had one or two years of work experience; and 42% had more than two years of work experience.⁸¹ For the entering class in 2001, however, 20% came straight from their undergraduate studies; 44% had one or two years of work experience; and 36% had more than two years of work experience.⁸² Furthermore, another Northwestern Law publication reports that 58% of the 2001 entering class had two or more years of work experience, with 35% having had three or more years of work experience.⁸³

A graph presented in the Annual Report of the Dean, Northwestern University School of Law, 2000-2001, compares the number of students with work experience for the classes of 2002, 2003, and

75. *Id.*

76. See Interview with Donald Rebstock, Associate Dean of Enrollment Management and Career Strategy, Northwestern University School of Law, in Chicago, IL (Nov. 6, 2001).

77. NEW LAWYERS, *supra* note 46, at 5; see also NORTHWESTERN UNIVERSITY SCHOOL OF LAW, NORTHWESTERN UNIVERSITY SCHOOL OF LAW ADMISSIONS BROCHURE, Volume XXIV, No. 5 at 15, September 2001 [hereinafter ADMISSIONS BROCHURE] (“About 80 percent [of our students] have had one or more years of work experience, and 60 percent have had at least two years.”) (on file with author).

78. NEW LAWYERS, *supra* note 46, at 5.

79. *Id.*

80. *Id.*

81. *Id.*

82. ADMISSIONS BROCHURE, *supra* note 77, at 15.

83. NORTHWESTERN UNIVERSITY SCHOOL OF LAW, OFFICE OF ADMISSIONS AND FINANCIAL AID, ENTERING CLASS PROFILE (2001-02) (on file with author).

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2004.⁸⁴ For the class of 2002, 24% of its students came to law school straight from college, 39% of the class had one or two years of work experience, and 37% had two or more years of work experience.⁸⁵ For the class of 2003, 22% have no work experience, 36% have one or two years of work experience, and 42% have more than two years of work experience.⁸⁶ For the most recent class, the class of 2004, 20% have no work experience, 44% have one or two years of work experience, and 58% have more than two years of work experience.⁸⁷ For the classes of 2002 and 2003, the percentages add up to 100%. However, the percentages for the class of 2004 do not add up to 100%. (Twenty percent plus 44% plus 58% equals 122%). No explanation for this discrepancy is provided by the table itself or any of the literature accompanying the table.

A. Northwestern Law Figures Compared with Other Schools' Figures

I contacted the admissions offices of various law schools in the Chicago area and various top law schools throughout the nation via electronic mail and telephone in order to obtain their statistics as to how many of their students had post-college, full-time work experience prior to entering law school. Some law school admissions' offices reported that they do not even maintain any information or statistics with regard to how many of their students arrive with full-time work experience. Schools whose admissions offices reported not maintaining these statistics included the University of Chicago Law School,⁸⁸ Chicago-Kent College of Law,⁸⁹ DePaul University, College of Law,⁹⁰ Duke University School of Law,⁹¹ the University of Michigan

84. ANNUAL REPORT, *supra* note 70, at 3.

85. *Id.*

86. *Id.*

87. *Id.*

88. Telephone interview with Joyce Wilson, Admissions, University of Chicago Law School (Apr. 22, 2002).

89. Telephone interview with Steve Squires, Assistant Director for Admissions, Chicago-Kent College of Law, Illinois Institute of Technology (Apr. 16, 2002).

90. Telephone interview with Terrence Grant, Admissions, DePaul University, College of Law (Apr. 16, 2002).

91. E-mail from the Office of Admissions, Duke University School of Law (Feb. 8, 2002) (on file with author).

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Law School,⁹² Stanford University Law School,⁹³ and Yale Law School.⁹⁴

Other schools, however, do maintain some sort of statistics with regard to how many of their students come to their law schools with prior work experience. These schools include Loyola University Chicago School of Law,⁹⁵ Cornell Law School,⁹⁶ Georgetown University Law Center,⁹⁷ and Harvard Law School.⁹⁸ For these law schools that report maintaining statistics as to how many of their students come to their law schools with prior work experience, none have as high of a percentage as Northwestern Law. As aforementioned, 80% of students at Northwestern Law have prior work experience.⁹⁹ While about 15% of the entering class at Loyola University Chicago School of Law have prior work experience,¹⁰⁰ other schools, including Cornell Law School and Georgetown University Law Center, report just over half of their students (about 55%) have prior work experience.¹⁰¹

From my short survey of various law schools, it appears that Northwestern Law is in fact doing something quite different in terms of admissions. Northwestern Law is attempting to attract students with at least two years of work experience prior to law school.¹⁰² Eighty percent of Northwestern Law students have prior work experience.¹⁰³ From my limited survey, it appears that most law schools do not even keep statistics with regard to how many of their students come to their schools with prior work experience, indicating that these schools do not consider keeping these kinds of statistics as

92. E-mail from Anne Dutia, Senior Admissions Counselor, University of Michigan Law School Admissions Office (Feb. 9, 2002) (on file with author).

93. E-mail from Shannon Marimon, Associate Director of Admissions, Stanford University Law School (Feb. 25, 2002) (on file with author).

94. Telephone interview with Josie Elliot, Admissions, Yale Law School (Apr. 22, 2002).

95. E-mail from Pamela Bloomquist, Assistant Dean, Loyola University Chicago School of Law (Feb. 8, 2002) (on file with author).

96. Telephone interview with Pam Gardner, Admissions, Cornell Law School (Apr. 16, 2002).

97. Telephone interview with Sherry Blumberg, Associate Director of Admissions, Georgetown University Law Center (Apr. 16, 2002).

98. Telephone interview, Admissions, Harvard Law School (Apr. 16, 2002).

99. NEW LAWYERS, *supra* note 46, at 5.

100. E-mail from Pamela Bloomquist, *supra* note 95.

101. See Telephone interview with Pam Gardner, *supra* note 96; Telephone interview with Sherry Blumberg, *supra* note 97.

102. NEW LAWYERS, *supra* note 46, at 5.

103. *Id.*

an important goal. In addition, as compared to those law schools that do maintain these statistics, Northwestern Law admits many more students with prior work experience than those other schools.¹⁰⁴

B. Northwestern Law Figures Compared with National Figures

Students are voluntarily entering the work force upon graduating from their undergraduate studies, but not in the same percentages as the students admitted to Northwestern University School of Law.¹⁰⁵ According to the American Bar Association ("ABA"), 74,550 people applied to enter the first year classes at ABA-accredited law schools in the fall of 2000.¹⁰⁶ Just over 25,800 of these applicants, or 35%, indicated they received their bachelor's degrees sometime between September 1999 and August 2000, which indicates that they were basically applying to law school very near the time of their undergraduate graduation.¹⁰⁷ About another third of the applicants (33%, n=24,900) indicated they had received their bachelor's degrees between September 1996 and August 1999, meaning they applied to law school between one and three years after graduating from college.¹⁰⁸ About one-quarter of the applicants (24%, n=18,000) indicated they received their bachelor's degrees sometime before September 1996, which means they graduated from college more than three years before applying to law school.¹⁰⁹ The remaining applicants (8%, n=5,900) either provided no undergraduate graduation date or indicated that they received their undergraduate degrees after August 2000.¹¹⁰ The number of students taking time off and presumably getting work experience before attending law school has not increased in the past nine years.¹¹¹ For the past nine years, the percentage of students applying to law schools during their senior years in college or very close thereto, has remained relatively stable at slightly over 30%.¹¹² The percentage of students applying to law school between one and three years after college graduation has also

104. Compare *id.*, with Email from Pamela Bloomquist, *supra* note 95, and Telephone interview with Pam Gardner, *supra* note 96, and Telephone interview with Sherry Blumberg, *supra* note 97.

105. E-mail from Robert Carr, Senior Statistician, Law School Admissions Council (Nov. 11, 2001) [hereinafter Carr e-mail II] (on file with author).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

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remained steady for the past nine years, also slightly above 30%.¹¹³ Furthermore, the percentage of students applying to college more than three years after college graduation has remained constant at about 25%.¹¹⁴ The only group of applicants that has slightly increased over the past nine years is that group of students who fail to indicate their date of graduation or who graduate after August of the application cycle.¹¹⁵ This group has steadily increased over the past nine years from 4.9% to 7.9% of all the students applying to law schools nationwide.¹¹⁶ (See Table 1).

A greater percentage of Northwestern Law's students have work experience prior to attending law school than students applying to law schools nationwide. As aforementioned, given the fact that one of Northwestern Law's goals is to attract more students with prior work experience,¹¹⁷ Northwestern Law is doing a little better than law schools nationally at attracting and admitting students with prior work experience.¹¹⁸ According to the Law School Admissions Council, roughly one-third of all students applying to ABA-accredited law schools go directly to law school after completing their undergraduate studies.¹¹⁹ (See Table 1). Unsure as to how to interpret the data for the class of 2004, I will refer only to the data for Northwestern Law's classes of 2002 and 2003. For the classes of 2002 and 2003, 24% and 22% of its students, respectively, had no prior work experience before coming to law school.¹²⁰ These percentages of 22% and 24% are lower than the national average of 34.6% (for fall 2000).¹²¹ Thirty-nine percent and 36% of the students in the classes of 2002 and 2003, respectively, have between one and two years of prior work experience.¹²² These numbers are slightly higher than the national average of 33.4% of all students applying who have between one and three years of work experience.¹²³ (See Table 1). Finally, Northwestern Law attracts and admits more students than other schools nationally with two or more years of work experience.¹²⁴

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. NEW LAWYERS, *supra* note 46, at 5.

118. *Id.*

119. *See infra* tbl. 1; Carr E-mail II, *supra* note 104.

120. ANNUAL REPORT, *supra* note 70, at 3.

121. *Id.*; Carr E-mail II, *supra* note 104.

122. ANNUAL REPORT, *supra* note 70, at 3.

123. *Id.* *See infra* tbl. 1; Carr E-mail II, *supra* note 104.

124. NEW LAWYERS, *supra* note 46.

Thirty-seven percent and 42% of the students of the Northwestern Law classes of 2002 and 2003, respectively, have two or more years of prior work experience.¹²⁵ As aforementioned, 33.4% of students nationally have between one and three years of work experience and 24.2% of students nationally have more than three years of work experience.¹²⁶ (See Table 1). Given these statistics, 76% of the class of 2002 and 78% of the class of 2003 has one or more years of work experience.¹²⁷ Nationally, 57.6% of students applying to ABA-accredited law schools have one or more years of work experience.¹²⁸ (See Table 1). Therefore, Northwestern Law has many more students with one or more years of work experience compared with students nationally.

Ultimately, Northwestern Law is faring better in attracting and admitting students with prior work experience compared with law schools nationally. Roughly, about one-third of students admitted to law schools nationally have no work experience; about one-third of students admitted nationally have between one and three years of work experience; and about one-quarter of students admitted nationally have more than three years of work experience.¹²⁹ (See Table 1). At Northwestern Law, roughly only one-fifth of students have no work experience, with two-fifths having between one and two years of work experience and two-fifths having more than two years of work experience.¹³⁰

125. ANNUAL REPORT, *supra* note 70, at 3.

126. See *infra* tbl. 1; Carr E-mail II, *supra* note 104.

127. ANNUAL REPORT, *supra* note 70, at 3.

128. Carr E-mail II, *supra* note 104.

129. *Id.*

130. ANNUAL REPORT, *supra* note 70, at 3.

TABLE 1 - ABA APPLICANTS BY TIME SINCE BACHELOR'S DEGREE WAS GRANTED¹³¹

Appli- cation Cycle	Total Appli- cants	Seniors	% of Total	Grads 1-3 years	% of Total	Grads > 3 years	% of Total	Other	% of Total
<i>Fall 2000</i>	74,550	25,800	34.6	24,900	33.4	18,000	24.2	5,900	7.9
<i>1998- 1999</i>	74,380	24,900	33.5	24,900	33.4	19,000	25.5	5,600	7.5
<i>1997- 1998</i>	71,726	24,700	34.4	24,100	33.6	18,500	25.8	4,500	6.3
<i>1996- 1997</i>	72,340	24,500	33.8	24,800	34.3	18,800	26.0	4,300	6.0
<i>1995- 1996</i>	76,687	25,800	33.6	26,800	34.9	20,000	26.1	4,200	5.5
<i>1994- 1995</i>	84,305	27,700	32.9	30,100	35.7	22,200	26.4	4,300	5.1
<i>1993- 1994</i>	89,633	30,700	34.3	31,300	34.9	23,100	25.8	4,500	5.0
<i>1992- 1993</i>	91,892	31,900	34.7	31,600	34.4	23,500	25.6	4,800	5.3
<i>1991- 1992</i>	97,720	34,400	35.2	32,900	33.6	25,700	26.3	4,700	4.9

II. NOT CHOICE, BUT DISCRIMINATION

The two year work requirement will have an adverse effect on women simply because it will produce older Northwestern Law graduates. Because women will be older when graduating from Northwestern Law, the years in which they are able to have children will decrease by two years and will directly coincide with those years in which they are attempting to become partners in their law firms. The two year work requirement ignores the fact that women have a finite number of years in which to have children. Inherent in this oversight is the underlying assumption that women can afford, in terms of

131. E-mail from Robert Carr, Senior Statistician, Law School Admissions Council (Jan. 3, 2002). Figures, other than those for "Total Applicants" are rounded to the nearest 100 applicants. "% of Total" is based on actual counts, not the rounded counts. "Seniors" are applicants with graduation dates in the current application cycle. For example, for Fall 2000, "Seniors" are applicants with graduation dates between 9/1999 and 8/2000 inclusive. "Grads 1-3 years" are applicants with graduation dates from 1 to 3 years prior to the current cycle. For example, for Fall 2000, "Grads 1-3 years" are applicants with graduation dates between 9/1996 and 8/1999 inclusive. "Grads > 3 years" includes applicants with graduation dates more than 3 years prior to the current cycle. For example, for Fall 2000, "Grads > 3 years" are applicants with graduation dates before 9/1996. "Other" includes all other applicants, such as juniors in college and those applicants with no graduation date on file.

family and career, to take two years to work in a non-legal field before attending law school. The two year work requirement makes women's decisions or choices regarding career and family much more difficult. In her book, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT*, Joan Williams criticizes and dismantles the choice rhetoric women often utilize in explaining their balancing of family and career.¹³² Williams explains that domesticity is alive and well in American society, and that women's "choice" between career and family is really no choice at all, but actually results from discrimination.¹³³

In opening her work, Williams indicates that in America, the "assumption is that we are seeing the demise of domesticity."¹³⁴ For Williams, "domesticity" describes the idea of separate spheres, where men go out into the social sphere, or working world, to function as their families' sole breadwinners while their wives remain in the private sphere, or the home, to raise the children, do housework, and maintain the perfect household.¹³⁵ Williams explains that domesticity, as a "gender system," entails not just the organization of "market work and family work" according to gender, but it also entails the "gender norms that justify, sustain, and reproduce that organization."¹³⁶

Williams argues that domesticity is in fact not on the decline, but that it is actually thriving: "Domesticity remains the entrenched, almost unquestioned, American norm and practice."¹³⁷ With domesticity, it is not just that men go to work and women remain at home.¹³⁸ Inherent to the domesticity framework is the requirement that workers perform as what Williams calls "ideal workers."¹³⁹ Under the domesticity regime, ideal workers are those workers "who work[] full time and overtime and take[] little or no time off for childbearing or child rearing."¹⁴⁰ As Williams points out, "this ideal-worker norm

132. See WILLIAMS, *supra* note 15, at 15 (maintaining that a woman's "choice" to marginalize her job performance is only a choice when it is made freely).

133. *Id.* at 1-2, 15.

134. *Id.* at 1.

135. *Id.* (stating that the breadwinner/housewife concept established norms for successful gender performance).

136. *Id.*

137. *Id.* (citing LILLIAN RUBIN, *FAMILIES ON THE FAULT LINE* 79 (1994) and ARLIE HOCHSCHILD, *THE TIME BIND: WHEN HOME BECOMES WORK & WORK BECOMES HOME* 135 (1997)).

138. WILLIAMS, *supra* note 15, at 1.

139. *Id.*

140. *Id.*

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does not define all jobs today, it defines the good ones.”¹⁴¹ So, for instance, few mothers can work as partners within law firms because “few women have spouses willing to raise their children while the women are at work.”¹⁴² Williams argues that when work is structured in this way, “caregivers cannot perform as ideal workers.”¹⁴³ Because caregivers cannot perform as ideal workers, caregivers are marginalized in that they are “cut . . . off from most of the social roles that offer responsibility and authority.”¹⁴⁴ “[I]nflexible workplaces guarantee that many women will have to cut back on, if not quit, their employment once they have children.”¹⁴⁵ Ultimately, the ideal-worker norm is based on the “traditional life patterns of men, exclud[ing] most mothers of childbearing age.”¹⁴⁶ The ideal worker is someone who has “bullet-proof day care,”¹⁴⁷ someone who has someone else to provide primary care for his children.

The ideal worker is someone who works at least forty hours per week all year long.¹⁴⁸ In addition, jobs that require “extensive overtime exclude *virtually all mothers* (93 percent).”¹⁴⁹ Meanwhile, women take care of 80% of the childcare and 66% of the housework in America.¹⁵⁰ In fact, when women reduce their hours or withdraw entirely from the workforce to have or raise children, they incur a “loss of income.”¹⁵¹ This loss of income, described by Ann Crittenden as “a huge ‘mommy tax,’” generally amounts to “more than \$1 million for a college-educated American woman.”¹⁵² Domesticity thrives on the assumption that the ideal worker has “access to a flow of family work few mothers enjoy” and “privileges typically available only to

141. *Id.*

142. *Id.* at 5.

143. *Id.* at 1.

144. WILLIAMS, *supra* note 15, at 1.

145. CRITTENDEN, *supra* note 36, at 5.

146. WILLIAMS, *supra* note 15, at 2.

147. Mayer Freed, Northwestern University School of Law Professor, Lecture during Employment Discrimination Class at Northwestern University School of Law (Oct. 8, 2001).

148. WILLIAMS, *supra* note 15, at 2.

149. *Id.* (citing Manuelita Ureta, who in using the machine-readable version of Bureau of the Census, U.S. Department of Commerce, Current Population Survey, March 1996 Supplement, explained that only 93% of mothers work forty-nine hours per week or less).

150. See WILLIAMS, *supra* note 15, at 2 (citing ARLIE HOCHSCHILD, *THE SECOND SHIFT* 173 (1989) and Carol S. Wharton, *Finding Time for the “Second Shift,”* 8 GENDER & SOC’Y 189, 190 (1994) (quoting Brayfield & Hofferth’s study)).

151. CRITTENDEN, *supra* note 36, at 5 (providing examples of lost income for women who worked less in order to care for their children).

152. *Id.*

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men.”¹⁵³ This structure of market work discriminates against women.¹⁵⁴ “Requiring workers to have the social power of men excludes disproportionate numbers of women.”¹⁵⁵

Ultimately, to perform as an ideal worker, an individual needs to have a wife at home to take care of the family and maintain the home.¹⁵⁶ One survey of American corporations “chief financial officers” found that 80 percent were men with stay-at-home wives.¹⁵⁷ In addition, “[a]nother survey of managerial employees revealed that 64 percent of the male executives with children under age thirteen had nonworking spouses.”¹⁵⁸ Even today, “homemaking, the fundamental task associated with raising the young, is still the largest single occupation in the United States.”¹⁵⁹ In fact, the United States “has one of the lowest labor force participation rates for college-educated women in the developed world; only in Turkey, Ireland, Switzerland, and the Netherlands does a smaller proportion of female college graduates work for pay.”¹⁶⁰ Of women between the ages of twenty-five and fifty-four with children under age eighteen, 28.4% do not participate in the labor force at all, “meaning that the only employment of these 6.9 million women is their home and children.”¹⁶¹ One study reported that “the typical U.S. father spent an average of only twelve minutes a day in solo child care,” while another study reported twelve to twenty-four minutes.¹⁶² It is estimated that mothers engage in “three times as much time as fathers in face-to-face interaction with children.”¹⁶³

153. WILLIAMS, *supra* note 15, at 3.

154. *See id.* (explaining that the current structure of the market must inherently discriminate against women when some of the privileges that are available to men are not available to women).

155. *Id.*

156. CRITTENDEN, *supra* note 36, at 17 (stating that the typical 60-hour work week requires full-time help around the home).

157. *Id.* at 17-18 (citing MICHAEL W. TRAPP ET AL., CHARACTERISTICS OF CHIEF FINANCIAL OFFICERS, CORPORATE GROWTH REPORT 9, 17-20 (1991)).

158. CRITTENDEN, *supra* note 36, at 18 (citing Charles Rodgers, Personal Conversation (Oct. 1994)).

159. *Id.*

160. *Id.* (citing interview with Economist at the University of Stockholm (Aug. 1997)).

161. CRITTENDEN, *supra* note 36, at 17 (citing Steve Hipple, Current Population Survey (Mar. 1999) (unpublished data)).

162. *See WILLIAMS, supra* note 15, at 124 (citing DIANE EHRENSAFT, WHEN WOMEN AND MEN MOTHER, IN MOTHERING: ESSAYS IN FEMINIST THEORY 41 (Joyce Trebilcot ed., 1983) (providing twelve minutes) and GRAEME RUSSEL & NORMA RADIN, INCREASED PATERNAL PARTICIPATION, in FATHERHOOD AND FAMILY POLICY 139, 142 (Michael Lamb & Abraham Sagi eds., 1983) (providing twelve to twenty four minutes)).

163. WILLIAMS, *supra* note 15, at 124 (citing MICHAEL LAMB ET AL., A BIOSOCIAL

Also, having a wife at home is a huge economic asset. One estimate put a mother's worth at \$508,700 in annual wages, in that it would cost that much per year to have an outsider come into the home to perform the chores and services a stay-at-home mother performs, including childcare, cooking, cleaning, "managing household finances," and "resolving family emotional problems."¹⁶⁴ If a woman were to perform the services she performs in her own home for strangers in their homes, the woman would perhaps make \$508,700.¹⁶⁵ In another person's home, this woman would make \$508,700 more than she would make in her own home.¹⁶⁶ As Ric Edelman points out, "No one's crazy enough to work for free but moms."¹⁶⁷

But, one might argue that women make the free choice between having a professional career and having children or providing childcare instead of having a professional career. Williams argues that "[a]llowing women the 'choice' to perform as ideal workers without the privileges that support male ideal workers is not equality. It is a system with 'built-in headwinds' that discriminate against women."¹⁶⁸ Williams argues that women may choose not to have the most powerful, highest-paying jobs and not to perform as ideal workers, "but they do not choose the marginalization that currently accompanies that decision."¹⁶⁹ Williams proposes that market work be "restructured to reflect the legitimate claims of family life."¹⁷⁰ "If women are offered the option of keeping the jobs they want with the schedules they need, they stop describing marginalization as their choice."¹⁷¹

Furthermore, in her recently published work, *CREATING A LIFE: PROFESSIONAL WOMEN AND THE QUEST FOR CHILDREN*, economist Sylvia Ann Hewlett presents the personal stories of various female professionals in arguing that women with professional careers really

PERSPECTIVE ON PATERNAL BEHAVIOR AND INVOLVEMENT, IN *PARENTING ACROSS THE LIFESPAN: BIOSOCIAL DIMENSIONS* 111, 127 (Jane B. Lancaster et al. eds., 1987)).

164. CRITTENDEN, *supra* note 36, at 8 (citing Press Release, Edelman Financial Services of Fairfax, Virginia, *Mothers Are Worth \$508,700!* (May 1997)).

165. *See id.* (noting that this calculation does not include health or retirement benefits that a professional career would provide).

166. CRITTENDEN, *supra* note 36, at 8.

167. *Id.*

168. WILLIAMS, *supra* note 15, at 6 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971)).

169. *Id.* at 6.

170. *Id.* at 5.

171. *Id.* at 6.

do not have the choice to have children.¹⁷² For instance, the women whom Hewlett interviewed indicated that children were “crowded out of their lives by high-maintenance careers.”¹⁷³ For example, Judy Friedlander, Dean of the Graduate Faculty at New School University, indicated that “childlessness” is a “creeping nonchoice,” meaning that “during her thirties and early forties, career constraints and relationship difficulties gradually squeezed the possibility of having a child out of her life.”¹⁷⁴ In interviewing these successful, powerful women, Hewlett came to find that these women had not in fact chosen not to have children.¹⁷⁵ Rather than choosing not to have children, the women in fact had wanted to have children, but the demands of their professions and not finding the right partner precluded them from having children.¹⁷⁶

Williams also argues that the American economy is “divided into mother and others.”¹⁷⁷ She explains that the fact of having children has “a very strong negative effect on women’s income”¹⁷⁸ in that “mothers who work full time earn only sixty cents for every dollar earned by full-time fathers.”¹⁷⁹ Female attorneys fare marginally better. Female attorneys working full time on average make \$1054 per week, while their male counterparts make about \$400 more, or \$1448 per week.¹⁸⁰

Women are encouraged to “‘have it all,’ both a career and family.”¹⁸¹ One female economist, Claudia Goldin, attempted to determine whether the women of her generation had succeeded in having both careers and families.¹⁸² Through her survey, Goldin found that less than 20% of “college-educated baby-boomer women had managed to achieve both motherhood and a career by their late thirties or forties.”¹⁸³ Of these women who graduated from college

172. HEWLETT, *supra* note 15, at 2-3.

173. *Id.* at 3.

174. *Id.*

175. *Id.*

176. *Id.*

177. WILLIAMS, *supra* note 15, at 2.

178. *Id.*

179. *Id.* (citing Jane Waldfogel, *The Effect of Children on Women’s Wages*, 92 AM. SOC. REV. 209, 211 (1997)).

180. ABA COMM. ON WOMEN IN THE PROFESSION, A CURRENT GLANCE OF WOMEN IN THE LAW (2002) (quoting U.S. Dept. of Labor, Bureau of Labor Statistics (2000)), available at <http://www.abanet.org/women/glance.pdf> (last visited Mar. 17, 2004).

181. CRITTENDEN, *supra* note 36, at 32.

182. *Id.*

183. *Id.* (citing CLAUDIA GOLDIN, CAREER AND FAMILY: COLLEGE WOMEN LOOK TO THE PAST (Nat’l Bureau of Econ. Research, Working Paper No. 5188, 1995)).

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between 1966 and 1979, only between 13% and 17% “managed to reach mid-life with both career and family.”¹⁸⁴ “The women without children have been *twice* as successful in achieving a career as the women with children. Fully *half* of the women who had attained a career by midlife were childless.”¹⁸⁵ In fact, Goldin is one of those women. As the “first female professor to receive tenure in economics at Harvard, she is unmarried and has never had a child. Privately, according to Harvard colleagues, she believes that a serious, high-level career and primary responsibility for children cannot be combined.”¹⁸⁶

Perhaps Goldin is correct. According to Ann Crittenden, “no generation of American women has yet been able to achieve what most college-educated women have said they wanted for more than 100 years: a meaningful career *and* a chance to raise children of their own.”¹⁸⁷ Judy Walker and Deborah Swiss studied the lives of 902 female graduates of Harvard’s professional schools.¹⁸⁸ These women graduated between 1971 and 1981.¹⁸⁹ Walker and Swiss found that 25% of the women with Harvard M.B.A.s had completely withdrawn from the workforce by the early 1990s.¹⁹⁰ “Most said they had been forced out of the best jobs once they became mothers.”¹⁹¹ Fifty-two women who were interviewed in depth reported having “a wistful sense of loss over what they viewed as a totally unnecessary conflict between caring for their child and pursuing professional goals they had spent their lives, and a great deal of money, preparing for.”¹⁹² Northwestern Law students, male and female alike, have also invested a great amount of time and money into their educations, preparing for future legal careers.

In addition, women who remain in the professional workforce generally do not have children. Despite any cultural myths, “[a]t mid-

184. CRITTENDEN, *supra* note 36, at 32 (quoting GOLDIN, *supra* note 182) (explaining “Goldin defined ‘family’ as having at least one child and ‘career’ as hourly earnings higher than those of the *lowest* 25% of men of the same age and educational level.”). The figure of 13 percent represents women who met the required earnings test – the equivalent of \$11 an hour, full time – for three years in a row; 17 percent met the test for two consecutive years. *Id.*

185. *Id.* at 32 (quoting GOLDIN, *supra* note 182).

186. *Id.* at 33.

187. *Id.* at 33-34.

188. *See id.* at 34 (citing JUDITH P. WALKER & DEBORAH J. SWISS, *WOMEN AND THE WORK/FAMILY DILEMMA* (John Wiley & Sons, 1993)).

189. *Id.* at 34.

190. *Id.*

191. *Id.* (citing WALKER, *supra* note 188).

192. *Id.* at 35.

life, between a third and a half of all high-achieving women in America do not have children.”¹⁹³ In January 2001, a nationwide survey was conducted of “high-earning career women.”¹⁹⁴ This study revealed that 33% of these women are childless at ages 40-55.¹⁹⁵ In “corporate America,” 42% of these women are childless at the same ages.¹⁹⁶ Again, Hewlett argues that these women did not want to remain childless, that they in fact wanted to have children.¹⁹⁷ Hewlett recognizes that women have made great strides in terms of education and career equality with men.¹⁹⁸ However, “this new status and power has not translated into better choices on the family front—indeed, when it comes to children, [women’s] options seem to be a good deal worse than before. Women can be playwrights, presidential candidates, and CEOs, but increasingly, they cannot be mothers.”¹⁹⁹ One woman Hewlett interviewed, Sue Palmer, who is forty-nine and the Managing Director of the London-based accounting firm Grant Thornton, explained her non-choice this way:

For twenty-five years this career of mine has sat in the center of my life, using up prime time. As a result, relationships and the possibility of marriage and children were just crowded out. I mean I never decided that I didn’t want a family, in fact I would love to have had a family. That phrase, “a creeping non-choice,” pretty much sums up what happened to me.²⁰⁰

But the same is not true for men. “Nowadays, the rule of thumb seems to be that the more successful the woman, the less likely it is she will . . . bear a child. For men, the reverse is true. The more successful the man, the more likely he is to be married with children.”²⁰¹ One woman Hewlett interviewed, Stella Parsons, a forty-five year old professor who was just offered a chair position at Ohio

193. HEWLETT, *supra* note 15, at 33 (citing U.S. CENSUS BUREAU, FERTILITY OF AMERICAN WOMEN (2000)).

194. *Id.* at 33.

195. *Id.* (citing NATIONAL PARENTING ASSOCIATION, HIGH ACHIEVING WOMEN, 2001 (2002)).

196. *Id.* at 33.

197. *Id.* at 34.

198. *Id.*

199. *Id.*

200. *Id.* at 69.

201. *See id.* at 41-42 (citing NAT’L PARENTING ASS’N, HIGH ACHIEVING WOMEN, 2001 (2002)) (“Forty-nine percent of women executives earning \$100,000 or more a year are childless, while only 19% of 40-year-old male executives in an equivalent earnings bracket do not have children.”).

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State University, addressed the problem this way:

We were told: "Do what men do. Work your tail off until you're established in your field. Sacrifice what you need to for your career." But now I think, if you want children "cloning the male, competitive model" doesn't work.

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.²⁰²

Women do have only a short amount of time in which to have children. In requiring its students to work for two years before attending its law school, Northwestern Law ignores this simple biological fact. Northwestern Law graduates will be two years older when they graduate than if they had not worked for two years before entering law school. Those two years will also be two years subtracted from women's childbearing years. It will be harder for Northwestern alumnae to choose both career and family.

III. THE WAGE GAP IS A RESULT OF HAVING CHILDREN AND TAKING CARE OF CHILDREN

Women are hurt professionally when they take time to have children or care for children. Various studies have found wide gender gaps in the compensation and promotion of attorneys.²⁰³ This disparity in compensation and promotion is the result of women taking time off from work and reducing work hours to have and care for children. One study found that taking time off from work in order to care for children drastically reduces earnings.²⁰⁴ The

202. *See id.* at 44-50.

203. *See* Huang, *supra* note 41, at 218 (concluding that the gender wage differences among lawyers results from the earning structure within specific legal sectors); Spurr, *supra* note 41, at 415 (determining that women are half as likely to be promoted as men); Wood et al., *supra* note 41, at 438 (asserting that the gender wage gap among lawyers is primarily due to women's greater child-care responsibilities); *see also* Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession: A Report to the Committee on Women in the Profession, the Association of the Bar of the City of New York*, 64 *FORDHAM L. REV.* 291, 358 (1995) (stating that for attorneys hired between 1973 and 1986 at eight New York law firms, 19% of the men and 8% of the women made partner over a ten-year period); David N. Laband & Bernard F. Lentz, *The Effects of Sexual Harassment on Job Satisfaction, Earnings, and Turnover Among Female Lawyers*, 51 *INDUS. & LAB. REL. REV.* 594, 603 (1998) (observing that in 1984, male attorneys earned 18.7% more than female attorneys, and in 1990, male attorneys earned 11.3% more than female attorneys).

204. Wood et al., *supra* note 41, at 417 (noting that even accounting for factors like childcare, work history, school performance, and job-setting measures, one-fourth to one-third of the earnings gap was still unexplained).

researchers obtained data about University of Michigan Law School graduates from surveys completed by the graduates 15 years after graduation.²⁰⁵ Wood, Corcoran, and Courant found that these Michigan Law graduates, both male and female, made “very good money and work[ed] very long hours.”²⁰⁶ Although the male and female graduates earned almost the same wages after their first year in the legal profession, (women earned on average \$36,851 and men earned on average \$39,428, with women making 93% of what the men made), the female graduates made only 61% of what their male counterparts made after having worked in the profession for fifteen years (the women made on average \$86,335 and the men made, on average, \$140,917).²⁰⁷ Fifteen years after graduation, these attorneys worked roughly the same number of hours, with the female attorneys working 2280 hours per year on average and the male attorneys working 2510 hours per year on average.²⁰⁸ The researchers point out that the ratios comparing the women’s and men’s average earnings and median hours are “almost identical” to the ratios for their median earnings and hours, indicating that the differences between men’s and women’s earnings and hours “are not driven by a few extreme cases.”²⁰⁹

Compared with the male graduates, the female graduates spent fewer actual years practicing law (12.6 vs. 13.4), worked more months part time in order to care for children (10.1 vs. 0.1), spent more months not working at all in order to care for children (3.3 vs. 0.03), and held more jobs since graduating from law school (3.2 vs. 2.5).²¹⁰ While 27% of the women had worked part time to provide child care, only 0.5% of the men, or four out of 804, had worked part time in order to take care of children.²¹¹ The researchers indicate that these sex differences in terms of taking leaves of absence or working part time for childcare reasons “are particularly dramatic given that women were twice as likely as men not to have had children.”²¹²

205. *Id.* at 422 (noting that the study was comprised of 803 men and eighty-one women from the graduating classes of 1972-1975).

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.* at 422.

210. Wood et al., *supra* note 40, at 423.

211. *See id.* at 423 (explaining that women worked part time for an average of thirty-six months to provide child care). The study also determined that women took off, on average, 3.3 months and worked part time for 10.3 months. *Id.*

212. *Id.* (conveying that 40% of the women surveyed did not have children and only 18% of the men remained childless).

The researchers readily admit that an individual's "job setting" does explain some of the wage gap.²¹³ "Job setting" accounts for some of the wage gap because, as in this study, men were much more likely to be working in large, high-paying private law firms than the women were, as they were more likely to be employed in lower-paying government or legal services positions.²¹⁴ However, when the researchers controlled for "job setting," they found that the biggest factor negatively influencing earnings was taking care of children, not just the mere presence of children.²¹⁵ When job setting was accounted for, "a month worked part time to care for children, at any time in the respondent's career, reduces . . . earnings by [5.6% per year]" for women.²¹⁶ The researchers concluded that "there is a long-run, permanent, and sizable reduction in earnings capacity resulting from part-time work."²¹⁷

In addition, of the mothers who worked in private law firms, "fewer than one-fifth of those who had extensive part-time work had made partner in their firms 15 years after graduating, while more than four-fifths of the mothers with little or no part-time work had made partner."²¹⁸ The "majority (69%) of mothers in the sample go back to work full time within a month or two after childbirth and report little or no part-time work. For these women, there is no permanent effect of either childbirth or child care on earnings."²¹⁹

The study concludes that 55% of the wage gap is accounted for by sex differences.²²⁰

We find that, indeed, over 40% of the [economic] difference [between men and women] in our population can be attributed, directly or indirectly, to parenting. But once we control for sex differences in labor supply and work history, we find that mothers earn no less than do childless women, while both groups of women

213. *See id.* at 425.

214. *Id.*

215. *Id.* at 427.

216. Wood et al., *supra* note 40, at 427-28 (reporting that on average, by working part time for three years, women would suffer an earnings penalty near 17%). Here, the researchers also controlled for hours worked, indicating that they "do not know why the penalty for part time work is so high." *Id.*

217. *Id.* (commenting that with women earning on average \$86,335 per year, the 17% penalty for part time work amounts to \$15,000).

218. *Id.* at 428 n.16.

219. *Id.* at 428-29.

220. *Id.* at 438-39 (noting that 41% of the wage gap is "due to women's greater childcare responsibilities," 11% of the wage gap results from "women's greater number of job switches," and 3% of the gap results from "women's fewer years practiced law").

earn less than men. Having traced out and measured the mechanisms whereby child care reduces mothers' earnings, and having found no direct negative effect of children on mothers' earnings, we find it highly implausible that the remaining unexplained portion of the difference between men's and women's earnings in the legal profession can be attributed to some remaining unmeasured effect of women's commitment to home and hearth.²²¹

This study indicates that female attorneys are penalized economically, in terms of salary and promotion, due to their time spent away from the office in order to have or care for children.²²² Under the two year work requirement, female and male Northwestern Law graduates alike will spend two fewer years in the legal profession than lawyers of the same age.²²³ Logically, then, Northwestern Law graduates, both male and female, will miss out on those two years in terms of earning power and seniority within their new law firms.

In a study similar to that conducted by Wood, Corcoran, and Courant, Wynn R. Huang found that a significant percentage of the wage gap remains unexplained.²²⁴ Huang surveyed five groups of law school graduates who graduated in the years 1969, 1970, 1971, 1980, and 1985.²²⁵ The respondents consisted of 580 men and 370 women from four different law schools.²²⁶ Huang surveyed these graduates at three different points in time, "five years after graduation, ten years after graduation, and in 1992."²²⁷

Ultimately, Huang found what other studies had indicated in the past: "that female lawyers are less likely than male lawyers to attain partnership status" and "that when women do become partners, they receive income premiums that are significantly smaller than those received by men."²²⁸ According to Huang, while 56% of the male

221. Wood et al., *supra* note 41, at 439.

222. *Id.*

223. See ANNUAL REPORT, *supra* note 69.

224. See Huang, *supra* note 41, at 269 (finding "26% of the gender wage gap remains unexplained for all lawyers in the sample, while between 29% and 37% of the gender wage gap remains unexplained for all lawyers working at private firms.").

225. *Id.* at 276 (choosing these classes to include groups of women who entered the legal profession before its large influx of women, one group at the end of the influx, and a group of more recent graduates).

226. *Id.* at 277 (indicating that 496 of the respondents were Harvard Law graduates; 174 were alumnae from University of North Carolina, Chapel Hill School of Law; 173 graduated from Brooklyn Law School and the remaining 102 were from the University of Missouri at Columbia School of Law).

227. *Id.* at 268 (determining that the three stage method allows for analysis of the overall trend in gender differences in earnings and earnings at one point in time).

228. See *id.* at 268-69.

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1969-1971 graduates and 48% of the female 1969-1971 graduates made partner between five and ten years after law school, 67% of the male 1980 graduates and only 41% of the female 1980 graduates made partner within the same time period after completing law school.²²⁹ Huang found that "women take more time out of the full-time labor force than men" and "experience more significant income penalties for doing so."²³⁰ In essence, working part-time or not working has a negative and statistically significant effect on income, but only for women.²³¹ Huang concludes that 23% of the wage gap remains unexplained, and that this unexplained gap rises over time, from 23% five years after graduation, to between 14% and 47% ten years post-graduation.²³² Furthermore, Huang found that women "whether by their own choice, as a result of discrimination, or a combination of the two" tend to work in "lower-paying sectors of employment and lower-paying specialties in law."²³³

In his study, Stephen J. Spurr found that the experiences of male and female attorneys with regard to promotion vary greatly.²³⁴ Spurr followed two sets of attorneys until 1987,²³⁵ and he found that for these attorneys, "the probability of partnership was 17.9% for women and 38.6% for men."²³⁶ In addition, Spurr found that "previous experience," meaning time or years spent working at the firm, had a "significant positive effect on promotion."²³⁷

In a study conducted by Delee Fromm and Marjorie Webb, 515 graduates of the University of Alberta Law School who graduated between 1975 and 1980 completed a questionnaire regarding their work experience.²³⁸ From the graduates' responses, the researchers found that while men, on average, took only 0.3 weeks off for the birth of a child, women took off an average of ten weeks for the birth

229. *Id.* at 269 n.8.

230. *Id.* at 302-03.

231. *Id.* at 303.

232. *Id.* at 305.

233. *Id.* at 310.

234. Spurr, *supra* note 41, at 409.

235. *Id.* (explaining that the first group contained 2116 attorneys, of which 173 were females who entered 139 different law firms between 1969 and 1973). The second group consisted of 293 attorneys, eighty-four of whom were female who started working with the seventeen largest law firms in New York City and Chicago in 1980. *Id.*

236. *Id.*

237. *See id.* at 410.

238. Delee Fromm & Marjorie Webb, *The Work Experience of University of Alberta Law Graduates*, 23 ALBERTA L. REV. 366, 368 (1985) (examining sex differences affecting salary, type of law practiced, and employer).

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of a child.²³⁹ Almost twice as many men as women (44% vs. 22%) indicated partnership status, while just as many men as women indicated associate status (24% vs. 23%).²⁴⁰ Their study found that the women's salaries were generally lower than the men's salaries.²⁴¹ However, the men, as compared with the women, tended to:

[W]ork longer hours (especially in very large firms); work more frequently on the weekends; receive short term benefits such as club membership, profit sharing and bonuses in contrast to females who obtain retirement pensions; spend more time practicing civil litigation, real estate, corporate and commercial law; obtain partner status sooner, and receive a larger salary.²⁴²

Very few women earn the same amount of money as men with comparable education, skills, and professions.²⁴³ In fact, "the women who earn almost as much as men are a rather narrow group: those who are between the ages of twenty-seven and thirty-three and who have never had children."²⁴⁴ Given the results of the aforementioned studies, it is clear that women who take time off from work or work reduced hours earn less and are not promoted in the same numbers as their male counterparts. This indicates that the less time spent at the firm, the less money the attorney will make and the longer it will take to make partner.

Women who are required to work for two years in a non-legal field before attending law school will not have spent those two years in their law firms. Northwestern alumnae will not get credit for those two years in terms of their salaries nor credit toward partnership at their law firms.²⁴⁵ Given the fact that women who have children are penalized economically for doing so, it follows that women will also be penalized for those two years they spent doing something other than the law.

In fact, a Harvard Women's Law Association guidebook, published in 1995, advised women to "act like a man and time your pregnancies appropriately."²⁴⁶ Another publication, PRESUMED EQUAL: WHAT

239. *Id.* at 369 (observing that the ten week average is eight weeks less than allowed by the provincial statute).

240. *Id.* at 372.

241. *Id.* at 373 (determining that male salaries averaged \$56,954 while female salaries averaged \$42,528).

242. *Id.* at 374.

243. *Id.* at 373.

244. CRITTENDEN, *supra* note 36, at 87 (citing June O'Neill and Solomon Polachek, *Why the Gender Gap in Wages Narrowed in the 1980s*, 11 J. LAB. ECON. 205-28 (1993)).

245. *Id.*

246. *Id.* at 36.

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AMERICA'S TOP WOMEN LAWYERS REALLY THINK ABOUT THEIR FIRMS, explained the realities in leading law firms: "Two men in one firm were so afraid to leave work that they didn't join their wives in the delivery room when their children were born;" "[a] female associate at Baker & Botts said she and her husband had decided not to have children, because she couldn't pursue a partnership otherwise;" and "[a]n associate at Paul, Weiss, Rifkind, Wharton & Garrison reported that 'the only conditions under which a woman could succeed is if she remained unmarried and certainly childless.'"²⁴⁷ Even today, it is clear that female attorneys generally cannot have both a successful legal career and a family.

Even though women have made great strides in terms of gaining equal educational and employment opportunities, women still cannot have it all. Although women do want to have both a successful career and a loving family, statistics show that women are indeed forced to choose.²⁴⁸ Northwestern Law's two year work requirement will exacerbate an already difficult situation. Due to the two year work requirement, Northwestern Law alumnae will have two fewer years in which to have children after completing law school. The years in which these alumnae will be attempting to establish themselves and make partner within their firms will directly coincide with those finite child-bearing years. Those two years in which Northwestern Law students are required to work before coming to law school will make alumnae's decisions with regard to family and career that much harder than they are already.

IV. OTHER EFFECTS OF THE TWO YEAR WORK REQUIREMENT

However, in addition to creating the "great law school for the changing world,"²⁴⁹ this plan has many substantial effects on the student body, particularly women. The two year work requirement will have an adverse effect and disparate impact on women in terms of their ability to choose both career and family. Essentially, it makes all Northwestern Law graduates older when they graduate. Roughly 50% of the Northwestern Law student body is female.²⁵⁰ The fact that female Northwestern Law graduates will be older indicates that in a

247. See *id.* at 36-37 (citing Wade Lambert, *Women Lawyers Talk about Double Standard at Work in New Book*, WALL ST. J., Oct. 16, 1995, at B5).

248. HEWLETT, *supra* note 15, at 2-3 (recounting the story of a woman who was forced into not having a child due to career constraints).

249. Van Zandt, *supra* note 51, at 763.

250. See ANNUAL REPORT, *supra* note 70, at 2 (stating that women comprise 50% of the classes of 2002 and 2003, and 47% of the class of 2004).

profession where it is already difficult to have children, given the energy and time demands of the legal profession, a requirement of two years of work experience before entering law school has a disparate impact on women.

Cases of discrimination based on sex can be sustained on a disparate impact theory.²⁵¹ In making a claim of disparate impact, a woman must show that a “facially neutral policy has a disparate impact on women.”²⁵² The complaining woman could demonstrate disparate impact through statistical evidence,²⁵³ for instance, by comparing how many women hold “entry-level positions” to how many women hold “high-level positions.”²⁵⁴ The disparate impact theory of sustaining a claim of discrimination was established by *Griggs v. Duke Power Co.*²⁵⁵ “and its progeny.”²⁵⁶ If the woman shows disparate impact, the person or entity doing the discriminating has an opportunity to defend the practice causing the disparate impact as necessary.²⁵⁷ If the person or entity does prove the practice is necessary, the woman can still sustain her disparate impact claim if she can provide a “less discriminatory alternative.”²⁵⁸

The “traditional” age range of the college population is between eighteen and twenty-four years of age.²⁵⁹ For purposes of this article and argument, it is assumed that the average woman graduates from her undergraduate studies at age twenty-two. If a woman graduates from college at age twenty-two, attends law school for three years, graduates from law school at age twenty-five, starts to work at a law firm at age twenty-five, and makes partner in seven years at age thirty-two, then the woman still has enough time to have children easily and

251. WILLIAMS, *supra* note 15, at 104-05 (arguing that Title VII cases may challenge masculine social norms by focusing on the design of the promotional track in blue or white collar jobs, or by contesting an employer’s decision not to allow part time work).

252. *See id.* at 105.

253. *Id.*

254. *Id.*

255. 401 U.S. 424, 436 (1971).

256. *See* MERRICK T. ROSSEIN, EMPLOYMENT DISCRIMINATION LAW AND LITIGATION §2.3 (2001) (outlining burdens of proof for plaintiff in Title VII cases); *see also* *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800 (1973) (relying on the rationale set forth in *Griggs* to explain how to prove plaintiff’s prima facie case of Title VII employment discrimination).

257. WILLIAMS, *supra* note 15, at 105.

258. *Id.*

259. MARK MITTELHAUSER, U.S. DEPT. OF LABOR, THE OUTLOOK FOR COLLEGE GRADUATES, 1996-2006: PREPARE YOURSELF (Fall 1998) (comparing the future of college graduates to non-graduates), at http://www.pueblogs.a.gov/cic_text/employ/3college/3college.htm (last visited Mar. 7, 2002).

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safely. However, if a woman graduates from college at age twenty-two, must work for two years, enters law school at age twenty-four, attends law school for three years, graduates from law school at age twenty-seven, and waits seven years to make partner before having children, then the woman is now thirty-four years old and has a greater likelihood of difficulty in becoming pregnant, thus exposing herself and her child to greater risks.²⁶⁰ This career strategy is the one that most women follow; women take a “*career then family* [pattern], pursuing their professional dreams and postponing children until they run up against the biological clock.”²⁶¹ “Women are told to finish school, find a job, acquire skills, develop seniority, get tenure, make partner, and put children off until the very last minute. The longer a woman postpones family responsibilities, and the longer her ‘preparental’ phase lasts, the higher her lifetime earnings will be.”²⁶²

The two year work requirement may not seem that oppressive or demanding. However, working for two years prior to attending law school places female graduates at a disadvantage when they are both attempting to become partner and desiring to have children. The two year work requirement will push the date that women start working in law firms back by two years. Ultimately, women’s years of proving themselves for partner significantly overlap with their prime childbearing years due to this two year work requirement. The two year work requirement would have the effect of discouraging women from becoming partners in major law firms because it exacerbates an already difficult situation. Women will feel more pressure to have children and attempt to make partner simultaneously, rather than waiting to have children after making partner in their law firms. The two year work requirement will have the net effect of making female Northwestern law graduates older when they begin to want to have children.

In addition, this two year work experience requirement does not give Northwestern University School of Law graduates, male or female, an advantage over non-Northwestern Law graduates. In fact, it puts Northwestern Law graduates at a disadvantage. The

260. DARTMOUTH-HITCHCOCK MEDICAL CENTER, DIVISION OF MATERNAL FETAL MEDICINE, PREGNANCY OVER AGE 35 (finding that women over the age of thirty-five are more likely to have problems with pregnancy because of existing maladies such as high blood pressure), at http://www.dartmouth.edu/~obgyn/mfm/PatientED/Pregnancy_over_35.html (last visited Mar. 7, 2002). Babies that are born to older women have a greater chance of being diagnosed with Down’s Syndrome, lower body weight, etc. *Id.*

261. CRITTENDEN, *supra* note 36, at 33.

262. *Id.* at 103.

aforementioned studies show that a lawyer's salary, income, and position is influenced directly by his/her work experience.²⁶³ "Work experience" in this context is not the same "work experience" demanded by the Northwestern University School of Law administration. Rather, "work experience" here means time spent at a firm, or seniority. The more time an attorney has spent at a particular law firm, the more money he/she makes. Generally, with each passing year, attorneys make more money and get closer to partnership. If Northwestern University School of Law students must spend two years doing something that is not law-related, Northwestern Law graduates will be two years behind graduates from other law schools who did not have to take time off prior to attending law school.

Furthermore, it is not clear that students who work before attending law school are more focused and more determined with regard to the law. In fact, one study conducted by Mesirov, Gelman, Jaffe, Cramer & Jamieson, found that students with work experience prior to law school tended to leave the legal profession.²⁶⁴ More specifically, in studying its attrition rates over a twelve-year period, the Mesirov firm discovered that "lawyers with business experience were less likely to survive firm life."²⁶⁵ Although Marc Cornblatt, the individual who designed and executed the study, admits that the study "is too small to be statistically valid," the results are valuable.²⁶⁶ Mesirov's attrition rate over the twelve-year period was "more than 70 percent."²⁶⁷ However, this figure was only "a few points under the national average," indicating that the results of the study conducted by the Mesirov firm "mirror broader, national studies."²⁶⁸

Similar to Dean Van Zandt,²⁶⁹ Cornblatt expected that lawyers with previous work experience would be "more mature . . . more ready to deal with the real world."²⁷⁰ With regard to lawyers with prior work

263. See Huang, *supra* note 41, at 417, 439 (examining the gender wage gap); Spurr, *supra* note 41, at 409-410 (revealing evidence of bias against women in law firms); Wood et al., *supra* note 41, at 417, 439 (discussing the gender wage gap for parents having and taking care of children).

264. See Ritchenya Shepherd, *A Firm Finds that Lawyers with Business Experience are Less Likely to Survive*, THE RECORDER, July 29, 1999, at 4.

265. *Id.*

266. *Id.* (attributing the attrition rate to the fact that those who have been in the business world are less likely to accept menial task work on a regular basis, which is often the case for first year associates).

267. *Id.*

268. *Id.*

269. Van Zandt, *supra* note 50.

270. Shepherd, *supra* note 263 (noting that 39% of the 141 attorneys at Mesirov

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experience, Cornblatt had “always thought [that]...[t]hey take law school not purely academically, and therefore once they get into the real world, should be more stable, should last longer and should generally just be better.”²⁷¹ Cornblatt found just the opposite to be true.²⁷² He found that “[l]awyers with prior business experience . . . ‘were below the norm in every single category. They were more likely to leave voluntarily. They were more likely to be fired . . . and they were less likely to become partners.’”²⁷³ Cornblatt did not have any concrete explanations for his findings.²⁷⁴ He did speculate, though, that law graduates without prior work experience are more willing to stick through the trials and tribulations of being first and second-year associates.²⁷⁵ He explained that:

People who have been in the business world are much less likely to take equably what appears to be garbage. First-year associates do a lot of scut work. Second-year associates do a lot of things for no reason except somebody tells them to. When you have people who have lived in the real world . . . the practice of law in a medium or big-size law firm can turn out to be a big disappointment for them.²⁷⁶

Judith Collins, the research director for the National Association for Law Placement, indicates that her organization has not conducted any studies or compiled any statistics with regard to determining whether lawyers without prior work experience tend to fair better in a legal profession than lawyers with prior work experience.²⁷⁷ Throughout the course of this project, it does not appear that Northwestern Law has any such statistics either. It is unknown whether Northwestern Law has conducted such studies or is maintaining data to determine the success of attorneys with prior work experience. Some organization should conduct a broader study to determine what impact, if any, prior work experience has on attorneys’ professional stability and success.

And finally, by requiring students to work for two years before coming to law school, Northwestern University School of Law will produce older law graduates, both men and women. Studies have

who had been hired during the twelve-month study had worked full time before law school).

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

found that age discrimination continues to be a factor in the legal profession.²⁷⁸ Older students continue to face problems in attaining jobs. One study, conducted by Sociology Professor Linda Evans, found that age discrimination does rear its head during firms' recruitment of law students.²⁷⁹ Evans followed sixty law students, between the ages of twenty-eight and fifty-three, through one year of recruiting and job hunting, during the 1998-99 academic year.²⁸⁰ Evans found that "age played a key role in how students were advised by career counselors, how students viewed on-campus interviews, and how some employers tended to focus on a candidate's age, rather than his or her qualifications. . . ."²⁸¹ Furthermore, she found that "there was indeed a problem with age bias among law firms looking to hire recent graduates, as several of the students reported discrimination in terms of perceived 'risks' in hiring older graduates."²⁸² It was reported that "law firm interviewers routinely asked if [older students] could take direction from younger associates, or if they would be willing to do 'grunt' work for a few years—questions that were not asked of the younger [students]."²⁸³ One director of career services of one law school studied indicated that "most older legal graduates did not go into traditional roles as first-year associates with law firms, but rather used the field as a stepping stone for promotions within a corporate environment."²⁸⁴ In attracting and admitting students with a minimum of two years of work experience, Northwestern Law will inherently be producing older law graduates. As these studies have shown, Northwestern Law graduates might face age discrimination while trying to secure jobs at law firms.

Given the fact that Northwestern Law will be producing older law graduates, most female graduates will consider the repercussions of having children at an older age. In fact, more women in general are waiting until after they are thirty years old to have their first child.²⁸⁵

278. Kellie A. Wagner, *When Age is Not Just a Number: Older Law School Graduates Report Age Discrimination is Alive and Well in the Legal Profession*, CONN. L. TRIB., Jul. 2, 2001, at 1.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.*

285. AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, PREGNANCY AFTER 30 (1985) (on file with author) [hereinafter ACOG]; see also DARTMOUTH-HITCHCOCK MEDICAL CENTER, *supra* note 258 (finding that the number of women over thirty-five having their first baby has increased in recent years).

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As compared with all live births, the percentage of live births to women between the ages of thirty-five and forty-nine increased from 4.7% in 1974 to 12.6% in 1997, increasing by a factor of 2.7.²⁸⁶ In 1974, women aged thirty-five gave birth to 34,639 babies.²⁸⁷ That number increased to 122,730 births to mothers aged thirty-five in 1997.²⁸⁸ The number of babies born to women between the ages of thirty-five and thirty-nine increased by a factor of 3.5 between the years 1974 and 1997, from 118,115 births in 1974 to 410,094 births in 1997.²⁸⁹

Although more women are waiting until later in life to have children, it is in fact harder for women to become pregnant after age thirty.²⁹⁰ Women over the age of thirty who have never been pregnant experience a "gradual decline in fertility beginning in the early [thirties]."²⁹¹ Women become less and less fertile after age thirty because ovulation decreases, meaning that as a woman gets older she has fewer and fewer viable eggs and fewer and fewer eggs are released during ovulation over time.²⁹² Older women also have a greater chance of suffering from tubal occlusion and endometriosis, both of which can inhibit conception.²⁹³ Tubal occlusion occurs when the fallopian tubes are blocked, preventing fertilization.²⁹⁴ The fallopian tubes can become blocked by scar tissue, resulting from previous infections or surgery.²⁹⁵ Endometriosis occurs when "tissue that looks and acts like the inner lining of the uterus is located outside of the uterus."²⁹⁶

There are also health risks, for both mother and baby, associated with having children after age thirty. Some women have preexisting medical conditions, like high blood pressure or diabetes.²⁹⁷ These

286. James F.X. Egan, M.D. et al., *Efficacy of Screening for Fetal Down Syndrome in the United States from 1974 to 1997*, 96 OBSTETRICS & GYNECOLOGY 979, 979-85 (2000), (finding that maternal serum screening should be done on women thirty-five years or older before performing an amniocentesis), available at http://www.acog.org/from_home/publications/green_journal/wrapper.cfm?document=2000/ong12307fla.htm.

287. *Id.*

288. *Id.*

289. *Id.*

290. See ACOG, *supra* note 284.

291. *Id.*

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

conditions “occur more often in women” who are age thirty and older.²⁹⁸ Due to these conditions, complications can arise during pregnancy, and the likelihood of these complications occurring during pregnancy is greater for women over thirty.²⁹⁹ In addition, miscarriage is “slightly more common” for women over thirty.³⁰⁰ For women older than thirty-five, the incidence of stillbirth is greater than for women in their twenties.³⁰¹ Women over age thirty-five also have slightly more babies with low weights at birth (weighing less than 5.5 pounds).³⁰² For women having their first child after age thirty-five, the incidence of delivery by cesarean section is also slightly greater.³⁰³ The incidence of twins and triplets also increases when the mother is thirty-five years old or older.³⁰⁴ Also, the incidence of preeclampsia, or toxemia, increases when the mother is over age thirty-five.³⁰⁵

Further, the chance of having a baby with birth defects increases with the age of the mother.³⁰⁶ As a mother ages and her eggs become older, there is an increased likelihood that those eggs will suffer chromosomal abnormalities, which can lead to babies being born with Down syndrome or Turner’s syndrome.³⁰⁷ For instance, the likelihood of having a baby with Down syndrome increases as the mother ages.³⁰⁸ More specifically, while “[o]nly 1 in 1,600 children born to women in their early twenties would be expected to have Down syndrome,” One in 365 children born to women who are thirty-five are expected to have Down syndrome.³⁰⁹ Furthermore, one in 100 children born to women who are forty are expected to have Down syndrome, and one in thirty-two children born to women who are forty-five are expected to have Down syndrome.³¹⁰ In fact, one 1997 study found that almost half (47.3%) of all fetuses with Down

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. DARTMOUTH-HITCHCOCK MEDICAL CENTER, *supra* note 259.

305. *Id.*

306. ACOG, *supra* note 284.

307. DARTMOUTH-HITCHCOCK MEDICAL CENTER, *supra* note 259.

308. ACOG, *supra* note 284.

309. *Id.*

310. *Id.* See also DARTMOUTH-HITCHCOCK MEDICAL CENTER, *supra* note 259 (explaining that for mothers age twenty, there is a one in 1923 chance that the baby will be born with Down syndrome; for mothers age thirty, one in 885; for mothers age thirty-five, one in 365; for mothers age forty, one in 109; and for mothers age forty-five, one in thirty-two).

syndrome, detected at sixteen weeks, were carried by women between the ages of thirty-five and forty-nine.³¹¹

However, given all of these known problems associated with having children later in life, one of Sylvia Ann Hewlett's main arguments in her newly released book, *Creating a Life: Professional Women and the Quest for Children*, is that professional women are not actually aware of these problems and the infertility experienced by older women.³¹² Hewlett interviewed one of her former students, Linda Davenport, who at age thirty-five is the marketing director for a "fast-growing software company" located in Seattle.³¹³ At the time of the interview, Davenport had just broken up with her boyfriend and was very depressed about it.³¹⁴ However, when she thinks of having a child, she "perks up and becomes animated again."³¹⁵ Davenport explains:

I always thought that if I got to be 35 and hadn't had a child, I would slit my wrists or something. But I really feel I can breathe easy on the kid front. With all these medical breakthroughs women can have children later and later. Did you read about this Italian woman who had one at 63? I think it's great, and it means I can put off having children until my forties. It's such a relief. I feel that I have been given an extra seven or eight years.³¹⁶

Hewlett explains that, unfortunately, many women have the same misguided beliefs as expressed by Davenport. "[I]f only a 35-year-old woman could wait, and in a leisurely fashion, launch a career and find the perfect mate before thinking about having children. The plain fact is, if [Davenport] waits until she's 43 or 45 before attempting to have a child, she most probably will not have one."³¹⁷ Hewlett argues the media has lulled women into a false sense of security by reporting and focusing on the stories of women like Arceli Keh, Jane Seymour, Cheryl Tiegs, and Helen Morris, all of whom had babies at the ages of sixty-three, forty-four, fifty-two, and fifty-two, respectively.³¹⁸ These stories "send a dangerous message: that women can wait to have children because technology will be there to save them when they are ready."³¹⁹ In reality, for every woman over fifty who successfully gives

311. Egan et al., *supra* note 285.

312. HEWLETT, *supra* note 15, at 204-05.

313. *Id.* at 203.

314. *Id.*

315. *Id.* at 204.

316. *Id.*

317. *Id.*

318. HEWLETT, *supra* note 14, at 211-15.

319. *Id.* at 215.

birth to a healthy child, “thousands more waste an inordinate amount of energy, time, and money.”³²⁰ In fact, in the 1990s, “fewer than 200 American women over 50 succeeded in having a baby.”³²¹ Women cannot wait to have children.

Despite all the forms of Assisted Reproductive Technology (“ART”) available today, age is still “a huge problem for women who want children.”³²² As discussed above, as women grow older, they “run out of eggs” and infertility becomes a serious issue.³²³ In fact, women today are “less fertile than their mothers were,” even though “women today are healthier and live much longer than women in previous generations.”³²⁴ Today’s women “are likely to have had several sexual partners and therefore experience a much higher incidence of pelvic inflammatory disease, which creates scar tissue that can block the fallopian tubes,” decreasing women’s ability to become pregnant.³²⁵ In addition, as Hewlett points out, today’s working women “also routinely miss out on the prime childbearing years—ages 20-30.”³²⁶ Ultimately, as a woman grows older, it is harder to successfully conceive a child. “While 72 percent of 28-year-old women get pregnant after trying for a year, only 24 percent of 38-year-olds do.”³²⁷

ART is currently a booming industry. Between 1996 and 2000, the number of fertility clinics doubled, and now there are more than 400 in America.³²⁸ However, these clinics “often inflate their success rates by suggesting that pregnancy rather than a live birth is the end goal.”³²⁹ In fact, in order to keep success rates up, most in vitro fertilization (“IVF”) clinics will not treat women over age forty-five because “they bring success rates down.”³³⁰ The biggest challenge for women over forty who want to have children is miscarriage.³³¹ “After age [forty] only 3 to 5 percent of those who use the new assisted reproductive technologies . . . actually succeed in having a child.”³³²

320. *Id.*

321. *Id.* at 216.

322. *Id.*

323. *Id.* at 217.

324. HEWLETT, *supra* note 14, at 216.

325. *Id.*

326. *Id.*

327. *Id.* at 216-17.

328. *Id.* at 206.

329. *Id.*

330. *Id.* at 23.

331. *Id.* at 205.

332. *Id.* at 34.

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For a woman aged forty-two or forty-four who actually does get pregnant using IVF procedures, there is a fifty to eighty percent chance that she will miscarry her baby.³³³

Stella Parsons's story of how she tried to have a baby is an example of what professional women go through to have a baby later in life:

Although I was only 38, I could actually feel myself becoming less fertile. My periods were getting lighter, and my breasts no longer felt as heavy or as tender when I ovulated. My body seemed to be telling me that I was coming to the end of the time when I could become pregnant. . . . Deep down I knew that I had only this narrow window—that my time was running out—while deep down [her husband] knew that he could have children for years to come. . . . Well, we finally sought help, and after four months on Clomid I got pregnant. We were ecstatic for eleven all-too-short weeks. Then I miscarried. . . . A few months later we tried again. This time I took Clomid and did something called HSG – a procedure that involves shooting stuff into your fallopian tubes to make sure that they are super clear. And sure enough I got pregnant. This time I miscarried in week thirteen. . . . After the second miscarriage we got deadly serious. We took out a second mortgage on our house and signed up for IVF. Twelve months and three cycles later I got pregnant again, only to miscarry in week five.³³⁴

As Hewlett explains, the typical ART process starts with hormone therapy, like taking Clomid, in order to stimulate the ovaries, hopefully causing them to produce more eggs.³³⁵ If hormone treatment fails, the woman then can “graduate” to IVF, which costs about “\$12,000 per cycle.”³³⁶ The cycle begins with hormone therapy, including taking Lupron and Pergonal, in order to stimulate egg production.³³⁷ Before the woman begins to ovulate, “a needle-tipped probe guided by ultrasound is inserted through the vaginal wall into the ovary, and the mature eggs are removed and placed in an incubator with prepared sperm.”³³⁸ If fertilization is successful and the cells begin to divide, the “pre-embryos” are re-inserted into the woman’s uterus.³³⁹

333. *Id.* at 205.

334. *Id.* at 46-49.

335. *Id.* at 218.

336. *Id.*

337. *Id.*

338. *Id.* at 219.

339. *Id.*

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Although young professional women might believe otherwise, older women utilizing IVF are not that successful in becoming pregnant. For the year 1999, the American Society for Reproductive Medicine ("ASRM") reports that women who are thirty-five years old or younger have a 28% chance of actually getting pregnant and successfully delivering a baby after one IVF cycle.³⁴⁰ However, "[b]y age 39 the success rate drops to 8 percent per cycle, and by age 44 it falls to 3 percent."³⁴¹ Furthermore, in 1999, "25,582 babies were born as a result of IVF."³⁴² Those 25,582 babies represent only "six-tenths of 1 percent of 3.9 million babies" born in 1999.³⁴³ Only 3624 babies were born to mothers over age 45.³⁴⁴ Even given the seemingly modern miracle of ART, "there were more babies born to women ages 45-49 thirty-five years ago than today."³⁴⁵

As aforementioned, even if an older woman is able to conceive using any form of ART, she still faces the risks of delivering a baby with Down syndrome or miscarrying the baby.³⁴⁶ While a twenty-five-year-old woman has only a one in 1250 chance of having a baby with Down syndrome, a forty-five-year-old woman has a one in twenty-six chance of delivering a baby with Down syndrome.³⁴⁷ As for miscarriage, a Danish study published in the June 2000 issue of the *British Medical Journal* reported that miscarriage directly corresponds with the age of the mother.³⁴⁸ The study found that a twenty-two-year-old mother has only an 8% chance of miscarriage, while a forty-eight-year-old mother has an 84% chance of miscarriage.³⁴⁹

One woman whom Hewlett interviewed, Anne Newman, a writer for *Business Week*, explained that she wished she had been better informed:

[My husband] and I believed technology was going to help us conquer the odds. In a general sense, we knew that a successful pregnancy became more difficult with age, but when I got pregnant this last time I had no idea that I had a 53 percent chance of

340. *Id.* at 219.

341. *Id.*

342. *Id.* at 211.

343. *Id.*

344. *Id.*

345. *Id.* (citing NATIONAL CENTER FOR HEALTH STATISTICS, NATIONAL VITAL STATISTICS REPORT, BIRTHS: FINAL DATA FOR 1998, at 6 (2000)).

346. *Id.* at 220.

347. *Id.*

348. *Id.* (citing A. Anderson et al., *Maternal Age and Fetal Loss: Population Based Register Linkage Study*, BRIT. MED. J. 1708, 1708-12 (2000)).

349. *Id.* at 220.

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miscarriage and a 1 in 26 chance of having a child with chromosomal problems. I hadn't done the research the way I should have.

Looking back on our experience, I am pretty angry with my doctors. My obstetrician kept on telling me that I was "forty-five-years young" and to keep on trying. There's such a gung ho attitude out there. These infertility guys encourage women to believe age is not a factor when, of course, it's huge. They focus on their success stories and have little interest in the heart-wrenching losses most of us deal with. The pain wrapped up in those four dead babies was—and is—almost unbearable. . . . I did not expect to fail on the baby-making front. I fully intended to be a mother by age 30, but my life did not turn out that way. I spent my twenties and early thirties earning a living as a freelance journalist. . . . I went back to school to become a business journalist. That's when I met my husband. But by then I was thirty-seven years old.³⁵⁰

As discussed earlier in this article, with its two year work requirement, Northwestern Law will produce older law graduates. If Northwestern Law alumnae intend to establish themselves in their legal professions before having children, the alumnae will have to consider the health risks with having children at an older age. The two year work requirement will have an adverse effect on Northwestern Law alumnae's ability to have both successful careers and children. The two year work requirement has a disparate impact on women in that it forces women to have children later in life, potentially inhibiting their ability to do so in a safe and healthy manner. Biologically speaking, if a couple is going to have a child, the female is the one who has to physically bear the child. Women have only a finite number of years in which to have children.³⁵¹ Inherently then, because women are the ones who are physically able to have children and have only so many years in which to do so, the two year work requirement will have a disparate impact on women because they will have at least two fewer years in which to attain any family and career goals. Due to the two year work requirement, the years in which a woman will want to establish herself professionally will directly coincide with those few years in which she has to have children.

350. *Id.* at 207-08.

351. *Id.* at 217.

V. THE SURVEY OF NORTHWESTERN LAW ALUMNAE

This study was designed to determine if the two year work requirement would in fact have a disparate impact on women by affecting women's ability to have children. I interviewed Northwestern Law alumnae to ascertain what decisions they had made in their lives with regard to career and family. Ultimately, most of the women did feel that the two year work requirement would have a disparate impact on women in that it would negatively affect women's ability to have children. In addition, the women did not agree that the two year work requirement was a good policy overall.

A. Method

Ninety female graduates of Northwestern University School of Law currently working at major Chicago law firms were contacted via electronic mail and telephone (eighty-six via e-mail, four via telephone) to determine if they would be willing to be interviewed. A ten-page questionnaire was prepared with questions designed to obtain data regarding the alumnae's decisions with regard to family and career as well as their feelings or opinions regarding the two year work requirement.

The interview questionnaire was divided into five sections, including background information, education information, professional information, childbearing decisions, and opinions regarding work experience as a prerequisite to law school admission. The vast majority of women respondents were interviewed in person after I telephoned the respondents to set up an interview meeting. One woman filled out the questionnaire as if it were a survey. Thirty-two women were interviewed, making the response rate 35.56%. The women were assured that their names would be kept confidential. In order to protect the respondents' anonymity, the women were randomly assigned numbers between one and thirty-two. Throughout the remainder of this article, the women will be referred to only by their randomly assigned numbers.

B. Background Information

The women ranged in age from twenty-six years old to fifty-two years old. The mean age was 32.78 years, the median age was thirty-one, and the mode was twenty-seven and twenty-eight, each with four women of that age.³⁵² Eleven of the women were single, while

352. See *infra* Table 2, p. 53.

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seventeen were married and four were divorced. Twelve of the women had children and twenty did not have children. Five women had one child; five women had two children; one woman had three children; and one woman had four children. Three of the women with children volunteered that they wanted to have more children in the future; six of the women with children indicated they were not planning on having any more children; and two women with children indicated they might have more children in the future. Of the women who did not already have children, fifteen indicated that they would like to have children in the future; one woman indicated that she might have children in the future; and four women indicated that they did not want to have children in the future.

TABLE 2. AGES OF WOMEN WHO WERE INTERVIEWED

Age	Number of Women of that Age
26	2
27	4
28	4
29	3
30	2
31	2
32	2
33	2
35	3
36	1
38	1
39	1
40	1
42	2
44	1
52	1

C. Education Information

The respondents, all graduates of Northwestern University School of Law, graduated from Northwestern Law as early as 1975 and as late as 2001.³⁵³ Eighteen women indicated that they had a family member or family members who were in the legal profession, while fourteen responded that no one else in their families was in the legal profession. Almost just as many women went directly to law school

353. See *infra* Table 3, p. 55.

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from their undergraduate studies (n=17), as women who did not (n=15). For the women who took time off and worked before going to law school, two women let one year pass before attending law school; four women spent two years working before going to law school; three spent three years working before law school; three spent four years working before law school; and one each spent five and six years working before going to law school. The vast majority of the women (81.25%, n=26) did not participate in a judicial clerkship after graduating from law school.

TABLE 3. LAW SCHOOL GRADUATION YEARS FOR RESPONDENTS

Graduation Year	Number of Respondents
1975	1
1984	2
1987	2
1988	2
1991	1
1993	1
1994	3
1995	2
1997	2
1998	4
1999	3
2000	6
2001	3

D. Work Experience Prior to Law School

For the women who did not go directly to law school from their undergraduate studies, their experiences varied greatly. Four women went to graduate school in areas other than law, including music and public health. One woman spent her year off traveling and teaching. Another woman worked for a youth ministry. Two women entered professions involving chemistry. Three women worked in the legal profession; two worked at law firms, while one worked in the legal department of a major company. One woman worked in politics, while another was a computer programmer. One woman worked in consulting, and one woman worked at an investment bank. Two women indicated that, although they did not take time off in between college and law school, they did take some time off between high school and college. One woman took one year off between high

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school and college, while another was twenty-two years old when she began her undergraduate studies. Most of the seventeen women who did not go directly to law school from their undergraduate studies spent time in a non-legal career, with four women working in law-related fields.

The women who did not go directly to law school from college were asked about their reasons for taking that time off from their studies. Most women indicated that they did not plan on going to law school at all, but rather entered the work force to start their careers (n=6). One woman indicated that she needed to earn money in order to go to law school. Two women responded that they were exhausted with school and needed a break from academia. One woman indicated she just wanted to get some worldly experience before going to law school. Another woman was already committed to a master's program. Only one woman indicated that she wasn't sure if the legal profession was right for her and so she wanted to gain some legal experience before committing to law school. Again, most of the women who did not go directly to law school from college did so because it was not their intention to go to law school upon graduating from college.

The women were asked if they were ever encouraged to or discouraged from taking time off between college and law school. Half of the women (n=16) indicated that no one ever expressed an opinion to them as to whether or not they should take time off before or go straight through to law school. Of the other half of the women, the vast majority (n=12) indicated that they were discouraged from taking time off and encouraged to go straight to law school from college. Most of these women (n=8) were encouraged to go straight through by a member or members of their families. The rest were encouraged to go straight through by either their undergraduate institutions or particular professors. Two women indicated that they were encouraged to take time off in between college and law school; one woman was encouraged by her mentor, someone for whom she had worked in the past, and the other was encouraged by her college professors. Two women indicated they were simultaneously encouraged to and discouraged from taking time off, one by professors and one by family and friends.

None of the participants were subject to the two year work requirement in the sense that none of the women were required to get work experience in order to attend Northwestern Law. In essence, the two year work requirement was not actively imposed on any of the women participating in this study. Although half of the

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women indicated that they were never encouraged to or discouraged from getting work experience before law school, twelve women indicated that they were encouraged to go straight to law school after completing college. More women were encouraged to go directly to law school from college than were encouraged to get work experience before attending law school.

E. Professional Information, Career Decisions, and Support of the Ideal Worker Norm

The respondents were working at one of eight different large, prominent, and prestigious law firms in the city of Chicago. Twenty-two of them were associates, and the remaining ten were partners. Of the associates, nineteen indicated they were on a partnership track. Two women indicated that it was too early in their careers to determine whether they were in fact on a partnership track. Of the twenty-two associates, only nine indicated that they planned to become a partner, with eight indicating they in fact wanted to become a partner. One woman answered that she did and did not want to become a partner, indicating that being a partner was "too time consuming." Ultimately, just under half of the associates planned to become partner.

Most women indicated they did not want to become partners because they wanted to have families. One associate indicated that she was not on a partnership track. Five associates responded that they did not plan to become a partner and did not want to become a partner. Six associates did not know if they planned on becoming a partner or if they wanted to be a partner. In explaining why they didn't know if they wanted to become a partner or why they in fact did not want to become a partner, most women (n=8) explained that they wanted to have sufficient time for their families, whether they already had children or were planning on having children in the future. Two women indicated that partnership did not seem appealing, in that they did not want to become the same types of people that the partners at their firms were. One woman indicated that she wanted to get trial experience and so could not remain at a large law firm. One woman replied that partnership is generally too time-consuming.

The fact that most of the women indicated they did not want to be partners because they wanted to have families supports Susan Estrich's theory that female attorneys do not want to become partners because they want to have families, aforementioned at the beginning of this

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article.³⁵⁴ Also, the fact that these women do not intend to become partner because they want to have families supports both Joan Williams's³⁵⁵ and Sylvia Ann Hewlett's³⁵⁶ arguments. Williams argues that when women "choose" to leave the workforce to have children, the women have not made a free and voluntary choice, but that their "choice" results from discrimination.³⁵⁷ Williams argues that the best jobs, including those in the legal profession, are based on an ideal worker norm that assumes the ideal worker to be a male with a wife at home.³⁵⁸ The ideal worker norm is based on the assumption that the worker is supported by someone else who is taking care of the family and home.³⁵⁹ Women cannot perform as ideal workers because they are the ones who are left to take care of the family and home.³⁶⁰ So, women are forced out of the work force because they cannot sustain two full-time workloads. In the words of Sylvia Ann Hewlett, children are "crowded out of [women's] lives by high-maintenance careers."³⁶¹ The women in this study reflect that trend, given the fact that they plan to not become partner in order to have families.

The alumnae were asked to think of the three most powerful or senior women in their firms. They were then asked whether these three women were married, had children, and if so, how many children. What is interesting about the responses to this exercise is that almost a third of the women (28.12%, n=9) could not think of three senior or powerful women at their firms. All nine of them could think of one or two women that were considered senior or powerful. A few women used their firms' facebook for assistance. One woman (# 17) who looked to her facebook said, "Funny, they're all white men." But she continued: "I feel like most of the women partners don't have kids. But then there are plenty of examples of female partners with four and five kids who we're all just in awe of. Nobody can believe it, how they do it. I feel like there are examples

354. ESTRICH, *supra* note 31, at 36 (positing that women need to push for institutional change that will make the partnership track more compatible with women and family life).

355. WILLIAMS, *supra* note 14, at 2 (arguing that the definition of the ideal work excludes most mothers of child-bearing age, causing women to endure gender discrimination in the workplace).

356. HEWLETT, *supra* note 14, at 293 (exploring the various difficulties professional women encounter in balancing work and family, ultimately forcing them to choose between the two).

357. WILLIAMS, *supra* note 15, at 2, 5, 15.

358. *Id.* at 2, 5.

359. *Id.* at 5.

360. *Id.*

361. HEWLETT, *supra* note 15, at 3.

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of . . . role models . . . but there aren't that many. I have no reason to think that that's different here as opposed to other employers."

One woman (# 28) indicated the lack of female partners at her firm:

One thing I have noticed along these lines, there aren't many women in my firm. And there particularly are not many female partners. And there absolutely are not powerful partners who are women. The names that are thrown around for being the powerful people are all men. And even there, I don't know that they have families either. I think some of them do, but I really have no idea.

Another woman (# 31) expressed the same feeling:

There aren't a lot of women partners here. Women don't stay [here]. They just fired the three first-year women. I think they're going to have a problem in the future, recruiting women and keeping women. And it's a direct result of the fact that it's hard for women to have families.

One woman (# 21) joked: "Senior women at [this firm]? That's an oxymoron." (She looks at her face book). "This is the thing at [this firm], do you see any women on this page? No."

These women's responses indicate that most women do not in fact remain at firms long enough to make partner. The partners in law firms, generally, are men. There are very few female partners to serve as role models for fresh female associates.

The women were also asked if they knew what their firms' maternity leave policies were, and if so, to explain them. All of the women claimed to know their firms' maternity leave policies. Twenty-three women (71.87%) indicated that they knew of the policies only generally, based on what they had heard from other people at their firms. Nine women (28.13%) absolutely knew their firms' maternity leave policies. Of these women who knew their firms' policies, one woman knew because she had read it in her firm's employee handbook; one woman spoke with a human resources employee regarding the policies; and three women had actually used the policies. Four women did not volunteer an explanation as to how they knew about the policies.

In terms of explaining their firms' maternity leave policies, some women were more optimistic about the topic than others. One woman (# 18) explained how her firm is very supportive of new mothers because the firm provides emergency childcare and a nursing mothers program. Another woman (# 11) spoke of her firm's paternity leave policy, but she quickly indicated that "almost no one takes it." In explaining that part-time associates' and partners' billable hours are prorated and the fact of working part-time does not affect

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one's partnership track status, one woman (# 24) indicated, "I can't vouch for the veracity of any of that." This woman's statement indicates that at least some women are aware of the fact that having and caring for children would hurt a woman's chances at making partner. This fact is also well-documented in the aforementioned studies reporting gender discrimination in the legal profession in the form of women being penalized both in terms of their salaries and making partner due to having children.

One woman (# 28) explained that the "common belief" in her firm was that the firm's maternity leave policy was "nonexistent." Two women (# 3 and 19) indicated that they had never seen their firms' maternity leave policies in writing anywhere. One woman (# 23) indicated that at the time she had her first child, her firm was developing its maternity leave policy. She explained that the policy had three components: (A) a commitment to return full-time, (B) six weeks paid leave, and (C) six more weeks unpaid. Most of the women indicated that their firms' maternity leave policies included three months of paid leave. One woman (# 31) related a story about a friend and co-worker of hers. She indicated that she and this woman had been summer associates together at this particular firm, and that by the time they graduated from law school and started working there as first year associates, the firm's maternity leave policy had changed. This friend of woman # 31 became pregnant and planned to have her baby in December, right after she started working with the firm. Although one did not have to have worked at the firm to qualify for maternity leave when the women were summer associates, when the women started working post-graduation, one had to have been working at the firm for a year before qualifying for maternity leave. The friend no longer qualified for the maternity leave and was not paid for the leave she took to have her baby.

Given these women's responses, namely that the firms' maternity leave policies do not appear to be in writing anywhere, (or if they are, the women are not made aware of it), supports Williams's theory that the ideal worker is a male-based idea.³⁶² The ideal worker, being male, does not have to worry about having children, and so, maternity leave policies are irrelevant. The fact that these firms have not explicitly published and circulated, or made their female employees aware of their policies, indicates the firms' indifference to those policies.

362. WILLIAMS, *supra* note 15, at 2, 5 (claiming that efforts to persuade companies to accommodate women who plan to have children during their career by offering alternatives, such as part time tracks, have failed or have had limited success).

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The alumnae were asked whether they felt there was any pressure, in their particular firm or the legal profession in general, to not have children. The majority of the women said no. Twenty-three women (71.87%) said there was no pressure to not have children within their particular firms. Seventeen women (53.12%) indicated there was no pressure to not have children within the legal profession in general. Nine women (28.12%) felt there was pressure to not have children within their firms, and eleven women (34.37%) felt there was pressure within the legal profession to not have children. Four women (12.5%) did not speak for the profession as a whole.

Following the pattern I proposed earlier in this article of achieving partnership before having children, two women indicated that there is pressure to not have children because women feel they must wait until they make partner to have children to attain a more flexible schedule and greater financial stability. For example, one woman (# 31) said:

It appears to me, especially in this firm, that most women, at least who are still here, waited until they were partners until they had children. And that seems to be a pressure as well. Although, having said that, those are just the women who are still here. It seems that women who have babies as associates don't stick around to make partner, at this firm anyway.

Four women indicated that any pressure felt by women to not have children is self-imposed. For instance, one woman (# 30) expressed the opinion that many women "self-select out of the partnership track because they have children." One woman (# 13) explained the pressure this way:

It's not an issue whether or not you have children, but whether or not you're able to pretend that you don't. . . . In theory, if you had a wife at home who could take care of those children for you, you could do that. But as a woman, I don't have a wife. I have a husband who is extremely understanding and will in all likelihood be the primary caretaker, just because his profession is more flexible. But, I still, it's still not the same. And so I think in that regard there is pressure because it's unrealistic to say that you don't have a change in your situation when you have kids.

One woman (# 5) indicated that having children does not "impact[] your ability to make partner, but it definitely delays it." One woman (# 28) felt there is substantial pressure to not have children:

I still think that the reality in the legal profession is that it's male dominated. And that behind closed doors traditional stereotypes against women are still existing, existent. I think that if you have high career aspirations with a firm, yes there is a pressure not to

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have kids because being a mother is viewed as a weakness professionally. You're no longer devoting yourself 100% to work. And just judging from the hours that we keep here and the fact that we literally are on a partner's beck and call, you can't do that if you have to get home to a child. You can't do that if you have to pick them up, or if your child is sick, or whatever the case may be. There are associates in my department whose wives have had children, and they have come to work on the day that their wife gives birth. It's not something that's easily worked around. They just don't do it. I don't think anybody would admit that, though. I don't think a firm would say to you, yeah, we don't want you to have kids.

The fact that these women responded that they did feel there was pressure to not have children and given the nature of their explanations, there is a sense that women are discouraged from having both partnership and a family. This also supports Williams's ideal worker norm theory.³⁶³ From the women's answers, it appears that some law firms do expect women, if they want to make partner, to remain childless. Some women "choose" not to become partner in order to have families. Williams would argue that this "choice" is really a result of discrimination.³⁶⁴ Women with children cannot perform as ideal workers, so they "choose" to leave, or not become partner.

Also, some women delay having children until they make partner. In this scenario, these women must consider their age when determining when to have children. As discussed above, the older a woman is when she has children, the more infertility and health risks are associated with a pregnancy. The two year work requirement will produce older law graduates.³⁶⁵ Women's determination to have children will be delayed by at least two years, and they will be at least two years older due to the requirement. The two year work requirement puts more pressure on women in terms of their physical ability to have children and deciding when to have them.

Next, the women were asked if they felt there is any pressure or encouragement to have children in the legal profession in general or in their particular firms. Not surprisingly, the vast majority of women responded in the negative (84.37%, n=27). Four women felt there was in fact pressure or encouragement to have children within their

363. *Id.* at 2, 5 (emphasizing the challenges women in law firms face to advance in their profession while also trying to raise children).

364. *Id.* at 5 (asserting that companies often do not make it feasible for women to successfully pursue executive positions and care for their families).

365. See ACOG, *supra* note 284; HEWLETT, *supra* note 15, at 204-05, 216-17.

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specific firms, and one woman felt there was pressure or encouragement within the legal profession as a whole to have children.

F. Childbearing Decisions

The women were asked if they had children, and almost twice as many responded that they did not. The majority of women who did not have children, however, did want to have children in the future. Ultimately, then, the vast majority of the women interviewed either already had children or wanted to have children in the future. Twelve (37.5%) responded that they did already have children, and twenty-one (63.5%) responded that they did not. If the respondent indicated that she did not already have children, she was then asked if she desired to have children in the future. Of the twenty-one women who responded that they did not already have children, about three-quarters (n=16) responded that they did want to have children in the future. The remaining one-quarter (n=5) indicated they did not want to have children in the future. If a woman responded that she did not already have children and did not want to have children in the future, she was then asked whether her decisions about her career played a part in her decision not to have children. Four of the women indicated that their careers played no part in their childbearing decisions. The fifth woman, however, responded that her career did play some part in her decision to not have children. She said:

[Y]es, but not a strong yes. I think my career aspirations have solidified my lack of desire for children, but it has always existed (of course, I have always wanted a career so we have a chicken or egg problem!). In any event, I do not see how I could effectively have the same job and children at the same time, and the job has won the battle.

Almost twice as many women did not have children as women who did have children. It is clear that based on these interviewees' responses, female attorneys do have children and continue to want to have children. About one-third of the alumnae had children and about one-half of the alumnae wanted to have children in the future. So, female attorneys are having children. However, most of the women do not want to become partners because they want to have time for their families. The women's responses support both Williams's and Hewlett's arguments that the choice between career and family really is no choice at all.³⁶⁶ If the women choose to have

366. See HEWLETT, *supra* note 15, at 2-3 (recounting that children often unsuccessfully compete with high maintenance careers and needy partners);

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children, then they are forced out of their professions.³⁶⁷ If the women choose their professions, then the children are forced out of their lives.³⁶⁸ Given the fact that all the women interviewed graduated from Northwestern Law, it is fair to assume that female Northwestern Law graduates generally do and would like to have children in the future. Again, with having to work for at least two years before attending law school, these women will have to consider their age in determining when to have children.

For some women, the timing of when to have children will also be affected by the point at which they are in their careers. The women interviewed who already had children were asked to identify the factors that played a role in their deciding when to have children, or how many children to have. Most of the women (n=5) indicated that they just wanted to have children; that they had their children when they wanted to have them, not really taking any other factors into consideration. Three women purposefully had their children during law school because of the flexible schedule; two women waited until they made partner before having their children; one woman indicated that she postponed having a child until she and her husband got married; one woman wanted to enjoy a few years of married life before having children; one woman wanted to finish her international travels before having children; and one woman wanted to get settled in her career by working a few years before having children. Only one woman indicated that she took no factors into consideration, as her pregnancy was unplanned. Women do take their careers into consideration when having children. Some female attorneys do consider partnership status in determining if and when to have children.

As for the women who did not already have children but who wanted to have children in the future, they were asked what factors, if any, they would consider in determining when to have their children. The biggest factor was their age, with seven women responding that age would play a significant role in their decision. Almost as many women said they would consider partnership status. Six women each

WILLIAMS, *supra* note 15, at 5 (commenting that success in elite jobs requires the "ideal worker" status that women are unable to achieve due to the constraints of children).

367. WILLIAMS, *supra* note 15, at 124 (explaining that the non-delegation of work in raising a child often causes working women to compromise their professional careers or drop out of the workforce in order to meet the family's household services demands).

368. *Id.* at 5 (arguing that the workplace discriminates against women so that they have to choose to work full time instead of having children because it is too difficult to achieve both).

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said they wanted to make partner before having children or that they would consider their financial situation before having children. Four women indicated that they wanted to enjoy married life for a few years before having children; and four women indicated that they wanted to find a suitable partner and get married before having children. Two women would take their career generally into consideration; two women wanted to wait until their husbands were secure in their professions before having children. Two women wanted to pay off their student loans before having children. One woman wanted to make sure her husband was emotionally ready; one woman wanted to make sure she was emotionally ready, and one woman wanted to develop her own personal experiences before having children.

So, in fact, the two biggest factors women would take into consideration in determining if and when to have children are their age and their partnership status. Without having been asked about the two year work requirement as a factor, most women indicated that their age was the biggest factor in determining if and when to have children. Therefore, the two year work requirement is likely to have an adverse effect on women in terms of their ability to have children. As aforementioned, with the two year work requirement, women will be at least two years older when they graduate from Northwestern Law than if they had not had to work for at least two years before attending law school. Given that those two years are devoted to some other non-legal career, Northwestern Law alumnae will have two fewer years in which to have children, while they are attempting to become partner. Women are limited in terms of the number of years in which they can safely have children.³⁶⁹ The two year work requirement shortens that period.

G. Opinions Specifically Regarding the Two Year Work Requirement

Until this point in the interview, some women had indicated that age and partnership were concerns in determining if and when to have children. In order to more firmly assess what these women think and feel with regard to the two year work requirement being imposed by Northwestern Law in particular, the alumnae were explicitly asked questions about the policy. The alumnae were asked whether students should be required to not go directly to law school from college, take time off and get work experience between college and law school. The vast majority of the women responded that they felt it

369. ACOG, *supra* note 284; see also HEWLETT, *supra* note 15, at 216-17 (relaying that peak fertility occurs between the ages of twenty and thirty, with fertility rates dropping at thirty and plunging after thirty-five).

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was not a good policy. Only two women responded yes, students should be required to get work experience before attending law school. They cited the same reasons that Dean Van Zandt does when he explains Northwestern Law's two year work requirement,³⁷⁰ including the fact that students with work experience are more mature, are more focused, bring more perspective to law school, and become better attorneys. Ten women (31.25%) felt that students should not be required to get work experience before law school, but recognized the benefits of prior work experience and felt that students should be encouraged to get work experience before attending law school. Twenty women (62.5%) rejected the policy, feeling students should not be required to take time off or get work experience before law school.

Eleven of those women indicated that deciding when to go to law school and whether or not to get work experience is a personal decision that might be based on personal reasons not accounted for by a requirement. One woman (# 13) said, "everyone's situation is different and there are times when you . . . have to go to law school right after college for personal reasons." Woman number 4 agreed: "each individual is different and the proper timing for each individual will be different."

Five women felt work experience was not a good proxy for determining who will be a good law student or good lawyer. Four women indicated that by implementing this policy of a two year work experience requirement, Northwestern Law will discourage many talented and otherwise qualified students from applying to Northwestern for law school. One woman (# 17) explained that "[the law school] will be missing the boat on . . . some students that could be great students, great alumni, great lawyers. . . . I think it's fine to have [work experience] be part of the mix. But, I think it's foolish to make it be a requirement." Four women indicated that prior non-legal work experience is not translatable into a legal career. For instance, one woman (#19) explained her feelings this way:

First, . . . I don't think there's any job out there that one is going to have, post-college, that is going to make them a better law student. Second, I don't think there's any correlation, at least in my experience, it must be hundreds of lawyers I've met in my life, that any past work experience will make you a better lawyer, because I

370. Van Zandt interview, *supra* note 47 (disclosing that Northwestern Law school believes their philosophy will produce students who are better prepared and therefore more successful because they already have work experience).

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don't think there's any job out there that really can teach you how to be a lawyer.

Three women indicated that prior work experience is not necessary. Two women explained that law school is not business school. One woman felt this policy would decrease diversity at a law school, while one woman felt that this policy would discourage women from applying to law school because it would make them older as they were to begin their careers as attorneys.

One woman (# 18) felt work experience should not be a requirement because:

[i]t would certainly change the atmosphere of school. . . . I wouldn't want them to require it. I don't think it would be fair to people who wanted to make other choices and get started in their careers earlier for whatever reason, men or women, because they want to do it while they're young, while they have the energy to work these long days, and make partner young.

One woman (# 28) indicated that "for a lot of people, it just ends up being wasted time."

Although they were not asked about Northwestern in particular, a few women spoke about their alma mater in explaining why they felt students should not be required to have work experience to be admitted to law school. One woman (# 14) said, "I didn't have any [work experience], and I'm doing fine. . . . I don't even know if it would have been that helpful at Northwestern because the education that we get there is so theoretical and not very practical that practical experience doesn't even necessarily play into it that much." Another woman, (# 22) summarized her rejection of the requirement this way:

I think that is an absolutely ridiculous requirement quite frankly. I think that to have an across the board requirement that everyone must have some type of work experience before going to law school ignores the fact that some people really want to go to law school right out of college. And they want to get their career on track. They're not interested in doing any other kind of work. I think it would be extremely detrimental to the law school itself, because they will turn away otherwise highly qualified applicants that want to go to law school directly from college. And it's no secret that Northwestern is concerned about its rankings, and I think that would just be, from the law school's perspective, extremely detrimental in terms of the type of student that they are attracting. I think, my own experience in law school is that the people that succeeded, not only in law school but that are also succeeding in the legal profession now, there is no correlation between whether they took some time off or went straight through. So I don't think it, I don't think you can have an across the board policy that says it's

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beneficial for the person and I definitely think it would be detrimental for the school. That's why I would be vehemently opposed. Not that anyone's going to pay attention to what I have to say. But I really do think, if that were the policy, I would not have considered applying to Northwestern. And I think a lot of people that do want to go straight through, they would just cross Northwestern off their list.

The women were then asked what they felt of a policy whereby students are required to get work experience before being admitted to law school.³⁷¹ The two women who had previously agreed that students should be required to get work experience before attending law school indicated that two years of work experience could not be a requirement because there needed to be room for exceptions. Two other women agreed with a policy requiring students to obtain work experience before attending law school, but they also indicated the need to consider exceptions. Four women did not feel strongly about the policy, either in favor of it or against it. The rest of the women, (72.7%, n=24) disagreed with a policy requiring students to obtain work experience before law school. One woman (# 13) explained,

I think that's an attempt to make law school [into] business school. And I think they are different. There are also people who go to law school because they want to be a teacher. So . . . in that particular situation it doesn't make sense to say you have to work before you go to law school.

Another woman (# 25) agreed:

I feel like if a student knows that they want to, for example be a [district attorney]. . . . I could see a lot of people wanting to do that on a full time basis. . . . I just don't see what the benefit would be of requiring them to go out and just take a job for a year or two before they could get into law school, if they knew that's what they wanted to do and they wanted to get into that, criminal area. I guess I don't see very many jobs they could perform for a year or two that would really benefit them in that area.

A third woman (# 12) also agreed:

I'm not sure you learn that much, depending on what area of law you're going to be [in], you may not learn that much that would be translatable into what you're going to do as a lawyer. In business, I think you learn more that's translatable. You know people go and

371. This question might seem very similar to the previous question of "Should students be required to get work experience prior to law school." I asked the respondents how they felt about a general policy requiring work experience as a sort of safety net. I wanted to really ascertain what the women's feelings were with regard to the policy that they might not have readily or voluntarily expressed in response to the previous question.

work in an investment bank for a couple years, then they go to business school, and then they go back to investment banks. Or they go work in a corporation and learn how a company works.

Four women felt the policy is unnecessary. Six women indicated that a law school implementing such a policy would miss out on a number of talented and otherwise qualified applicants. One woman (#17) expressed the following concern:

They [Northwestern Law] are just going to be serving a different part of the population because people like me who went straight through just aren't going to apply there anymore if it's required. . . . I think that they're going to lose out on a part of the population that knows what they want to do, is smart and talented, and isn't immature. . . . I know that one thing [Northwestern Law] is really concerned about, or another way that schools measure their success, is how many law clerks they have. When I was at Northwestern, the dean met with people that had good grades to say we really hope you'll try for a clerkship and we're here to support you, and make sure you try for those appellate courts. . . . When I was in school, the people who wanted to do clerkships tended to be younger people who didn't have families, who could move somewhere, who could make \$40,000 a year because they only had themselves to support, who didn't feel like they had to get on with their lives. So many of my older friends who I guess are more valuable under this regime didn't want anything to do with a clerkship.

In fact, I contacted one student via electronic mail to ascertain his experience in applying to Northwestern Law. The student confirmed that yes, he had applied to Northwestern Law, but was given a deferred acceptance, even though he did not request one. The student decided not to attend Northwestern Law, opting for another law school where he did not have to take time off before attending.³⁷²

With a policy to require work experience for admittance to law school, one woman (# 22) was reminded of her high school experience:

I went to a high school that was an all-boys' school up until 1987. And sort of one of the big arguments of the school going co-educational was the point that if you're only drawing from male applicants, you're not getting the absolute best applicants across the board. . . . And I think it kind of applies here. If . . . Northwestern is only going to look at students that had prior work experience, they're not going to get the best applicant pool that they otherwise would. I just think there were a lot of highly qualified law school

372. Electronic mail from law student (Feb. 20, 2002) (on file with author).

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students who are now extremely successful attorneys from my law school class. I think it would have been a shame if they hadn't been in my law school class, and I think they added a lot to the school community. The other danger, I think, . . . if you're only drawing from applicants that have prior work experience, you're necessarily drawing from an applicant pool of older students who may be married, have families, have far more pressing obligations than just law school per se. And in my own experience with my law school class, some of the most enthusiastic law school students who were really interested in Northwestern and really contributed a lot to the school community were students that went straight through, that are younger students, they may be more able to take on a lot of activities and do things for the school. Whereas someone who's a little bit older and perhaps has more responsibilities can't devote that time to the school community.

One woman (# 21) summed it up this way: "If there's one thing that we learned in law school, it's just [that] there's so many different situations. You can't, what's right for one person is not right for everybody."

The alumnae were then asked how they would handle work experience in admissions if they could set the policy at Northwestern Law. The vast majority indicated that work experience would by no means be a requirement. While two women responded that they would make work experience a requirement in admissions, just as many women responded that they would make work experience a plus in admissions (46.87%, n=15), or that they would make work experience one factor among many in making admissions decisions (46.87%, n=15). Ten women indicated that in considering work experience during the admissions process, one had to consider whether the work experience was "relevant." Women indicated that if an applicant had work experience, but only working as a ski instructor, at Dunkin Donuts, as a waitress, or as a nurse, that work experience would not be relevant and would not necessarily help the candidate in terms of admission. One woman (# 12) explained that if an applicant had work experience at McDonald's, it may or may not be relevant and influential in the admissions process. The work experience would not be relevant if the applicant had just flipped burgers at the McDonald's for two years. However, the work experience would be relevant if the applicant ran a McDonald's franchise for two years.

Two women expressed the concern that a policy requiring two years of work experience between college and law school would have prohibited them from attending Northwestern Law. One woman (# 6) indicated that she worked several years before going to college,

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and only began her undergraduate studies around age 22. Another woman (# 28) explained that she founded and ran an international company while she was in high school. Because she had this experience, she felt she did not need any more work experience prior to law school, and feared that with such a policy in place, she would not have been allowed to attend Northwestern.

One woman (# 29) expressed the opinion that one cannot predict, based on an applicant's/student's prior work experience, whether the applicant/student will succeed in law school or as a lawyer. She indicated that based on:

associates who have worked here, one of the best associates, the most serious job he ever had was a lifeguard. And he was one of the best associates we ever had. And we've had a couple, I can think of a couple, one who had military experience, experience working at a bank. You looked at the resume, you thought, wow, this is just great, he's going to be fantastic. Turned out not to be quite so. And I have the same experience interviewing summer associates. You just can't tell.

In fact, although Dean Van Zandt claims that students with substantial work experience generally perform better in law school and in the legal profession,³⁷³ I have failed to locate any statistics or studies that verify that claim. Perhaps Northwestern Law has conducted its own studies with regard to its graduates, examining the success of its graduates while considering whether they had prior work experience or not. If it has, I am not aware of any such studies. But, that is one proposal to be made. A study should be conducted to determine what effects, if any, work experience prior to law school has on the success or failure of practicing attorneys. In addition, another worthwhile study would entail studying the top 10% or 15 % of Northwestern Law graduating classes over a period of years to see just how many of the top graduates had work experience prior to law school.³⁷⁴

H. Connections Between Time Off/Work Experience and Childbearing Decisions

Depending on their prior responses during the interview, the alumnae were asked if they felt there was any connection between either their having taken time off or not having taken time off between college and law school, and their having had children or not having had children. For the women who did take time off between

373. Van Zandt interview, *supra* note 47.

374. One woman, # 30, did indicate that this type of study should be conducted.

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college and law school and had had children, one woman felt there was no connection between the two and five felt that there was a connection. Two women (# 10 and #31) indicated there was a connection between taking time off and having children because of their ages. Woman # 31 explained that the biggest connection between having work experience before law school and when she had her children was "age." She explained that she "couldn't afford to wait as long [to have children] as other people [who] had gone straight through." Both women indicated that because they had taken time off, they were older upon graduation from law school, and therefore felt more pressure to have children in the sense that they had fewer childbearing years with which to work.

For the women who did take time off between college and law school but who did not yet have children, six felt there was no connection. Three women, however, did feel there was a connection between their having taken time off and not having had children. One woman (# 11) explicitly took time off to gain personal experiences, and those experiences were not related to starting a family. Two women felt there was a connection in terms of their ages. Woman # 2 indicated that because she took time off, she was now older and felt more pressure to start having children relatively soon as a result of her delayed start. She said: "I'm closer to the age, maybe my maternal instincts are more apparent than . . . one friend who did go straight through, and she's 25 and feels like she's young and she's not married." Woman # 21 indicated an age connection, but in a slightly different way. She felt that because she had taken time off, she was now older. Because she was now older, she felt she could not make partner before having children. She wanted and intended to have children, and so partnership would have to be put off because she only has so many childbearing years left. She explained that she "definitely" saw a connection between taking time off and not having had children yet. She explained that

If I would have graduated law school at 25 instead of 28, how old am I? If I would have graduated at 24, sure. Then I could maybe be a non-share partner at 32, and then maybe I'd have my 6-year goal. . . . But if I would have been on a different track and if I could have felt like I could achieve my career goals at an earlier stage in life and get to a place where I wanted to be in life then I would have children earlier. I just have all these ideas in my head of kind of the person I want to be, where I want to be in my life before I have kids. And if I could have gone to school earlier and achieved all that earlier, then I could see myself having children earlier and I could

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see my life being different. . . . I can definitely see the correlation there.

Some women did recognize that either because they did in fact take time off before law school or if they had been required to do so, they actually were or would be older upon graduation. As enunciated before, older women do have to take their age into consideration when deciding if and when to have children. The two year work requirement makes women older when they graduate from Northwestern Law. Logically, then, women would be older when they begin their legal careers and, as a result, would have less time in which to have families. The two year work requirement also results in a conflict between women's prime childbearing years and the years during which they are trying to establish themselves for partnership. The net result will be to exacerbate the problem of women being forced to "choose" between career and family.

For the women who did not take time off, just as many women who had not yet had children (n=6), as women who had children (n=6), felt there was no connection between not taking time off and having children or not having children. Four women who had not taken time off and did not yet have children felt there was a connection between those two facts. They explained that the connection was one of age. Women # 14, 22, 24, and 27, each indicated that had they taken time off, they would now be older than they are. Because they did not take time off, they felt they were young enough to not have to worry about when they would have children, as they had many childbearing years left. However, they recognized that had they taken time off, they would have been older with fewer childbearing years left. In addition, as aforementioned, one woman (# 6) took a substantial amount of time off between high school and college. So although technically she did not take any time off between college and law school, she had taken this time off before attending college. She felt there was a connection between her having taken that time off and not having had children yet. She also felt that this connection had to do with her age. She felt that because she took this time off, she was now older compared to her classmates. Because she was older, she felt more pressure to have children, as she realized she had fewer childbearing years left with which to work.

The women were next asked whether they thought women who take time off and get work experience before attending law school would be more or less likely to have children later after completing law school. Thirteen women (40.62%) felt the fact of requiring women to take time off before entering law school would have no influence either way on a woman's decision to have children. Nine

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women (28.12%) responded that they did not know if it would have an influence or were unwilling to draw any conclusions. Another nine women (28.12%) indicated they felt that women who were required to take time off would be more likely to put off having children and would have them later than they would have had they gone directly to law school from their undergraduate studies. Only one woman felt women who were required to take time off would be less likely to have children later after completing law school.

Two women, however, agreed that although taking time off might not influence a woman's decision whether or not to have children, it might influence her decision as to how many children to have. One woman (# 14) explained her indecision on the matter this way:

For some [women], having worked and then going to law school, . . . their biological clocks are going to be ticking, so that by the time they get into the working world, then they're in the position that I'm in now, where they're thinking, gosh, now I have to get a few years under my belt here before I can start a family. So I think for some people that might induce them to have kids sooner, like hurry up I'm getting older. Or for some people it might dissuade them from having children because they're thinking, well, my career comes first. I need to work and establish myself, and gosh, I've run out of time. I just don't know. I think it's very personal.

Another woman (# 1) explained that the effect of the work experience requirement was not that direct of an influence on a woman's decision to have children or not to have children, but that the influence was more indirect:

I don't think they're any more or less likely to have children. I think it's just going to make it much more difficult for them to have children because it's going to delay. . . I mean I suppose they could have kids in the two years that they take off and then go to law school with kids, but, that's awfully difficult. Or they could delay having kids until after they're in the legal profession. But, you obviously don't want to have kids your first year you're in your job because you're trying to become accustomed to your new job. Although there's obviously nothing that says this, you don't really want to have kids the year you're up for partner because you don't want that on people's minds when they're making that decision. So I think there's probably a lot of internal pressure to delay the decision a little bit longer than you might otherwise, and then you get older, and then the next thing you know you're 35 before you have your first kid. And then if you want 3 you're going to be really

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hard pressed to have 3. I think it just makes it all much more difficult than it already is.

The women were then asked whether they thought requiring women to have work experience before attending law school would decrease either their desire or ability to have children. The women responded that yes, women's ability to have children would be affected by a two-year work requirement. The vast majority of the women (78.12%, n=25) felt that a work experience requirement would not influence a woman's desire to have children. Two women felt that a work experience requirement would influence a woman's desire to have children. Twelve women (37.5%) felt that a work experience requirement would have no influence on a woman's ability to have children. Seventeen women (53.12%), however, felt that a work experience requirement would decrease their ability to have children. Thirteen of those seventeen women explained that by requiring work experience for law school admission, women would be older and could run into difficulties associated with having children later in life. Two women did not speak to whether the work experience requirement would decrease a woman's desire to have children. Three women did not know whether a work experience requirement would decrease either a woman's desire or ability to have children.

Two women did express their concerns with a policy requiring women to get work experience before going to law school. One woman (# 5) said:

I would fear that any such requirement would discourage men and women alike to some extent, but to a large extent women because they are the people that do carry children. It may discourage women from going to law school, and that's the one thing we can't do. We're barely coming up to even with guys at law school now. Anything that serves as a required impediment to that is a problem.

Another woman (# 12) concluded:

I share your concern. Without knowing actually what would happen, it is a concern. And you wonder whether that would reduce the likelihood that people would have them, couple years earlier than they otherwise would. Two years makes a difference. It's sort of in that critical phase of if someone's going to wait [until] they're a little more senior or maybe wait [until] they make partner.

Ultimately, all but two of the alumnae did not agree that two years of work experience should be a requirement to be admitted to law school. Furthermore, just over half of the women interviewed expressed the concern that a two year work requirement could decrease a woman's ability to have children after completing law

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school. Most of the women interviewed either already had children or wanted to have children in the future; only five out of thirty-two did not already have children and did not want to have children in the future. From this sample, it is clear that female graduates of Northwestern Law do want to have children at some point in their lives. However, the two year work requirement could hinder their ability to do so. Some of the women did see a connection between getting two years of work experience before attending law school and their age upon graduation. The two year work requirement makes graduates two years older than they would be had they gone straight to law school from college. Female graduates, then, have two fewer years in which to have children and make partner. As expressed by the alumnae, this two year work requirement might deter young women from applying to Northwestern Law. If all law schools were to implement a similar work experience requirement, women might be deterred from attending law schools generally and entering the legal profession altogether.

CONCLUSION

The two year work requirement currently being implemented by Northwestern University School of Law will have an adverse effect and disparate impact on women who graduate from that institution. In interviewing 32 Northwestern Law alumnae, all practicing at eight of Chicago's major law firms, I found that women appreciate and take issue with the effect the two year work requirement will have on a woman's ability to have partnership status and a family. Instead of graduating from law school at the typical age of twenty-four, twenty-five, or twenty-six, women will now be graduating from law school at the age of twenty-seven or twenty-eight. Women have a finite amount of time in which to have children at all, to have safe pregnancies, and to deliver healthy babies.³⁷⁵ Spending two years working before attending law school decreases that finite amount of childbearing years by two years. The result is that female Northwestern Law graduates will feel a time crunch in which to have children and make partner. The decreased number of childbearing years, then, is in direct conflict with those years in which female attorneys are attempting to prove themselves at their firms and make partner. Female attorneys already have a hard time making partner and having

375. See ACOG, *supra* note 284; HEWLETT, *supra* note 15, at 204-05 (relaying that women over forty have great difficulty getting pregnant and keeping a baby without a miscarriage).

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children.³⁷⁶ Increasingly, women cannot be both partners and mothers.³⁷⁷ If a woman has children, she is penalized in terms of her salary and promotion.³⁷⁸ If a woman drives to make partner, she will most likely not have children.³⁷⁹ The two year work requirement exacerbates women's inability to choose both family and career. Ultimately, in a profession where it is already difficult to balance career and family, the two year work requirement will make those decisions regarding career and family that much more difficult for female attorneys. As suggested by the respondents' answers to my questions, this two year work requirement could discourage women from applying to Northwestern Law in particular, or to law schools in general. Just as women are almost catching up with men in terms of equality within the legal profession, this two year work requirement could work as another barrier to women entering the law. At this point, that is something that we, as a society, cannot afford.

376. See Huang, *supra* note 40, at 310 (explaining that female lawyers work in lower-paying specialties; have a difficult time making partner; and, should they choose to have children, experience income penalties).

377. See HEWLETT, *supra* note 15, at 135 (noting that only fourteen percent of partners in private firms are women).

378. See Huang, *supra* note 41, at 308-10 (explaining the difficulty for women litigators to work extreme hours, earn high salaries, and care for husbands and children); Spurr, *supra* note 40, at 416 (suggesting that female lawyers may experience fewer promotions than males due to the greater opportunity cost in the production of household services); Wood et al., *supra* note 41, at 439 (indicating that sex differences in the commitment to parenting are the most important single cause of sex differences in earnings).

379. See HEWLETT, *supra* note 15, at 137-38 (explaining that women miss out on the upward mobility that men experience during their twenties and thirties because they are forced to compromise their careers for their children).