

# “Mommy Track” on Steroids: How the Pandemic is Further Derailing “Moms of Law”

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Made up of students and law professors who are also parents, “Moms of Law” is an informal support group<sup>1</sup> at the University of New Mexico School of Law, where I began teaching in the fall of 2019. When the coronavirus pandemic forced us all to turn our homes into classrooms this spring, the group’s conversations turned to the new reality that we were facing, which required us to do a balancing act that seemed impossible and had never been done before. As students or professors with children to raise, we inherently experience law school differently from our male and childless peers—and not in a good way. Even before the pandemic hit, the Moms of Law were at a disadvantage because we must divide our time and attention between the demands of law school and parenting. Thus, while the pandemic has created challenges for everyone involved in legal education, the inequitable impact on those raising young children has brought new meaning to the term “mommy track.”

Part I of this essay describes the mommy track experience and how the inequity that it creates has been exacerbated by the ongoing pandemic. In Part II, I share my own law school experience as a mom with a young child

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1. While the group is open to both moms and dads, only moms currently participate. Perhaps the group’s moniker deters the dads among us from joining. It is more likely, though, that the group’s composition reflects the reality that it is the moms among us who experience the struggles associated with balancing the demands of school and children in a way that dads often do not. That is not to say that there are no exceptions to the rule. Undoubtedly, there are. Nonetheless, unpaid labor in the home, including child care, has always disproportionately burdened mothers. See, e.g., Claire Cain Miller, *Young Men Embrace Gender Equality, but They Still Don’t Vacuum*, N.Y. TIMES, Feb. 12, 2020, at B5.

to raise, and Part III describes the struggles I face as a professor and stay-at-home mom as a forced consequence of the pandemic. Ultimately, I conclude that without the support Moms of Law need, the pandemic could force faculty and students alike out of legal education entirely.

### I. The Mommy Track Experience, Then and Now

The term “mommy track” was first used by Jennifer Kingson, who described the phenomenon in a 1988 New York Times article.<sup>2</sup> In essence, “mommy track” describes a career path that allows for work arrangements conducive to the demands of being a mother, but that also results in lost opportunities and hinders career advancement.<sup>3</sup> Although the article only touches on the negative impact on overall earning potential in one’s career, that is only one consequence of being on the “mommy track.”<sup>4</sup> For example, a mommy track might allow for a delayed review for promotion (or in academia, for tenure) to account for a mother’s time away from work. Although well-intentioned, such allowances can also make it more difficult to be promoted, because the metrics for hours worked or papers published—despite the extra time—are the same. More than thirty years after Kingson’s article, being forced onto the mommy track is a gender-equity issue that persists for yet another generation of women, and it is a problem that the coronavirus pandemic has only made worse.<sup>5</sup> The fallout could be tremendous.

In 2018, millennial women accounted for the vast majority of births in the United States.<sup>6</sup> Right now, in the midst of the pandemic, millennial mothers, already vulnerable from the Great Recession and the downturn in the economy, have young children to raise without the support that they need.

2. Jennifer A. Kingson, *Women in the Law Say Path is Limited by ‘Mommy Track’*, N.Y. TIMES, Aug. 8, 1988, at A1.
3. See generally *id.*; Rebecca Korzec, *Working on the “Mommy Track”: Motherhood and Women Lawyers*, 8 HASTINGS WOMEN’S L.J. 117, 127–31 (1997).
4. See Korzec, *supra* note 3, at 129 (observing that one of the economic costs of the “mommy track” is “the permanent, non-recoverable losses in lifetime earnings which have been estimated to average one-and-a-half percent for each year of absence”).
5. See, e.g., Joe Pinsker, *This Isn’t Sustainable for Working Parents*, THE ATLANTIC (July 9, 2020), <https://www.theatlantic.com/family/archive/2020/07/working-parents-careers-school-childcare/613936/>. The article describes the experience of one mom/lawyer whose family recently moved, and as a result, she is looking for a job near her new home. Because her main task these days, as result of the pandemic, is taking care of her two young children, she is concerned about whether she will be able to accept a job opportunity should it arise. Her husband, also a lawyer, “has mostly been going into the office, but when he works from home, he’s protective of his time” and is “barricaded” in his home office. The author explains that because of the pandemic, child care and schools are closed, and “many parents’ careers—particularly mothers’ careers—are getting deprioritized.”
6. Gretchen Livingston, *More Than A Million Millennials Are Becoming Moms Each Year*, PEW RES. CTR. (May 4, 2018), <https://www.pewresearch.org/fact-tank/2018/05/04/more-than-a-million-millennials-are-becoming-moms-each-year>.

Today’s moms are bearing the brunt of the pandemic, and that reality has significant long-term consequences. Instead of letting moms fall through the cracks as we often seem to, it is time to recognize that equality requires equity. In other words, equality requires recognition that not everyone is on the same playing field because of existing barriers and advantages. Moms of Law, for example, are not on the same playing field as our male and childless peers in the legal academy, and to remedy that reality, the powers that be must be willing to acknowledge that and work to address the imbalance.

In the world of legal education, the near impossibility of being both a stay-at-home mom—as a forced consequence of the pandemic—and a professor or law student has the potential to force moms out of legal education entirely. I offer my own experience as someone who has navigated law school as both a student and a professor with a young child to raise. In doing so, I hope to start a conversation about the challenges moms face in legal education, as intensified by the pandemic, with the goal of seeking equity and, at the very least, raising compassion and awareness.

## **II. My Experience as a Mom in Law School**

As the Great Recession kicked into full gear in 2008, I became the first person in my family to graduate from college. Despite my accomplishment, worry consumed me. All my life, I was told that education was the way to financial stability, yet when I graduated, so many of my college-educated peers could not find a job. Like other millennials at the time, I realized that earning a college degree was not necessarily a ticket to success despite the assurances of our baby boomer and GenX parents. For the first time in my life, I was scared about my future—in large part because it was not just about me anymore. Just one year earlier, at the age of twenty-one, I had become a mom. I had always endeavored to go to law school, but as a parent to an infant, I was worried that my dream was not realistic. On the other hand, jobs were scarce and those that were available did not pay very well. I felt stuck between the proverbial rock and a hard place.

Ultimately, I decided to go to law school because of what it meant for my family, especially my daughter. I wanted her to know that she did not hold me back from pursuing my goals. On the contrary, I wanted her to realize that because I had her, my dreams, goals, and accomplishments became so much more meaningful, and I became so much more motivated. I wanted her to realize—no matter how clichéd it sounds—that we can accomplish our goals, regardless of our backgrounds and even in the face of seemingly insurmountable obstacles. Not only did I want her to know this, I also wanted her to see it and help her live it.

It is always easier said than done, though, and I realized that quickly. Law school has a reputation for being stressful, anxiety-inducing, and mentally taxing. You begin to build (or ruin) your professional reputation the moment

you step into the physical law school.<sup>7</sup> The reading is dense, technical, and foreign, unlike anything you have ever experienced before. And it is relentless. You feel like you can never get ahead. You study constantly without knowing, until the end of the semester, where you stand academically or whether you are truly getting it. The demands of law school could easily occupy one's mind every moment of every day. That, of course, is the experience of students who are not also raising a young child. I did not have the option of dedicating that level of mental energy to law school.

Once I started law school, I felt as if all the things I “wanted” my daughter to “realize” someday sounded like fairy tales in my head. I had a toddler in need of raising, not realizations. I had very little help. The cost of child care was prohibitive, and I had no income, so I was not sure how I would pay for it. Fortunately, my university had received a grant to offer free child care to students for half an hour before a class started until half an hour after a class ended. As a part-time 1L student, I took four classes my first semester and five my second. While other students arrived at school early to have coffee with their professors, stayed late chatting about the readings that would be covered in class the following day, and studied obsessively between classes, I was standing in two very demanding worlds.

If there was more than a one-hour gap between classes (because 1L year, even as a part-time student, you do not get to choose class times), I had to pick up my daughter from day care. So, I went back and forth between the law school and day care a few times each day. My daughter spent a lot of time at the law school with me. She ran around in the forum space talking to professors and law students; she tried to sit quietly in a corner when I visited professors during office hours; and she attended meetings with me, sometimes interjecting with entertaining questions like, “Are there donuts again?” By the time I graduated, she knew every nook and cranny of the law school. I smile remembering that she could direct patrons to the federal or state statutes in the law library and explain the difference between the two as if that were a perfectly natural thing for a pre-K student to be able to do. Although I am confident that it was a mostly good experience for her, I cannot say the same about my experience, which felt markedly different.

Picking her up and taking her back to day care took so much time and stressed us both out—she often cried when I dropped her off, upset that she could not be with me all the time. That left me with no time to review readings between classes in case I was cold-called. Because trying to study between classes was impossible, the only studying I could do was at night, after squeezing in time with my daughter during the few hours left after classes each evening. I cannot count how many times I was up most of the night studying. Still, I cannot recall a time I completed all the reading I was supposed to get

7. This is particularly true at my alma mater, the University of New Mexico School of Law, which is the only law school in the state. Because of this, it plays a uniquely important role in New Mexico and produces many of the state's leaders, from governors and legislators to judges and justices.

through for the following day. The late-night pizzas that were occasionally delivered to my door after tearful talks with my parents (who lived hours away) were the only reason I remembered to eat some nights. The effects of an already stressful curriculum were compounded by the lack of sleep, the feeling that my daughter needed me more than I needed to be in school, and the mental load of remembering her needs and my assignments. It was unbearable at times. And that is just the tip of the iceberg.

Workshops? No. After-hour study groups? No way. Weekend cramming? Forget it. If my toddler was not welcome or if it just was not practical to bring her, I could not participate in whatever law school-related event, resource, or support that was supposed to be “available” to me. I soon realized that most of my peers were simply better situated to do better than I, so I resigned myself to surviving rather than excelling. My goal was simply to stand there on graduation day with my daughter in one hand and my law degree in the other.

Money was my other main concern. The only reason I was able to attend college at all was through a full academic scholarship at my state university as an undergraduate. Now, though, although I received some scholarships to attend law school, I was not on a full ride. Soon, I had no choice but to get a job and then another one. I still cannot believe that I had to find and somehow did find enough hours in the day to work two jobs, go to law school full time, and raise a toddler. Once I started working two jobs in my second year, full-time day care was no longer optional. Between classes, I was either tutoring students in legal research and writing or I was at the circulation desk at the law library assisting patrons. I had also been selected for my law school’s flagship journal, which was a bigger commitment than I had realized. In addition to working on others’ articles in preparation for publication, I spent an enormous amount of time writing my own article.<sup>8</sup> As a 3L, I snagged a law clerk position at a local litigation firm that paid enough so that I could afford to have only one job at a time.

That was the year I was in clinic, a mandatory course at the law school I attended. As if the loads I was carrying were not enough, I spent more time on my clinic cases than most students that semester. It just so happened that I was the only bilingual student in my clinic section, so I was assigned to all the Spanish-speaking clients. For one of those clients, what started out as a custody case in state court ended up a Hague Convention case that landed me and my client in federal district court. A fellow classmate, also a mom, watched my daughter for me at the law school more than once while I met with clients. My parents sat with my daughter in federal district court when I appeared in court for that case.

I graduated from law school, cum laude, in 2012. It was one of the proudest days of my life, and I feel quite strongly that my daughter earned that diploma just as much as I did.

8. Lysette P. Romero, *Why English-Only Notice to Spanish-Only Speakers is Not Enough: The Argument for Enhancing Procedural Due Process in New Mexico*, 41 N.M. L. REV. 603 (2011).

### III. My Experience as a Law Professor, Teaching from Home while Raising Children at Home . . . during a Pandemic

Eight years later, I find myself in the same halls and classrooms—not as a student, but as a professor. One might think that my experience would be much different, and it is in some ways. People who were once “Professor” to me are now my colleagues, and having worked in my state’s appellate courts for almost seven years, I feel quite at home in law now. And yet, while the experience is undoubtedly different, in so many ways, my struggles as a parent have not changed at all. I am still stretched too thin, especially now that my workload has increased because of the pandemic. I am far from alone.

In 2014, professors in one study reported working an average of sixty-one hours per week.<sup>9</sup> The time was split among twenty-four tasks required of professors—teaching-related tasks accounted for about forty percent of that time, while the rest of the time was spent primarily in meetings or on e-mails, research, and writing.<sup>10</sup> At the same time, the U.S. Bureau of Labor Statistics reported that stay-at-home moms spend an average of eighteen hours a week caring for children.<sup>11</sup> Combining the two jobs—as the pandemic has forced many to do—results in a seventy-nine-hour workweek, which is tantamount to working two full-time jobs. To put it plainly, these numbers clearly show that being a full-time professor and a full-time stay-at-home mom at the same time is unsustainable.

My daughter is thirteen now. She is beautiful, confident, and brilliant in every way. I also have a four-year-old son. The age gap reflects the time it took for me to feel I had accomplished enough in my career to continue growing my family. In August 2019, I uprooted my family to accept a visiting faculty position at my alma mater. I never imagined that a pandemic was looming. In my second semester of teaching, the pandemic hit and our school transitioned to remote learning. At the same time, day care centers and schools across the state closed.

These changes complicated an already tenuous balancing act. Without child care, my workday never ended. Like many others in education, I was teaching *from* home while teaching *at* home and managing a household. And every minute I had to make a decision about whether to spend time with my kids or spend time on work that had to get done. I completed my work-related tasks in short blocks of time whenever I could find them. I spent the little

9. Colleen Flaherty, *So Much to Do, So Little Time*, INSIDE HIGHER ED (Apr. 9, 2014), <https://www.insidehighered.com/news/2014/04/09/research-shows-professors-work-long-hours-and-spend-much-day-meetings>.

10. *Id.*

11. Jacob Galley, *Stay-at-home Mothers Through the Years*, U.S. BUREAU OF LABOR STATISTICS MONTHLY LABOR REV. (Sept. 2014), <https://www.bls.gov/opub/mlr/2014/beyond-bls/stay-at-home-mothers-through-the-years.htm>. Notably, the article only discusses the hours engaged in child care; it does not account for any of the other responsibilities a stay-at-home mother typically takes on, for example, cooking, cleaning, shopping for necessities, etc.

time I had on class preparation, including figuring out how to adapt to online instruction and learning how Zoom worked. When I did teach, I was typically alone in the house with my children, and toddlers do not really listen when you ask them not to interrupt you because you are doing something important. Even if they did, the reality is that I cannot simply leave my toddler to fend for himself for an hour and hope nothing bad happens to him.

The New York Times headline said it all: “Pandemic Could Scar a Generation of Working Mothers.”<sup>12</sup> Every few days, a nagging voice in my head tries to convince me that I have no choice but to quit my new position as an assistant professor of law, a position I did not dare dream of until recently. The guilt I feel as I repeatedly tell my son that I cannot do whatever he is asking me to do because I have to work is overwhelming. It feels as though I am always saying no, and his little face is stuck in a state of disappointment. No, I cannot bake cookies. No, I cannot read you a book right now. No, I cannot have a water gun fight. No, I cannot jump on the trampoline with you. No, I cannot. Please go play with your toys. Sure, you can watch another movie. I hear myself saying the same things over and over again. As hard as it is to admit, without help, I do not see a way to do everything that I must do as a mother, wife, and professor. But I silence that voice when I think back to my law school days, and in moments of perseverance, I tell myself that if there were enough hours in the day then, then there must be enough hours in the day now. I am not so sure. Here I am, again, looking at my toddler and living in two demanding worlds—reality and virtual reality.

I empathize with all the Moms of Law out there right now, professors and students alike, and wonder what the future has in store for us. I am scared, yet again, about the decisions I will have to make and the effects that they will have on my family and my career. I worry for the Moms of Law who are students, because I realize that while my experience as a law student was challenging, they might have it even tougher than I did. No matter how stressful it was, at least I could drop my toddler off at day care to attend class or go to work. They cannot. These moms will not have the one thing in law school that allowed me to barely keep my head above water. Like me, many of them will have to figure out how to be in class while simultaneously wrangling children. They could be required to take at least some exams at a particular time on a particular day, leaving them at a disadvantage when it comes to the metric that essentially decides where they stand academically. They might feel forced into pass-or-fail grading options to compensate for the time they do not have to spend studying. Or they might just give up, yielding to the nagging voice in their heads that tells them the time demands are impossible.

12. Patricia Cohen & Tiffany Hsu, *Pandemic Could Scar a Generation of Working Mothers*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/03/business/economy/coronavirus-working-women.html>.

#### **IV. Conclusion**

Teaching law has been a fantasy of mine since I was in law school. I love the classroom and my students, but things were less than ideal for Moms of Law without having to worry about a pandemic. The balancing act forced upon us now does not *seem* impossible, it *is* impossible. It could be the straw that breaks the camel's back. Some of us could be pushed out of legal education, while others may choose to continue to work ourselves into the ground, feeling inadequate in our professional lives and as mothers, all while having to accept that we have been mommy-tracked from the day we entered law school. Perhaps I am just one mom whose track is bottlenecked between a rock and a hard place, yet again, or perhaps I represent a whole generation of Moms of Law discouraged by society's refusal to confront the inequities that have placed us at a disadvantage in both the home and in our professional lives for so long. You may see me as just another millennial complaining about how hard we have it, but the truth is that I am standing with a generation of moms who have been told we can do it all, when all that really means is that we have been given permission to attempt the impossible.

The solution to the problem is beyond the scope of this essay, in part because it evades me. I wish that were not the case, and I invite your suggestions, perhaps over a glass of sangria—or two, and via Zoom, of course.