

WHERE WILL WOMEN LAWYERS BE IN 25 YEARS?*

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Susan Sturm¹ (moderator):

Barbara Black said in her unbelievably moving remarks that Columbia has opened up its institutional heart to women.² I thought that was a wonderful expression and, as a relative newcomer to Columbia, I have to agree. What does this mean? It means that women have become part of the cultural fabric of the Columbia Law School. We are not an accent. We are not an accessory. We are woven into the day-to-day fabric of the school. And this means being able both to participate in the old traditions and to reshape them to make some new traditions and then have that create opportunities for both men and women alike. So, in many ways, this panel is about extending that question to the legal profession as a whole. Are we a part of the profession's institutional heart? How has this changed? How will we be able to open up the possibility of answering that question for the profession as a whole in the same way that we are beginning to answer it here at Columbia?

So this is the panel first where we get to take stock of how the problems facing women have changed; second, where the openings are for institutional responses that respond to the problems facing women in the profession at this point; and finally, where we both would like to be and see ourselves in twenty-five years, in other words, where the profession is going.

We are privileged to have a diverse and extremely thoughtful and dynamic panel. Our goal for today is to hopefully extend the conversation we have been having among ourselves to you. I'm not going to do a lengthy biography, but we have Judith Reinhardt Thoyer, class of '65, a partner and on the management committee at Paul Weiss; Joan Guggenheimer, class of '79, co-general counsel at Citi-Group;³ Nancy Northup, class of '88, Director for the Democracy Program at the Brennan Center for Justice; and Frances Bivens, partner at Davis Polk & Wardwell.

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² Barbara Aronstein Black, Remarks from the 75th Anniversary Luncheon, 12 Colum. J. Gender & L. 313, 313 (2003).

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We'd like to have a conversation. What we plan to do is have our conversation in three parts, starting out with identifying the changes in the types of challenges confronting women in the legal profession, and we will all respond to that. Secondly, [we will consider] the institutional responses and pressures for change that we see in the world that we live in. And thirdly, we want to brainstorm about our visions and aspirations for the future and how that relates to the overall question about the future of the legal profession. We hope this will be a conversation.

So let's start with the question: How have the challenges facing women in the legal profession changed? We're going in reverse order of graduation for this question, so we are going to start with Judith Thoyer.

Judith Reinhardt Thoyer:

What she really meant is in order of age, age first. Since I am the senior on the panel, I have chosen to start with what it was like back then compared to now—what those issues might be. We're not going to dwell in the past, but it gives you some context to what might have happened in twenty-five years, because I go back at least that much, if not a bit longer. This part of the presentation is really from overt, to semisubtle, to subtle, and that will take you over twenty-five years. Let me give you a few examples of what I mean.

Overt—the example of clubs and what many of us who were in private practice encountered. I can see some recognition already. I can give you an example from the mid-70s. I was at a post-closing lunch up in Boston. I was with my clients, obviously, and there were lawyers from the bank, bankers, and so on. It was time for lunch and we proceeded to the club at the top of the bank building. I am with seventeen men, and the only woman is myself, and we go to the club. It has green leather chairs, dim lighting, cigar smoke. We parade through there, and we get into a room that has tulips on the wall. It's all sunny and pretty and the men say, "Oh. I've never been in this room before. What a nice room." They are blissfully unaware that we have all been brought to the ladies' dining room. There are seventeen men and myself, and we have now been brought to the ladies' dining room.

Another example, right in our own city, was at the University Club. I went with a senior partner at the time. I had to go up the back door. Not only did they finally let me in the back door, but they then put a blue rope, a velvet rope, across the staircase so that I wouldn't come down the front staircase. The senior partner said, "Please, please don't make a scene." And I wasn't going to make a scene. We didn't make scenes in those days, and we didn't know we wouldn't have been fired for making a scene. Maybe we would have been. At any event, we were still getting over things like etiquette. These things are silly now, but we were worried about things like coats, elevators. Could a man help you with your coat? What do you do? What don't you do? The elevator scene will be familiar to anybody of a

certain age. That is, you're in the back of the elevator and all the men are in the front, and they all think they have to step aside for you to go through first. It's all a bit complicated and it's all laughable now, but to those of us who were serious about our careers, these things were important, because we had to know how to deal with incidents like that.

Another, back in the overt category, is language. There were many men who were really uncomfortable using certain language in front of women. Maybe there are still men today who feel that way. Again, it sounds silly, but it's important. If men speak a certain way, and they feel that can't speak that way in front of you, they don't want you around. This was a big, big issue to us back then. This is an incident from the 70s. My firm represented the Municipal Assistance Corporation⁴ and, again, I was there meeting all men. One of the politicians there said something was a "damn shame. Oh! Excuse me, Ms. Thoyer, I am so sorry." The Chairman of the Board, who was then former ambassador Felix Rohatyn,⁵ turned and said, "Oh shit. You don't have to worry about her." I was always grateful for him. He got us over a very awkward moment.

Let me go to what I call "almost subtle." I'll give you an example of what I think is almost subtle. It sounds trivial, but in the life of women lawyers in private law firms, this was important. Picture the lunch room, tables for four—this was in the firm's lunch room. There are two women at one table, three men at the other. In comes a male associate. He says, "Hello ladies," looks at the table, and sits down with the men. Now the tables are two women here, four men there. In comes another male associate, comes over to the ladies table—remember there's a space there and no space at the other table—and so they assume, "We're all colleagues," that they were all going to sit down together. He said, "May I take this chair?" So there we are, two at this table and five at that table. Well, I had heard that from one of the younger associates—this was after I was partner—and that was really a catalyst for action because almost subtle stuff is really important.

Then I think, I'll just tell one more and then I'll pass it on to the panel. I don't know if this is almost subtle or what, but the progression of women and families and law firms has been very dramatic in the twenty-five years. The first woman in my law firm to get pregnant—this was in the 60s, oh, about 1968—she had to ask permission to take some time off, and they said, "Uh, well, okay." Then I became pregnant soon after that. I guess I assumed it was okay, but there was no policy, so you had to think about things like that. I learned very quickly. I came back very quickly, and I never discuss my family—ever, ever, ever. Because I had what I call the "friends as enemy" type person who was a big career killer in those days. These were men who meant well, but who worried more about my child

⁴ Municipal Assistance Corporation for the City of New York.

⁵ Former U.S. Ambassador to France.

than I did. They worried, "Could I travel? Could I stay late?" Well, if they were worrying about that, then I didn't have the opportunity. I think maybe there is a big change today. I think maybe the friends of women with families are genuine friends.

Let me just stop at this point you know, from overt to semi-subtle, to subtle, and maybe the subtle issues are the ones we should be talking about today.

Joan Guggenheimer:

I think I could just pick up with "subtle," Judith, because I escaped some of the overt—just by virtue of being class of '79 rather than '65—that you were subjected to. Having said that, though I worked in a law firm for a few years, in 1985 I joined a financial services company, and financial services companies at that time were not known for—well, were known for extremely male, very macho behavior by the business people. So the environment was really more a function of the business environment than the environment for lawyers. I will tell you though, that in the financial service industry, the men still wait for the women in the elevator, and I have gotten used to it. So when I am in an elevator with men and they don't part for me to leave, I sometimes find myself stumbling over them. I don't know why, but they do still do that.

The language—You know what? I did still have similar experiences with respect to language, and it is interesting to look back and think what that was about. The one that comes to mind for me was an occasion when I was in the office of a senior executive. Another real old timer—if I mentioned his name most people who know financial services would know this gentleman—came in and rattled off at break neck speed, like bullet fire, what some trader had done on the trading floor, very, very fast and somewhere in the middle was the word "mother" and I won't say the other part, and then he realized I was sitting there and he turned to me and said "Oh, I'm sorry." And I said, "Don't worry. That is the only word I understood of everything you just said." But the moral of that story, it's a bit similar to Judith's story, you know, someone chiming in saying, "You don't have to worry about her." I'm going to draw what may seem like an odd connection to one of the points in the Catalyst study⁶—that a key strategy for success is developing a style which partners are comfortable with in a law firm. Part of the difficulty arises from a male stereotype of what women are comfortable with rather than what they are actually comfortable with. By making comments like that and by having women around who are tolerant of bad language sometimes—and honestly, it's either good or it's bad, and it's professional or it's not professional, and it doesn't have much to do with whether it's expressed in front of men or in

⁶ Catalyst, *Making Change: Advancing Women in Law Firms* (2002).

front of women—the gender, you know, my gender, one’s gender, becomes less of a relevant point in the interaction.

To the “subtle” point—something that really resonated with me, to those of you who were in the prior section, was the Ruth/Sandra story.⁷ My co-general counsel is Stephanie Mudich, also a woman. I cannot tell you how many times I’m called Stephanie and she is called Joan by men who have known us. I’ve been there seventeen years; she’s been there ten years. They’ve known us for years. I don’t know what that is. If somebody here can figure that out, let me know afterwards, because I don’t know what it is, but I do know there are men in similar positions and this doesn’t happen.

Nancy Northup:

Well, Susan, I also had a conversation with my ten-year-old daughter about these proceedings, and her response was, “Mom, you worked late two nights this week. You went to Washington this Wednesday. I can’t believe you’re doing this.” And that comment, I think, is going to tie into one theme on this panel today (and also makes me wonder about child-care at this conference, which we’ll think about for the 100th anniversary). I also was thinking about what Judge Uviller⁸ said at the last panel,⁹ that one of the major challenges is the whole work/family debate. Judith said maybe there’s been a big change around pregnancy issues, and I would say we are still definitely in the semi-overt discrimination stage. When I was having my second child, I was a prosecutor at the time and I always kept my pregnancies secret for as long as possible. I didn’t want defense counsel, in the case of my first pregnancy, to take advantage of it and try to get an adjournment of a trial to remove me from what had been a three year investigation and was going to be a lengthy trial. The second time, it was frankly just concern that I might not get a promotion if it was known that I was pregnant. As it turned out, when I was about five months pregnant, and still sneaking around in my regular clothes, they said, “We’d like you to be Deputy Chief of Appeals.” I thought, “How am I going to handle this, because I know that I’m going out on maternity leave in a couple of months.” So I went to the person in charge and I said, “Listen, that’s so great. I’d like to be Deputy Chief of Appeals. You should know that I’m pregnant and that shouldn’t change anyone’s decision about this.” So I did take that pregnancy leave. There was a change in who was the decision-maker, and I had to go meet with this new person, while I’m on pregnancy leave, about whether I’m going to become Deputy Chief of Appeals. He sits me down, and he is well-meaning. He is not what we

⁷ Anita Blumstein Brody et al., *Women on the Bench*, 12 Colum. J. Gender & L. 361, 374 (2003).

⁸ Hon. Rena Katz Uviller, New York Supreme Court Judge.

⁹ Brody et al., *supra* note 7, at 382.

would have thought of in the old days as a hostile person. He probably thought of himself as a kind of progressive, maybe even as a feminist, guy. He said to me, "This is a really hard job, very demanding, lots of briefs to file in the Second Circuit." I give my whole spiel, about what a hard worker I am. Then he says, "But you know, when my wife had our second child, I know that she wanted to slow down, and you know you may too." So even then—this was 1994—I was still struggling with this behavior. Now he happened to articulate it, which gave me a chance to say, "Not the case. I'm going to work very hard and, you know what, I need the raise." If he'd kept it to himself, but just thought it, I wouldn't have had a chance to articulate it and be aggressive about the points I wanted to make. A big challenge that we face today, and are going to be facing the next twenty-five years, is not just the reality of the balance between work and lawyering, but also whether or not certain stereotypes are projected on us of whether we can balance it all.

Frances E. Bivens:

Well, I think I'm going to pick up on the family theme, because I think there have been interesting changes and significant changes over the past twenty, ten, and even five years. I just recently made partner about a year and a half ago, and it was always important to me during the years that I was a senior associate—I was married but I did not have children at that point—I did not want people to think that I was intending to be childless forever. I actually did not want to make partner with the idea that somehow or another I was foregoing a family in exchange for my career. I must have felt comfortable enough to voice that view and my position fairly loudly, and I'm sure that women who preceded me would not have felt that comfortable being that public and discussing that issue with male colleagues. But that said, one other interesting observation is that I made partner in a class of eight—four of us were women, four of us were men, which is another significant change—all four of the women were childless at that time and three of the four of us have since had our children. So we certainly all waited until the partnership decision was made, I'm sure with the feeling that if we had actually had the children while we were associates there might have been some impact on our promotion. So I think things are changing, and certainly people are more comfortable talking about the issues, but I don't think that we are entirely where we want to be as an end game. The other change that I have seen during my time at my firm is that part-time has really become a real option, but certainly wasn't a real option for women, even when I graduated from law school. I certainly saw, as a junior associate, a number of women leave the practice of law, or certainly leave our firm, when they decided to have children. I happily can now say that we have very significant numbers of women working part-time in all departments of the firm. The women who were the real leaders in that were very terrific, strong lawyers, who proved to the firm that this really could be

done. Very quickly other women have followed in their shoes, or in their footsteps, so that's been a nice change.

Judith Reinhardt Thoyer:

Frances, can I ask a question? Are these women on partnership track?

Frances E. Bivens:

We have two or three women—now partners—who worked part-time for some period of time in their career as associates, came back full-time, and made partner. So I think the answer is certainly that partnership is not out of the question after women work part-time.

Judith Reinhardt Thoyer:

The reason I ask—I think that's terrific—but I think it is a rosier view of the world than certainly I observe, I guess, even in my own firm, but also in other places. I think we have a way to go. I think the flex-time arrangements are working very well, but after all, you have to get a certain amount of work done. There are different ways of getting it done and there are different ways of doing flex-time arrangements, but I think it's a while before the business world and the legal world really understand that you can do that and become a partner, at least in the model that we have today.

Frances E. Bivens:

I think that law firms have dealt more substantially with the part-time issue as to associates. The issue of part-time partners introduces a whole host of other issues that have yet to be fully developed.

Susan Sturm:

I think that actually is a nice segue into our second round of questions and hopefully you will then feel free to join in. What we've been hearing from our panelists is that the types of challenges are more subtle, problems which I refer to as second generation type problems. These are subtle dynamics involving cognitive bias, stereotyping, or patterns of interaction—who sits where, who gets what case, who gets the “royal jelly” of training and access to good clients, work/family issues, structural issues about how much to value time as a measure of success. So all of these are questions which aren't easily amenable to a rule stating, “stop excluding women,” the way first generation problems are. These types of issues require more institutional responses, more structural responses, more problem-solving responses on the part of law firms. Sometimes there is pressure for change, not only from within the law firm, but also from constituencies outside the law firm. That takes us to our next set of questions, which is what I think is really the heart of our panel. How have the legal organizations of our panelists, and those they've observed,

responded to address these kinds of pressures, these kinds of subtle biases? Where are the pressures and triggers for change coming from? So Nancy, do you want to start with that question?

Nancy Northup:

Sure. I'm starting because, having worked in both government and now as a public interest lawyer, I work in sectors where there are especially likely to be younger women, sometimes more women than men. About forty-one percent of legal aid lawyers and public defenders are women, and women are well-represented in prosecutor's offices as well.¹⁰ I think the difference there has been that we can, at times, be on the vanguard of change. I noticed it when I was at the U.S. Attorney's Office from 1989 to 1996. When I first got there, the notion that a federal prosecutor in the U.S. Attorney's Office in the Southern District of New York could be part-time was really not entertained as a good idea. But what happened, because they had really great women prosecutors who pushed the envelope, is that they did begin to allow women to go four days a week. When they went to trial and when they were preparing for trial, of course they went back to full time plus, and overdrive, and it worked. When you have something that you can try and be flexible, and it can work, it can be shown that you can do it. I do the same thing in my office, as a manager. I try to make sure that if there are requests about flexibility for family time and we can still get the work done, I always try to accommodate it. I had a man with a long commute from New Jersey who had two kids and wanted to work at home two days a week. He did it for five years. He was fantastic. I never noticed when he wasn't in the office, and so I think the point is that, where we can be flexible, we ought to try to do it and it's going to make a tremendous difference in the future.

Susan Sturm:

So, we've heard about responses to subtle bias in a context where there is, in some ways, more openness to changing the organization's structure: in the public interest context and in the U.S. Attorney's Office. The question is, "What lessons can we take from this to the private firm context?" Judith, do you have anything to say about that?

Judith Reinhardt Thoyer:

I do. I think one thing we can't lose sight of is that this isn't applicable to all women and not every woman has a concern over family and work balance. It is an issue of great importance, and we'll get back to it, but I think it is very important to have equal opportunities within the law

¹⁰ American Bar Association Commission on Women in the Profession, *A Current Glance at Women in the Law* 3, available at <http://www.abanet.org/women/glance.pdf> (last visited May 26, 2003).

firm for people who want to just adapt the “male” model and just do it the way it’s always been done. The institution has to interfere or do something, because if you just let people act the way people act, the women who want to just make it in the old-fashioned male model won’t make it. I go back to my life, for example. I go back to deals that are put together in the men’s room. I go back to firm outings where the golf games are put together in foursomes of men, and I go back to teams where people are invited out to dinner and somehow the woman on the team is ignored. I think it’s very important.

What I tried to do in my own place, when it became obvious to me that there were these subtle barriers, is to get one of the most senior, respected men to join me and we created a consciousness-raising session. This shows you I go back to the early 70s and consciousness-raising groups and I always thought it was always a wonderful thing for me and for my life. We did that with the partners. We got a little film together, and we created hypothetical—or allegedly hypothetical—incidents. When it was all over, I revealed to my partners that, although the names were disguised, not one of those incidents was hypothetical and it did start people thinking about it.

Susan Sturm:

Judith, in our discussion over the phone, one of the things that you talked about was a shift in your own understanding about part-time work. I don’t know if you want to share that with the group.

Judith Reinhardt Thoyer:

I guess by immediately shifting the subject away from part-time I gave myself away on that one. I have a lot of trouble with it. I know it has to be and we just have to be flexible and find ways to do it. I must say it is a little harder for me than for younger people. I think, truthfully, a lot of the younger male partners are more open and comfortable with flex-time arrangements than perhaps I am.

Susan Sturm:

Joan brings, from the firm and in-house context, a similar set of concerns and also a set of opportunities in terms of the role that in-house counsel plays in prompting change in law firms. So, what are you seeing as the pressures and the openings for this kind of change?

Joan Guggenheimer:

I think that there’s been a huge change which has mirrored changes in corporate attitudes. I think that the legal department has been out ahead of the rest of, at least, the financial services companies. As I’ve told my colleagues, I think as a result of a historical lack of opportunities for women at law firms, corporate law departments had great opportunities, as probably

have government and public interest, to hire hugely talented women who might have, in other circumstances, stayed at law firms. But in terms of some of the impetus for change, I would say first of all, to put this in some historical context, I can still remember when, at Smith Barney, the company I originally joined which was a little, retail, privately-owned brokerage firm, we received our first hostile environment complaint. This was at a time, mid-80s, when practically no one really knew that it was a cause of action, but it was; clearly with hindsight that's what it was. One of the really, really nice guys in the legal department drafted a response to it and somebody asked me to look at it. The response was sort of "if you can't take the heat get out of the kitchen," and this was a really nice guy that drafted it, but there was just really no concept of that being something that's important. Although, as somebody who spends my time defending corporate America, I usually don't go around saying plaintiff's lawyers are great, I have to say that I do think that litigation has played a significant role in changing the way that businesses and corporate America respond to a lot of these issues. It may be unfortunate, but it is clearly true that in an environment in which what really counts is the bottom line, when there's a great cost to sticking to old attitudes, people become much more open to a new way of doing things. So, I do think that litigation and then public pressure, the newspapers—what we always call the "Wall Street Journal factor"—has played a large role. I identified a lot with the reference in the prior panel to "traditional habits of thought."¹¹ Again, in the best of all possible worlds, one would want to be able to persuade others of the right way of thinking, and then say that the right conduct will follow. Again, that's just not realistic. That's just not going to happen. So, I think that what has happened, partly under the threat of litigation or bad publicity, is that there have been institutional reforms throughout corporations and law firms that have forced changed conduct and that the changed conduct in and of itself has generated different ways of thinking. Just experientially. Just by virtue of the fact that there are more women in the workplace. Just by virtue of the fact that people are challenged in terms of their traditional ways of decision-making. I think what's gone along with that is a lot of training. Judith talked a little bit about the consciousness-raising. We went through a period in our company where every single manager went through a really terrific diversity training course that was provided by an outside consultant and it kind of focused on helping you understand for yourself the screens you have when you talk to other people. The difference between what's there and what you're seeing, what they're saying and what you're hearing. Shortly after that, I interviewed two lawyers for a position. They were both women. One was a woman of color and one was white. Afterwards, I thought, "Well, I really feel more comfortable with the Caucasian woman, and why is that?" I thought about it and looked inside myself and I found

¹¹ Brody et al., *supra* note 7, at 374.

sort of an odd answer, which is that it had nothing to do with race. It had to do with the fact that one had a family and children and we were able to find that common personal ground to talk about, and the other was single and we didn't have that. But that was a really valuable experience for me, and I think it was for others who were trained in focusing people inward on thinking about how they make decisions. And I do believe that without forcing people to question the decision-making that they do, whether it be for bad reasons—and most of the time it's not—mostly it's because people are risk-adverse and they think that making the same choices they always made is a safer thing to do than making a choice that's different and unless they are really forced to confront that, they won't change. I think there've been a lot of institutional-type reforms throughout corporations and at law firms that have forced people to challenge the way they make decisions and that has been a real positive.

Susan Sturm:

It also seems like these changes are part of a more general shift in legal organizations towards recognizing that you actually have to manage your firms. It becomes much more possible to think about these types of specifically-targeted changes when legal organizations more generally are recognizing that human resource issues are really important to retaining staff, to meeting bottom line concerns. So, this seems like it's also part of a broader trend. Frances, did you want to weigh in on this issue?

Frances E. Bivens:

Sure. It's interesting for me to think about how different my experience is from what Judith's experience must have been a number of years ago. I think the institutions have changed most significantly because of women who succeeded in spite of the previous institutional barriers. Both the women who have made partner or women who left law firms and went in-house and are now clients of law firms have very significantly changed things for women in law firms today. In contrast to Judith, who was the first woman partner at her firm, I was the thirtieth woman partner at my firm. It's a big difference. It really is significant. My partnership class was 50/50 male/female. My very closest group of friends includes two other women who are partners in major New York law firms, so I have a support network that is, I'm sure, very different than what Judith had when she was at the point in her career where I am today. The issue of client development is a very significant issue as well, because I think even within the law firm structure and within the partnership, the power really comes from the ability to go out and get business. I think women traditionally have been at a disadvantage in that area. That really is changing when, or because, the in-house legal departments are now populated with significant numbers of women. A story that I think exemplifies this nicely is a story about a woman at my firm who did not make partner in the normal course of things,

but stayed on of counsel. A number of years after she was first considered for partner, her name came up again, and it came up because her friends who had come up with her as an associate and had left the law firm had gone into in-house positions and had risen to very significant positions—general counsel positions, heads of the litigation department—and she suddenly had this “old girls” network of friends who are now clients. She made partner, in part, I think, because of that and, at the reception in honor of her, one of the male senior partners’ wives came up to her and said “You know I hear that you are very good at getting business. Do you play golf? What is it? Do you belong to these clubs?” And she turned to her and she said, “I don’t do any of that. These are my friends. I call my friends up and I say I’ve got bagels, my kids are here, bring your kids, come over, and we’ll sit around the kitchen.”

Joan Guggenheimer:

We nursed our babies together honestly.

Frances E. Bivens:

That is a model for a woman lawyer. I know that I’m not going to be able to get season tickets to the Rangers or whatever, and really do the things that some of my male colleagues do to get business, but I can call up my friends and get bagels and it makes it a much more accessible, doable task.

Susan Sturm:

I want to open it up both to the panelists and to the audience to join the conversation with either questions or your own examples of openings, places where you see room for pushing forward around some of these subtle patterns, and also their implications for the legal profession as a whole.

Audience Member One:

I had a question for those of you who do have children, specifically about the child-care arrangements and whether it had to do with having family in town, a husband who helps, a day nanny, a night nanny, a weekend nanny, or how you make it. I just say that because at my first firm I worked for in New York, a female partner was held up as a model for the female associates at the firm because she had three children and that was how she did it, which made quite an impression on the young female associates at the time. I was just wondering if that’s what it takes or how you are able to do it?

Joan Guggenheimer:

Well, we all have children. Any one of us can start.

Frances E. Bivens:

My observation of watching other people at my firm is that women do all kinds of different things to cobble together childcare and no one does it the same as anyone else. There are women at my firm who have stay-at-home husbands, but there are also women who have husbands who are partners at law firms, or investment bankers, or even prosecutors, or whatever it is that they do. It's a very personal decision in terms of what people choose to do for childcare. I don't know if there's any magic answer. I have a nanny. [Laughter.]

Nancy Northup:

I was going to say that my situation is more along the lines of behind every woman there might be a guy at home picking up more of the childcare. My husband is a writer, and he meets that school bus at 3:30 every day, and that has made all the difference in my career.

Joan Guggenheimer:

I don't think my husband ever met the school bus, but he does try to help when he can. I have two children. They are fifteen and eighteen. The eighteen-year-old is now off to college and the fifteen-year-old wishes I was someplace else, so he thinks he doesn't need me anymore. We know better. I've had housekeepers, nannies, the usual assortment. Two observations I'd make. One, for me personally, I left the law firm when I had an eighteen-month-old and I knew I wanted to have another child. I left, in part, because I didn't want to work that way and, actually, the timing worked out well for me because for a few years, the in-house job actually was less demanding in terms of time. Now it's twice as demanding, but my children aren't, so that it somehow worked out that way through good fortune. The other thing I'd say though—I think it's a mistake that I sometimes see younger colleagues make that I try and help them think through—is that every person has to decide what their needs and desires are with respect to family time, and then figure out how to do that. Too often I hear women who work for me say, "I really have to leave tonight because such and such is happening and if I don't, then my kids will never speak to me again or something bad will happen." My response to that is always that you don't have to say I have to leave because if I don't go to the school play my child won't talk to me. You can say I have to leave because if I don't go to the school play I'll feel really sad, because I had children in part to share that with them and that's a hard thing. It's easy to get sucked into this sort of psychology that the only justification you can give for leaving your office job is if your at-home job demands it from you. But you know, for many people, and I include myself in that, home very often is a job but it's also a pleasure. We're entitled and we're allowed to say that we want to do that because we want to do it.

Judith Reinhardt Thoyer:

On the other side, when my son was in school, he would have a field trip and I never go on field trips—never did—but he said, “Oh no. All the other mommies are going to be there and you should be there too.” So I said, “All right,” and I took Joan’s—I didn’t know Joan then—but I took her advice, and I’m going to this field trip. There were all these little children, and I’m not really particularly comfortable around all these little children. Two mothers show up—each of us was a working mother—not one of the non-working mothers show up to this field trip. So halfway through the museum trip, the teacher, seeing I was just really not all that comfortable, told me it was okay, and I just ran back to my job. So these things are really very, very personal, about how you take care of your children.

Susan Sturm:

I could just add one comment, which is that I have a partner who really likes parenting and also likes his job, and one of the things that I’m seeing is that these issues are really becoming defined as family issues. Not to say that women still don’t bear more of this, but one of the shifts here is to think about how you change the structures of, for example, determining who is successful so that people on a continuum can actually make judgments about how they want to strike that balance, so it will be possible for women and men to be parents. One of the things that one of our panelists said in our earlier discussion was that there’s no one magic way to structure lawyers’ work. You could actually staff cases differently. You could be thinking about billable hours not just for each individual associate, but for classes of people and then give some range of choice. This is kind of thinking forward, but the question of making these individual choices, they’re taking place in an institutional context. I think you’re seeing men concerned about these issues as well as women—my law student who brought his baby to my office the other day and we had a meeting in my home with the baby there so that we could actually meet—when we have that flexibility so that we can create choices. It’s when men as well as women are really thinking about the importance of structuring institutions that permit these types of choices to be made that I think we’re going to see more fundamental institutional change.

Audience Member Two:

On the subject of where will women lawyers be in twenty-five years, the law firm model. I’m class of ‘77 and we recently had our twenty-fifth reunion. I was struck by a booklet that came out associated with the reunion, how few women were partners in law firms. My own perception—I am a partner in a law firm—is that, particularly in a time of economic downturn, where rainmaking and the glass ceiling are continuing

issues for women, I'm very comforted by Frances's experience, but I am gravely concerned about what I perceive to be a problem with increasing numbers of women graduating from law school and something is happening. Women are not becoming partners in law firms, or they weren't from the class of '77. So I'd like your thoughts on where you think women are going to be in twenty-five years in law firms.

Joan Guggenheimer:

I'm going to answer that partly now from a client perspective, because although I'm a lawyer, I really spend more of my time being a client of law firms than I do actually being a lawyer myself. It's interesting the way that you posed the question because, we've been talking about this a little amongst ourselves, and on this question of where will women be in twenty-five years, it's really tied to the question of where will the practice of law be in twenty-five years. What's going to happen with the business itself and the business model? One of the observations that I made to my colleagues is that it seems to me, looking at this now through a client's telescope, that over the years that I've been a lawyer, there's been a change in the practice of law at law firms. At large law firms, it's gone from a much more, if I could use the word, "gentlemanly" practice, where there were very strong institutional allegiances, and there were the guys that belonged to the same club and that was very much a driving force. It's become something that's much more competitive. It's much more transactional. It's much more focused on the particular lawyer or the particular partner rather than the institution itself. And I don't think that will change. I think it is something that I see as a continuing trend. What that says to me is that when the environment's more competitive, one possibility is that that's an opportunity. Because one could say that perhaps that's a better environment for a real meritocracy and that clients like myself are just looking for the person who can get the job done best. If law schools are turning out fifty percent women and some firm is going to ignore that fifty percent and just find the best in the other half, they're just not going to cut it. Having said that, there's another side to the coin, which my colleagues raised with me. Maybe Judith, you want to talk about that.

Judith Reinhardt Thoyer:

Right. When people first talk about what's happened to the law practice I think they sort of shudder because, as Joan said, it went from this gentlemanly sort of thing to this highly competitive situation. The fact that that's an opportunity, I agree with. But what has to happen in firms is to make sure that the women are trained well enough to use that opportunity when it's available to them. At least in a downturn, where in effect there may be some excess talent in law firms, particularly on the business side. Again, if you don't interfere, people go back to what they're comfortable with, and since most of the partners are men, they will staff without

thinking about it, since the pool is there, and people aren't dying of overwork in a down economy, they will just pick the guys to get on the matters and they'll get the training. You have to interfere with that and make sure that there are women getting the training, so that they can be competitive in the future.

Nancy Northup:

Okay, I have a question for the audience. We have women lawyers here probably going back forty years. There's a lot of disgruntlement about the way that law firms operate, and what I keep thinking about is in the days when Jewish lawyers were excluded from some of the mainline firms, they formed their own firms. Kristen Booth Glenn talked this morning about having formed her own feminist law firm in the 70s when she had finished clerking. I'm wondering, with all these wonderful Columbia Law School graduates out there, and other leading law schools, why there haven't been not just small women's firms, but why not a big, dominant—many big, dominant—female law firms setting up their own institutions the way they want them to be?

[Someone in audience, unidentified]: They're called clients!

Frances E. Bivens:

I think it's very tied to what we were talking about just a minute ago. It all comes down to how women are perceived by the clients. In the more competitive environment, it's going to be very important that women are perceived as the best choice. If you're going to be competing, it may not be the old gentleman's club, but if it's a meritocracy, you need women to be perceived as the right choice. We have seen some significant change in that direction, and there have been a number of women in high profile positions that have helped women generally. I think of Mary Jo White as a perfect example of that. After Mary Jo White was U.S. Attorney,¹² I don't think any woman needs to prove that a woman can be tough. She was really a tremendous role model and probably changed people's views of what women are capable of. But that is a major issue that women continue to face. I know personally, and this is just a subtle example of this, that I am very often told by clients and other people that I just am so young to be a partner at Davis Polk. Well, I'm thirty-six years old, and there are plenty of partners who are thirty-one and thirty-two, and I'm sure that my male colleagues are not hearing the same thing. And it's made an impact on me, and I'm sure it's just a subtle example of other perceptions that are out there.

¹² Former U.S. Attorney, currently at Debevoise & Plimpton.

Joan Guggenheimer:

But Frances, I understand all that, and I've been there too. When I was first hired at Smith Barney, the then-general counsel's comment to me in my interview was that I seemed too nice to be a litigator. Like, too nice a person. I think after a while people didn't think I was that nice—I mean, I am pretty nice, [laughter] but I was a good litigator too. That's sort of akin to seeming young and that kind of thing. Going back to the Catalyst study¹³—again where the other highly-rated factor there was taking the initiative and getting assignments, meaning high profile assignments—and in an environment like this, that means assignments with the clients. I think the strategy is getting in front of the clients and making the connection yourself, which may involve pushing people around a little at your institution. Particularly in litigation, which is your area, your client is really the general counsel. There are a lot of women general counsel out there. I also think that when people are in trouble they are sort of receptive to anybody who can help them.

Susan Sturm:

In the Catalyst study, one of the findings was that people looked to clients' attitudes as the explanation for women's underparticipation, but when you actually interview the clients, they weren't the ones who had the problem.¹⁴ It was more some lawyers' perception of how the clients were going to respond, than the clients' stated attitudes. [Pointing out a question] yes.

Audience Member Three:

If I look ahead twenty-five years, or even ten years, I see the deconstruction of the law firm as we know it today because there are two forces that we haven't mentioned: one of them technology, and one of them the new push for multi-jurisdictional practice. Where a lawyer can serve a client through technology and the client might not care and the partners might not care where that particular lawyer is with his or her computer. I see that as a tremendous change. I think it's coming. I think it's here, and I think it will be approved by the American Bar Association and will dramatically change the way law is practiced. What impact that will have on some of the issues that the panel has been discussing remains to be seen. But I think that we have to consider the changing ways in which we're practicing law, and certainly that will accelerate within the next decade. I think the profession will become very different.

¹³ Catalyst, *supra* note 6.

¹⁴ *Id.*

Judith Reinhardt Thoyer:

On technology, we did talk about it, I'm glad you reminded us, but, at least for now, it's a little bit of a two-edged sword. Some are benefiting tremendously, as Joan mentioned, one of her lawyers was not in the office and you didn't even notice it. But, on the other hand, I think some of us are on-call 24/7 because those little Blackberries buzz through the night.

Audience Member Four:

I just wanted to respond to what Nancy Northup asked. I think that a lot of the problem hasn't been addressed so far in the room, because as you get to your fifth or sixth year, and you're very discouraged by the environment in which you find yourself, and/or your practice area starts to have a downturn and there's going to be a winnowing, you have this great option: you can stay home with your children, which is something you'd really like to do anyway in many cases, and you can just make a different decision that's completely socially acceptable and easily understood. You can kind of stop and opt out, and I think that a lot of the reason you're not seeing these great female law firms form is because probably eighty percent of the women who've been here since it was possible to come aren't in this room. They left the profession altogether. I think that's what tends to happen.

Audience Member Five:

I wanted to comment about the issue of client-building for women. I guess it gets back to what Nancy said, and, to an effect, to what Frances said. I spent most of my career in-house, and therefore I am a purchaser of legal services on several continents: North America, Asia, and Latin America. It's been rather interesting dealing with women in some other environments. I think that women lawyers who are selling legal services—in other words, in law firms—need to understand that golf is about trust. I don't play golf. But men playing golf and building client relationships are building a relationship. There are very many ways for women to do that with their clients. I think Frances speaks to that issue. I have been approached as somebody who has business to give by many, many people looking for my business, and it's been very interesting for me to observe over twenty years—I'm class of '81—how different people have done it. One of the things that happens with young women—and probably with young men, but I get approached more by young women than young men—is the eagerness to impress and tell you what I've done, and bottom line is if you're three years out of law school, I'm probably not going to hire you for my most important matter. But if we keep showing up at the same events and at Columbia alumni activities—or a lot of times women from law firms will go to American Corporate Counsel Association meetings—I'll get to know who you are and what you do and what your competencies are. Over that, we will create our moral equivalent of a golf

game. I think that women in this generation need to understand that that's how you build clients, that's how you build client relationships, and as somebody who, I have to say I've only done this in the last few years for a variety of reasons, I think that relying on the alumni relationships that are built in Columbia is a resource that, as a young lawyer, I did far too little. I would love to encourage all of the young lawyers here to be doing that, not just waiting until you graduate from the Law School, but starting right here as students, and feeling free to go to the alumni office and say, "Gee, I'm thinking about going into this kind of practice. Is there an alum out there I could talk to?" because we'd all be happy to do that.

Susan Sturm:

One of the things that I think is so interesting about this comment is that you could generalize from it. What you're saying is you still have to meet these same criteria, which is that you have to be able to generate business. But we're expanding our ideas of how one can go about doing that. You don't only do it in the one or two or five ways that you saw being done in a different generation. It's kind of getting behind the concept of how you build trust, how you establish relationships, and then working with what you have, which probably means that people are going to do this quite differently. One might not think that this is an issue in the public interest world, but Nancy suggested that, in fact, it is. Why is it that the people at the top of many public interest organizations still tend to be men? Nancy, I was wondering if you just wanted to say something about that, and also comment on how the leadership might shift in relation to this whole issue of being able to generate money, and generate resources?

Nancy Northup:

The answer's the same. Anybody who heads up a nonprofit needs to raise the money to run the nonprofit, and you need to be a good fundraiser. And, again, as more women are partners in law firms [audience laughter], and in positions of power at corporations, I think that also is going to make it easier through the informal networks and the building of trust. People are not going to invest their money in your charity unless they have trust in it. Women have to be good at that, and they have to understand that it's about relationships. So it's the same point in the nonprofit world as well.

Audience Member Six:

I'd like to go back to the issue of child-care. It was an issue for Judy and me years and years ago. You did it ad hoc. Later, as in-house counsel with a law firm, I put together emergency day care. My question is, structurally, what are we as women lawyers going to do to help our—excuse the expression—sisters, who do not have as much money as the partners at law firms and really have to worry about competent day

care? I use the term competent—certainly in my general counsel experience—having shared the guilt groups, consciousness-raising with Judith. There were some women who had nannies that they thought were good and found out that there had been child abuse. What are we going to do about the structure, because I really think we have an issue.

Judith Reinhardt Thoyer:

I share your view that something has to be done, but I couldn't begin to comment on it.

Joan Guggenheimer:

What do you think we should do?

Audience Member Six:

Well, a portion of it is, we can do it as lawyers with legislation. I was appalled within the city of New York, as to what you had to do for licensed day care. Now I grant you, that was ten years ago, but I don't think we've changed it very much. It becomes almost impossible for a corporation in midtown New York, if they want to, to put together licensed daycare for its employees. It's gotten a little better, but not much. We certainly could go on that bandwagon without it costing us a whole lot of time and trouble.

Nancy Northup:

I'd also say there are other public policy issues as well. As most of us in this room probably know, the United States just lags behind much of the western world in terms of the public resources that are invested in taking care of children. If you were in France, this wouldn't be a problem. If you were in Scandinavia, this wouldn't be a problem. What we can really do to help most of the women—we are fortunate enough and privileged enough in this room to be able to hire nannies or select really top quality day care facilities—is to support public policies that will let all women be able to work and contribute to society while their children are being cared for in an appropriate way.

Susan Sturm:

Let me just say, in terms of the frontrunners in the private sector in the corporate world, places like Deloitte & Touche and some other places like that, have really looked at the relationship between personal life and work life, in productivity terms, in efficiency terms, and not only for women but also for men. They've seen that it's actually in their interest to try to address issues of flexibility, issues of childcare, as part of a more general set of questions. The consequence of this has been an increase in productivity. I think some of this is connected to this issue of having law firms and legal institutions think of themselves as managed organizations

where they're going to analyze the patterns of productivity, not only around billable hours, but around human capital type questions. In that sense, large firms, not general corporate America, but the frontrunners of corporate America, have started to ask these types of efficiency-related questions as they relate to the personal lives of employees and how that affects their work productivity.

Audience Member Seven:

Just a really quick, sort of Washington addition to the childcare story. I think the frontrunner in our town is really the federal government. My daughter was in the Justice Department day care center for several years. I felt far more comfortable with her care there than in the nannies that I had earlier, for various reasons. But it took ten years of inside, quiet lobbying by lawyer-parents to get that done. I don't think it required legislation, but it certainly required an allocation of money from the executive branch and the Department of Justice in particular. It was just ten years of persistent in-house lobbying that got that done. There are still far too few slots, but now GSA,¹⁵ I believe, has an initiative to try and get federal government day care centers in virtually all of the major agencies.

Frances E. Bivens:

I'm going to say this to encourage the women who are students in the room, that we've done a lot of talking amongst ourselves on this panel about where the catalyst for change often comes from. In the law firm context, the catalyst for change often comes through pressures that come about in the context of recruiting. Law firms care about getting the best people, male or female, and some of the changes that we do see in the institutions come from the students. It's an interesting observation to share with the students in the audience, so that they can feel like they do have some ability to weigh in on these issues that law firms will be dealing with in the future. It's also important for law firms, as institutions, to realize that these childcare issues do play into retention. I'm thinking about the comment that was made earlier about women who leave the practice of law when they have children. If childcare were a little bit more accessible, we might not see the numbers of women leaving the practice, and I think that's also true with part-time flexibility as well.

Susan Sturm:

I want to take an opportunity now to return to our panel and have you briefly respond to our third question—we've actually begun this conversation already—what is your vision or aspiration for women in the legal profession in twenty-five years? You can respond to that question both in terms of what you predict or what you would like to see. You can also

¹⁵ U.S. General Services Administration.

think about it for women in particular or for your views of women as it connects to your aspirations for the legal profession overall. Joan, do you want to start us off there?

Joan Guggenheimer:

Okay, I will try to be very brief, because I think we've covered a lot of this. Somebody asked me, maybe it was Nancy before we came in here, from the class of '79, what percentage was women. I think—somebody else in this room correct me if I'm wrong—it was about a third, which was a lot. It sounds like a long time ago, but I believe a third of my class was women. When we look at law firms in particular and the demographics of the partnership, and think about that split from the class of '79 and how many classes of partners there could have been since then, it feels like there hasn't been as much change as we've all talked about in terms of the atmospherics, and the institutional policies, and the work-life, and that sort of thing. Having said that though, I do think that this is something that is incremental—it's not revolutionary—it's on the right trajectory and it's been accelerating over the past years. I think and I hope that that trajectory will continue. As I said earlier, I think that the practice of law, particularly in New York big firms, has become very competitive. I think that is an opportunity from the meritocracy standpoint. Recognizing that, I think there is sort of a premium on client relationships, and it is kind of a double-edged sword. It's not historically what women have been perceived to be the strongest at, but there is an opportunity there to really drive that growth. Finally, as I said with law schools like this one turning out classes that are fifty percent women in a competitive environment, I don't see how law firms cannot take advantage of that.

Susan Sturm:

Frances, do you want to comment?

Frances E. Bivens:

Sure. I think we can't answer the question of where women will be in twenty-five years without asking where men will be in twenty-five years. The two are very related and we see trends that are very promising, in the context of paternity leave for example. When I first joined my firm, paternity leave was available, but no man ever took it. Today it's actually fairly routine that men do take paternity leave. It's not the three months that women get—it's a four-week period—but I think that's a change. There isn't a stigma attached to men taking time off when their children are born. We also are seeing changes in how men perceive women, and I think in the older generations of men it comes from, in part, watching their daughters and their wives achieve in various contexts. I think that is beneficial and that change will continue in the direction that we've seen. There are several areas that we haven't talked about in depth, but as women achieve more in

the business context, not just in the legal departments of corporate America, but as women become better represented in the executive levels of Fortune 500 companies, etcetera, we hopefully will see that have an impact on women lawyers. And I'd also like to see, and I hope we do see, an increased number of women politicians, because women are significantly underrepresented in that realm. I think that is an important area for us to focus on. I personally think it's important for women to participate in any way you can, either by spending time or by spending your money, in making sure that that actually does come about.

Susan Sturm:

Judith?

Judith Reinhardt Thoyer:

Short of twenty-five years, a long time from now, so maybe we'll all live in communes, and that will change the child-care situation. We've even speculated that maybe men will have babies and that would change things. But I think, coming back down to earth, sheer numbers will be the answer. I really don't like to leave the impression that the law firm is a horrible place. The law firm is a good place, and I really feel terrible that people don't stay there. It's a place where you can use your intellect. You have camaraderie. You have variety in the legal issues you take care of. It's really a very exciting career. If more women stay in, more women will succeed, and it will have an effect of just changing what law firms look like in the future.

Nancy Northup:

I would certainly like to see, when we're celebrating together the 100th anniversary of women at Columbia Law School, that women are really holding up half of the legal world and half of the legal world across the spectrum. Fifty percent of the judges, fifty percent of the law firm partners, fifty percent of the Senate (which of course is all lawyers anyway). I think that to get there, to set the benchmark there, is a matter of women lawyers really taking and understanding their own power. I remember so well, when Dean Black¹⁶ became dean my first year here at Columbia. I thought that I'd died and gone to heaven, because I started in 1985 and Columbia then still had a reputation of being a very male-dominated institution and this surprise appointment of Dean Black had happened in my first year. She used to also talk to us during those years—and this reflects back on something Frances said—you know, we were about a third of my class as well, but it was starting to really be a critical mass. She just kept saying, "Why don't you just use your power? Why are you acting as if you don't have any power out there in the market?" And I think that that is what

¹⁶ Barbara Aronstein Black, former dean of Columbia Law School.

we need to be looking at, looking forward to over the next twenty-five years so that we can get to my goal. And since I'm in the profession of thinking that the world can be changed, I think we can get there.

[Applause.]

Susan Sturm:

I just want to say what a pleasure it is for a professor to have an opportunity to learn from practitioners. This is an amazingly wise, insightful, open, and courageous group of women on this panel, and we've had a series of conversations that I know I've learned a lot from. There have been so many parallels between the way I'm thinking about this as an academic and the way they are thinking about it in their various lines of practice. I think it's wonderful that there is a group of women who are in these various positions who are really thinking hard in their own practices about how to put us in a position in twenty-five years where we can see genuine gains, not only for us, but for the legal profession. I also think it's wonderful that there are these opportunities for us in the academy—students, faculty—to interact with them in these really dynamic ways—with you, with the alumni, with people in practice. I just want to thank David¹⁷ and Tricia Coyle¹⁸ for putting together a wonderful panel, for putting together what has been a truly inspiring and inspired set of conversations between us in the academy and you who were here and continue to have your hearts here. So thank you, David, and thank you all for being here and staying to the end.

¹⁷ David Leebron, Dean and Lucy G. Moses Professor of Law, Columbia Law School.

¹⁸ Columbia Law School Alumni Office.