

Roundtable Discussion on Women in Antitrust*

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IAN SIMMONS: Good morning, everyone. My name is Ian Simmons. I'm a Co-Chair of the O'Melveny & Myers Antitrust and Competition Practice Group, and it's a privilege this morning to moderate a panel on a really pressing and vital issue, which is the contribution of women to antitrust, where we've been and where we need to go.

I'd like to make a brief couple of preliminary remarks, one of which is to thank the working group that is responsible for this important project and the important discussion that will unfold today. I want to thank the ABA *Antitrust*

Magazine working group including Andrea Murino, Kellie Lerner, Michael McLellan, and Michael Lindsay, the Editor-in-Chief; and I, with your indulgence, would like to do a special callout to Ellen Meriwether and Kim Van Winkle for their guidance and counsel.

We are all experiencing a vital and important set of debates swirling around antitrust: What is the role of competition? Should it be directed towards issues broader than just price, output, and quality—social justice issues, environmental issues, privacy issues?

* Edited for publication.

It takes me back to when I was in my younger days, in the mid-1990s, working at the Antitrust Division under Anne Bingaman, when the currency of the realm was *Microsoft* and *Intel*.

We are living in a very vibrant and vital debate. We hear discussions about the neo-Brandeisians and their important contributions to broadening the debate and causing us all to question our assumptions and precepts.

And it's because antitrust is so vital that we are here today to discuss an important constituency in antitrust, which is women's contribution to the development of the law, to the practice of the law and economics, and what we've done and where we need to go and what work remains to be done to question our assumptions and precepts.

One of my favorite quotes is by Disraeli. He once said, "Justice is truth in action." Put another way, you cannot have justice without action and people are the focal point of justice. Therefore, we are here today to talk about, in various stages of our conversation, what action is necessary to achieve justice in terms of the advancement of women because, as Disraeli said, justice is indeed truth in action.

With that preliminary set of comments, I would like to introduce our illustrious panelists, and we are really gratified they are taking the time out of their busy schedules to join us.

It is my privilege to introduce The Honorable Diane Wood, who is a judge on the U.S. Court of Appeals for the Seventh Circuit based in Chicago. Judge Wood served as Chief Judge of that illustrious court from 2013–2020. She has written numerous antitrust opinions; she taught at the University of Chicago for many years, rising to the level of Associate Dean; and I remember Judge Wood when I was two-three years out of law school because she served as a Deputy Assistant Attorney General for Antitrust Appellate and Policy Issues under Anne Bingaman at the Justice Department from 1993–1995.

We are also privileged to have on our panel Doha Mekki, who is the Principal Deputy Assistant Attorney General at the Antitrust Division of the United States Department of Justice. Doha joined the Antitrust Division in 2015 as a trial attorney and now she is the Principal Deputy Assistant Attorney General, an extraordinary and fully warranted rise. She has been expert in antitrust cases involving defense, industrials, and aerospace, and she has led investigations and litigated merger challenges involving the commercial vehicle and the aviation industries. Doha has a B.A. from Duke University and a J.D. from my alma mater, the University of Pennsylvania. It's really fantastic Doha could take time out of her busy schedule to join us.

I would next like to introduce someone who, as with all the panelists, needs no introduction, Martha Samuelson. Martha Samuelson is the CEO and Chairman of Analysis Group. Extraordinarily, Martha took over that organization in the mid-1990s when it had revenues in the neighborhood of \$16 million and now—Martha will correct me if I'm wrong—the revenues of Analysis Group exceed \$650

million. Martha is one of the world's leading economists. She has built a consulting and economic group that is really second to none. They are brilliant, they are cohesive, and when I think of a leader, I think Martha embodies the whole point that leadership leads by example—it doesn't lead by mantra. We are delighted Martha could join us today.

I would next like to introduce Roberta Liebenberg, who goes by "Bobbi," so I'll slip into calling Roberta Bobbi. As with all our panelists, Bobbi needs no introduction. Simply put, she is one of the top trial antitrust lawyers in the country. She and the other members of the Plaintiffs' trial team have, extraordinarily, achieved the largest jury verdict in a price-fixing case—the *Urethanes* matter—which was \$400 million pre-trebling and which later resulted in the largest settlement in an antitrust price-fixing case in history. She has held leadership roles for both plaintiffs and defendants in a number of successful civil and criminal antitrust cases. In 2019, Bobbi was inducted into the American Antitrust Institute Private Enforcement Hall of Fame. She is a role model for women. She is a role model for all litigators, plaintiff or defendant—she has done both plaintiff and defense work—and, as with Martha, Bobbi leads by example, and we are privileged to have her on the panel today.

Next, it is my privilege as well to introduce Barbara Sicalides. Barbara has many years of antitrust experience, frankly in the full range of the practice. Antitrust is really three practices—practice 1, counseling, regulatory; practice 2, litigation; and practice 3, criminal. Barbara has done it all, and done it all at the highest levels. She speaks regularly and has authored numerous articles. She is a thought leader. I have the privilege right now of being in a set of cases with Barbara, and she always puts her stamp on the intellectual agenda. She has received numerous awards including the Community Legal Service, Inc.'s Champion of Justice and Equal Justice Awards in 2006 and 2002, respectively.

Last but not least, it is my privilege to introduce our final panelist, Eleanor Fox, who, like all the panelists, needs no introduction. Eleanor is a truly legendary figure in antitrust. I knew about her in law school, I knew about her when I was at the Division, and I've known about her ever since. She is the Walter J. Derenberg Professor of Trade Regulation at New York University School of Law. Eleanor is an expert in antitrust and competition policy. She teaches, she writes, she advises, and she mentors young antitrust lawyers. Remarkably, by my count, Eleanor has been co-author of four antitrust textbooks. When you look the term "thought leader" up in the dictionary, it's got "see Eleanor Fox" beside it. Eleanor has a particular interest as well in developing economies and what role competition plays in those economies.

Now let me move to our first set of topics. Again, the issue is advancement in antitrust, this amazing intellectual space that we all love. Maybe I could put the first question to Doha, which is: Antitrust is a broad field involving litigation, counseling, transactions. Doha, what drew you to antitrust? Why did you fall into it?

DOHA MEKKI: Thanks for the question, Ian. I don't think it will surprise many what drew me to antitrust. The fact is I didn't plan for a career in antitrust; it was something I fell into rather fortuitously.

But I will share that I was a history teacher before I went to law school, and so I knew about the historical backdrop against which the antitrust laws were passed and the impact that had on the American people long before I had engaged with the substantive law.

So to me antitrust and enforcement work feel inextricable from Americanism, and I think it draws a person with a certain kind of sensibility. I think it draws people who have deep regard for American ingenuity and American business history; people who care about economic liberty; people who care about the rights of Americans and economic justice; and people who have a willingness to engage in important questions about the industrial relations of firms, corporate power and when government intervention is appropriate.

I am someone who believes that people are the objects of law solicitude, and I think as a public enforcer there is no greater calling than a mandate to secure and maintain the economic liberty of Americans. That's how I locate antitrust as a point of interest.

So it's really the deep love of antitrust law that keeps me engaged. Congress passed remarkably simple statutes, the first over 130 years ago, and courts have consistently reaffirmed their meaning and significance for more than a century.

There's a great line in the majority opinion in *NCAA v. Alston*² where the Court says: "Whether an antitrust violation exists necessarily depends on a careful analysis of market realities. . . . If those market realities change, so may the legal analysis." That framing keeps me very excited about antitrust law.

IAN SIMMONS: Doha, wonderful. I like your answer, and I have said several things like that to my kids. I say, "When you study antitrust, you study the history of the United States."

Judge Wood, from your many years involved in antitrust, obviously from a different vantage point in your career as a jurist, what drew you to antitrust?

JUDGE DIANE WOOD: Very much like Doha, it was quite fortuitous to begin with. I was working at a law firm the summer after my second year of law school, as many people do, and they assigned me to what was one of the giant antitrust cases of all time, the Procter & Gamble acquisition of Clorox, which started out as an FTC matter. It went on for a decade, and then a new phase went on for practically another decade with follow-on private litigation.

There was a slice of that that I was assigned to, and I'll never forget the partner saying to me, "We want you to write a memo detailing everything in the record that might be viewed as an attempt to monopolize," because that's one

of the things that the client had been accused of and we were getting ready for a retrial. This case bounced around, up and down, quite a few times. So I'm writing my notes down and I say, "Fine." And, just as I was leaving the room, he said, "Oh, and by the way, no one understands attempts to monopolize." So I thought, *Okay!*

I had never taken an antitrust class at that time, but I plunged into the record, I read everything I could, and I wrote an enormous seventy-five-page memo talking about different things that had happened. It really required me to think about what was this area of law; what was causing the difficulty in defining attempts to monopolize in any way that was going to make sense to people?

So I went back to law school for my third year and finally took an antitrust class, which I had not done at the time I wrote the giant memo, and I really was hooked from that time on.

I agree with every word that Doha said about its role in history, but also current events. It really gets you to the core not just of our economy, although certainly that, but our values. Are we running a legal system in which people have open opportunity? What happens if they don't have open opportunity?

There has been a longstanding debate, which I was part of over many years—I'm still teaching at the University of Chicago, by the way, not antitrust at the moment—of whether we care about efficiency; do we care about distributional effects; do we care about what kind of remedy a court could give; do we think we should have an administrative structure or more the private attorneys general model? All of these questions come up in antitrust.

Certainly since I've been on the Seventh Circuit—it's not every day we get an antitrust case of course, because you know that that's relatively rare—but over the years I've had the chance both to sit on and to write a number of antitrust opinions in areas that I care deeply about, whether it's the international application of the laws or whether it's health-care acquisitions or whatever it may be—there have been all different kinds of things.

And it's always new, it's always a new problem. The world keeps changing and the law keeps trying to keep up with it. So I have loved all of my antitrust time.

IAN SIMMONS: Thank you, Judge Wood.

I was remiss not to mention at the outset that in her time as Deputy Assistant Attorney General at the Division from 1993–1995 I believe Judge Wood wrote the first truly robust guidelines for the international analysis of antitrust.

Martha, as one of the world's leading economists—you might say, "Well, antitrust is about economics"—what do you like about antitrust? What drew you to the field?

MARTHA SAMUELSON: I am going to echo the theme of Judge Wood and Doha of the most absolutely most nonlinear path for me as well.

I went to Yale. My father was an economist there, and he actually ended up teaching economics at Yale for fifty years, and so I did not want to have anything to do with it. I don't think I took an economics class as an undergraduate.

I think my self-imposed isolation from economics started to crack when I came home with Paul Samuelson's son, and as I said—I think I may have mentioned this to some of you—our wedding was like a really weird faculty meeting because everybody who was there was an economist.

I went off to Harvard Law School, I practiced law for a while, and I had a case that had a damages expert and I was actually more interested in what that person was doing than what I was doing. It just sort of suited the way my brain works a little bit better. So I went off to MIT and got a degree from Sloan.

Then, after that, I had at that point two little kids and I really did not want to work full time, and I thought, *Gosh, I've got a law degree from Harvard and a business degree from Sloan, and I've heard about this economic consulting, and I think I could do that as project work and work less than full time.*

I had no idea that I was going to fall in love with the field. I had no idea I was going to be good at building a business. I just wanted to keep my hand in while the kids were little. Then I just ended up loving the field for all of the reasons, Judge Wood and Doha, that you've set out.

I think very early on when I was at Analysis Group I got a call from a lawyer, Michael Lacovara, who has unfortunately passed away, at Sullivan & Cromwell, and he said—and I'm going to come back to your *Microsoft* theme, Ian—"We have just lost in front of the government and we now have 300 class actions that we're defending in the United States all claiming that we charge too much for our software. What do we do about this?"

It was the most fun. They were open to exploring all sorts of complex ways of thinking about what was the impact of the behavior that the court had concluded was problematic already. And I just sort of never looked back, I loved it, and that's where I am right now.

IAN SIMMONS: Wonderful.

Bobbi, with your permission, I will call on you next. What linear or nonlinear path got you into antitrust?

ROBERTA LIEBENBERG: I think this is a really common theme. My involvement in antitrust was also completely fortuitous. I had never taken antitrust in law school, and, Doha, I was also a history teacher before I went to law school.

After I graduated from law school in 1975 and completed a clerkship on the Court of Appeals for the Fourth Circuit, I began looking for a job in Richmond, Virginia. At that time there were only about twenty practicing women lawyers in Richmond and we faced both explicit and implicit biases in getting hired.

Fortunately, there was a large firm in Richmond that had an associate opening in its newly created antitrust

department. They were defending criminal bid-rigging cases—this is hearkening back—involving road-paving contracts and they wanted someone who had familiarity with criminal law and the Federal Rules of Criminal Procedure. Although I hadn't taken antitrust in law school, I didn't let that deter me. I did have some criminal law experience, as a result of my clerkship. I was offered the position and I became the first woman in the antitrust department.

When we left Richmond, I was also really fortunate that I joined a large firm in Philadelphia, home of the antitrust class actions on the plaintiff side, and this firm not only represented defendants but also was very active representing plaintiffs in really the beginning of antitrust class actions.

I think my decision to concentrate in antitrust was really one of the best career choices I ever made for many of the reasons that have been said.

I have enjoyed the variety of the practice. In terms of the type of law that's involved, the cases are always interesting and intellectually stimulating. You learn about the intricacies of an industry; you learn a little bit about economics, Martha, enough to be dangerous; and you also have the good fortune to work with distinguished economic experts and lawyers from around the country on both the plaintiff side and the defense side, and of course government lawyers as well.

I think practicing in this area—it does seem like there's a theme here in terms of what we need to do for law schools to get people to be interested in antitrust—really gives you the opportunity to have a very diverse practice.

I've been appointed by courts to serve as lead counsel in several large antitrust multidistrict litigations (MDLs); currently I am lead counsel for the end-payer class in *In Re: Generic Pharmaceuticals Pricing Antitrust Litigation*, one of the largest antitrust MDLs in the country right now; and I've also defended Fortune 500 companies in antitrust class actions. So it's sort of an unusual practice. In addition, I not only handle civil antitrust cases, but I have defended corporate executives in antitrust criminal cases.

I think these wide-ranging experiences have given me a really broad perspective, and I think being a plaintiff's lawyer really has informed the strategic decisions I make even when representing defendants.

IAN SIMMONS: Thank you, Bobbi. On that quote "knowing enough economics to be dangerous," I've used that one many times.

Barbara, what drew you to antitrust?

BARBARA SICALIDES: Not to follow the lead of everyone who went before me, but it is true that I did not go into the practice of law in order to be an antitrust lawyer, and it was not at all expected. I was a history major, and the history is fascinating.

Literally the first year I was an associate at what was then Pepper Hamilton, now Troutman Pepper, I was essentially

commanded to participate in an injunctive proceeding and I was assigned antitrust injury. I remember that vividly, and I remember going into the library, because then we used books, and researching antitrust injury and being completely fascinated. The differences in the opinions of the different courts and the way in which they approached it just really set me on fire.

The truth is that literally after that day I went into every partner's office who had antitrust matters—at that time they were all men—and, even though I already had a full plate of work, I said, “If you have a new case that's an antitrust case, I want to be on it.” It was a tough year I have to say, lots of work to try to manage, but I've never regretted it. It was the right choice for me.

I think part of the reason it's so interesting to me—and I have done single plaintiffs' work, so essentially monopolization cases, although they might have had Section 1 claims in them, they were focused on firms that arguably were dominant; and I have done plaintiffs' cases on that side that are super-interesting as well as defendants' cases, so the variety is incredible—I have found that it's the variety of the industries and the businesses that has really kept me engaged and excited.

I love working with businesses. I was very foreign to businesses before I started practicing—I was just a student and I worked a service job before I went to law school—and for me it was really eye-opening to see the creativity of the business teams, to watch them work together to build something, to construct something, to invent or innovate the next version of it, and finally they were going to build the machine, even if it isn't a physical machine, how they were going to put it out into the market, what went into making it—sort of the hopes and plans of the enterprise for the enterprise itself, for their employees, for their leadership team. I found that really interesting and I found it invigorating and energizing.

So even though it wasn't a choice to start and it certainly wasn't any place I expected to land, because I did not take economics and intentionally did not take economics, I've never looked back.

I will say that Bobby Willig just also set me on fire. He was a challenge always and he challenged me all the time. He wasn't on every matter I had, so I'm not suggesting he was with me my whole career, but he was at the start. It was always exciting and I learned so much from him.

Just that experience of constantly learning, and learning from experts all the time—I mean when you're representing a business you are learning from the CEO, from the COO, from the VP of sales—it's just to get that opportunity every day is very rewarding for me.

IAN SIMMONS: Fascinating, Barbara, you had Bobby Willig as an inspirational person. And Barbara it's so interesting to hear you say getting into it wasn't necessarily your choice but staying in antitrust was. Wonderful.

Eleanor, what took you into antitrust?

ELEANOR FOX: This is so interesting because my story too is one of serendipity. I did not seek antitrust. Antitrust sought me. It happened to me.

I graduated from NYU Law School in 1961. I was pregnant then. I had my first child in November 1961. I started to look for a job early in January 1962. The law firms were not hiring women. They would say it openly; this was before the Civil Rights law. The Career Office at NYU gave me a list of the biggest Wall Street law firms.

I got a governess for the day and I went down to the Wall Street area. I went to the firm on the list that was closest to the subway stop and they offered me a job to do file searching on a big antitrust case. That was Simpson Thacher & Bartlett. I was only hired for the file search. It was a very interesting file search. The case was *United States v. MCA*. Music Corporation of America became MCA and was acquiring Decca Records; this was a huge leveraging case.

We worked at the offices of the executives to do the file search, which was pretty interesting. I pieced together the narratives: how the leverage was used. After we finished the file search, I was asked to do fact memos and then law memos. I learned all of the law of tying and bundling, which again was fascinating.

At that point I was hired to be an associate. I was assigned to litigation, which included antitrust.

Again serendipitously, after the MCA case was settled, I was asked to be on a couple of antitrust cases in which we were representing the plaintiff, a big company, against bigger companies. I loved the work.

Like Diane, and maybe all of you, I was intrigued by the political economy thread. These were the years of the Warren Court. I loved the Warren Court, which was the champion of civil liberties. Freedom of the underdog to engage fairly in markets (opportunity) was part of the broader fabric of the Court's values. I worked hard and with pleasure; I enjoyed my work and my colleagues, and I became the first woman partner.

I joined the faculty of NYU Law School in 1976. The antitrust law had just started to change; to be economics-led rather than political economy-led. I had not taken economics in college. I learned economics mostly from Janusz Ordover, with whom I co-taught antitrust and economics for about ten years.

Then the world opened. Trade barriers fell. The Berlin Wall fell. Scores of countries began to adopt competition law. I began to be part of the international conversation, and to help other countries draft and apply their antitrust laws.

I consulted with the European Community, and then Eastern Europe, and then became very interested in developing countries. I helped developing countries mediate between complicated developed country law and their own needs. I continue to do this today. It is a subject of immense fascination.

IAN SIMMONS: Thank you, Eleanor.

It is wonderful to see such themes in all the answers—the flexibility of the law, the quality of the people involved.

Let me shift gears slightly and ask Martha to weigh in on this. Martha, what skills do you identify as being key to being a leader in antitrust? For someone, a woman in particular, what do you identify as the attributes of a good leader?

MARTHA SAMUELSON: I think this has come up somewhat, but I think what is so unusual about our field is that the products and how the businesses operate just move so quickly and we have to be able to be flexible, creative, interested, and keep up.

I think about certainly what has happened in the tech industry. When I first was called to work on *Microsoft*, I really hadn't thought about network effects and indirect network effects and those kinds of topics before. I hadn't really thought about platform markets that are now so central to how we think about the field. I think you have to be able to keep up, and all of us have said that's why we are so fascinated with economics. But I think it's that.

I think the rigorousness is incredibly key to being successful in our field. I'm here as the economist. We have to be able to prove it with numbers if we are going to offer it in an opinion and we have to be able to be sure that this is robust.

What we do now in mergers—the complexity of the pricing simulations we come up with in order to think about what's going to be the impact on prices if these two companies combine—you have to be able to keep up with the industries, keep up with how the businesses operate, and keep up with the advancement in the thoughts of how we approach these problems because they are just increasingly more complex.

I do think in my field specifically I can ask sometimes why the company has done so well. To some extent, I think it has been things I'm proud of. But the luck part of it has been the change in technology, the complexity of analyses that we can perform now that we couldn't perform before because it would have taken us weeks to do a price simulation. This has really been a wind at our back in terms of our field. But you have to keep up with all of those things, and you can get left behind easily I think, and that's what makes it fun.

IAN SIMMONS: Thank you.

Let me ask Barbara to start this one off, and I hope all the panelists will weigh in on this issue. Barbara, how important is it to find mentors and sponsors, and what advice do you give women in antitrust in how to cultivate those relationships? And maybe you can talk about your role both as a mentor and as a mentee.

BARBARA SICALIDES: I think it is very important. Frankly, it's important professionally but it's also important for your happiness. It's important to have people who help point the way in some way. You don't have to follow what they tell you to do, but it's always helpful to learn from other people's experiences.

To me really the most important thing in finding a mentor is to find the person or persons that fit for you. It can be a man, it doesn't have to be a woman, though there are obviously some benefits to having a woman as a mentor. I think the fact is the person needs to be a good personality fit.

And for me it needed to be someone who also challenged me, someone who questioned me respectfully. Sometimes maybe it was even a little harsh, but it was good for me, helped me to think things through, and it also helped me to be stronger as a person and as a lawyer.

That is the advice I generally give to most women, or frankly any diverse person, probably anyone who asks me, "How do I find a mentor?" What I say is it was critical for me to have someone from whom I could learn and with whom I could be direct and who was direct with me.

The person who actually was my first mentor was someone who everyone was afraid to work for. The first time he asked me to work on a project for him, everybody told me, "Finish this and get away from him as fast as you can." In the end, I worked with him for twelve years, and he was a great teacher and a strong mentor. I guess I'd say listen to what you hear from other people but don't act on it, use your own judgment, because it really does need to be the right fit.

And then, as far as mentoring younger lawyers, I will say it is sometimes hard, not because of them, but because—the first time I really mentored a woman attorney, it didn't turn out the way I wanted it to. She ended up leaving the firm and said that one of the reasons she decided to leave was she felt, while she liked working with me, watching the pace at which I worked and the demands that I confronted with family and the job, she didn't want to move at that pace. Anyway, the truth is she ended up with a great job in-house doing international antitrust work. So she stayed in antitrust, so that was a victory, and she is a fantastic lawyer.

Over time I've had a little bit more luck. It is really satisfying actually, and frankly so critical. The people who I try to mentor are critical to me getting the job done. I can't possibly do the work without the folks who want to work with me, and I think it is obviously important from both ends. Frankly, I challenged my mentor all the time over the years, so I hope he got something out of the relationship other than just my slave labor. I know I got a lot out of it.

Honestly, Bobbi has been one of my mentors over the years, and it was super fun actually to have a mentor who was on the other side of the "v." I learned a lot about being a leader, I learned a lot about being respectful of my opponents, and I learned a lot about how smart they are.

I actually had a couple of mentors over time, and I've been lucky, and I recommend that everybody find one. I don't see how you do it without it, frankly.

MARTHA SAMUELSON: I think it's such an important topic. I think people make a mistake sometimes in thinking about a mentor and they look for someone who can help them

advance in their career in too concrete a way, as opposed to somebody, as you say, Barbara, where the personality fit is there and you are going to connect and the person can help improve you.

But the other thing I often tell people is that being a good mentee is an incredibly important part of having that relationship work out. In particular I find—I think we all do—I have people where I feel like the advice is hand-to-hand combat and I have people who make it easy for me and welcome the feedback. That's the being-a-good-mentee part, which I think is something that when young women focus on that is enormously helpful—"What can I do?" not "What can I get out of this?"—to make the mentor-mentee relationship valuable.

IAN SIMMONS: Wonderful.

Maybe we could go to Judge Wood.

JUDGE DIANE WOOD: Thank you, Ian.

It is really important, but I guess what I would say in addition to everything that has been said, not in contrast, is that it is really important to cast your net widely.

When I started teaching at the University of Chicago Law School, things were not really all that positive for mentor relationships. First of all, I was the only woman on the faculty. Secondly, the day I started teaching I had a nineteen-month-old child and a two-week-old child and was a little stretched from that point of view. I was doing well to actually wake up in the morning and go in and teach my civil procedure class and come home at night without falling asleep on the floor.

But the University of Chicago is a very collegial place. People have very strong ideas. You might think So-and-So is not a person you would ever have a mentor-mentee relationship with because maybe you don't agree with a single word that comes out of their mouth, but in fact the faculty collectively takes very seriously the responsibility to bring along the younger people, test them constantly—you know, put your batting helmet on before you go to work or you'll never make it. It was such an amazing learning environment. I wound up getting so much out of people who were not obvious, I guess I'll just say; but I realized that that was my limited vision, it wasn't them. You're going to learn different things from different people. That I think is quite important.

Certainly you want to make sure you are not just holed up in your office and never interacting with anybody. I'm sure women and men alike should be aware of that if they aren't.

The only other thing I'll say is over the years, of course, I've had a wonderful chance to be a mentor myself to my law clerks, who have all been wonderful, and also as I continue to teach. I just finished grading sixty-eight civil procedure exams. There are many students in that class who I expect to follow up with and have a long-term relationship with, just open their eyes to the possibilities, and I think that's maybe the best thing you can do.

IAN SIMMONS: Could we go to Doha next? Doha, tell us about the importance of finding mentors and sponsors and what advice you have for cultivating them.

DOHA MEKKI: I would only echo a lot of things that others have shared.

It was interesting to me that the question included both mentors and sponsors. I think there is a difference between the two.

Mentors are people who can help you get answers to questions that you might not otherwise feel comfortable asking. They can tell you the unstated politics of the organization in which you work. You typically have a very good working relationship with a mentor.

To use a poker analogy, a sponsor is someone who has a stack of chips and who's willing to give you some of their chips or move those chips from their pile to yours. I think that those are really hard-earned, valuable relationships that are born out of high performance on difficult assignments and projects.

The second point I would offer is you actually don't have to be senior to mentor. A first-year associate can mentor a paralegal. A mid-level associate can mentor someone more junior or someone who is newer. So I would advise against the view that if you're not established you can't really be a mentor. I think that's the wrong way to think about it.

I love the point that Judge Wood mentioned that your mentors can be very different from you. I've had the great fortune of working with a lot of people with whom I've agreed substantively as well as people whose views on anti-trust law and policy are very different from my own. They have uniformly given me tremendous opportunities to grow.

I have worked with incredible people like Maribeth Petrizzi, who was my first Chief at the Antitrust Division. She probably had more confidence in me than I had in myself and gave me great assignments, advice, and invaluable feedback. She also modeled leadership in ways that I admire tremendously. As a counsel in the Front Office, I got to work with senior leaders like Richard Powers, Andrew Finch, Barry Nigro, and Makan Delrahim, who gave me substantial room to establish and build out the Division's work on labor competition issues, testify before Congress, and help shape digital markets cases. Serving as Assistant Attorney General Jonathan Kanter's principal deputy is, without a doubt, one of the great honors and privileges of my career. He is smart, thoughtful to a fault, and cares deeply about others—a really terrific leader from whom I've learned a lot.

I can't say enough how important it is to have many mentors and sponsors. Don't decline opportunities to build those relationships because someone's viewpoints are not exactly like your own have.

IAN SIMMONS: Wonderful insights. And we shouldn't forget that mentoring is sometimes reciprocal from the junior to the senior. I mean one of the things I love about still

doing this job is learning from younger lawyers who have insights that I don't.

ROBERTA LIEBENBERG: Ian, if I could just chime in for a little bit, there is extensive research that women are actually over-mentored and under-sponsored.

It really is important to ensure that there are key sponsors who will put their credibility on the line for you, who will advocate for you when you are not in the room, who will make sure that you are getting the compensation and the advancement opportunities that you deserve and giving you those stretch assignments.

There is also extensive research that I and others have done in terms of the lack of access that women have to formal and informal networking opportunities, particularly women lawyers of color. In a research project that I did with Stephanie Scharf, called "Walking Out the Door,"³ we found that 46 percent of experienced women lawyers, lawyers who had been working fifteen-plus years, reported that they were denied access to sponsors and mentors compared to just 3 percent of men.

I think to also just augment what Doha said about takeaways, Barbara has been a mentee and a mentor. Some of the things that you can do are to make sure that your mentees are prominently featured on programs; make sure that you are sponsoring them to get involved in organizations; if you are lead counsel on a case, make sure that younger lawyers are having the opportunities to get stretch assignments.

I would also just give a plug to the Women.Connected Committee of the Antitrust Law Section, which provides great networking and programming and really has a network of experienced, talented women lawyers who would be there as mentors and hopefully would also refer business to other women lawyers.

DOHA MEKKI: On the point about opportunities for younger lawyers, I want to highlight the trial court judges who have given the Antitrust Division the opportunity to give many junior lawyers the chance to stand up and take their first witnesses at trial.

In the recent Penguin Random House/Simon & Schuster trial, which was led by the incredible John Read, a number of Division attorneys examined witnesses for the first time. I am encouraged by the gracious judges who have given us that latitude.

As a leader of the Division and someone who believes we need to be raising the next generation of antitrust lawyers, I can't say enough how much those opportunities matter.

IAN SIMMONS: And, Doha, if I could just put a footnote on that, we did a jury trial before Judge Schofield, an antitrust case for the plaintiff's side, in the Southern District of New York from March to May, and Judge Schofield's standing orders are young lawyers need to argue *in limine*, so

the judiciary is bringing people forward, giving them those opportunities. I'm so glad you said that.

Eleanor, could we just quickly get your thoughts on how important it is to find mentors and sponsors, and then I want to shift and start with Bobbi on a slightly related issue?

ELEANOR FOX: The first thought on mentors is historical. My mentor at my law firm—which happened by chance, not design—was the senior partner, Whitney North Seymour. If it hadn't been for Whitney, I probably would not be where I am today. He opened doors for me. For women at the time, the doors—paths to opportunity—were all closed.

Whitney had been a president of the American Bar Association and almost all local bar associations. Probably because of Whitney, I was asked to be on committees of the bar associations. Later, after hard work, I was asked to be the chair of committees. Whitney was like a sponsor. He promoted opportunities for me.

My second point is about me as mentor. I mentor a lot of students, informally. They come to my office and they want advice. Prior to that, I'd probably have gone over their papers with them and given them whatever advice I could. Mentoring evolves. I follow a lot of my students in their careers. It is so rewarding; they give so much to me.

IAN SIMMONS: Wonderful.

Bobbi, if I could just shift gears or evolve our conversation a little bit, from my perspective it seems like we've made some progress in terms of the advancement of women in antitrust, and indeed law as a whole, but it's obvious so much more work needs to be done.

I think the distinction that Doha and you made between sponsors and mentors is a valid distinction. Women may have mentors, but do they have sponsors? Doha's metaphor of the chips I think was so powerful.

Have you witnessed advancement of women in antitrust? How would you grade it, and what work remains to be done on the part of the public and the private bar to advance women in antitrust?

ROBERTA LIEBENBERG: While there has been considerable progress by women in the legal profession since I began practicing, the pace of progress is simply glacially slow and unacceptable.

Women have comprised over 50 percent of graduates from law school for the past few years and have made up nearly half of law school classes for over twenty-five years, and yet women still comprise less than 24 percent of equity partners and women of color make up only 4 percent of law firm partners.

I think findings from a very recent Above the Law survey⁴ of over 500 associates of firms of all types should have set off alarm bells or sent shivers to all law firm managing partners. The study found that 50 percent of women associates intend to leave their law firm within one-to-two years

compared to just 34 percent of men, and that 36 percent of male associates wanted to stay at their firm to make partner compared to just 23 percent of women. It was also really distressing in that report that not one lawyer of color intended to stay at their firm to become a partner. So clearly a lot of work remains to be done.

When you are looking at women in the courtroom—and then I'll get down to talking about antitrust—Stephanie Scharf and I did a first-of-its-kind study⁵ looking at the underrepresentation of women first chairs at trial and as lead counsel using the Northern District of Illinois as a benchmark. We found that in civil cases men were three times more likely to serve in lead counsel positions and 87 percent of the lawyers who were lead counsel in class actions were men. And then, when you looked at the “bet the company” litigation in antitrust and securities, women served as lead counsel in only 12 percent of those cases.

Our findings have been mirrored by other studies, including the New York State Bar Association. A very recent empirical analysis that was coauthored by Judge Amy St. Eve⁶ on the gender gap in appellate arguments found that only 4 percent of the antitrust and securities appeals and only 14 percent of class action appeals in the Seventh Circuit in 2019 were argued by women.

So, picking up on Doha's point, I think as a result of a lot of these studies really shining a spotlight on this gender gap in lead counsel positions, you are seeing courts being way more intentional in terms of the selection of lead counsel in class actions in particular. As of 2019, 31 percent of lead counsel or plaintiffs' steering or executive committee members were women. When we did our study only 12 percent of lead counsel in class actions were women. So you are seeing much more progress.

In addition, standing orders are being entered by courts around the country encouraging firms to assign younger lawyers, many of whom are women and diverse, to argue motions that wouldn't otherwise be argued. Also, you are now seeing judges actually appointing Plaintiffs' leadership development committees in class actions to ensure that women lawyers and lawyers of color are getting the type of experience that they need so that they can apply for MDL leadership positions.

So yes, progress has been made, but it is clear that we still have a long way to go, unfortunately, to reach gender equality in the profession.

IAN SIMMONS: Perhaps I could call on Judge Wood next. Has progress been made, and what do we need to do to advance women further and faster?

JUDGE DIANE WOOD: Bobbi of course is right. The Northern District of Illinois is downstairs from me. I guess maybe it might help, if we are trying to think of how to address the problem that is clearly still there, to break it down between trial level and appellate level in terms of the

litigating bar. I'm not going to say anything about the corporate bar because that is probably just a whole different set of problems. The type of case, the role that the lawyer is playing, also matters.

A lot of this is something that one can see depending on what kind of firm the lawyer comes from. The government is systematically better at sending women at both the trial level and before my court. I pay attention, as you might imagine, every day to see who is standing up saying, “I'm So-and-So for the United States.” The government does a pretty decent job of it.

I can't say the same for the private bar, but I don't think it's because people are sitting there saying, “I've decided to exclude all the women.” It's much more an inertia factor, where they are just not paying attention to the need to spread this kind of experience around to as many people as possible, to build the pool of tomorrow's lawyers. I think Doha referred to that in a slightly different context.

So it is really on the law firms and the in-house counsels' offices to open their eyes and see that they are missing an opportunity actually to develop the professional expertise of some people who may turn out to be terrific. We don't know. If you don't ever let them stand up, you never find out what they can do.

At the court of appeals level, we try in our cases where we recruit counsel. That may happen in cases that don't get oral argument; it's a one-judge rule; you are looking at the case, you look at twelve cases in a day, and if one judge says, “You know, I really think there's something here in this case; this shouldn't be decided just without argument and without full development of the party's side.” I'm talking about *pro se* litigants, which account for a shocking 60–62 percent of our docket, it's just immense.

But if you see something there, then we have somebody who goes out and finds a lawyer in the legal community and that lawyer has a guaranteed oral argument—that's why we appointed them, because we give oral argument in every case where there is a lawyer on both sides. That's a great opportunity for the court to be aware and cognizant and use that opportunity to make sure that we are getting recruited counsel from all parts of the bar—and I don't mean just women either, but lawyers of color, people who are out there who should have those opportunities.

Sometimes when we work through a central contact at a law firm, the inertia factor may take over again. It is certainly possible and desirable for the court to say, “No, we are expecting that you are going to take a look at the full pool of people who might be suitable for this case.” So the courts can do some things.

I really think the burden of this action, though, lies with the bar, again either in-house or private law firms, because the disparities are exactly as Bobbi said they are and as my colleague Amy St. Eve has found. We need to get away from that inertia and find some way of doing the extra work so that you find the people who are out there.

BARBARA SICALIDES: Can I just chime in with one thought? It's a little different because it's not so focused on the law firm, but I would say that until men take equal responsibility for the family and the home it is going to be difficult—not impossible, because I think women are pretty amazing—for women to achieve true equality and take the rightful positions that we should have out in the world. So it's not a law firm issue necessarily, although it's important for law firms and businesses in general to give men that opportunity too, such as paternity leave and those sorts of things.

So I think it's not just a legal issue or a law firm issue, although I do agree there is a great deal of inertia and we aren't thoughtful enough about these things.

One issue we are also seeing—and I haven't done a study on this; maybe somebody else has—is it seems like trial courts are having fewer and fewer oral arguments, which makes it harder to have more opportunities for younger lawyers. Clients are less excited about giving the younger lawyers the bet-the-company summary judgment argument, and if those are the only ones you are having, it's hard to pass on those opportunities.

I'm just going to leave it at that because I know other people have important things to add, but I just wanted to put that out there.

JUDGE DIANE WOOD: I just want to say the oral argument dearth exists. That's actually right about both the trial courts, and the Seventh Circuit is like wild in giving oral arguments.

The fact that we give oral argument in 38–40 percent of the cases puts us right next to the D.C. Circuit that doesn't have a docket that looks like ours. They don't have the *pro se* burden that most of the other courts of appeals have. You can go to the Fourth Circuit, and 8 percent of the cases will be orally argued. A huge swing depending on which court of appeals you happen to be in, but that's the way the world looks.

IAN SIMMONS: Eleanor, I know you have your hand up, but I'd like to go down the line. Have we made progress, but also specifically what needs to be done to accelerate and expand the progress?

Go ahead, Eleanor.

ELEANOR FOX: I want to bring in careers in academia. In academia too there has been a very serious gender gap. There have been a lot of studies.

I'm sure, Bobbi, you have worked with Deborah Rhode, who does a lot of work in this area. Her studies⁷ show that women in academia are clustered in positions that are regarded as not prestigious. These positions, incidentally, ought not to be so considered. They are very important and foundational. For example, writing instructors and clinicians.

Deborah's conclusions are confirmed in a study recently reported in the *ABA Journal*⁸ finding a huge law school faculty achievement gap, with men much more likely to be

promoted or appointed to higher-status positions, such as deans and full professors, and women much more likely to be interim deans, adjuncts, clinicians, and librarians.

Many law schools are focusing on this problem right now. They are trying to correct racial, gender, identity, and other inequality problems imbalances, just when the Supreme Court may be on the verge of prohibiting any affirmative action in school admissions.

IAN SIMMONS: Thank you, Eleanor.

MARTHA SAMUELSON: Can I add something too?

IAN SIMMONS: Yes, Martha, please go right ahead.

MARTHA SAMUELSON: I think for all of us who are about my age the problems have gone from appalling to more insidious. I mean I used to hear the word “stability” applied to me: “What's her stability like?”

And I remember very early on when I was still practicing law, at our recruitment meeting, I had been married for a year, and somebody turned to me and said, “When we're thinking about hiring, we have to think about, when does Martha plan to exit the workforce?” That's the world that we used to have. I don't think we have that.

But I really agree with Barbara. I don't think it's just the issue of the division in the home. I also think it's a question of women beating themselves up more, and I think men can be more comfortable with their ambitiousness and all of that.

I had a project with Anne probably eight years ago, something like that, where we just were working around the clock. We thought we were responding to two reports and it ended up being eight, and the team was sort of living in the office and filed the reports. The woman partner came in, she burst into tears, and she said, “I'm beating everybody up. People don't like working with me.” Then the man partner came into my office and he said, “As soon as everybody gets some sleep they are going to be so proud of this.” I just thought, *There's some piece that is also a part of this. I think women need to be supported more.*

The last thing I'd say that we are looking at a lot in my firm is just the language around how do we evaluate women internally compared to men and being careful about the word “abrasive,” being careful about the word “shrill,” being careful that we don't refer to the challenges of moms in a different way than the challenges of dads, and all of that. I actually think that's very important too.

Maybe it's associated with I do worry that women beat themselves up more than men issue because sometimes the language around women's performance is different and something we have to pay more attention to.

One last thing. We are getting asked all the time by clients now for female experts or diverse experts, so there is certainly a sense in the world that this is something that

needs to happen and that the clients are demanding and the judges are demanding, that they want to see a diverse group of economists and lawyers in the courtroom. But the “how to get there” is not as clear.

IAN SIMMONS: Thank you, Martha.

ROBERTA LIEBENBERG: Can I just give a plug to Barbara’s comment? If you would be on the lookout, Stephanie and I are just completing the first-of-its-kind study for the ABA on the impact of motherhood on the career trajectories of women lawyers to see how the “motherhood penalty”—which is something that has been studied in economics but not been applied to the legal industry—impacts women with respect to their assignments, evaluations, advancement, and promotion.

As in all of our studies, not only will we present our data, but we’ll also have best practices and the types of structural reforms that legal organizations need to take if we are going to create a level playing field for women.

IAN SIMMONS: Doha, maybe you would address how the bar has done in antitrust in the advancement of women and what specifically do you recommend the public and private bar do better?

DOHA MEKKI: I would only echo a lot of the ideas and sentiments that have already been shared.

It would not be authentic or genuine if I didn’t acknowledge that my path and my experiences were better and easier because of the incredible women who came before me, including those participating in this interview.

By the time I arrived at the Antitrust Division in 2015, Anne Bingaman and Christine Varney had already led the institution and many women, including Judge Wood, had served as Deputy Assistant Attorneys General (DAAG). On the very first consent decree matter that I led, every single signatory was a woman. Renata Hesse was the Acting Assistant Attorney General, Sonia Pfaffenroth was the DAAG, Patty Brink was the Director of Enforcement, Maribeth Petrizzi was the Chief, the Assistant Chief was Stephanie Fleming, and I was the lead attorney. They are all thoughtful, exceptional lawyers and I was so fortunate to work for them.

Today, women are well represented throughout the Division. Looking at our own front office, I see incredible women lawyers like Hetal Doshi, who is our Litigation DAAG. She is an accomplished trial lawyer who is heading up the Division’s Litigation Program. One of her goals is to deepen the bench of women litigators and trial leads at the Division. DAAG Maggie Goodlander is a force unto herself and a tremendous appellate litigator who is overseeing the international, appellate, and policy programs at the Antitrust Division, as well as our interagency work. And of course Dr. Susan Athey is the Chief Economist at the Antitrust Division. She is a brilliant, multi-talented woman who

is expanding our economic and expert capabilities. Women are represented throughout the Division, including in the Front Office, program leadership, and section leadership. I will not try to name all of them for fear that I will leave someone out. Suffice it to say they are wonderful and inspire me daily.

I have less to say about the private bar because I haven’t been in private practice for a long time. Like Judge Wood, my perception, which is perhaps a little anecdotal, is that there is more work to be done in the private sector and in the law firms in particular.

At bottom, I think we need to be pivoting the conversation away from one that merely observes who is underrepresented in our field to one that reexamines how we assign out opportunities, retain people, evaluate them, and what promotion paths are available to them.

IAN SIMMONS: Fantastic, Doha. Thank you.

I have just two more questions because unfortunately our sand is running through the hourglass. This is not even a four-hour conversation; it’s a four-week conversation at a minimum.

Martha, if I could direct this to you—and then I invite any panelist to weigh in—on women and diversity in general, Martha, you created a firm, you run a firm, how do diversity and women play into teamwork, a collective?

One of my favorite quotes—I’m a soccer fan—is Louis van Gaal, who said, “I don’t want the eleven best; I want the best eleven.”

We ultimately have to perform as a collective. How does the advancement of women factor into that collective enterprise, that collective project?

MARTHA SAMUELSON: Let me answer this in two ways.

One, I actually do think, as I just said, there really is a market reality going on certainly in my field now, which is there is a sense that the judges and the juries want to see experts that look like them and sound like them and the judges are equally eager to have diverse lawyers and economists in the courtroom.

I’m going to answer this maybe both about diversity more generally and then about women. My feeling is everybody is better off if we are exposed to people who have had a broader set of experiences. It’s just a richer way to have a conversation, to run an organization. It certainly pushes me a lot. I suspect with all of us, after George Floyd’s murder, there was really a different level of effort to figure out why people were succeeding in my organization and other organizations and what we could do to make that better. That’s on the diverse side.

On the female side, it’s just healthier. It’s hard to know what more to say about that. I think women and men do have different life experiences. Your point, Barbara, and your point, Bobbi, about the responsibility of women tends not to be equal is enriching of the conversation.

I feel like one thing that has been very important to me is I never want people at my firm to feel like they have to choose between what's important to them outside work and what's important to them inside work. Work improves and the work experience, the work conversation, and the work output is better if people's fuller lives are integrated into their work life and when the whole range of what is important to them is part of their work life. That is how I think about it.

IAN SIMMONS: Beautifully and profoundly put, Martha, about the need to maximize both home and work.

ROBERTA LIEBENBERG: I would say Martha's answer reflects why we need more women leaders as CEOs.

IAN SIMMONS: I think Martha should be president of the United States. I hope that comment stays on the record. We're not going to take that one out.

Would anyone like to weigh in on Martha's point about the role of the advancement of women and the importance of teamwork, and then I'll move to my final question?

No? All right.

If I could start with Judge Wood and then we'll move to Doha and Martha, we'll just go down our roll call here with our final question.

Let me say before I put the question out to the panelists I want to thank them for their time. This is such a satisfactory project, but in a certain sense unsatisfactory because we're not even scratching the surface.

Let me start with you, Judge Wood. What advice do you give young women starting out in antitrust and more broadly the profession today?

JUDGE DIANE WOOD: Before I go to the advice, let me thank you and everyone here for allowing me to be part of this. I feel like an imposter in a way, because I spend such a small amount of my time doing antitrust anymore, but it's such an important topic for the reasons Martha expressed, and I don't think I could improve on that.

What advice do I give? I'll try to give a couple of pieces of advice.

One of them is directed to what Martha just said about the tendency of women either to beat up on themselves or to underestimate themselves. After all these years of both teaching and serving as a judge, I can say that I couldn't tell you systematically who is going to make a better point in any discussion. They might be a woman; it could be anyone. I've tried very hard to hire ethnically and racially diverse law clerks.

I try to encourage especially the younger woman just to speak up, take an active part in the conversation, get your voice heard, let everybody know you are there in the room, because I promise you whatever it is you are thinking of saying is very likely every bit as good as, if not better than, the points that the other people are making who like to hear themselves talk. So speak up, take a part of it.

Think of somebody like Eleanor Fox, who reached out beyond her firm at a time when this was so unusual and became a leader in the New York City Bar in the antitrust area; she became the kind of person who is the go-to person.

And yes, it does take extra work. I think Barbara made the comment about going to the antitrust partners and saying, "Hey, I want to get in on this." You do have to be willing to go through that transition, but once you've done it—and of course nobody's going to know if you're interested in antitrust unless you tell them, so you have to again speak up—be part of the conversation and take some responsibility for your own work in the knowledge that you are going to be good.

I guess the other thing is something I said about international antitrust but I think it's true here too. I wrote a little article once about international antitrust saying that one size doesn't necessarily fit all. Other countries have different economic problems, they have different histories, they have different social organizations. So, for example, if you are in South Africa, maybe you want part of antitrust to be directed to the dismantling of apartheid. That is a choice that a country can make.

I think the same thing is true here. People are going to have different needs over different times and we need to be very open to the fact that answers that we've gotten accustomed to may not be the right answers. So just because a woman is suggesting something different doesn't mean it's wrong; it just means we need to debate it.

It is a tricky problem to solve, but I think it is in part solved in the law schools where people who are lucky enough to be—maybe some of you teach adjunct, maybe some of you teach classes—but that is a great place to get young women and young people of color and others off on the right foot.

IAN SIMMONS: Thank you, Judge Wood.

Doha, what advice would you give women in antitrust today, particularly those just starting out?

DOHA MEKKI: I have two pieces of advice.

The first is come to the agencies. The agencies are an "all you can eat" antitrust buffet. At the Division, we work on civil matters and criminal matters and there are international issues. I think we have built an antitrust practice that is right on the cutting edge, and it is so much fun and we learn a lot and it's just a lovely place to work.

The second thing is to really become expert in your practice. I can't say enough what a premium I place on that because if you have substantive grounding you'll be ready when the opportunities arise—and they will arise, and you have to be ready to meet them and really do a great job. That's kind of an obvious point.

But one not-so-obvious point is that when you become truly expert in antitrust, I think it can be protective when you move through the world. I think all of us have a tendency to

let our highs and lows fall with praise and criticism. I think that once you develop your own internal governor of when you've really done a good job, other people's views just matter a lot less. Like if you link something and someone says, "This is the best thing ever," you'll know how much effort you really put into it. If you really do a great job and are working with someone who is difficult or more judicious about dealing out praise, you are not going to get low about that. I think that's very important in a world where people seek out praise and really tie themselves to accolades and good feedback.

IAN SIMMONS: Wonderful insight, Doha, about the implicit self-esteem issue of getting or not receiving praise.

Martha, maybe we could go next to you on what advice you would give women in antitrust today.

MARTHA SAMUELSON: I just have two pieces of advice and they are connected.

The first is for me having a support infrastructure has been incredibly important, whether that's close friends or a partner or a spouse, because certainly—I wonder if this is true with all of us—there were days where I came home and I said, "I'm done with this," and my husband just said, "No, you aren't. This is not a good idea for you." I think having the support infrastructure like that is incredibly important because for some reason I do think it's easier for women to just feel like *I'm letting everybody down; I'm stretched too thin at work; I'm stretched too thin at home.*

The other part of that same issue of you need to be supported and you need to cut yourself a little bit more slack is don't think of the time interval as today—"Today was awful; today my kids were sick and I had too much to do." Think of the time interval more broadly. I worked part-time for quite a while and I never thought that every day I would leave at 3:00. I thought, *Over the year I'll work less and that's what I want to do. And I'll probably be exploited financially as well,* and I'm okay with that because I just want to work less.

Think of the time interval correctly. If you had a bad day, say, "Wait a minute. Before you say, 'I just can't do this.' Think about what the month has been like. Just measure your success and happiness and feeling of self-worth in the office and outside of the office with a broader timeframe.

But those are both about your head and so they seem correlated or associated to me.

IAN SIMMONS: Wonderful, Martha. Thank you.

Bobbi, what advice would you give women in antitrust today?

ROBERTA LIEBENBERG: A couple of things.

One, I would say to be proactive. Tell partners and tell clients that you are interested in a particular type of

assignment or matter and make sure that you advocate for yourself the same way that you advocate for your clients. That's something that women don't do as well.

I would add to some of the points that have been made. Don't be discouraged by the inevitable setbacks and really make sure that you just continue to plow ahead. And in that regard don't be afraid to take risks. Push yourself for stretch assignments, push yourself to get out of the comfort zone. Especially in antitrust where so few cases go to trial, try to embrace the types of opportunities where you will get on-your-feet experience, especially if you aren't lucky enough to work in the Antitrust Division.

Finally, I'm going to echo something that Doha said: Have fun. I think the great thing about an antitrust practice is that you can really have fun. In one of our trials, we had T-shirts made up for our trial team and we laughed a lot. Make your career enjoyable. You are there for long periods of the time. Enjoy yourself, enjoy the people you work with, and relax a little bit. Really this is a fantastic area of the law, and if you put your energy and passion to it, it will be extremely rewarding.

IAN SIMMONS: Beautifully put, Bobbi. I would echo have fun.

Barbara, what advice do you give women in antitrust today?

BARBARA SICALIDES: It is interesting because frankly, I think much of what Bobbi said is part of what I say, only I use very different words. It's super-interesting. Honestly, I tell them to be themselves.

Even though they are going to sit in a room and someone is going to tell them that women shouldn't apologize as much as they do, my view is I apologize, that's how I am, and that's how I was raised, and I am not going to apologize for apologizing. So I just try to be myself and recognize that just because I might do something differently doesn't mean that I'm not better at it or just as good as my male counterparts.

A small example. When I have teams that are out in the field, I'll send them a box with licorice and *Tiger Beat* magazine, and *Surfer* magazine. It's almost like a care package that your mother would have sent you in college. It's supposed to be funny. Now I try to put healthy things in there and not just junk food. Some people might see that as mothering. I don't care. It's part of who I am and I am not going to apologize for it.

So I say be yourself and seek your own justice and your path, and don't take no for an answer because it isn't an acceptable answer. If you have a passion or you want to achieve something, you have to be able to stand up for yourself as politely as you can sometimes, and occasionally sometimes maybe not so politely, depending on the circumstance.

The last thing I would say is, I think similar to what Doha was saying, which is I was told on my very first assignment, “Make yourself indispensable to the client.” In different situations your client is different—it could be your partner, it could be a client client, it could be the lawyers who are working with you, it could be a lot of different things—so having the expertise and making yourself a critical part of a team by putting yourself out there and doing it is very important to get opportunity, because we’re all worthy of it.

IAN SIMMONS: Wonderful insight, Barbara, the indispensability and trust point.

Eleanor, last but not least, what advice do you give women in antitrust today?

ELEANOR FOX: First I want to adopt what everybody said. I agree.

I tell my students the first day in law school, “Remember who you are today; remember what you value.” “Don’t let yourself get homogenized.” Homogenization happens in law a lot. Being yourself, being your own individual, knowing what you want and going for it, is vital.

Regarding role models, I tell my students: Look around you and see who is doing or saying or being something you admire. Think about those qualities and absorb them. You might have several role models, and they might be very different from one another. Always look ahead; consider “How can I improve myself by being me (and not trying to become someone else)?”

I would also advise about open-mindedness, congeniality, and teamwork. Enjoy others and get what you can from them in a positive sense, not an exploitative sense. People all over give us so much every day. Be open to liking them, supporting them, and learning from them.

On a different note, there may be times when you are the victim of discrimination. It may come in the form of criticism of your abilities. For example, “We need someone more forceful for this court hearing.” It helps to have a network of women to talk with about it; and it may take courage to talk about it. Only by sharing experiences might you discover a pattern—your women colleagues get the same career-limiting feedback. Information is the first, necessary step to change.

But my main advice is upbeat. Hitch your wagon to the stars that shine most brightly for you. Have the courage of your convictions to make the choices that will get you there.

IAN SIMMONS: Wonderful, Eleanor. Thank you.

Judge Rifkin once said, “Law is a very funny field. It’s one of the few fields, whether you’re in the government or at a law firm or a thinktank or an economic firm where virtually 100 percent of the assets leave by the elevator every night.” In law we don’t have fabs, we don’t have warehouses of inventory. All we have are the people on this screen or in this

conversation, and women leaving by the elevator every night are obviously a critical part of the bar and the antitrust bar.

On behalf of the ABA *Antitrust Magazine*, I want to thank Judge Wood, Principal Deputy Assistant Attorney General Doha Mekki, Martha Samuelson, Roberta Liebenberg, Barbara Sicalides, and Eleanor Fox. As I said, this really should be a four-week or four-month conversation. It’s not the end. Hopefully, it’s not even the beginning of the end.

Without getting into trouble, I would encourage the readers of this transcript and of this issue of the magazine to reach out to any of these panelists, whether you know them or not, send them an email, and see if you can arrange a coffee or an in-person meeting over a video meeting.

BARBARA SICALIDES: And read some Ida Tarbell.

IAN SIMMONS: Absolutely.

And by the way, I think it was Doha who mentioned don’t forget to have fun, find a passion and throw yourself into it, because if you are engaged with the law and what you are doing, so much flows from that.

Thank you to the panelists. Thank you again to Kim Van Winkle and Ellen Meriwether for all their help in setting this up. ■

¹ *In re Urethane Antitrust.*, 768 F. 3d. 1245 (10th Cir 2014).

² 141 S. Ct. 2141 (2021).

³ Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out The Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, American Bar Association (2019), available at <https://www.alm.com/intelligence/wp-content/uploads/2019/11/WALKING-OUT-THE-DOOR-FINAL-AS-OF-NOV-14-2019-pm.pdf>.

⁴ Above the Law, *Associate Perspectives on the New Normal* (2022), available at https://470182.fs1.hubspotusercontent-na1.net/hubfs/470182/ATL_Associate-Perspectives-New-Normal_2022Report.pdf.

⁵ Stephanie A. Scharf & Roberta D. Liebenberg, *First Chairs at Trial: More Women Need Seats at the Table*, American Bar Association (2018), available at <https://www.americanbar.org/groups/diversity/women/publications/perspectives/2018/winter/first-chairs-trial-more-women-need-seats-the-table/>.

⁶ Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys*, ABA Commission on Women in the Profession (2021), available at https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf.

⁷ Deborah L. Rhode, *The Beauty Bias: The Injustice of Appearance in Life and Law* New York, N.Y.: Oxford University Press, 2011 252 pp. hardcover ISBN: 0199794448

⁸ Stephanie Francis Ward, *Law school achievement gap by gender for faculty and deans examined in new paper*, ABA JOURNAL (Aug. 22, 2022, 8:40 AM CDT), available at <https://www.abajournal.com/web/article/paper-examines-law-school-achievement-gap-by-gender-for-faculty-deans>. Elizabeth Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021* (2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4194210.