

Lowenstein Sandler's Women's Initiative Network Podcast: Real Talk

Episode 7 - International Women's Day: How Much Progress Have We Really Made?

By Lynda A. Bennett, Nicole Fulfree, Rachel Moseson Dikovics
March 2022

Amanda Cipriano: Welcome to the Lowenstein Sandler Podcast Series: The Women's Initiative

Network, Real Talk. I'm Amanda Cipriano, an Associate attorney and

member of the Women's Initiative Network at Lowenstein Sandler. Before we

begin, please take a moment to subscribe to our podcast series at lowerstein.com/podcasts, or find us on iTunes, Spotify, Pandora, Google

Podcasts, and SoundCloud, Now let's take a listen.

Rachel Dikovics: Welcome back to the Women's Initiative Network: Real Talk. I'm one of your

co-hosts, Rachel Dikovics, an Associate in Lowenstein Sandler's White Collar

Criminal Defense practice group.

Nicole Fulfree: I'm Nicole Fulfree, Counsel in Lowenstein Sandler's Bankruptcy and

Restructuring department.

Rachel Dikovics: We're joined today by our fearless leader, Lynda Bennett.

Lynda Bennett: Thanks for having me back, ladies. Good to be with you again.

Rachel Dikovics: Thanks for being here, Lynda. Today's episode is a special one because if

you're listening the day it's released it's International Women's Day.

Nicole Fulfree: International Women's Day celebrates women's accomplishments and

contributions, and is a great opportunity to bring attention to issues that are

important to all kinds of professional women.

Rachel Dikovics: This year's International Women's Day theme is "Break the Bias".

Overcoming biases is something we already discuss a lot on this podcast, but we wanted to give it special attention today and discuss the results of a really interesting survey conducted by the American Bar Association last

year.

Nicole Fulfree: The American Lawyer reported on the survey in an article titled "There are

more women lawyers than ever, and they're not pleased with legal industry norms." We'll link the article in the description of this episode, in case any of

our listeners want to take a look.

Rachel Dikovics: The article summarized the study's findings as follows, "Women as a whole

are much more dissatisfied with their law firms than men. Pay gaps and

perceptions of gender bias are driving factors as well as day to day challenges women face that men typically don't."

I want to start our conversation there.

Lynda, I want to talk to you first. How prevalent do you think gender bias is in today's workplace?

Lynda Bennett:

So from my perspective, I think we should break it down into the two things; pay gaps and gender bias more generally. From my point of view, I think particularly over the last 10 years, tremendous strides have been made to close the pay gap and to ensure that there's more equity and pay, there's certainly room for continued growth. But I would say that a lot of the discussion around that, I think of the women's soccer team and there have been some headline-making efforts really shine a spotlight on that and through my lens and in some of the rooms that I'm in, I am seeing much greater focus on ensuring that people who are performing substantially similar functions are getting substantially similar pay. As I said, there's room for growth there.

I think the perceptions of gender bias in the law firm setting are a lot more real. And I think there needs to be a lot more focus on the power dynamics and some of these unspoken tensions that have emerged as we're putting greater focus on diversity, equity and inclusion initiatives within firms, because there's a big difference between engaging in a box checking exercise to put people into rooms or put them on committees versus actually having a voice at that table that you're now seated at.

Rachel Dikovics:

Lynda, some of your comments really reflect the reality of other statistics from this survey that we're talking about today. So a few examples when asked if gender diversity was a priority at their firm, 88% of men said that it was. Only 54% of women felt the gender diversity was a priority. Similarly, and this is quoting from the American Lawyer article "When asked if their firms had succeeded in promoting women into positions of leadership, 84% of men said yes, only 55% of women felt the same way." So pretty similar to the last statistic "or when asked if their firm had successfully retained experienced women attorneys, 74% of men thought yes, this time only 47% of women agreed."

Nicole, do you think that these stats reflect a reality that women often have to work harder to obtain the same advancement opportunities as their male colleagues?

Nicole Fulfree:

Ooh, Rachel, that is a very loaded question. I'll start off by saying that I think everyone has to work hard to advance in the legal field. It's not an easy field to navigate for anyone. And so in answering this question, I think in turn begs the question, how do attorneys needs advance in the legal field? And the two things that come to mind that are particularly relevant to me and I think are likely relevant to others are meaningful mentorship and meaningful substantive opportunities in your subject area.

And so on the first point, I think that obviously anyone's capable of finding a meaningful mentor, but I think it's true for me, and I think others would agree that people have a general inclination to find friends and mentors at work that are similar to them, whether that means same sex or otherwise. And so in looking for a meaningful mentor, I think it's important for women, especially taking into account the unique obstacles that women attorneys face that it's super important for younger women attorneys to have that meaningful mentorship and to have it from a senior woman attorney.

And I think that's difficult just because of a pure numbers issue. There aren't as many high level women attorneys, that's just the fact, and so I think that does create an obstacle and allowing women to get that really important advice that they need to thrive in a legal environment. Like I said, it's not easy to navigate a law firm. And when I say that, I don't even just mean with your assignments and things like that, but navigating the politics of a law firm it's difficult. And without someone showing you the way or being by your side to support you, I think it makes it a lot more difficult for you to succeed.

With respect, to getting meaningful substantive opportunities, I think that obviously men and women alike are more than capable of seeking out meaningful opportunities. I think one of the issues that we've spoken about at Women's Initiative Network discussions in the past is women's inclination to be less likely to volunteer for assignments that are beyond their comfort zones as compared to our male counterparts, and that our male counterparts may be more inclined to have a little bit more confidence to volunteer for things that they may or may not be fully qualified to do.

I'm not saying that's negative or positive, it might be either and in some situations, but I think maybe on this point, we should think about from a self reflection point of view, whether we're holding ourselves back by not volunteering for things outside of our comfort zones, because someone might be able to do it a little bit better than you are, and think about the ways that we can put ourselves out there a little bit more in order to get those opportunities. And again, I think that all circles back to having a solid mentor relationship.

Lynda Bennett:

I agree with a lot of what you just said, Nic, and I think you said it very well, but I think we need to take a little bit of a step back and frame what we're talking about and what industry we're in, right? We are in the business of law and the business of law is built on ours and origination. And women face a number of additional challenges that men don't necessarily feel the same weight of. So billing those hours, whether you are early on in your career and in childbearing years or taking care of other family members, women for face significant challenges in that hour's component, of how am I going to get it all done? How am I going to advance my career while not feeling like I'm letting others in my life down and on the originations piece, historically, those who had the power to hand out work were straight white men and they were looking for other straight white men to hand the workout to.

And so to make strides and advancements for women in this profession and were starting to see some of is this now, we need to have greater emphasis on the originations. And historically our clients have not wanted to delve that

deeply into the business of the law firm by saying, well, you've got to figure out comp and you've got to figure out how you're going to value your people, I just need to get the legal work done for my work organization. We are starting to see a polar shift there where clients are now not only advancing the work, not only demanding diversity on the team. They're not just going to put up anymore with folks showing up for the pitch meeting and having an appropriate array of people sitting around that table to pitch and land the work.

We're now starting to see clients ask a lot more questions after the work has landed at the firm. Who's actually doing the work? Who's actually getting credit, origination credit, for the work that's coming in? And that's really important to move the ball on this advancement point. The perspective that you provided is a correct one in that women need to raise their hands more. They need to affiliate themselves with people who are going to look out for opportunities and provide them with those opportunities. But I'm very heartened to that our clients are starting to place focus on this aspect of career development. So that helps on the origination piece.

Coming back to the hours piece, that is a tension, that is an elephant that is in the room constantly. Because we want to try to find ways to, I'll say allow women to have it all, but when that includes billing less hours, that's a hard issue to tackle. And what I would like to see around that is just more honest conversation around it, because we do have to bill hours to make the money to pay people. But there's got to be a lot more thinking and honest conversation around how to strike that right balance that allows for fewer hours, but not a precipitous drop off in value of the woman who's not billing as many hours perhaps as a male colleague, but still provide or sometimes greater value with fewer hours.

One thing we can say about women is they're amazing multitaskers and can figure out how to project manage an awful lot of things and do it extremely well and efficiently.

Rachel Dikovics:

Those are all great points. I think that the idea of women getting credit for the work that they're doing and whether it's origination of an idea within a matter, or a strategy is immensely important. And when that doesn't happen, it has real impacts on women's experience at work and something else that you both mentioned without calling it this, but I think this is the concept that you're talking about is affinity bias, which is basically everyone's tendency to be biased in favor of people who are like them. So like Lynda said in the past, there have generally been in most large law firms, older white men who are looking to give out work to younger white men and who will follow in their footsteps to some extent, probably not consciously in all situations, but people have a tendency to do that.

And I was reading about affinity bias the other day, and this article I thought made an interesting point, which is if you are a part of an underrepresented group, so you're a minority woman, affinity bias for you is not harmful because you are helping to lift up people who will over time level the playing field for everybody and help to make things more diverse.

So I think in some situations we want to discourage people from allowing their affinity bias to come through, and in some situations we may even want to encourage it because we're helping to diversify the legal field as a whole when we try to lift up other women and focus our attention on that.

Some more statistics from this survey reflect the reality that women are missing out on opportunities, whether it's directly because of their gender or because of other gender related factors like Lynda and Nicole both talked about that limit in some cases women's ability to perform in the exact same ways as their male colleagues. So for example, only 11% of men surveyed felt that they had missed out on a desirable assignment because of their gender, 48% of women thought so. Only 7% of men thought that they had been overlooked for advancement because of their gender, 53% of women thought so. So that's more than half of women felt that they missed out on an advancement opportunity because they were a woman.

And when it comes to salary, probably nobody will be surprised to hear this only 4% of men thought that they had ever been denied a salary increase because of their gender, 54% of women thought so. That's actually lower than I would've thought that result would be.

But these survey results seem to indicate that women frequently have vastly different day to day experiences as attorneys than their male counterparts do. For example, and this is something that our Women's Initiative is looking forward to discussing in a little bit more detail around International Women's Day, 75% of women's surveyed said that they dealt with demeaning comment, jokes, or stories based on their gender, only 6% of men said that they had.

And this is my favorite or least favorite, depending on how you want to look at it, result from the survey. 82% of women surveyed said that they had at some point been mistaken for a lower level employee, anybody want to guess what percentage of men said that happened to them?

Lynda Bennett: The Vegas odds on that aren't good, Rachel. I'm sure.

Nicole Fulfree: Yeah, I'm going to go with zero, Rachel.

Rachel Dikovics: Literally zero, not one man who answered the survey had ever been

assumed be more junior than he was. And this was a survey of thousands of

people.

So I want to talk a little bit about that.

Lynda and Nicole, in no particular order, have you ever been mistaken for someone more junior than you or experienced demeaning comments that

you felt were a result of being a woman?

Lynda Bennett: We're going to need a part two to this episode, if we were to go through every

example I think.

Certainly I have not been viewed as the lawyer walking into the room when I've gone to court several times, but I want to focus more on the demeaning comments because that's something that I've endured over my 28 year legal career that continues in 2022. It's an unfortunate reality, but it is a reality. I've had people say to me, oh, that's really great that you got onto that important committee at your firm. You had the right equipment for that. You were the right person to check that box. And that's pretty sobering when I think back on all the things that I knew needed to do to earn my way into the room. And the presumption is that I was invited into that room because they need to say they have a woman sitting in that room.

Same thing has happened when I've originated work, particularly from those companies that are out there, and I thank them for it, making no bones about the fact that going to hire and award their work to more diverse teams. I get the comment, oh, well, you got that. That was a gender play. The reason you got that was because you're a woman. I completely reject that. I have no doubt that the clients that are putting out that message of we're going to hire more diverse teams are not hiring incompetent diverse teams, they are obviously looking for the best and brightest to handle their matters. But when there's an equally qualified woman and man pitching for that, maybe I'm going to get that work because they're making the commitment to diversity. But that doesn't get me in the room and that does not award me the work.

I have still showcased my knowledge, capabilities, strategy, all the reasons that someone should hire me. And it's incredibly offensive and deflating when that's the comment that's made back to you in that kind of a circumstance.

Rachel Dikovics:

Yeah, Lynda and I think it's pretty obvious that everyone in the legal industry knows that if the client realizes soon thereafter that you aren't qualified to do the work, they have no problem finding someone else to do it. And so I think that argument is a difficult one to make.

Lynda Bennett:

Yeah, the one other thing I just want to circle back on something that Nicole said, because it's so important and that is that women need to raise their hand. They need to be not shy about asking for work. They need to be not shy about asking for those stretch assignments because that is a gender difference. I've seen it in the people that I work with on my team having a very junior male walk into my office and say I think I'm ready to go argue that summary judgment motion. I merely fall off the chair, but on one level I love it

I love the projection of self confidence for that person to walk into my office and say, yeah, I'm ready. Even if you don't think I am, I'm ready. I view that person differently. And I think that a lot of women are reluctant to do that. Nicole referenced it before. How many times have we seen the statistics and surveys about women who don't think that they have every single job qualification that's posted online, they won't apply. Meanwhile there are men that have only one of the qualifications and they say, oh, why not? I'm really that good. I'll figure it out. And they lob it in there.

So a little bit of this is on us to have more confidence to go outside of that comfort zone, like Nicole was talking about, to raise your hand, and then it's

also to continue the conversation that started right now about the capabilities of women and that they can do it, and having the support of the people that are sitting in the rooms, awarding the work really continuing to press these issues, because I think we're making progress, but they're certainly more to be done.

And actually there was one other topic that's related to this that I would love to touch on, which is what's happening in the virtual world that we're continuing to find ourselves in. And I'm going to flip the script and ask the question of my hosts, what are we seeing in this virtual work environment and isn't this really putting a fine point on some of the things that we've been talking about where women are more inclined toward politeness and how is that working in the virtual world for all of us?

Nicole Fulfree:

With respect to your point on the inclination to be polite, I think that it's really difficult in this virtual world to stop by someone's office. If it's not impossible to stop by someone's office and ask for help it's kind of, you have to go a little bit more out of your way and probably as some younger attorneys would view it, impose on more senior attorneys a little bit more than you would have to if we were in the office. And I think that for a lot of younger attorneys that results in just not speaking with other attorneys as much, not having those interactions that lead to the meaningful mentorship opportunities. And so I think that it's something that is troubling, especially for younger women attorneys.

Rachel Dikovics:

Yeah, you both know that I am a person who loves working from home. I like to be wearing my comfortable clothes and hanging out with my dog and being as in the zone as I can be. But that said, I think that especially for junior attorneys, but really for everybody, there's a lot that gets lost in translation when you're communicating primarily by email or by chat. And I think that people tend to nicer and more supportive in person in general, it's harder to sit across from somebody and say something mean or not supportive or overly critical than it is to say it over an email. And I think especially for junior attorneys who are still really learning the ropes, any errors that they make feel incredibly magnified when they're told about them via something on their screen, as opposed to a live conversation with somebody who's sitting in a room with them explaining what went wrong or whether there are consequences for them.

I think that's a big issue, and I think it's a particularly big issue for junior women who I think tend to catastrophize a little bit more in the same way that Lynda said men are frequently more willing to put themselves out there, even if they're not sure they're qualified, they think they're qualified. That is definitely not true for most women in the same way, I think women, especially junior women who are relatively new to law view any of their mistakes as potentially catastrophic, whereas men tend to take things in stride a little bit more and figure out, oh I'll get it next time. Whatever, I'm great, these people are wrong.

So that's one issue.

In terms of advanced men opportunities. I think what's probably one of the main differences in the virtual world is that we all tend to keep working with the same people that we're already comfortable with.

And in some ways that can be good because if you have people that you really like working with, you like their style of giving you feedback or for somebody more senior, you like this particular associate because you like the writing style or whatever happens in the corporate world, you like their Excel sheets, it's really easy to just keep doing the same thing over and over and over, and kind of have a groundhog day effect in your work life.

In some ways I think that's good because you can get really good at performing for a particular person. You can get really good at particular tasks, but you lose a lot of opportunities to meet and work with people that if you were in person, you probably would more easily find just by virtue of having face time with more people.

Lynda Bennett:

I agree with everything that both of you just said, I'm really focusing much more, especially because we're not sure what the hybrid work environment's going to look like if and when we ever end this pandemic, but I've really become incredibly attuned to Zoom meetings and watching women sit on mute and waiting to be called on or waiting until the very end after every single other person has spoken to unmute to add their input. And this happens both for internal firm meetings, as well as external when I'm dealing with a matter and we've got seven or eight people on the Zoom I have taken careful notice, then there should be a survey done on this. How many times it is a man who is speaking first if a topic of discussion comes up, it is a man who is speaking first.

And in many settings I've seen women having to frankly shout their way into the conversation because the virtual platform's difficult enough as it is to maintain conversation. But that's something that I've really become very focused on because that's a bias that I see every single day, all day long. And maybe we need to spend some time thinking and talking, and again, just sort of shining a spotlight on this because maybe people aren't even seeing it that we need to facilitate better and more equal air time and even air time because that's going to be another potential detractor or another impediment for women to get those opportunities to be seen, to be heard to advance.

Nicole Fulfree:

Yeah. Lynda, I think you bring up a really good point about things that our male counterparts may be doing, whether consciously or not to actually hold women back. And so this kind of brings me back to the question that Rachel asked about everyday experience as a woman lawyer and demeaning comments that you may received on a day to day basis. And I think that there's a pretty wide range of these types of comments. So of course there are overt things that people can say like Lynda, you mentioned, oh, you got that position because you checked the right box. I've had very similar experiences with people saying oh, if you wanted to make partner it'll be easier for you because you're a girl and those types of comments are really hurtful, and those types of things have been said to me by people who I consider to be my friends.

And it's kind of interesting to me that they don't realize how harmful or hurtful those types of comments can be. Because as soon as I hear something like that, all of the self-doubt just comes streaming in.

The other thing is I think the other end of the range is we get into the dangerous waters of demeaning comments by men or people that mean well, and the reason that I think that's so dangerous is because I think it's easy to say, oh, he meant well and brush it off. But what that doesn't take into consideration is the impact of those comments on the women who are on the receiving end of those comments.

And so two things that come to mind in that category are a comment that was made to me when I was taking a deposition and I was taking it along with one of my male colleagues and as he was answering the questions the witness asked, oh, when's that pretty lady lawyer going to get to ask me questions. And in all honesty, putting us side for a minute the mild flattery that I got and a little bit of happiness I got from that comment, as far as the deposition one, I felt so deflated. It kind of just took the wind out of my sail as far as my confidence. And I just felt like, all right, he just thinks I'm here, I'm just like some girl. And it just was a really harmful comment to my confidence.

And then the other category that's in this dangerous category of meaning well is I think some of the assumptions that men make and things that they say based on those assumptions. So for example, when someone returns from maternity leave, if there is an opportunity to say travel across state, to be the primary speaker at a hearing, a male attorney could say, oh let's not give that opportunity to Nicole, she just had a baby. She wants to stay home with her baby, let's give that opportunity to Mike. And while for some people that may result in a big sigh of relief like, oh, thanks. I really don't want to travel at this time, I do have new baby. That's great. That attorney should not be the one to decide that for the person who is, or is not getting the opportunity.

And so instead of making an assumption about what that person wants to do, I think the better way of going about it is to say, I know you just had a baby. We would love for you to travel and attend this hearing and take the lead on it. Also understand that if you don't want to, it's totally fine if you want to stay home this time. But making that assumption and making that decision on someone else's behalf, I think is extremely damaging.

Lynda Bennett:

So Nicole, that example is absolutely perfect. And it goes back to what I was saying earlier, which is change is really hard. We are in an unprecedented time because of me too and other factors that have really bubbled these issues up to everyday conversation. I think that there is a genuine commitment from many men working in the legal industry right now, wanting to do the right thing, wanting to say the right things. And I have received this feedback from men. I'm walking around on eggshells here now, I don't know what to say. I want to do the right thing, and I'm an empathetic person, I'm wanting to try to help when I'm saying that I'm not intending to take an opportunity away. I'm trying to express my empathy, that you've got a new baby at home.

And so it is really hard to strike the right balance here. And frankly, we need to start to find ways to have honest conversation where we can really say that's so great. I am so appreciative that you're thinking about my family life. What I would love in that circumstance is for you to come to me and say, Hey, there's an opportunity to do a trial, how are you feeling about that? Would you like to do that? Would you like me to advocate for you to do that?

It's these little nuanced things and I do think it's so important to reinforce the point that most men working in the legal industry today have no intentionality around holding people back, taking opportunities away, half the time they don't see those implicit biases that we're talking about. But I think the problem that all of us are having collectively is that we're not having to steal the tagline of this podcast. We're not having real talk around this. We're having a lot of glossy consultants speak around the importance of this, but getting people in a room where people can really say what they think, how they feel so we can get like a real dialogue going.

The women are worried about that power dynamic, that if I tell the truth, and if I really speak from my heart, this is a person who can annihilate me in my career and my compensation and the men on the other hand are trying to say, I want to be empathetic. I want to say the right things, but it seems like a lot of the time when I'm trying to give at runway where I'm trying to express concern about the differences between men and women in childbearing, that's the easiest example, I'm getting it wrong a lot. And that's really the knob of where we are today.

And the real productive solutions here are going to come from real talk. This podcast can be the start of it, but that's really what we're talking about.

Rachel Dikovics:

That's really true. I think something that you're both getting at is the idea that women don't need decisions to be made for them by anybody else. We need to be empowered to make the decision that's going to be best for us based on the circumstances of our lives. So we need to be empowered to say, yes, I want to take that hearing or no, I don't want to do that trial. And to be the one who makes the decision and not have people assume that one choice or the other will be better for us.

So Lynda, like you said, we've talked a lot now about what the problems are, but our work, especially through our women's edition is solution oriented. So I want to talk a little bit about how we fix these issues to wrap up our conversation.

So what do you each think is the single most important thing law firms can do to break the bias?

Lynda Bennett:

My single most important thing is let's keep teaching through actual examples, not... I referenced before, there's a lot of firms out there that are bringing in outside consultants and they can serve an educational purpose to a certain point. But what I've found in my personal experience is if you give someone an actual example of someone that you work with, it hits home so much harder and so much louder and so much faster because people come

to work and want to get along with their colleagues and want it to be a comfortable environment.

And so if we have those teaching moments that we can bring to the fore in the moment, I think we're going to make a great impact in leveling this playing field.

And then related to that, it's having women find the courage to speak up in that moment. So if I'm sitting on that Zoom call and I see a derogatory comment or a shutdown of a woman who's speaking and being interrupted, calling it out in that moment and bringing attention to it in that moment is going to move this ball a lot faster than if we're trying to orchestrate these formal settings where there's going to be a dialogue, that's all about hypotheticals and not the people that you work with every day.

Nicole Fulfree:

I agree with you completely Lynda. And now I'll just add a little bit to that last point you just made. I think one of the most important things firms can do is recognize, encourage, and reward meaningful mentorship. With the example that Lynda just gave about being able to call it out in the moment. That's great, but also have to think about some of the power dynamics that exist sometimes like we talked about earlier, and I think it can be very difficult for especially younger women attorneys to feel the confidence, to be able to speak up in the moment. And that's part of why meaningful mentorship relationships are so important because if you don't have the confidence to call it out in the moment, you either have A, someone to talk to after the fact about how to maybe address it in a different way or B, someone to address it on your behalf.

Rachel Dikovics:

I completely agree with that, Nicole. And it's similar to something I wanted to say to wrap up, which is just how immensely important effective mentorship by I women is for women.

Like Nicole said, one of the biggest issues, I think in terms of achieving advancement is finding mentors who will speak for you when you're not in the room, because a lot of times junior women especially will not be in the room when important decisions are made. And knowing that you have people who are looking out for you from inside the room will make an immense difference to your career advancement over time.

And as we always emphasize, it's critically important for when and of any seniority level and in the law or in other corporate fields to make the effort to mentor women who are junior to them to provide support for women who are their peers.

And I want to give a special thanks and shout out to both Nicole and Lynda for being those mentors and friends to me from the time I was a summer associate. So I definitely could not have made it to this point without their support. And I'm sure each of them has their own mentors who have done the same for them.

So I want to wrap up with that and thank you all again for joining us for this very special International Women's Day episode of Real Talk. We hope you

enjoyed our discussion and took away some useful ideas, and we hope you'll tune in again next time for more real talk.

Lynda Bennett: Thanks for having me. Great discussion ladies.

Amanda Cipriano: Thank you for listening to today's episode. Please subscribe to our podcast

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