

PANEL DISCUSSION

Karen Tokarz¹ asked the panel to address the legitimacy of treating women's clubs differently from men's clubs—what legal argument could one make to link business clubs with the economic and political status of women as well as their access to power. Bruce LaPierre,² the panel moderator, amplified the question by introducing Deborah Rhode's³ suggestion that maybe a distinction is unnecessary; the law should require even-handedness. Professor Kay responded:

To speak to the last point first, I think what Deborah is getting at is that it's not necessary to draw the line based on gender, that it's important instead to draw the line based on access to power. And while most clubs that are composed of people with access to power will be men's clubs, there may be others (such as clubs composed of minority men), where the line would not necessarily correspond to one based on gender. And that's sort of what I was trying to suggest when I was talking about the effort to go private. I don't think it's possible for a club like the Pacific-Union Club to be "truly private" even if it never accepts money from non-members for functions or dues and even though it is very exclusive in its membership practices. I think that the people who belong to clubs like that are inherently so powerful in our society that there's just no way that you can let them operate without requiring that women be given access to membership. I don't think that's true of a women's club like the Metropolitan Club. Even business and professional women are not that powerful in the economy yet.

Now if, for example, you take a field like nursing, where at least the United States Supreme Court seems to think women dominate (I'm thinking of the *Hogan*⁴ case), you might come to the opposite conclusion. I suppose if you could imagine a club composed of women hospital administrators—of course, this is very hypothetical because most hospital administrators are men, even though most nurses are women—but let's say we have a club where most of the leading female nursing supervisors and women hospital administrators get together to have lunch on a regular basis. And let's suppose there's a male nurse who is trying to climb the ladder and wants to make contacts and he's excluded from the club. Now, I think in that case he might say that he is being stigmatized, he is being treated unfairly, simply because of his sex. He is being hampered in his ability to

1. Professor and Director of Clinical Education, Washington University School of Law.

2. Professor, Washington University School of Law.

3. Professor of Law and Director of the Institute for Research on Women and Gender, Stanford University.

4. *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

penetrate the market, and there you might have an example of a case where this man is being denied access to powerful people who could help his career who happen to be women. But then, of course, you have to look at nursing in the context of the medical-health care delivery system, and it's not clear to me that these women in nursing dominate that market. So maybe the male nurse could not make out a case for admission to the club even under those circumstances.