WORKPLACE FLEXIBILITY 2010: REFLECTIONS ON WORKING WITH CORPORATIONS

KEYNOTE REMARKS AT THE NYU REVIEW OF LAW & SOCIAL CHANGE SYMPOSIUM "FROM PAGE TO PRACTICE: CORPORATIONS AS PROGRESSIVE ACTORS"

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I.

INTRODUCTION

I want to thank the organizers of this symposium for choosing the topic "Corporations as Progressive Actors." It's not the topic you would ordinarily expect from the *Review of Law and Social Change*. But for social progressives, and I count myself as one, I believe it is important to engage with the issue of corporations as potential progressive actors.

What I am going to do in this opening talk is lay out the story of an enterprise called Workplace Flexibility 2010 (WF2010). I am going to use that story to offer some conceptual ideas about how social progressives might engage corporations in the development of public policy and how they might do so in a different way than has been the norm in our American political process.

This story reflects the work of a large number of people, but I want to highlight two people in particular. Katie Corrigan was the strategist for WF2010 and for five years was also the Co-Director of the enterprise. She helped conceptualize and navigate the political dynamics from beginning to end. Sharon Masling was the senior legislative lawyer for the enterprise, working part-time throughout the entire seven-year endeavor.[1] The efforts I am about to describe could not have happened without the support, work, talent, and wisdom of these two people.

First, I will start with the way in which social progressives in the policy world ordinarily deal with corporations and business and discuss how those dealings influence our "understanding" of business interests. Next, I will contrast that approach with what we did at WF2010 over the course of seven years.

In the Washington policy world, social progressives primarily deal with business associations across a negotiating table or through limited media and grassroots advocacy settings. Interaction through negotiation was the primary kind of relationship I had with business lobbyists over the several years that I worked on the Americans with Disabilities Act (ADA) of 1990. During that time, I worked for the ACLU AIDS Project, but I ended up being the lawyer for the disability community overall. The goal of the disability community was to get a consensus on the ADA so that it could pass Congress in a bipartisan fashion. So I negotiated across the table with the business community on behalf of the disability community—and we got broad bipartisan support.

During that process, I spent a lot of time talking with business lobbyists and lawyers. I would listen to them, respond to them, and then we would talk some more. But all of my listening was geared toward negotiation—to figuring out

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1. *See* Chai Rachel Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 McGEORGE L. REV. 785, 793–95, 797–98 (2003) (describing the role of the strategist and the legislative lawyer).

simply how much needed to be changed or given up in order to reach consensus. I wouldn't say that was listening to business interests in order to truly understand their concerns.

Social progressives also interact with businesses in certain grassroots and media contexts in the political arena. That is, if progressives find one or two businesses that agree with them on a policy position, the progressive groups will push those businesses out front and say, "Look, even *business* thinks we should adopt this policy position." So, for example, if there are businesses willing to say, "Yes, we should have employer-paid sick days mandated by government," then progressive groups that support that type of mandate will make sure *those* businesses are heard by their supporters.

Don't get me wrong—having the right media message is very important. Indeed, in the six circles theory of policy advocacy that I put forward in an article published in 2003, media plays an essential role.[2] The six circles theory presumes that an effective advocacy system will require six distinct roles—a creative strategist who develops and implements an overall strategic plan for achieving the identified goal; a legally-attuned legislative lawyer who performs legal analyses that take into account political realities and who can engage in negotiations; a persistent and personable lobbyist (if you're actually trying to pass or stop a piece of legislation) who can accurately determine where the legislators stand on the identified goal and who can provide persuasive materials to convince legislators who do not yet support the goal; a savvy media person who will help frame the public debate that will take place on the goal; a dedicated grassroots person who creates and/or funnels grassroots support for the identified goal; and a sophisticated policy researcher who can interpret and apply the work of people in the academic world to the policy world.[3] In real life, one person may do more than one of these jobs. But the claim of the six circles theory is that each of these jobs demands very distinct skills sets. Hence, the theory posits that it is more important to have one of each of these types of individuals, rather than multiple numbers of just one or two types of individuals.

In the six circles theory, therefore, using corporations to further the efforts of the media and grassroots individuals can be important and quite valuable. But that's not really listening to corporations. That is strategically selecting certain corporate viewpoints and deploying them to further an advocacy goal—*i.e.,* using the corporate voice as essentially a media prop. As with the listening process in negotiations, it does not involve a true attempt to understand why a corporation would view an issue in a certain way.

WF2010 was built on a different premise. A completely, totally different premise. To explain how it was different and why it was different, I will give you a chronological overview of the enterprise that started in 2003 and ended in

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2. *Id.* at 802–03 (describing the importance of a communications director).

3. *Id.* at 793–803 (describing the six circles).

March 2011.[4] And then I will offer a conceptual lens through which to view that story.

II.
THE WORKPLACE FLEXIBILITY 2010 STORY (OR PART OF IT, AT LEAST)

Workplace Flexibility 2010 started because of the persistence of the President of the Alfred P. Sloan Foundation and a dedicated project officer. The Sloan Foundation is a business-based foundation. Its board is comprised of current and former CEOs of corporations. It could not be more different than, say, the Ford Foundation, which frequently provides funds for social progressive causes.[5] The Sloan Foundation does not view its role as acting as an incubator for progressive social policy ideas or movements. Rather, it believes its primary responsibility is to fund research to help corporations do well.[6]

Ralph Gomory, a former Vice President at IBM, was the president of the Alfred P. Sloan Foundation for eighteen years, from 1989 to 2007. It was because of him that the Sloan Foundation got involved in work-family issues.[7]

Ralph's personal experiences at IBM gave him the sense that the workplace was not set up to deal intelligently with well-educated women who want to work and have families. Ralph saw this problem as a clear business issue. It seemed wrong to him to invest so much in human capital in good workers (for example, by paying for expensive, good educations for women), only to have workplaces effectively push those educated women out of the workplace.[8]

Ralph's insight led him hire a woman named Kathleen Christensen. At the time, Kathleen was an academic who had done research on contingent workers. Ralph brought Kathleen to the Sloan Foundation and asked her to spearhead a research effort that would explore why and how the workplace isn't set up to

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4. At the time of publication of this speech, Workplace Flexibility 2010 had completed its work. Materials from the enterprise, however, continue to be available at www.workplaceflexibility2010.org, www.workplaceflexibility.org, and www.familysecurityinsurance.org.

5. For example, in 2011 the Ford Foundation issued grants to organizations such as 9to5 (under the initiative of "Protecting Women's Rights"), A Better Balance (under the initiative of "Ensuring Good Jobs and Access to Services"), and the Equal Justice Society (under the initiative of "Advancing Racial Justice and Minority Rights"). Ford Foundation, Grant Database, http://www.fordfoundation.org/grants/search (last visited Mar. 1, 2012).

6. *See* ALFRED P. SLOAN FOUNDATION, www.sloan.org (last visited Oct. 22, 2011) ("Established in 1934 by Alfred Pritchard Sloan Jr., then-President and Chief Executive Officer of the General Motors Corporation, the Foundation makes grants in support of original research and education in science, technology, engineering, mathematics and economic performance.").

7. See Alfred P. Sloan Foundation, Biography of President Emeritus Ralph E. Gomoroy, http://www.sloan.org/bio/item/11 (last visited Mar. 8, 2011).

8. In addition to Ralph's personal belief in this issue, he also had a strong belief that corporations have a responsibility to society beyond making money. This is a core belief of his. In fact, just a few weeks ago, he was telling me was that this wasn't such an outlier belief thirty years ago in the way that it often seems to be now. That is so interesting to me, and certainly relevant to today's symposium!

accommodate people who have lives and families outside of work.

Ralph, who has a Ph.D. in mathematics, also came up with a simple numbers analysis. Here's a paraphrase of how he and Kathleen used to explain their project in those early years:

> There used to be two jobs held by a couple: caregiving at home and paid work. And there were two people to do those two jobs. There were some unfortunate gender implications with that split, with women at home and men in the workforce, but mathematically it worked. Now there are three jobs: two jobs in the paid workforce and the family caregiving job. But there are still only two people. That's a mathematical problem.[9]

So, while Ralph and Kathleen felt it was good for gender equity that more women were in the workforce, they also felt that there was a business and data-driven case for doing something about the structure of work so as to reduce the mismatch between work and life.

The Sloan Foundation got started on this issue in the early 1990s. Over the course of ten years, Kathleen Christensen directed about $60 million of the foundation's money into academic research: funding economists, psychologists, linguists, anthropologists, and sociologists (among others) to research the workplace, the family, and communities, and to see how those all interacted.

And guess what? The research showed there really *was* a mismatch. The workplace was not taking into account the needs of the family. And that failure was leading to serious difficulties for workers, families and businesses. So $60 million later, Kathleen and Ralph said, "What can we do about this? How do we change the workplace itself?" Their first instinct was to go to the corporations and say: "Hey, this doesn't make sense. You should change your practices if you want to retain your work talent."

Take note: the initial arguments of the Sloan Foundation were very focused on retaining the talent of those in whom businesses or society had invested. Obviously, there is something of a middle-class bias in that articulation. The truth is, when talking about low-wage workers, businesses tend to focus on retaining labor costs rather than retaining labor talent. So one thing we made sure to do at Workplace Flexibility 2010 was include a focus on low-wage workers in all of our policy analyses from the beginning.[10]

However, the academic research Sloan funded and the conversations Kathleen had with a variety of stakeholders (businesses, unions, advocacy groups, policy experts, et cetera) indicated that federal law and regulations were

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9. Paraphrase is derived from countless conversations and presentations on the topic of workplace flexibility by Ralph Gomory, Ph.D. and Kathleen Christensen, Ph.D. In addition, Gomory and Christensen published an op-ed in the *Washington Post* making this point. Kathleen Christensen and Ralph Gomory, *Three Jobs, Two People*, WASH. POST, June 2, 1999, at A21.

10. Additional research, also funded by the Sloan Foundation, ultimately made clear that workplace flexibility for low-wage workers could also be positive for a business' bottom line.

also posing a problem. So the Sloan Foundation started a two-track process where they would attempt to promote voluntary adoption of workplace flexibility and explore how federal law and policy might be modified to promote flexibility. They were not necessarily sure which laws presented the problems, but they knew that going to Washington, D.C. to explore what could be done was the logical next step.

As a result, Kathleen Christensen came to talk to me, sometime in 2001. Kathleen had heard that I had been active in getting the ADA of 1990 passed into law. The ADA, as I noted above, was a significant civil rights law affecting employment that gained the support of significant elements of the business community. Kathleen wanted to know how that had happened. I met with her and we talked through the six circles of advocacy theory that I had developed based on the enactment of the ADA. Kathleen responded with: "Great! Great! Now would you like to work on my issue of workplace flexibility?" And I told her: "No way! I've only agreed to talk with you about what people did to help enact the ADA. My plate is full right now with civil rights and disability work." I didn't see workplace flexibility as an issue that fit my passions and it certainly didn't seem to have anything to do with the anti-poverty and civil rights work I had devoted my professional life to.

But Kathleen is a very persistent person. She stayed in touch with me, and, finally, about a year later, in the summer of 2002, I agreed to accept a small grant from the Sloan Foundation to answer just one targeted question: "If an employer wanted to create a flexible workplace for its employees, what laws would stand in the way?" It seemed like a simple question. I had no idea when I agreed to take it on that I would discover both a passion for the issue and a complete political impasse in Washington.

I decided I would begin to address Kathleen's question by researching the bills that had been introduced in Congress over the past decade to change laws in the area of labor and employment, because that's usually a good way to figure out what groups *think* the problems are with existing law. I quickly found out that Congress had passed *only one* new law in the labor and employment field during that time, the Family and Medical Leave Act (FMLA) in 1993. Lots of bills had been introduced. But none of them had moved in any significant way.

The bills introduced fell into two broad categories. First, there were a series of bills that sought to amend the Fair Labor Standards Act (FLSA) to allow employers to offer compensatory time instead of overtime pay for employees who worked overtime. The bills were invariably called something like "The Family Flexibility Act." In fact, in the political world of Washington in 2002, the only time I ever saw the term "flexibility" used in the context of the workplace was in regard to comp time bills. These bills were invariably introduced on behalf of business interests and pushed by business associations. The unions and progressive family groups, also invariably, would strenuously oppose them and

prevent any significant movement.[11] Complete impasse.

Second, there were a number of bills introduced that would create a federal legal right to paid leave. The FMLA of 1993 had given some employees the right to leave from work for various needs, including caregiving for themselves or for family members. But that law didn't give employees the right to be paid while on leave. As with the comp time bills, progressive family groups and unions would spearhead the campaigns to pass these pieces of legislation while business associations would line up to oppose them. All the bills were stopped.[12] Again, complete impasse.

So in the political world, as it existed in Washington D.C. in 2002, the reality was the following: (a) there was no real movement on any of the bills that had been introduced in the area over the past decade; (b) there were only two basic ideas in the mix: paid leave or comp time; and (c) the term "flexibility" was code for the Republican idea of comp time instead of overtime pay.

But as I started examining the laws on the books that could affect flexibility in the workplace and delved into the research conducted on the subject, it became clear to me that there were many, many laws and policies that played a role in this area. Paid leave and comp time were important, but they barely scratched the surface of the issue. It was also clear that the issue of workplace flexibility was more than just a middle-income mother's issue. It was an important economic as well as social normative issue that affected a whole lot of people in a whole lot of ways. and, as a political matter, it required a *whole* lot more ideas on the table if any progress was to be made.

There were huge gender and poverty implications in getting workplace flexibility policy right. Since women were still disproportionately taking on caregiving roles, the impact of the workplace mismatch fell more heavily on them, regardless of where they were on the income scale. In addition, low-income workers were disproportionately not getting the paid time off, paid sick

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11. One example was the Family Friendly Workplace Act, introduced by then Sen. John Ashcroft (R-MO) in the 105th and 106th Congresses. The bill managed to make it out of the Republican controlled Committee on Health, Education, Labor, and Pensions when introduced in the 105th Congress, but a Democratic filibuster prevented it from being debated on the floor. The Library of Congress, Bill Summary and Status for S.4, 105th Congress, http://thomas.loc.gov/cgi-bin/bdquery/z?d105:s.00004: (last visited Mar. 2, 2012). In the 106th Congress, the bill died in the Senate Committee on Health, Education, Labor and Pensions. The Library of Congress, Bill Summary and Status for S.1241, 105th Congress, http://thomas.loc.gov/cgi-bin/bdquery/z?d106:s.01241: (last visited Mar. 2, 2012).

12. One of the many examples of this is the Family Income to Respond to Significant Transitions Insurance Act (FIRST Act), introduced by Rep. Lynn Woolsey (D-Cal.) in the 107th Congress. The bill would have provided federal grants to assist state and local governments with the development of paid family leave programs. The bill never left the House Committee on Education and the Workforce. Another example is the Family and Medical Leave Expansion Act, introduced by Sen. Chris Dodd (D-Conn.) in the 108th Congress. The bill would have expanded coverage of the FMLA, provided grants to states to set up paid family leave programs, and grant family leave to federal employees. The bill never left the Senate Committee on Health, Education, Labor and Pensions. See S. 304, 108th Cong. (Introduced by Sen. Chris Dodd on Jan. 7, 2003).

days, or general flexibility that they needed.

Understanding that intersection, that this was both a serious gender and poverty issue, finally got me truly engaged. After working about ten months on Kathleen's small project (and realizing just how huge and complicated the project actually was, both politically and substantively), my recommendation to Kathleen, Ralph and the Sloan Foundation was as follows:

> You should think about creating an entirely new entity in Washington. If you had a group that didn't yet have *any* position on *either* amending the Fair Labor Standards Act to allow for compensatory time *or* on government mandating paid time off, that group would be well-positioned to use the range of academic research that the Sloan Foundation has funded and might help break the impasse in Washington.[13]

I had no reason to believe that such a group would necessarily be successful. But given how cautious I knew the Sloan Foundation wanted to be in sticking its toe into the Washington political world, this seemed like the best path forward for a relatively non-political foundation. I figured that a new entity might be able to shake-up and un-stick the process a bit, and, at the very least, it could figure out if there were any plausible new ideas for moving things forward.

I wasn't planning to create this new organization myself! I was just recommending to the Sloan Foundation that it find someone to create that new entity. But Kathleen Christensen turned out to be persistent and persuasive yet again. I partnered with Karen Kornbluh at the New America Foundation (who had started working on these issues several years earlier) and spent the Spring and Summer of 2003 working with her on a grant proposal to the Sloan Foundation. That proposal, as ultimately written and funded, formed the policy arm of a new entity called the Workplace Flexibility Initiative. The Initiative embodied the two-track approach of the Sloan Foundation. It combined a policy initiative aimed at jumpstarting a new conversation in Washington on workplace flexibility with a private-sector campaign to encourage voluntary adoption of flexibility (run through the Families and Work Institute).

A. Our First Attempt: The Workplace Flexibility Initiative

The policy initiative got started in November 2003 and lasted for about five months. I was extremely excited to be working with Karen Kornbluh. She was a great strategist, and I was looking forward to seeing my six circles theory of advocacy carried out in practice. Karen was in charge of the strategy, grassroots, media, and policy research roles, while I took charge of the legislative lawyering component. I hired one full-time lawyer (actually, I ended up hiring two lawyers who job-shared) and I took on the Workplace Flexibility Initiative as a client of

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13. Paraphrase of dinner conversation with Kathleen Christensen, Ph.D., Program Officer, Alfred P. Sloan Foundation, approximately March 2003.

the Federal Legislation & Administrative Clinic at Georgetown Law. Five law students each semester, a full-time Teaching Fellow, and the Deputy Director of the Clinic would thus all be working on the initiative as well.

The idea was that the policy initiative would come up with creative ideas for advancing workplace flexibility. It was central to the plan that we try to come up with policy ideas that would work for *both* employers and for employees. First, as I said at the beginning of this talk, the Sloan Foundation is not like the Ford Foundation. Sloan had not previously engaged in labor and employment policy work in Washington, and they wanted to go slowly. Plus, as far as Sloan was concerned, policy ideas that were going to hurt business were not necessarily good ideas. Sloan wanted to see if something could be changed in law and policy to help workers get flexibility, but they also wanted businesses to think those ideas were good ones.

In the end, the idea of slow policy development, focused on producing ideas that worked for both employers and employees, led to the early dissolution of the policy component of the Workplace Flexibility Initiative. It turned out that my view on how to develop policy, given the political realities and the preferences of the Sloan Foundation, were very different from Karen's view. I believed that our initiative could not take any position on any contested policy issue for at least a few years. I thought of this like the Middle East peace process. We were working in a highly polarized atmosphere and, in order to convince people to come to the negotiating table, we would have to be trusted by all sides. We could not do that if we had staked out where we stood on any of the issues before discussions began.

Karen, however, worked for a think tank and—as Karen pointed out to me—think tanks traffic in ideas. Karen believed that the initiative would simply not be relevant in D.C. if we didn't offer some specific positions and ideas as we got underway. And you know what? Karen was totally correct in terms of how Washington usually operates. Ordinarily, people expect organizations to have very clear positions on policy questions. People come to your meetings because they agree with your ideas. The objective is to build up the number of people and groups who agree with you until you have a strong coalition, a position of strength from which to negotiate with the other side. That's how it works. That's how it has always worked.

The problem was that I hadn't signed up to do what was always done. Indeed, the reason I had decided to take the grant from the Sloan Foundation (instead of moving into pure academia and writing research articles, which is where I had been heading) was that I thought: "Wow, this will be an experiment in trying to do policy change differently. To be successful, I will need to talk to businesses, to *truly* understand their concerns. And that means I will have to be open to having my mind changed on policy ideas, based on what I learn from business."

It was a fascinating and intriguing idea to me, and, to be honest, a somewhat

frightening one. I knew it wasn't how things were done in Washington ordinarily and that people would be skeptical. But I also knew that things hadn't moved forward doing it the old way in this area, so why not try a new approach?

So, as the New America Foundation and Georgetown Law decided to proceed on different tracks, the policy component of the Workplace Flexibility Initiative disbanded (the private sector campaign continued through the Families and Work Institute). I decided to reconstitute the other circles in the six circles theory: the strategist, the media person, the grassroots person and the policy researcher.[14] (I didn't need a lobbyist, because we weren't planning to be pushing or stopping any legislation yet.)

B.   *Workplace Flexibility 2010*

The new team got together in June 2004, and that's when we came up with the name for the enterprise: Workplace Flexibility 2010. I was explaining to the group that we needed to convey to our audience in Washington that our goal was to be a short-term (and time-limited) political intervention. We needed to convey that our primary objective was to change the political landscape enough so that new ideas could arise and new grooves of cooperation could form around the issue of workplace flexibility.

I talked about the need to have a strategy for enhancing the visibility of workplace flexibility as a policy issue. We needed policymakers and advocacy groups from across the political and ideological spectrum to view workplace flexibility as a legitimate and important policy issue, not simply as an individual concern that did not call out for structural changes.

Finally, I reminded the group that our mission was to see if we could come up with policy ideas that would work for both employers and employees—even though we should expect that people in Washington would laugh at us for trying. And to do so, we needed to make it crystal clear that our initiative would *not* be taking policy positions at the outset. From my perspective, the only way we would even have a chance of making this experiment work was to disclaim any positions on policy for a significant amount of time. We absolutely had to have what we later came to call "rigorous, disciplined neutrality."

Robert Raben, one of our strategists, listened to my spiel and said: "You're talking about workplace flexibility 2010. You're talking about doing activities now that *might* result, by the year *2010*, in some possible new approaches and collaborations."

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14. Using subcontracts, I hired Robert Raben and Nancy Buermeyer from the Raben Group as strategists, Patti Giglio from PSG Communcations for media, Patricia Kempthorne from the Twiga Foundation for grassroots and community work, and Jean McGuire from Northeastern University for policy research. I thankfully still had my whole legislative lawyering team from Georgetown Law's Federal Legislation & Administrative Clinic, including Robin Appleberry as the Teaching Fellow and Katie Corrigan as the Deputy Director, as well as Sharon Masling and Barbara Cammarata who were job-sharing the legislative lawyer job.

"Exactly!" I said. And so, in June 2004, the name Workplace Flexibility 2010 was born.

Of course, the way the Sloan Foundation works is that it ordinarily funds projects in two-year increments. Every two years, a grantee must put in a new proposal to receive additional funding. So when I told Kathleen Christensen, in 2004, that I was naming our enterprise Workplace Flexibility 2010, she looked mildly panicked and said, "Well, you know, the foundation hasn't necessarily committed to *funding* you until 2010!"

I assured her that I would not be coming back in two years to ask for more money if I saw, based on our initial efforts, that this was not going to work. We were just going to start off and see whether consensus was at all possible in this area. I told her I might come back in 2006 and tell her to just forget it and not waste any more of the Foundation's money because there simply is no way to break the political impasse. So Kathleen accepted the name of Workplace Flexibility 2010, with that caveat, and off we went.

By the way, working on a two-year grant cycle is not something I had ever done before, either as a law professor or as an advocate. I had spent about fifteen years, in my Federal Legislation & Administrative Clinic at Georgetown Law, helping clients like Catholic Charities USA and various disability rights groups achieve their legislative and administrative goals. My clients and I never stopped every two years and said, "What have we done so far and where are we going in the next two years?" No one ever had the time for that! But, every two years, WF2010 would have to stop and seriously consider what the project had accomplished and where it wanted to go next in order to develop a new grant proposal.

Even though I complained mightily during every two-year grant cycle, I think now that it was a phenomenal thing to have been forced to do. It required us to be focused and intentional in our efforts in a way that otherwise might not have happened. If you were to look at the activities and products that WF2010 helped generate and support from 2004 and 2010, here's a snapshot of what you would see:

- a Legal Working Group on Workplace Flexibility;
- a Phased Retirement Working Group;
- a number of bipartisan Hill briefings on workplace flexibility;
- a "Ten Principles on Workplace Flexibility" document;
- a National Advisory Commission on Workplace Flexibility;
- a number of briefings around the country co-hosted by business associations and community groups;
- a Senate Staff Study Group on Workplace Flexibility;
- a White House Forum on Workplace Flexibility;
- the establishment of a new Flexible Work Arrangements Collaborative made up of business and various constituency groups.

You would also find tons and tons of legal and policy background documents on

the website www.workplaceflexibility2010.org, as well as three major WF2010 public policy reports, also available on the website:

- PUBLIC POLICY PLATFORM ON FLEXIBLE WORK ARRANGEMENTS (2009);
- FAMILY SECURITY INSURANCE: A NEW FOUNDATION FOR ECONOMIC SECURITY (with UC Berkeley Center for Health, Economic, and Family Security) (2010); and
- FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION (with Dr. Jennifer Swanberg) (2011).

Those are some of the tangible activities and products we might not have reached without the rigors of a two-year grant cycle.

Of course, my real goal in this talk is not simply to describe the formation of WF2010 or to walk through its accomplishments. Rather, I intend to situate those accomplishments within the specific conceptual model that WF2010 developed. This is a model of "policy intervention" that involves truly listening to the concerns of all sides, internalizing and synthesizing those concerns, setting the table for progress through meaningful dialogue, and, ultimately, producing robust policy ideas that aim to bridge the divide and produce meaningful change. I think this model can be applicable to any social policy issue. And since the model engaged the business community in a very different way than was normally the case in Washington, it is quite relevant to today's symposium.

III.

THE CONCEPTUAL MODEL OF WORKPLACE FLEXIBILITY 2010

As Katie (our strategist), Sharon (our other legislative lawyer) and I look back now on the seven years that WF2010 was active, we see that there were three stages in the new conceptual model that we pioneered:

- First, *understanding and framing.*
- Second, *setting the table.*
- Third, *creating outcomes and changes.*

These stages are dialectical, not strictly chronological. In our stage of "setting the table," we were also refining our "understanding and framing" of the issue. And even as we were in the "creating outcomes and changes" stage, we were still doing things that helped us with "setting the table" for other issues. So these stages necessarily overlapped with each and impacted each other over time. Nevertheless, each stage had a different principal focus. That is why I can describe activities of WF2010 in terms of a first stage (from 2004 to 2007) that was primarily about "understanding and framing;" a second stage (from 2007 to 2009) that was primarily about "setting the table;" and finally, a third stage (from 2009 to 2011) that was largely about "creating outcomes and changes."

Within each of these dominant stages, there were always three elements in play: (1) legal and policy analysis, (2) advocacy group engagement, and (3)

political player engagement. (By "political players," I mean the people who are actually in the legislature and in the executive branch.) Each element also required a person in charge. For WF2010, as the legislative lawyer, I was in charge of the legal and policy analysis. Katie Corrigan, as the strategist, was in charge of the advocacy group and political player engagement. In the sections that follow, I am going to talk about how WF2010 worked through each period and describe how the three elements operated together in each stage and contributed to each step of the process.

A.   Understanding and Framing: 2004 to 2007

The first stage in the WF2010 model is understanding and framing. This is the hardest thing to do in Washington. The accepted wisdom is that, in order to be relevant, you have to be *doing* something more than just learning about and framing an issue. You need to be presenting your position on an issue and then translating that position into concrete work supporting or opposing some bill.

Yet one of the insights of the WF2010 model is that if we want to engage businesses in a different and real way (and presumably, if businesses want to engage employee groups in a different and real way), we *have* to commit up front to a period of time in which we are truly focusing solely on understanding and framing the issue that we are trying to tackle. Of course, if each side simply wants to negotiate with the other side as the opposition, neither side has to put much time into this type of effort. Each side can simply move to the third stage of "creating outcomes and changes" and try to push, stop, or modify a particular bill. Mind you, this is *not* an ineffective way of going about things! The ADA, medical privacy legislation, and any number of bills that I have worked on over the years have all been done in this way.

The point of today's symposium, however, is to ask whether there is some different way to create policy. If so, is there something to be *gained* by developing policy in this different way? Is there more bang for the buck by doing political work differently? I am a believer that the answer is "yes," which is why I am standing here and telling you about this different way. At WF2010, we were able to spend about three years in this first stage of "understanding and framing." That was, and is, a definite luxury in Washington. We were able to do it because we were funded by a foundation to try this new approach. Personally, I think more foundations should consider investing in groups to engage in this first stage on issues that have proven to be politically intractable.

Despite the relatively inactive title of this stage—"Understanding and Framing"—the elements of legal and policy analysis, advocacy group engagement, and engagement of political leaders were all well at work, laying the groundwork for future success.

1.   Legal and Policy Analysis

During the "understanding and framing" stage, we maintained what I called

"rigorous neutrality" or "disciplined neutrality." We were trying to truly understand the complexity of the issues before jumping in to say, "This is what we think the policy answer should be." In the legal and policy realm, developing a true understanding meant starting by conceptualizing the various elements of workplace flexibility, analyzing all the laws that could apply to workplace flexibility issues, and categorizing those laws by the area impacted and the manner in which they affected workplace flexibility. We ultimately developed what we called the three "buckets" that make up workplace flexibility and divided the laws impacting flexibility into five overall components.

The first bucket was Flexible Work Arrangements, a concept that includes flexibility in terms of scheduling, time, place, et cetera, as well as predictability in scheduling. The second bucket was Time Off, which we said consisted of three distinct varieties: short term time off, episodic time off, and extended time off. We actually took the time to coin new names for each type in order to avoid the politically charged labels that had developed around each of these areas over the years.[15] Finally, the third bucket was Career Flexibility, which captured the issues that arose for people who had left the workforce and were now trying to come back in.

Much of the background work on these issues was accomplished by the approximately thirty law students who worked for WF2010 as research assistants and clinical students during those "understanding and framing" years. However, this analysis didn't take place in a vacuum. The second component of the first stage—advocacy group engagement—was vital both for its own purposes, which I will describe in a moment, and as a means of informing our legal and policy analysis.

2.   *Advocacy Group Engagement*

In the course of trying to engage relevant advocacy and interest groups, we utilized a concept we called "cluster meetings." We held two cluster meetings on the FMLA and two on the FLSA over the course of a year. The concept of a "cluster meeting" was based on our political assessment that we couldn't have "the in-laws" together at the same meeting yet. Our ultimate goal was to have something that might work for both businesses and employee groups. But we didn't feel that we could start with business and employee groups in the room at the same time and get any real movement.

Instead, we gathered the employee groups into one meeting and said "Here is what we think the FMLA requires and here are some of the issues and difficulties we see with the law as it currently stands. What do you think?" We then posed the same set of questions and observations about the FMLA to

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15. For instance, the term "intermittent leave" had become synonymous with fights over the FMLA so we decided to opt for the term "episodic time off." It covered essentially the same type of leave but carried less political baggage.

business groups in a second meeting. We did the same thing with regard to compensatory time in lieu of overtime pay under the FLSA. In the FLSA meetings, we focused on the employment of state and local employees, where the law already provides for such an arrangement, in order to figure out what we thought about this policy approach generally.

The lynchpin of these cluster meetings was the fact that we used the exact same material and questions for each meeting. We did not develop one set of materials framed for employer groups and a different set framed for employee groups. Rather, each set of groups knew that the same material was being discussed at each meeting. As we told them, our goal was to see whether we were getting our facts right. So we were trying to be as rigorous and objective as possible with regard to the two laws that were taking up all the oxygen in the room—the FMLA and the FLSA.

These cluster meetings served to test and refine our legal analysis, but they also served the purpose of addressing the second component of the first stage: engaging with advocacy groups. The reality was that we were the new entity in Washington—the new kid on a block with a long history. We were planning to play on issues that other groups had been engaging in for years, and we weren't planning to play in the ordinary manner of politics! It was these cluster meetings, and the legal materials we developed for those meetings, that helped introduce us to the existing advocacy groups who would ultimately be key to any final political agreements.

Part of the work of "engaging with advocacy groups" was to broaden the number of advocacy groups we hoped would come to see this issue as their own. One way to break an impasse is simply to expand the number of people in the room. To do that, we developed something called The Ten Principles of Workplace Flexibility. We saw that document as a vehicle for engaging possible new constituency groups, such as disability groups, mental health groups, military family groups, and aging groups. Each group had constituents who were directly affected by workplace flexibility issues, so our point was to articulate, through these principles, why these groups should care about workplace flexibility as one of *their* policy issues. The Ten Principles document ultimately went through about thirty-five drafts before it reached the point where we felt that it touched on all of the requisite interests at stake in a way that resonated with each group.

At the same time, the Ten Principles document was a useful vehicle for engaging the existing business and employee groups who already saw this as their policy issue. The document helped us focus on the specific concerns of each political group and to start playing around with language that might work for both sides.

After the cluster meetings, our Legal Working Group on Workplace Flexibility (LWG) was the second key mechanism that we used to understand the issues substantively, as well as to get a sense of what might be possible for

advocacy groups to accept down the line. The LWG consisted of seven top management lawyers and seven top plaintiff's lawyers. Katie, Sharon and I spent a lot of time choosing those fourteen people.[16] We wanted people who were very respected in their fields of management law and employee law, respectively, but who were not expressly political in Washington terms. We didn't want the lawyer/lobbyist who was actually working for the Chamber of Commerce or for a union or a progressive family group. But we did want respected lawyers who represented businesses and respected lawyers who represented plaintiffs. The Legal Working Group got started in October 2005 and its members met every month for a year and a half.

Our framework for the group was, again, unique for Washington. I told the group members to imagine that they were rulers on Venus. We at WF2010 would give them memos about how things operated on Earth with regard to the three buckets of workplace flexibility: flexible work arrangements, career flexibility, and various types of time off (short-term time off, episodic time off and extended time off). But then we wanted them to tell us how they would arrange matters on Venus.

The year-and-a-half enterprise of the LWG was our experiment to see if there was even a possibility of consensus around these various issues. As I had said to Kathleen Christensen when we first named the enterprise, it made no sense to me to have the Sloan Foundation spend money or time on this effort if a consensus-based approach was illusory. However, the LWG experiment produced phenomenal results. The discussions provided a framework for moving to the second stage of "setting the table" and helped us define what was possible in this environment. The LWG helped us determine that there was significant potential for getting consensus around flexible work arrangements; that getting consensus around time off would be difficult, but not impossible; and that the area of career flexibility needed lots of additional thinking.

3.   *Engaging Political Players*

The third component of the first stage was "engaging the political players"—the people in Congress and the Administration who would ultimately develop any public policy. During this stage, our goal was to create what Katie Corrigan called a "shallow groove of bipartisanship."

Katie's theory was that, given the existing political impasse, we had to see if it was possible to create a "shallow groove" of operating differently. If we could achieve that, then we could go deeper. Our primary method for creating this shallow groove of bipartisanship was inviting Members of Congress to host bipartisan briefings on the Hill. In these briefings, panelists would talk about the need for workplace flexibility and the type of workplace mismatch issues that

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16. Joe Sellers, a plaintiff's lawyer, and Doug Mishkin, a management lawyer, gave us an incredible amount of assistance in helping us construct and recruit that group.

employees and employers were facing given the changing demographics. But the panelists were asked *not* to propose any specific policy solutions to the mismatch.

This might not seem like a big deal, but in Washington, it was difficult to pull off briefings of that kind. From 2005 through 2007, WF2010 was the main group in town striving for bipartisanship in the labor and employment arena with regard to workplace flexibility. We ultimately helped organize five bipartisan Hill briefings that drew audience members equally from Democratic and Republican offices and employer and employee advocacy groups. That was an unusual sight in Washington on a labor and employment issue!

At the end of the "understanding and framing" stage, WF2010 had accomplished a few important things. First, the term "workplace flexibility" in Washington was more than just one small idea about comp time instead of overtime pay. Instead, people were using the term to describe a set of policy questions and ideas about reshaping the American workplace to better meet the needs of both employers and employees. Different groups, of course, still had radically different ideas on what the appropriate policy response to the workplace flexibility issue should be. But the concept of "workplace flexibility" as a broad-based social issue that required structural, and not just individual, responses was gaining traction thanks to our broad conception of the term. Second, WF2010 now had a deep understanding of the range of laws and policies that would need to be changed or enacted to make a difference with regard to the broad social issue that we were dealing with. Finally, we had the tentative beginnings of some advocacy groups and some Members of Congress who might be enticed to reach across party and ideological lines to begin a substantive conversation about real policy change.

As I said to our Legal Working Group at its last meeting: "We are ready to come back from Venus." The "setting the table" stage had begun.

B. *Setting the Table: 2007 to 2009*

It would have been nice to have been able to move directly from "understanding and framing" to consensus on substantive outcomes. But conceptualizing and deeply understanding a set of issues provides one with a sense of what is possible for a political consensus. After scanning the political landscape in 2007, Katie, our strategist, concluded there was not much incentive for either side to move from its locked position. Particularly going into an election year, significant movement seemed quite unlikely. We needed a middle stage—the "setting the table" stage.

1. *Legal and Policy Analysis*

We "set the table" through legal and policy analysis by getting the right group of people together to have a substantive conversation about policy ideas. We wanted to start a conversation that might ultimately result in political

consensus at the right moment. Katie's idea was to create a National Advisory Commission on Workplace Flexibility (NAC) that would focus on the various components of workplace flexibility that we developed and a separate working group on Phased Retirement that would look at many of the unexamined technical problems specific to that issue. She knew we had to set this stage of the process on Earth, not Venus. But she also knew we needed to stay one step removed from the current lobbyists and lawyers for the business and advocacy groups because the political landscape would simply not lend itself to compromise yet. Katie's solution was to recruit high-level individuals who—in their *previous* lives—had been lobbyists for business or family groups, key House or Senate staffers, or high-ranking Administration officials. Again, Katie, Sharon and I spent a significant amount of time identifying and recruiting the right people for the group. In the end, we had a balance of Democrats and Republicans, and a balance of employer and employee perspectives.

The NAC met for a little over a year, and those were some of the most remarkable meetings I have ever been part of in the course of my political career. Everyone was engaged and committed to the process. Most importantly for the legal and policy analysis element of this stage, the group came to consensus on a broad range of public policy ideas to advance flexible work arrangements. The ideas included developing and providing robust training and technical assistance tools for employers, piloting flexible work arrangement policies in the federal government, and using the federal government as a "model employer" for flexible work arrangements. That consensus became the basis for the first major public report released by WF2010 in May 2009, at the end of the "setting the table" stage. That report included a carefully worked on and worded statement regarding the process and outcome of its work in this area, signed by all members of the NAC.[17]

The NAC process did not lead to results in all categories, though. My one area of significant disappointment was that the NAC could not reach consensus on any of the time off issues. Nevertheless, I am still very proud of the work we did with the NAC during the "setting the table" stage on these time-off issues. We hosted a meeting of economists with our NAC, including prominent economists from across the political spectrum. We came up with several possible ways of addressing the conundrum of how to pay for short-term, episodic, and extended time away from work. And we worked with The Brookings Institution in developing models that we shared with the NAC members.

Everyone worked really hard, and I believe all of us, including members of the NAC, learned a great deal. But ultimately, the nut was too hard to crack.[18] It

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17. WORKPLACE FLEXIBILITY 2010, PUBLIC POLICY PLATFORM ON FLEXIBLE WORK ARRANGEMENTS (May 13, 2009), *available at* http://workplaceflexibility2010.org/images/uploads/reports/report_1.pdf.

18. The fight over time off issues was reaching a new height during this period. California and New Jersey had passed paid family leave laws (in 2002 and 2008, respectively) and mandated sick days legislation was moving in states and cities across the country (San Francisco passed an

was not possible to bridge the ideological and political gap between the members. This was a case where the effort to "set the table" made it clear that we were simply not able to pull off a joint dinner party. That being said, we were able to determine some glimmers of long-term hope that served as the basis for our strategy in developing concrete ideas during our next stage.

We were also less than successful regarding the technical issues surrounding phased retirement and flexible work arrangements. Although we had an impressive group of participants for the Phased Retirement Working Group, it was not ultimately possible for the group to reach consensus.

While the "setting the table" stage saw extensive activity on the legal and policy analysis front, the other two components of each stage—engaging advocacy groups and engaging political players—had significant activity as well.

2.   Advocacy Group Engagement

With regard to the advocacy groups, WF2010 decided to go "outside the Beltway" from 2007 to 2009. We partnered with community and business groups across the country to host a series of Community Policy Forums on Workplace Flexibility. Each location had a particular focus: in Chandler, Arizona, we talked about aging issues; in Rochester, Minnesota, we talked about health issues; in Seattle, we talked about disability issues; in Savannah, Georgia, we talked about low-wage workers; in Concord, New Hampshire, we talked about states as employers; and, in New York City, we talked about union issues. Each community forum was as groundbreaking in its community as our NAC meetings were in Washington, D.C. That's because, for the first time, there was a deep and substantive policy discussion—across party and ideological lines— about what might be possible for the government to do in advancing workplace flexibility.

In these community forums, we assumed that corporations could be progressive actors in achieving government solutions to the work/life mismatch. We made this assumption based on our research into the difficulties employers were facing in light of the mismatch and based on the innovative solutions some of them were already developing to enhance workplace flexibility. So we invited corporations, as full and respected players, into the conversation of these community forums.

What we learned in the community forums helped inform our substantive understanding of the issues. Just as importantly, those forums provided subsequent efforts, such as the FWA Collaborative (which would be made up of the actual political players in Washington) and the White House Forum on

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ordinance in 2007, Washington, D.C. passed an ordinance in 2008, Seattle passed an ordinance in 2011, and Connecticut became the first state to mandate paid sick days in 2011). Given these advances, most of the employee representatives on the NAC were not particularly interested in significant compromise on the federal level. And business community representatives found it hard to imagine a mandate in this area that they could like.

Workplace Flexibility (which would bring together businesses and employee groups), with a deep bench of businesses and family advocates outside of Washington who were educated about the issue of workplace flexibility.

In addition to the community forums, the NAC and the Phased Retirement Working Group served as branches to the relevant advocacy communities. The members of each group were purposefully selected for their lack of current ties to any one faction, but most had deep connections to one community or another. As with the community forums, the NAC and the Phased Retirement Working Group served as a bridge for subsequent activities in the third stage of "creating outcomes and changes." A year later, both the FWA Collaborative and the White House Forum on Workplace Flexibility (held in March 2010) used the NAC report in their efforts.

3.   *Engaging Political Players*

Finally, our engagement of political players advanced during this stage as well. While it was not earth-shattering, it was a deeper groove of bipartisanship than is usual for Washington. A Senate Study Group on Workplace Flexibility was formed by a group of six Senate offices—three Republicans and three Democrats. Led primarily by the offices of then-Senator Blanche Lincoln (D-Ark.) and then-Senator Mike Crapo (R-Idaho), this balanced group of Democratic and Republican staffers met several times from September 2008 through May 2009, learning and talking about flexible work arrangements and public policy.

The lessons we learned regarding areas of compromise and the depth of potential political engagement during this stage helped WF2010 define realistic "outcomes and changes" for flexible work arrangements, time off, and career flexibility, as we moved into the third and final stage of the WF2010 enterprise. The picture was brighter for some areas than others, but we had a strong sense of the possible.

C.   *Creating Outcomes and Changes: 2009 to 2011*

While the third stage of the WF2010 model— "creating outcomes and changes"—relied as much on the three elements of legal and policy analysis, engaging advocacy groups, and engaging political players as the other stages did, those elements tended to converge in a way that makes it difficult to separate and describe each strand. Everything was feeding into the ultimate goal of creating positive change. So, instead of walking through each element as I did in the previous sections, I am going to offer a general view of WF2010's endgame.

Before I do that, though, let us return for a moment to the goals WF2010 had set for itself in 2004. One of the enterprise's primary objectives was to have policymakers and advocacy groups from across the political and ideological spectrum consider the issues of workplace flexibility to be legitimate and important policy concerns. We also wanted, to the extent we could, to intervene

in the political landscape so that new ideas might arise and new grooves of cooperation might form around the issues of workplace flexibility.

The third stage of the WF2010 model saw success in many, but not all, of the issues WF2010 had taken on. Any real policy change in Washington takes time. That is basically a truism. But the political landscape among the advocacy groups in the area of flexible work arrangements is significantly different now in 2011 than it was in 2004.

We found significant success advancing the visibility and scope of FWAs in the policy arena. The NAC process marked the beginning of a serious collaboration among a diverse group of political advocacy organizations that began in June 2009 and resulted in two collaborative Capitol Hill briefings, in October 2009 and December 2009. A more formal FWA Collaborative formed in February 2010 and prepared collaborative documents and ideas that it presented to various political players throughout 2010 and 2011. Bipartisan progress towards meaningful solutions had begun—a remarkable feat considering the inertia that had existed on the issue prior to our engagement.

With regard to the issue of time off, WF2010 re-defined the outcome to be achieved based on the realities of our "setting the table" stage. If a consensus could not be reached among the NAC members who were one step away from the actual political players, it was foolish to believe that consensus could be reached among the political players themselves. Nevertheless, there was still something of value that WF2010 could offer—a comprehensive policy approach that would further the discussion begun in the NAC and LWG process.

The new program was ultimately called Family Security Insurance.[19] While we no longer attempted to get consensus on a proposal, we took into account everything we had learned during the period of time that we had been seeking consensus and produced a policy plan that, I believe, pushes the debate forward in a progressive way. The final report, *Family Security Insurance: A New Foundation for Economic Security*, was issued in December 2010, eight months after I had left WF2010 to become a Commissioner at the Equal Employment Opportunity Commission.[20] It lays out a blueprint for a new social insurance

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19. As we started work on this project in the third stage, I reached out to UC-Berkeley's Center for Health, Economic and Family Security. I had been very impressed with the legal scholarship of Professors Gillian Lester and Steve Sugarman, and both were now affiliated with the new center, lead by Anne O'Leary. It turned out to be a wonderful collaboration. The Berkeley Center not only had incredibly smart legal scholars and policy thinkers in Lester, Sugarman, and O'Leary, they were also blessed with the smart and hard-working Angela Clements. The WF2010 team not only had a legal team of me, Sharon, and Katie, but we were also blessed with the smart and hard-working Pierce Blue. (There were also many wonderful students and interns on both coasts, all of whom are recognized in the acknowledgments section of the report.)

20. WORKPLACE FLEXIBILITY 2010 & BERKELEY CTR. ON HEALTH, ECON. & FAMILY SEC., FAMILY SECURITY INSURANCE: A NEW FOUNDATION FOR ECONOMIC SECURITY (Dec. 2010), *available* at www.familysecurityinsurance.org. In addition, Heather Boushey at the Center for American Progress took one of the ideas we had posed in our initial thought piece for the joint economists/NAC meeting and worked it up into a detailed proposal called "Social Security Cares" insurance. *See* CTR. FOR AM. PROGRESS, HEATHER BOUSHEY, HELPING BREADWINNERS WHEN IT

system that provides income replacement for people who need to take time off from work for caring and bonding with a new baby, for personal health reasons, or for other family caregiving reasons.[21]

I do not expect to see much political movement on Family Security Insurance in the next two years. There is simply not yet the groundswell of support or the well-organized coalition that is needed to overcome the political impasse. That said, I know that WF2010 helped change the contours of the conversation, by developing and presenting an approach that truly takes into account the needs and challenges of both employees and employers. And I believe that when Washington is ready to grapple with this issue in a meaningful way, the Family Security Insurance proposal will be an important and useful variable in that effort.

WF2010 also helped change the contours of the conversation in Washington about low-wage workers and workplace flexibility. From the beginning, WF2010 consistently wove in the concerns of low-wage and part-time workers into the policy conversation on workplace flexibility. But it was in the third stage that this work came to fruition. One of the WF2010 legislative lawyers, Elizabeth Watson, worked with Jennifer Swanberg[22] from the University of Kentucky and Director of the Institute of Workplace Innovation to produce a comprehensive report, *Flexible Workplace Solutions for Low-Wage Hourly Workers: A Framework for a National Conversation,* which was issued in May 2011.[23] The report pulled together the existing research in a policy-friendly and accessible manner. Among other things, the report explained how flexibility for low-wage workers is often more about needed predictability of scheduling, rather than traditional flexibility. It also explained how both predictability and traditional flexibility can help retain low-wage hourly workers, hence supporting the bottom line even of those businesses focused primarily on constraining labor costs. As with time off, the political landscape may not be currently hospitable to passage of all of the proposals the report offers but it will serve as a valuable step forward in the workplace flexibility debate.

CAN'T WAIT: A PROGRESSIVE PROGRAM FOR FAMILY LEAVE INSURANCE (June 8, 2009), *available at* http://www.americanprogress.org/issues/2009/06/fmla.html.

21. WORKPLACE FLEXIBILITY 2010 & BERKELEY CTR. ON HEALTH, ECON. & FAMILY SEC., FAMILY SECURITY INSURANCE: A NEW FOUNDATION FOR ECONOMIC SECURITY (Dec. 2010), *available* at www.familysecurityinsurance.org.

22. Jennifer Swanberg, Ph.D. had been doing extensive research on flexibility for low-wage, hourly workers for a number of years. She and two other prominent scholars in the field, Susan Lambert, Ph.D. and Maureen Perry-Jenkins, Ph.D., had been featured in a major policy conference that WF2010 had hosted in May 2008.

23. LIZ WATSON & JENNIFER E. SWANBERG, WORKPLACE FLEXIBILITY 2010 & INST. FOR WORKPLACE INNOVATION, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS: A FRAMEWORK FOR A NATIONAL CONVERSATION (May 2011), *available at* http://www.uky.edu/Centers/iwin/LWPolicyFinal.pdf.

IV.

CONCLUSION

I hope I have been able to convey to you in this talk some understanding of how differently WF2010 engaged with businesses and business associations over the course of its existence.

The WF2010 staff came largely, although not exclusively, from progressive social backgrounds. But the one thing everyone had to commit to was a true engagement with all stakeholders in the debate, maintaining an open mind throughout the process.

Speaking just for myself, that commitment made a huge impact on me. In fact, I do not think I realized when I started the enterprise how much of a change was going to make in the grooves of my brain. Some people may think those changes are bad. But I don't think so. My personal default is still the same. That is, my default on most policy questions tends to be pro-employee. That hasn't changed. But I think the grooves in my brain have changed a bit because I have taught myself to listen to the concerns of businesses differently.

I can see the impact of that now on the Equal Employment Opportunity Commission. I have been working very closely with my Republican colleague, Commissioner Victoria Lipnic, who, as Assistant Secretary of Labor for Employment Standards during the Bush Administration, was involved in some of the WF2010 process. During our time together at the Commission, we have negotiated the Genetic Information Nondiscrimination Act regulations and the ADA Amendments Act regulations. And while I have engaged in these types of negotiations before—for example, negotiating the ADA itself—I feel as if my new WF2010 grooves have helped me see more complexity in the facts. Personally, I think that's a good thing, and I believe that it would be a good thing if more progressive organizations engaged in this kind of practice. We might just find that some of the "intractable" issues we have been fighting on for years can actually be solved in progressive ways.

I think a day like today, in which you are trying to unpack and explore ways in which corporations can be progressive actors, is both wonderful and challenging. I am thrilled to be able to start off your symposium with the story of Workplace Flexibility 2010.

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