

# TEXAS LAWYER

APRIL 27, 2015

An ALM Publication

www.texaslawyer.com

## OUT<sub>of</sub> ORDER

Opinion • Commentary • Humor

### Lessons From the Ellen Pao Case

By KATHLEEN J. WU

As has been amply publicized, Ellen Pao lost her discrimination lawsuit against her former employer, the San Francisco venture capital firm Kleiner Perkins Caufield & Byers. But even if one believes the jury made the right call in Pao's case, most women (and hopefully a growing number of men) will acknowledge that women are held to a different standard than men.

#### ON THE LEVEL

Pao wasn't combatting a "Mad Men"-era policy of "we don't promote women," and she wasn't alleging that she was groped by a superior or chased around a desk. Pao claimed something much harder to prove: that her employer maintained a corporate culture that devalued the contributions of women and held them to a persistent double standard that rewarded her male colleagues for behavior that was held against her.

Unfortunately for Pao, the jury didn't agree with her. And it's no surprise. Subtle discrimination the likes of which Pao claimed to be subjected to is hard to prove and wildly open to interpretation. And although the male-dominated world of Silicon Valley VCs seems to

uniquely nurture such a culture, there's no question it exists in the legal profession as well.

Nationally, women working full-time earn 82.5 cents for every dollar a man earns, but women lawyers can only dream of making that much compared to their male colleagues. According to the U.S. Department of Labor, women lawyers make 56.7 cents for every dollar a man earns—the lowest ratio of all the industries included on their survey.

The reasons for that discrepancy are vast and complex. Certainly, the billable hours' expectation drives from the profession anybody who isn't able—or doesn't want—to work extraordinarily long days. But subtle discrimination, in the form of everything from gender stereotypes to women being excluded

**Pao wasn't combatting a "Mad Men"-era policy of "we don't promote women," and she wasn't alleging that she was groped by a superior or chased around a desk.**

from the old boys' network that accounts for much of rainmaking, plays a major role as well.

Gender stereotyping plays itself out in a number of ways, including women being assigned (or taking on) too much "office housework," as Facebook COO and resident neck sticker-outer Sheryl Sandberg noted in a recent New York Times column. Office housework—planning the office party, training new employees, taking notes at meetings and other "team player" chores—can be particularly pernicious in the legal profession, where billable hours are carefully tracked and non-billable time is seen as, at best, a necessary evil.

Office housework even played a cameo in Pao's lawsuit: she and a second female colleague were asked to take notes at partners' meetings.

Incidents like that highlight the difficulty of Pao's claims. Is being asked to take notes illegal or, on its face, discriminatory? Certainly not. But when women are consistently expected to take notes, pass out office supplies, make copies or do other chores, it sends a distinct message. And, as Sandberg points out, there are opportunity costs: "The person taking diligent notes in the meeting almost never makes the killer point."

Pao also claimed to be penalized for behavior that was tolerated or rewarded when it was exhibited by male colleagues. She was criticized both for being too quiet and passive and for being too brash and competitive. Is there such a thing as too brash and competitive for a Silicon Valley venture capital firm?

As most women lawyers will attest, there is such a thing as being too brash and competitive in the legal profession. Well, too brash and competitive for a woman. And that line is right next to the one for being "too quiet and passive." Finding that sweet spot is difficult, to say the least.

How do those in the profession change the culture to one that allows for the equal contributions of men and women and brings out the best of all of our unique talents? Simply put, there must be a commitment to



diversity and an awareness of the need to combat gender stereotypes at all levels of the profession. And men—at least a few of the more important and visible men—need to be vocal in their support of women in the profession.

The work force is about to be taken over by millennial women, who outpace their male peers in earning college degrees and in participation in the labor force. It's a safe bet that a fair number of those women will want to become lawyers. If we want the best and the brightest of them to stay in our profession, we must welcome those women into a culture that values their contributions equally.

And we can only do that if we don't load them down with "office housework" and we don't hold them to a double standard that's impossible to overcome. ■■■



**Kathleen J. Wu** is a partner in Andrews Kurth in Dallas. Her practice areas include real estate, finance and business transactions.