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# Opinion: Gender Bias Unchecked in Venture Capital Firms

Ellen Pao's lawsuit against Kleiner Perkins Caufield & Byers provides a view into an ugly truth.

Deborah Rhode, The National Law Journal

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The facts are mixed and murky in Ellen Pao's widely publicized sex discrimination lawsuit against Kleiner Perkins Caufield & Byers, a leading Silicon Valley venture-capital firm. But whatever the ultimate result, a few points are clear. The venture-capital culture is out of touch with the realities of contemporary workplaces, where half the talent pool is female. And the premises of anti-discrimination law are out of touch with the realities of women's experience, where much gender bias is unconscious and implicit, rather than overt and intentional.

Pao's sexual discrimination case in California state court offers a rare glimpse into the gender dynamics of venture-capital companies. The picture isn't pretty. The evidence at trial offered a wide range of what social psychologists term microindignities—small acts of exclusion and devaluation that individually may seem minor but cumulatively create an atmosphere that is unwelcoming to women.

For example, female junior partners were asked to take notes and left out of networking events. According to the plaintiff's testimony, a partner explained that women were excluded from an intimate dinner at Al Gore's home because they would "kill the buzz." The partner denies making the statement but, whether he said it or not, the fact remains that women weren't invited. It is also uncontested that a senior partner with whom Pao had an affair propositioned one of her female colleagues. He arrived, unannounced and unwelcome, at her hotel room in his bathrobe and slippers. When the colleague complained to another partner at the firm, he told her that she should feel "flattered." Pao alleges that after she broke off her affair with the senior partner, he retaliated against her. She also claims that she was excluded from a major deal after returning from parental leave.

Whether such incidents are sufficient to prove gender discrimination is subject to dispute. Kleiner Perkins contends that it fired Pao for inadequate performance; she allegedly lacked the ability to "lead others, build consensus and be a team player." The firm also points out that it has one of the best records on gender among Silicon Valley venture-capital firms. Twenty percent of its senior partners are women, compared with an industry average of 6 percent.

A Double Standard

But some of the firm's negative characterizations of Pao suggest the double bind and double standard that often face aspiring women. She was criticized for being too "reticent" and "passive," as well as for speaking up, demanding credit and "always positioning." Although she was faulted for being difficult to get along with and having "sharp elbows," a male partner who was promoted was described in his reviews as "arrogant" and "overbearing."

Pao's case is a textbook illustration of the dynamic that social-science research confirms: Women who self-promote are viewed as less likeable, and behavior that is viewed as domineering but tolerable in a man is viewed as abrasive and disabling in a woman.

Here, the question the jury will need to resolve is whether, if Pao wasn't an effective team player, how much of the fault lies with her and how much is attributable to a team that may not have liked being led by a woman? If, as one partner at Kleiner Perkins claimed, Pao had a "female chip on her shoulder," should the firm have been more interested in how it got there and whether it needed to do something to address it?

These difficulties of proof point up the problems with prevailing doctrine. The basis for an employer's decision must be judged either biased or unbiased, its justifications sincere or pretextual. Yet in life rather than law, legitimate concerns and unconscious prejudices are often intertwined. In cases such as Pao's, the issues of motive are difficult to sort out. And the process for doing so is extraordinarily expensive for all concerned. Even parties who win in court may lose in the world outside it, given the incalculable damages to reputation.

The Kleiner Perkins lawsuit should serve as a wake-up call to venture capitalists and to the legal community generally that we need better ways than litigation to address women's underrepresentation. Women need a culture that is committed to their advancement, that supplies them with mentors, that educates supervisors about unconscious bias and that monitors work assignments and social events to ensure that male and female employees are getting comparable opportunities.

However this case is resolved, it stands as a reminder that a half-century after passage of equal rights legislation, we are a long distance from realizing them in practice. Gender equity remains an aspiration, not an achievement.

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