

Pao & Gender Bias

On May 10, 2012, executive Ellen Pao filed a lawsuit against her employer, Silicon Valley-based tech venture capital firm Kleiner Perkins Caufield & Byers (Kleiner Perkins), on grounds of gender discrimination. Pao began working at Kleiner Perkins in 2005. She became a junior investing partner, but after several years at the firm was passed over for a senior partner position and was eventually terminated. Pao claimed that men with similar profiles and achievements were promoted instead.

In late 2011, Pao and a coworker were asked by a senior partner to come up with ways of improving the firm's treatment of women, but the senior partner, according to Pao, was "noncommittal." On January 4, 2012, Pao took this issue a step further and wrote a formal memorandum to several of her superiors and the firm's outside counsel. In the memorandum, she described harassment she had received while at the firm, claiming she had been excluded from meetings by male partners, and asserting an absence of training and policies to prevent discrimination at the firm. Pao's memo indicated that she wished to work with the firm on improving conditions for women. She was fired on October 1, 2012. The lawsuit went to trial in February 2015.

In a testimony during the trial, Pao explained that she sued because there was no process for HR issues at the firm and believed she had exhausted all options for addressing these issues internally: "It's been a long journey, and I've tried many times to bring Kleiner Perkins to the right path. I think there should be equal opportunities for women and men to be venture capitalists. I wanted to be a VC but I wasn't able to do so in that environment. And I think it's important...to make those opportunities available in the future. And I wanted to make sure my story was told."

Pao's lawsuit made four claims against Kleiner Perkins: 1) they discriminated against Pao on the basis of gender by failing to promote her and/or terminating her employment; 2) they retaliated by failing to promote her because of conversations she had in late 2011 and/or the memo from January 4, 2012; 3) they failed to take all reasonable steps to prevent gender discrimination against her; and 4) they retaliated against her by terminating her employment because of conversations she had in late 2011 and/or the memo from January 4, 2012.

Pao's legal team argued that men were promoted ahead of women, women who experienced sexual harassment received little support, and women's ideas were often more quickly dismissed than men's. Pao's performance reviews revealed contradictory criticisms such as "too bold" and "too quiet." Pao also accused company partner Ajit Nazre of pressuring her into an affair and subsequently retaliating against her after she ended the relationship. She said she received an inappropriate gift containing erotic imagery and was present while men at the firm were making inappropriate conversation. Further, the legal team described how Pao and other women had been left out of certain meetings and gatherings.



The defense's case focused on Pao's performance and character, noting that Pao received several negative performance reviews and acted entitled or resentful toward other employees and was not a team player. Evidence included evaluations, self-evaluations, meeting summaries, and messages both personal and professional. Kleiner Perkins claimed that Pao was paid more than her male counterparts, including bonuses and training. The firm also argued that Pao's job description was mostly managerial and that limiting her involvement in investing was therefore not a form of discrimination.

The verdict was announced on March 27, 2015. The jury ruled 10 to 2 in favor of Kleiner Perkins on the first three claims, and 8 to 4 in favor of Kleiner Perkins on the fourth claim. Speaking after the trial, juror Steve Sammut said that the verdict came down to performance reviews, in which Pao's negative criticism remained consistent each year. But he added that he wished there was some way for Kleiner Perkins to be punished for its treatment of employees, "It isn't good. It's like the wild, wild West." Juror Marshalette Ramsey voted in favor of Pao, believing Pao had been discriminated against. Ramsey stated that the male junior partners who were promoted "had those same character flaws that Ellen was cited with."

Deborah Rhode, law professor at Stanford University, said that even with this loss, Pao's lawsuit succeeded in prompting debate about women in venture capital and tech. She stated, "This case sends a powerful signal to Silicon Valley in general and the venture capital industry in particular... Defendants who win in court sometimes lose in the world outside it." After the verdict was announced, Pao stated that she hoped the case at least helped level the playing field for women and minorities in venture capital. She later wrote, "I have a request for all companies: Please don't try to silence employees who raise discrimination and harassment concerns. ...I hope future cases prove me wrong and show that our community and our jurists have now developed a better understanding of how discrimination works in real life, in the tech world, in the press and in the courts." Pao's case has since been credited for inspiring others facing workplace discrimination to act; similar lawsuits have been filed against companies such as Facebook, Twitter, and Microsoft.

Discussion Questions:

1. At what points in this case study did Pao make the choice to voice her values? How did she voice her values in each of these instances?
2. Do you think Pao acted on her values effectively? Why or why not? Does the fact that she lost the lawsuit impact your reasoning? Explain.
3. Think through the seven pillars of *GVV* in relation to the case study above. Can you identify each pillar in Pao's actions? Are there any pillars that you think Pao could have engaged more effectively? Explain.
4. If you were in Pao's position at Kleiner Perkins, what would you have done and why? How might the pillars of *GVV* influence your actions? Select one of the pillars and describe how you would enact it in a situation described in the case study.
5. Based on the information in the case study, if you were a juror would you have ruled in favor of Pao or Kleiner Perkins? Why? How might your own values or biases influence your decision?
6. Have you ever worked at a job where you faced ethically questionable behavior? What did you do? In retrospect, do you wish you had done anything differently? How would you prepare for a similar situation today?
7. Have you ever witnessed or experienced discrimination in the workplace? What did you do? In retrospect, would you have done something differently? What do you think would be the ethically ideal way to handle instances of discrimination in the workplace?

Resources:

Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins

<http://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html>

Kleiner Perkin Portrays Ellen Pao as Combative and Resentful in Sex Bias Trial

<http://www.nytimes.com/2015/03/12/technology/kleiner-perkins-portrays-ellen-pao-as-combative-and-resentful-in-sex-bias-trial.html>

Ellen Pao explains why she sued: "I wanted to make sure my story was told"

<http://www.businessinsider.com/ellen-pao-explains-why-she-sued-kleiner-perkins-2015-3>

Ellen Pao wanted "a multimillion dollar payout," Kleiner lawyers contend

<http://arstechnica.com/tech-policy/2015/03/ellen-pao-wanted-a-multimillion-dollar-payout-kleiner-lawyers-contend/>

Ellen Pao asked for a \$10 million payment from Kleiner Perkins as the cost of ‘not fixing problems’
<http://www.businessinsider.com/ellen-pao-asked-for-10-million-2015-3>

What the Jury in the Ellen Pao-Kleiner Perkins Case Needed to Decide
<http://www.nytimes.com/interactive/2015/03/27/technology/document-ellen-pao-kleiner-perkins-suit-verdict-form-and-jury-instructions.html>

A Juror Speaks About His Vote for Kleiner Perkins but Still Wants the Firm to ‘Be Punished’
<http://recode.net/2015/03/30/a-juror-speaks-about-his-vote-for-kleiner-perkins-but-still-wants-the-firm-to-be-punished/>

Ellen Pao Speaks: ‘I Am Now Moving On’
<http://recode.net/2015/09/10/ellen-pao-speaks-i-am-now-moving-on/>

After Loss, Pao Hopes Case Leveled the Playing Field
<http://www.wired.com/2015/03/ellen-pao-kleiner-verdict/>

Pao’s Alleged Firing Could Hurt Kleiner Perkins in Retaliation Suit
<http://www.wired.com/2012/10/ellen-pao-kleiner-perkins/>

Gender Bias Will Soon Shine a Harsh Light on Microsoft
<http://www.wired.com/2015/09/microsoft-gender-lawsuit/>

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