



Ellen Pao's Case Against Kleiner Perkins Has Porn Star Talk, High Stakes for Women

By Susan Antilla

SAN FRANCISCO (TheStreet) -- Back in 1994 when the women of "Boom-Boom Room" fame at the brokerage firm Smith Barney were shopping around for a lawyer to take their landmark gender discrimination case, they visited the dingy Times Square law offices of Judith Vladeck, an advocate for women who'd taken on giants like Western Electric and City University of New York, and won.

Vladeck, who died in 2007, told me in an interview that when she surveyed the three wounded, but combat-ready, visitors in her reception area, she broke into a beaming smile. "I am so excited that women are getting angry again," she told them.

I thought of Vladeck and her aggrieved visitors last week when I was encamped in Room 602 of San Francisco Superior Court, where Ellen Pao, 45, has been duking it out with the venture capital firm Kleiner Perkins Caufield & Byers in an explosive gender discrimination trial. Pao was a

junior partner at the Silicon Valley firm from 2005 to 2012, when Kleiner fired her. She says Kleiner discriminated against her, and then retaliated when she complained. Kleiner has said that Pao wasn't up to the job.

Pao, who today is interim CEO of the social networking site Reddit, is seeking \$16 million.

Among the affronts she has shared with the jury are the story of the female partner on a business trip who opened her hotel room door to see an uninvited Kleiner partner holding a bottle of wine and wearing his bathrobe; the co-ed business flight on a private jet where the conversation turned to porn stars; and the Kleiner meeting where a male partner approached a female partner to ask her to take notes. When the woman declined, he asked Pao to do it.

It's worth mentioning that only 20 percent of Kleiner's investing partners are women -- a veritable equality utopia in the venture capital world -- so odds are that there were men nearby who could have been approached for the secretarial work before the two women were.

Pao's stories didn't quite match the extremes of the incessantly raunchy atmosphere at the Long Island, New York branch of Smith Barney, where the men set up a party room in the basement, christening it "The Boom-Boom Room," so I guess that's a sign of progress. But I couldn't help but be reminded of those brokers when I listened to testimony about Pao's colleague who literally had to push the Kleiner partner away from her hotel door so that she could get back to the safety of her room. (The man got promoted, and later was fired.)

At Smith Barney, women in the offices a floor above the Boom-Boom Room put up with constant harassment. One broker walked into the bullpen to see a note with her name scribbled on the whiteboard: "Kathleen gives good head." That was in the 1990s. Is that any worse than shrinking into your airplane seat while your male colleagues banter about porn stars?

The case against Kleiner has sparked a boatload of news articles and an extended social media conversation not just about the treatment of women in technology, but about women in every workplace. On March 11, visitors to the standing-room-only courtroom dodged a spaghetti bowl of reporters' extension cords and computer chargers in a room that seats 170. They'd come that day to watch Kleiner's lawyer rip into Pao about her personal life and her sometimes-callous interactions with coworkers.

The 12 jurors and three alternates were busily taking notes as Kleiner's



Ellen Pao

lawyer, Lynn C. Hermle, projected text messages on two screens in the courtroom that showed flirtatious conversations between Pao and a married Kleiner partner with whom Pao had a brief affair -- the same man who'd been fired after Kleiner learned of that bathrobe scene with another Kleiner woman. "You drive me crazy," wrote Pao in one text.

Pao has alleged that she was retaliated against after she broke off the relationship on learning that Kleiner's Ajit Nazre had lied when he said he and his wife had separated. But Hermle's cross-examination had jurors transfixed as she pounded Pao, who, among other things, had been criticized as having a "female chip on the shoulder."

The job description that led Pao to approach Kleiner had said that Kleiner partners were “humble,” but testimony so far has depicted pushy, self-promoting professionals at the firm who talk over each other at meetings. Pao has been criticized over the four weeks of the trial as being both too passive and too aggressive. She had “sharp elbows” by one account. She was “reticent, waiting for orders,” by another.

The jurors seemed less engaged when Pao’s lawyer stood up to redirect questions to her after a brutal cross-examination by Hermle. Sitting just a few feet from the jury box, I saw only two who bothered to write anything down when attorney Therese Lawless attempted damage control. When the two sides had finished their questioning of Pao, Judge Harold Kahn asked the jury if they had any questions. Many of the group’s 100 or so questions reflected skepticism over Pao’s story.

Breaking the tension in the courtroom on the morning of March 11 was the arrival of a class of sixth-graders from San Francisco’s St. Cecilia School. The judge welcomed the visitors and introduced them to Pao, who waved, and to the lawyers for each side, who smiled and raised their hands.

The big case was a perfect pick for a teacher looking for an engaging civics lesson. But it would be a shame if the students left the courtroom thinking that aggrieved employees can easily get their day in court. Kleiner fought hard to sequester Pao’s case in private arbitration, a battle Pao managed to win.

Most women don’t prevail when they try to get into court. Employers increasingly demand that workers sign mandatory arbitration contracts before they can get a job, making a public trial like Pao’s a unique event -- and the offenses of most discrimination-law violators a well-kept secret.

A lot rides on the Pao verdict. Already, women fear bringing cases knowing that human resource departments routinely check to see if a job applicant has ever sued an employer, said Linda Friedman, the Chicago lawyer who brought gender suits against Olde Discount Corp., Smith Barney, and Merrill Lynch in the 1990s.

A high-profile trial where a woman has been beaten up on the witness stand and then loses will only “further reinforce people’s terror at bringing discrimination lawsuits,” said Joan C. Williams, distinguished professor of law at the University of California Hastings College of Law in San Francisco.

But some women who’ve been through the ordeal say it’s never the wrong decision to get angry and fight back. “Nothing’s going to change unless

people do what Pao's done," said Nancy Thomas, one of the named plaintiffs in the 1997 class-action gender suit against Merrill Lynch. "Whether she wins or not, I'm glad she's holding them accountable."