

WEDNESDAY, JUNE 19, 2024

TOP
Women Lawyers Addendum
 2024

When lawyers are judged by their looks

By Tricia A. Bigelow

Despite the presence of women at every level of law - from court clerks to Supreme Court justices - the fact of their “woman-ness” is inescapable. Women face criticism for the way they dress: too masculine or not feminine enough? Similarly, LGBTQ+ individuals are expected to conform to gendered norms of professional dress. These perceptions have their roots in stereotypes that persist not only in the legal profession but in society at large.

As a straight woman, I have not experienced discrimination based on race or sexual orientation. But I have been stereotyped and judged for being “too female for the workplace.” After a successful career as a prosecutor, I went on to serve as a well-regarded judge in the municipal, superior and appellate courts. My decisions were sound, fair, and well-researched.

When then-Governor Arnold Schwarzenegger put my name forward to serve as Presiding Justice of the Court of Appeal, there were but two negative comments about my potential elevation; neither reflected on my competency. The first criticized me for wearing nail polish. The second took issue with the length of my skirts. I am not daft; my skirt lengths were usually a modest one to two inches above the kneecap.



SHUTTERSTOCK

In this day and age, one would think that women in the legal profession could be judged by the strength of their characters and the brilliance of their minds. But clearly that was not the case for me. To his credit, Governor Schwarzenegger - and his appointments secretary Sharon Majors-Lewis - took the criticisms in stride. The Governor, through Judge Majors Lewis (Ret.), said I could be as much of a “girly girl” as I wanted while overseeing the workings of the court.

Thank goodness my interest in fashion was not used against me in consideration for a promotion.

Volumes have been written on the subject of substance versus appearance, but books continue to be judged by their covers. And women in the legal profession will continue to be so judged. Alas, the people listening to their words are also looking at their hair styles, make-up choices, and yes, even skirt lengths.

Judgment

I know of a California Supreme Court judge who pulled aside a Deputy District Attorney to give her advice before she argued in a particular division of the Court of

Appeal. She felt privileged to be brought into his confidence. His guidance: Wear your hair pulled back, a shirt buttoned up to the top, a dark skirt suit below the knee, a strand of pearls, neutral nylons, and low-heeled shoes. That was it! Nothing about being prepared on the cases, well versed on the facts, admitting to the weaknesses in your case, but still putting your best foot forward. Nope. Just dress as if you were from the 1950s.

We all regularly make judgments and assumptions about others, whether consciously or unintentionally. A colleague of mine - an African

American woman - was once mistaken for “help” by visitors who asked her to bring them coffee. Parties who showed up in my court one morning were visibly startled to see the woman who had been seated at the clerk’s desk reviewing the calendar and cases now later sitting in front of them in robes.

Women, for better or for worse, will be judged simply because they are women. So do we celebrate this, bemoan it, or simply shrug and move on with our lives and careers?

I think we do a little of each.

Cause for celebration

Women are part of the legal profession in a big way. More women are now enrolled in law schools than men. They teach and write about the law; they serve as judges and commissioners; and they head up law firms, large and small, across the country.

Women tend to care about their world. They bring unique listening and empathizing skills to their work, which enables them to build trust with clients while also building bridges with opposing parties. The “soft skills” exemplified by women in the legal profession have imbued the entire industry with an appreciation for “softness.”

More cases are moving toward mediated settlements than at any time in history. Litigants and counsel are more open to resolving disputes outside the courtroom. Mediators understand that the best tools for achieving success are those found in the “women’s toolbox.” All of this is cause for celebration.

Not so pretty

But even as women exemplify intangible qualities that improve the legal system, they are viewed and

judged based on other qualities. Well-dressed men are often thought of as suave for their bespoke attire. Expensive suits and accessories signal confidence, success, and high status. Nicely dressed men are seen as more experienced, influential, and well-connected. Opposing counsel, judges, and juries are inclined to like and respect them.

Not so with women, who are constantly being assessed and evaluated based on non-legal factors. They may face criticism for dressing or acting too masculine, but also for being too feminine or fashionable. They may face backlash for deviating from traditional norms, or for adhering too closely to them.

Women are viewed with complex and often contradictory standards in the profession, and while proper appearance is important, they face additional pressure to balance femininity, authority and likeability in both dress and demeanor. Women who dress in religious garb may be viewed as committed to their faith and cultural practices, but they may also face conscious or unconscious questions about their competence. They may be stereotyped, discriminated against, and excluded from some social networks.

Yes, women may have soft skills, but they can also have strong voices. And when they use those voices to educate, coach and caution others, they provide an invaluable service to themselves and the profession.

It starts with making eye contact. When a client or a colleague is forced to look directly at the attorney, they are more likely to listen to her. They will focus on her words, rather than her neckline or other garb. Reminders are also helpful: “What did I just tell you?” “Are you hearing what I’m saying?” “Is there something important that I’m missing?” Attention should be

on the matter in front of the client, not open buttons or stray hairs.

When things go off the rails - sexist or discriminatory comments by coworkers, clients who focus on cleavage, fashion reviews by opposing counsel - it is past time to speak up. Sexism, anti-gay bias, and discrimination are so ingrained in our culture that many engage in it without awareness. Make others aware.

Move on

Judges wear robes for a reason: They convey gravitas and impartiality. They also direct eyes toward the judge’s face. Attorneys have no such cover. They must choose their wardrobes carefully, to convey professionalism without being distracting. But black, brown, and gray suits are boring. The attorney who wears a red dress in court may be like the red sports car on the freeway: destined to draw attention.

Just like the sports car driver, we can make daring choices. There are no rules against wearing red, purple, or orange in the courtroom. We should be able to dress however we wish - as long as it is tasteful and professional, not provocative. We should be able to wear nail polish, lipstick, and high heels. We should be allowed to wear clothes that align with our gender identity or with our religious affiliation. None of these are unprofessional or disrespectful.

If others have difficulty focusing on our words, too bad. There are enough women at all levels of the legal profession that we are a force to be reckoned with. We write laws, we enact and enforce them, and we advocate on behalf of those affected by those laws. How we dress and how we look has no bearing on how we do our work. I’m grateful that my firm, Signature Resolution, is welcoming and supportive of all

people with talent, regardless of how they look, dress or affiliate.

We must advocate for change at each level and judge women - and others - by their capabilities and not their dress. If we want to be “girly girls” or to dress in a way that aligns with our gender, culture or religious affiliation, the world should respect our choices. I say let’s go for it.

Hon. Tricia Bigelow (Ret) is a neutral with Signature Resolution. She served as a Los Angeles Municipal Court and Superior Court Judge prior to her appointment as an Associate Justice and then Presiding Justice of the California Court of Appeal, Second Appellate District, Division 8. She was awarded the Ronald M George Award of Excellence (Judge of the Year) from the California Judicial Council in 2014 and was a co-awardee of the Bernard S. Jefferson Award for Excellence in Judicial Education from the California Judges Association in 2015. From 2006 to 2008, she was the Dean of the Bernard E. Witkin California Judicial College, where she oversaw the education of all new judges in the state of California.

