

# THE STRUGGLE FOR GENDER EQUALITY

I most decidedly do not want to sound like an ad campaign, however “We’ve come a long way, baby!” is about the best way I can think of to describe our current state of affairs when it comes to women in the law. The expression comes from the 1960s ad campaign for cigarettes designed for women, with the idea at the time being that women had progressed so much in society that they now had cigarettes designed just for them. Of course, there are a number of ironies in the ad, the most obvious one being that by calling women “baby,” the campaign demonstrated just how far women still had to go. In much the same way, women in the law have indeed come a long way, but we see all around us examples of just how far we have left to go.

ILLUSTRATIONS BY MARCOS CHIN

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I will share with you some of my thoughts about gender bias in the law, including examples of women who inspire me, anecdotes from my own legal career, obstacles I have faced along the way, and some thoughts about checking our own biases. I will leave with you the hope that I have for my own daughters, granddaughters, sons, and (one day) grandsons. We still have a long way to go, but I am indeed hopeful as I look forward and see us continuing toward the goals of equity feminism: fairness, equality, and access for all, regardless of gender.

I'll start by giving two examples of tremendous women in the law who inspire me. Tani Cantil-Sakauye, our new chief justice of the California Supreme Court, is only the second female to hold this critical post within our legal system and the first Asian-Filipina American to do so. She is amazing, intelligent, fair, and strong. She is 51 years old, a mother of two teenage daughters, and someone I know and admire greatly.

In my own appellate district, my dear friend Carol Codrington was just appointed this past January. She is the first African-American to be appointed to our appellate district, and she is currently the only African-American woman on the court of appeals statewide. She is a dear friend, and I was privileged to speak at her confirmation hearing held at the Supreme Court of California in San Francisco before then chief justice Ronald George, then attorney general (now governor) Jerry Brown, and the others on the commission. I am proud of these women who are amazing and strong examples to me. They are part of a long chain of pioneers in the law that will undoubtedly continue into the future and one day include many who are just now entering or have yet to enter the profession.

As for me, I am the mother of six children—four daughters and two sons—and

the nana of three brilliant and capable granddaughters. Much like Thumper in the Disney classic *Bambi*, when it comes to my granddaughters, I am simply "twitterpated." I have sentenced defendants to multiple life sentences. I have presided over more than 30 horrific child molestation cases as well as many murder, attempted murder, sexual assault, gang, and domestic violence cases. I serve on committees, task forces, and judicial faculties at the county, state, and national levels. I am logical, forward thinking, in charge, and a bottom-line sort of person; but when it comes to my granddaughters, I am indeed twitterpated. Putty in their hands. I tried to get them to call me "Judge," but they refused. Nana—of all the ridiculous things to be called—Nana.

I converted to the LDS Church when I was 12 years old. A precocious child, when the missionaries knocked on my door, I read the entire Book of Mormon and decided to get baptized. My single mother and my two younger sisters joined some six years later. I am on my fourth tour of duty as Young Women president and have been honored to serve as Relief Society president as well. I am a card-carrying, temple-going, active member of the LDS Church, and I am the presiding judge of one of the largest counties in the country—2.2 million people and 7,200 square miles.

Before becoming a judge, though, I was a commissioner. Before becoming a commissioner, I had my own law firm—a very successful firm, I might add. I represented regional banks, a large agricultural conglomerate, a car racing group, and many others, doing mostly business and real estate litigation. When I decided that I wanted to eventually become a bench officer, I devoted a portion of my practice to criminal defense

through the county conflicts defense panel. As you can imagine, all of this went over well with some of the Relief Society women who knew better than me what was best for my family and my community.

As a female LDS attorney, you feel the sting of gender bias both in the professional world in which we circulate and, unfortunately and more disappointingly, in the communities and cultures of our wards and stakes. I wish I could shift this over to the men, but I must say for the most part in my experience within the Church, it has been the women more than the men who have shown strong bias concerning the working woman. It seems that unless you are in the fields of education, nursing, or retail, you often become isolated as a result of strongly held preferences and biases by some of our sisters. An insightful bishop took care of that and made me Relief Society president. So on Sundays I made home visits, and on many a Monday I made jail visits.

Believe it or not, they were very much the same. I found that when people are in crisis, when people are hurting, they all need respect and compassion. Whether it is the single mother at church with tattoos and piercings who has lost her job and needs a food order or the young man caught up in the courts who has lost his way to drugs, they both need to be treated with dignity, even if that dignity results in consequences for their choices. When sentencing the cruelest of criminals, I try to do so with decorum, never demeaning or losing sight of the integrity of the office I hold so dear.

As a litigator, I had many experiences that I'm sure countless others have had: I was often mistaken for the court reporter or clerk, called "Miss" instead of "Ms.," or, worse yet, "hun" or "young lady." These seem like small things, but the cumulative effect is annoying, to say the least, and serves as one more distraction in a high-stress situation. It also does something strange to women. Rather than command respect based on our performance and our gender, we do odd things in response, like lower our voices when speaking in court, talking in our female version of a manly man voice. Why do some women lawyers do that with their voices, anyway? I think it confuses juries, and I know it confuses me. It is rather odd, but we do it. More significantly, we often

respond by behaving less zealously as advocates and by acting in ways that are more dramatic and antic-driven in an attempt to compensate for gender bias.

I decided rather early on that I would engender my gender. I brought a portable crib to my office and hired my mother as an office manager and nanny. The clients loved it, and I was able to keep my youngest at the office until I felt he was old enough to be in part-time day care. I would not become one of the boys, and I would not abandon the parts of womanhood that I enjoyed. My successes with juries would come from accentuating exactly who I was, without pretense. I was prepared, well spoken, and at ease. I *wanted* juries to see me as a woman, a mom, a sister, an aunt, and a daughter, because that is who I am. It did not require me to transgender my patterns of speech, my appearance, or my behavior. I did not have to be base or crude in order to be accepted. Indeed, I think that being a strong, compassionate, intelligent woman is why I was so successful. Respect is garnered when respect is given without falsehood.

Shortly after I began practicing law, an opportunity arose for me to take over a practice from an attorney who had practiced for years. He became a judge, and it was up to me to keep those longtime, important clients. The attorney's parting words to me were, "Don't blow it, young woman." His biggest client was a very successful agricultural business. These were farmers, men, manly men, men who ran a huge multimillion dollar operation, and men who were wealthy and powerful enough that they were not used to being told no.

I will never forget walking into the office of the CEO and owner of that business as a very young, female attorney, knowing that I was going to have to tell this gruff, grouchy, and powerful man something he did not want to hear. I was sick. I knew that this was make-or-break time. Keeping my integrity by giving my honest advice was, of course, most important, but I was well aware that if this business was pulled from me, my firm would go under. Before I went into that office, I did indeed feel like a little girl.

I took a big breath, stood firm, and presented my advice, knowing it was contrary to what the farmer wanted. He listened, never interrupting me, and then sat glar-

ing at me. Finally, he spoke: "Well, Sherrill, guess you'll be our lawyer. Guess we will follow your advice." He shook my hand and became one of my best clients. He owned a top-notch stock car and funny car racing business and hired me on to handle that business as well. Many an afternoon, I in my six-inch stilettos was in that garage, hanging with the guys and going over the contracts, signing them on the hood of a race car. They would hustle to flip over their pin-up calendars as a sign of respect, and I am certain their language was cleaned up as well. I retained and expanded their business because I was an excellent attorney who would not compromise her integrity or her gender. We are friends to this day.

In the mid-1990s, the statutory rape laws in the state of California were gender-specific in that only men could be charged and only females could be protected. During that time, I had one of the most significant opportunities of my legal career. The football coach at a local high school made national attention by soliciting sex for his wife from two of his quarterbacks. He would bring the young men, both of whom, incidentally, were from strong and intact religious families, into his home and his life, making them part of the family. Then, as part of a very perverted plan, he strongly encouraged them to have sex with his wife. This went on for a few years until the story finally broke.

Even though these young men were minors whose lives had been turned upside down, they were not protected under the statutory rape laws of California at the time, because they were male and the person they were having sex with was female. The families of the victims came to me for help, and I took on their case, *pro bono*. With the help of these brave young men, I was able to start a grassroots campaign and help change the statutory rape laws in California to become gender neutral. Many other states followed our lead, and this is why we now see many female teachers, for example, prosecuted for having sex with their underage male students.

I lost a law partner as a result of that case and became the target of extreme gender bias, as did the young men. Jay Leno made jokes on national television discounting the notion that a teenage boy could be a victim.

In court, male attorneys and judges made crude and inappropriate remarks. Shock jocks and others on the radio used this as fodder, questioning my relationship with these boys as a female attorney about the same age as their perpetrator. Some feminists jeered me as well, go figure, claiming that the change in the law would open up additional ways to oppress women. It was a difficult time, but it was a victorious time. It was the right thing to do. We testified in Sacramento, and the law was passed. Those young men did something courageous as they stepped out of the shadows, and I am proud to have helped them.

Shortly after that, I decided to apply to become a judge. I was a shoo-in—at least that's what everyone thought. I went into my judicial nomination evaluation (JNE) interview confident and collected. Two of my interviewers were women, so I knew that gender bias wouldn't be an issue, of course, and thought to myself, "I have this made, sisters!" At 35, I was young and far more naïve, I suppose, than I had ever imagined. The experience could not have been much worse. Most JNE interviews last between 30 and 90 minutes. The first few minutes were great as we ran through my strengths. Then it got ugly. For the next several hours I was grilled on being a Mormon and, more extensively and specifically, on how I could possibly be a judge *and* a mother with all those children. When I left, I was battered and bruised and pretty dumbfounded. It was no surprise that I didn't get the job. Despite my previous successes, and although I knew I was only one of a hundred applicants, not getting the position really made me think that I simply might not be judge material.

Nevertheless, I was given the opportunity to serve in a similar capacity as a commissioner. I held that post for nine years. I loved it but knew I wanted more. Year after year the judges, commissioners, and attorneys with whom I interacted encouraged me to apply for a judgeship. I knew I wanted to, but I didn't want to go through that miserable experience again. After nine years I finally put my name back into the hat. This time around it was a much better experience. My JNE interview took 20 minutes, and my evaluators told me they had not received a single negative evaluation. A far cry from those who had questioned me as a woman, mother, and Mormon, the evaluators this time around focused on attributes like fairness, integrity, and legal acumen.

Being sworn in as a superior court judge was for me a defining moment in my life. Not only did it give me a little taste of sweet vindication, as you can imagine, but it also allowed me to honor my mother, my sisters, my husband, and my children. I was subsequently elected by my peers to the office of presid-

ing judge. In its more than one hundred year history, I was only the seventh woman ever appointed to the Riverside County Superior Court and only the second woman appointed to my current position of presiding judge.

Recently, this topic of gender bias got me searching. I felt a little bit like a kid who is snipe hunting—looking for but never finding the illusive snipe. In this case I was searching for a female LDS judge in California other than myself. I called the Church offices, which sent me to the statistics department, which sent me to the legal department, which sent me to a real law firm with a name like McConkie in it. That resulted in someone doing some research and calling back with the simple answer "We don't know the answer." I called all of my male LDS judges from the trial court to the court of appeals, up and down the state. The universal conclusion was "Never heard of one; don't think they exist."

So I would love to be corrected, but I think I am on fairly good, elevated burden of proof standards when I say that I



think I am the only female LDS judge in the state of California. I am certain that I am the only female LDS presiding judge in the state of California. It is a little startling, isn't it? If anyone knows of other California snipes such as me, I welcome your e-mails of correction.

As women, we need to do all we can to combat bias in appropriate ways. When my youngest was in his senior year of high school, he lettered in three sports. I was in a plum assignment presiding over felony trials with the most experienced lawyers, the most interesting cases, and a beautiful top-floor office at one of the newer court-houses. But I had a 45-minute commute that precluded me from watching him play baseball. As a mom, I wanted to be there; as a judge who did not want to look weak, I was torn. In the end, I traded in the plum for a difficult domestic violence family law assignment in order to be closer to home and able to attend his games. I am a mom who happens to be a judge, and compromising my priorities would have been a compromise of who I am. I gained the respect of both men and women on the bench because my family came first. We as women often tend to be our own worst enemies; we like to blame the guys, but we are frequently just as culpable, if not worse. Women, figure out what your priorities are, and do not compromise or yield to bias or pressure. You will be less stressed, and you will find that those who are important to you will respect your decisions.

To the wonderful men who support the women in their lives, as my husband and sons have supported me, I thank you. I ask you to continue to check your biases and consider how you deal with the women in your life. I hope you encourage your daughters to be what I refer to in my Young Women organization as "ultimate women." Ultimate women are those who rely on their inner beauty, who are intelligent, who are strong, and who are courageous. I love that my niece, the same niece who was a beauty pageant finalist, a vocalist, and a viola player, graduated from BYU with an advanced degree in mathematics despite being told "girls don't like math" over and over by her peers, teachers, and leaders. She is a great example to me of an ultimate woman. Encourage the women

in your lives to continue to learn, to serve, and to define themselves.

So what hope do we have for the future? I am very hopeful. There are 58 presiding judges in California. It is truly the highest honor that can be bestowed on trial court judges to be asked by their peers to lead and represent them. Of the 58 presiding judges, we have, I believe, a record 13 female presiding judges, and Los Angeles has its first-ever female presiding judge. I see more female attorneys in court all the time and wide-scale acceptance of attorneys on their merits, not their gender.

Over the past 15 years in my combined time as a commissioner and a judge, I have had many amazing experiences and significant accomplishments. I believe my success is in some ways a direct reflection of the obstacles I overcame as a woman—an LDS woman—along the way. Perhaps I committed a little bit more as I felt the need to overcome the bias—being considered a young lady instead of a lawyer, a court reporter instead of a litigator, or a soccer mom only instead of a judicial candidate. Despite the frustrations and the obstacles along the way, I have often thought, "Who better than me, a mother of six, to sort out the complex issues of high-conflict custody battles? Who better than me, an LDS woman, to preside over child molestation cases where the victims and the juries need a gentle touch? Who better than me to handle domestic violence cases?"

I am confident that we will one day see true fairness, equality, and access for all, regardless of gender. To get there, though, each of us needs to step up and ask, "Who better than me?" I am convinced that the best ways to combat the biases we face are to perform to the best of our abilities, to be committed to excellence in all aspects of our profession, and to embrace the gospel in a way that never leaves others to question our standards. Although we see less bias today than in decades past, I am confident that we will only continue to progress. One day we will look back on our present times and the progress we will have made from now, thinking to ourselves, "We've come a long way, baby."

*\*Sherrill Anne Ellsworth is presiding judge, Riverside County Superior Court.*

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