



## **#WETOO 2019: AN EXPLORATION OF SEXUAL HARASSMENT**

By Renee N. G. Stackhouse

The Historic 1928 Courts & Library Building in downtown Sacramento is beautiful; boasting wood polished to a shine, high ceilings, and crown molding. The building harkens back to a time of the invention of Mickey Mouse, the discovery of penicillin, and the first trans-pacific flight. It was built in a time when women had just shortly prior (1920) won the right to vote.

On March 21, 2019, the historic nature of the building was sharply juxtaposed with the forward-thinking women gathered to explore sexual harassment and to talk about creating a new future- a “new normal”- Brought together by the National Association of Women Judges’ Day at the California State Capitol: #WeToo in the Legal Workplace, the room was filled with women lawyers, judges, and legislators all committed to working together on ways to eliminate sexual harassment and assault in the California workplace.

NAWJ President, San Diego Superior Court Judge Tamila Ipema said that she made the program the first goal of her presidency because “sexual harassment and assault is still prevalent at every workplace, including the courts and legislative branches” and that “we need to bring awareness to this problem by demanding transparency and accountability.”

#WeToo program co-chairs, San Diego Superior Court Judges Paula Rosenstein and Joan Weber met, and exceeded, that goal through their efforts in bringing the program to life.

### **Stronger Together**

The day began with a welcome from the three partnering organizations; the NAWJ, the California Legislative Women’s Caucus, and California Women Lawyers.

President Ipema noted many accomplishments of the NAWJ including its recent position statement to extend and strengthen the Violence Against Women Act.

Legislative Women’s Caucus Chair Sen. Connie Leyva shared recent legislative wins in California including SB 1300 (Jackson) which made employers responsible for the acts of nonemployees if they knew or should have known about the conduct and failed to take immediate action, SB 1343 (Mitchell) which requires employers with five or more employees to provide at least 2 hours of sexual harassment training to all supervisory employees and at least one hour of training to all nonsupervisory employees (vice the 50 employees required by FEHA), and SB 820 (Leyva) which prohibits confidentiality clauses in settlement agreements for certain sexual offenses. She noted that we must continue the forward momentum and can’t “let things go back to ‘normal.’”

California Women Lawyers President Ameer Mikacich commented on the strength of women coming together to support each other at events such as this and highlighted programming of

CWL in furthering women in society and the legal profession, including “So, You Want to be a Judge?” and “Elect to Run.”

The mix of lawyers, judges, justices, and legislators coming together on #WeToo was truly extraordinary.

### **California Women Lead**

Judge Weber moderated the first panel featuring Senate President Pro Tem Toni Atkins and California Supreme Court Chief Justice Tani Cantil-Sakauye. Weber began by recognizing that, not only was it Women’s History Month, but that the two panelists were leading two of California’s three branches of government; a historic first.

The Chief Justice shared two fronts on which she had been focused to combat sexual harassment in the courts. The first dealt with the California Rules of Court and public access to records. She told those that gathered that she became aware of a situation where records were being sought pursuant to C.R.C. 10.500. She assumed they would be provided by the individual courthouse, as they were appropriately sought, but later learned the documents had not been produced because of a perceived ambiguity in the rule. She immediately asked the Judicial Council to take action to review the court rule on public records to clarify that settlement agreements to resolve sexual harassment and discrimination complaints against judicial officers must be publicly disclosed in response to records requests and that the names of judicial officers may not be redacted from those agreements. Even stronger, the amendment made it clear that the disclosure of records applies to all settlement agreements entered into since January 1, 2010 to ensure that past as well as future publicly funded settlement agreements against judicial officers are disclosable as a matter of law. According to the Chief Justice this was the “fastest acting work group in the history of the Judicial Council.”

She also raised the working group she created to keep courthouses “safe from discrimination and harassment.” The working group is developing recommendations for reporting procedures for handling harassment complaints which focus on confidentiality, building confidence in reporters, and safety. The message the Chief Justice wants to promise and deliver is that reporters “will be heard, claims will be investigated, and parties will be treated with respect” in order to overcome any intimidation that may exist in reporting judges or justices. She hopes to get the working group recommendation this Summer.

Likewise, Senator Pro Tem Atkins led the change on reporting procedures in the state legislature. “The system has failed us, so we had to take a look at it,” she began, which prompted her to “create something new because people didn’t trust the existing process.” The new process, two years in the making and the result of seven hearings, and hundreds of testimonials, uses a model created by the City of Los Angeles and went into effect this year. It involves an initial investigation by a workplace conduct unit, and then a review of the unit’s findings by a panel of legal experts who will then recommend appropriate responses from the Assembly or Senate. Those experts include individuals appointed by the Chief Justice, the Senator Pro Tem and the Speaker.

The new process is an “incredible opportunity,” Atkins said, “If we turn away from the focus on sexual harassment, we’ll slip back to a definition of ‘normal’ that is not normal. We need to

change the definition of normal.” She said, “The true test is not how the new procedures work today, but how the response to them is long-term.”

In both the legislature and the judiciary, there are many reasons why people don’t come forward. Senator Atkins raised Prof. Hill as an example, “Anita Hill came forward and she was shut down. She was articulate, educated, and she was shut down. We saw that again recently. Women are going back in the closet because of that. They’re going to wait to see if we’re serious this time. We have to show them we are.”

President Ipema was not alone in sentiment that “we are very lucky in California to have two very capable and strong women in charge of the Senate and Supreme Court who are committed and are taking steps to improve training and education of all employees, and hold perpetrators accountable.”

### **Interrupting the Power**

The second panel featured attorneys Jerrilyn Malana, Chief Deputy of Employment/Special Advisor to the San Diego County District Attorney’s Office and Kelly Dermody, managing partner of Lieff Cabraser Heimann & Bernstein and was moderated by recently appointed Contra Costa County Superior Court Judge Wendy McGuire Coats.

The panel delved into the barriers reporters face and what can be done to overcome those barriers. Many women are familiar with the barriers to reporting including fear of not being believed, not being believed, and not having the complaint upheld or even investigated. Dermody cited Microsoft as an example, where there had been 119 complaints and only one was upheld by human resources. She also noted the disservice that occurs in the judicial system when a judge or justice steps down who had been facing a complaint and the investigation stops. While ceasing the investigation may seem to make sense, she raised that ceasing the investigation leaves the reporter in limbo; forever an “accuser” with no vindication or closure. Dermody pointed out that the process shouldn’t be about the accused, but should be changed to provide resolution for the reporters.

Malana spoke to what could be done to overcome the barriers stating strongly that “bystanders need to speak up. Sex harassment is about power. We need to interrupt that power over the target.” She created an acronym to help bystanders take action:

M – Make a decision to interrupt (be an active ally)

E – Escalate to a person in authority

T-Take action and interrupt the situation

O- Open dialogue with the person responsible for the offensive conduct

O- Offer support and assistance to the victim

She also said that modeling or demonstrating leadership is key pointing out the work being done by Sen. Atkins and Chief Justice Cantil-Sakauye. Dermody agreed and referenced the Proskauer Value Insights survey that had recently been released which found that the five major best practices were led by demonstrated leadership buy-in.

Judge Coats encouraged women in positions of power to have conversations with men – the good men who are not in the room when sexual harassment happens- because “they need to know this is not new.”

The panel concluded that “[Ending sexual harassment] is a long play- it’s about sharing our stories and our context, even though we are not defined by those moments, we are so much more than those moments, and we grow beyond those moments.”

And so the #WeToo program came to a close for 2019, but the work is far from done. “This event should not be a one-time program, but a continuing dialogue going forward. If we all work together we can come up with viable solutions to these issues that have plagued women in the workplace in California and throughout this country,” Judge Weber said. Judge Rosenstein agreed articulating that, “By continuing to hold #WeToo events across the country, holding the leadership in each of our courts accountable so that sexual harassment by judicial officers and people in positions of power is not swept under the rug, and by working for policy changes that bring sexual misconduct into the light and subject to serious consequences we keep the momentum of #WeToo going. Things are changing for women in the workplace; that sexual harassment is beginning to be taken seriously; and that having women in positions of power makes all the difference. As they say, if you’re not at the table, you’re on the menu.”

### **Recommended Reading**

Our panelists recommended some reading throughout the discussion we wanted to share with you:

Don’t Be an Asshole! Creating a Better World Through Self Awareness by A. Vidal

That’s What She Said: What Men Need to Know (and Women Need to Tell Them) About Working Together by J. Lipman

You Just Don’t Understand by Deborah Tannen