

# Men Behaving Badly

BY AIMEE E. GILMAN

Here in 2014 you wouldn't think it was necessary to write anything about the treatment of women lawyers, right? Everybody is treated the same way these days, right? So why is the male head of litigation of one of Cleveland's major firms telling three female special education lawyers, whose bailiwick is the IEP or individualized education program, that when they are through discussing their "IUDs" then their meeting could continue? And why does his female partner have to tell him that was offensive because he couldn't figure it out for himself? And why was my co-counsel, a man, laughing hysterically at this remark while the ladies sat there stone faced? Is this it? Are we still having this conversation in 2014?

I come from a family of lawyers; mother, father, two brothers, husband and first cousin. I cannot imagine any circumstances under which any one of them would have either made a remark like that, or found it to be appropriate or humorous. So this is not a generational thing. But this behavior has certainly endured through many generations.

I don't let sexist remarks influence my decision making because I've learned that you can't allow that sort of thing to impact your competent representation of your client. But at a time where we are still dealing daily with violence against women in professional sports (Ray Rice) and locally (Ariel Castro), is disrespect for women lawyers still the norm? What was most telling for me was that while this "gentleman's" female partner did not laugh at this remark, she later told me she thought it was hilarious. Really? Is that what we have to say to keep our jobs? If it was that funny, why did it take her so long to figure that out?

Now in my 30th year in the practice, I have been on the receiving end of a lot of demeaning remarks. At depositions, I was always asked if I was the court reporter. I've had lawyers refer to me as "little girl" and had a state judge discuss with my male opposing counsel the "boob job" of a fellow state judge immediately following a summary judgment hearing. I've been in

hearings where opposing counsel told the judge that every time we have a hearing, I am pregnant. I had a male opposing counsel who told me during a mediation when I was pregnant how attractive he found pregnant women. Upon appearing in court I've had lawyers say "I see they brought the big guns in." And on and on.

Most women lawyers do their best to ignore this type of conduct. But it is disturbing that now, when half the students enrolled in law schools are female, we cannot escape this Neanderthal mentality. One of my (male) colleagues actually said to me in response to this most recent event that if "you girls want to play with the boys you got to take a little ribbing." Is the toleration of demeaning remarks really still the price of admission for a lady to practice law?

While law schools teach students the Rules of Professional Conduct, these rules that govern the practice are rarely taught in the context of how one conducts oneself in the actual practice.

## Is the toleration of demeaning remarks really still the price of admission for a lady to practice law?

What is acceptable? Can a lawyer demean someone to gain a tactical advantage? Is that part of zealously representing your client?

I would hope the answers to these questions would be a resounding "no." Demeaning conduct toward women has no place in our profession, and if we allow it then we have failed to uphold the standards we swore to be governed by when we took our oath.

Let's not kid ourselves. Disrespect toward women and other types of demeaning behavior is how violence against women begins. Many of our local schools and colleges have begun programs to alert boys regarding inappropriate behavior towards their female counterparts to cut down on the rampant violence against women that has been so prominent in the news of late. Lawyers in particular need to be part of the solution, not part of the problem.

I think the judiciary has a role to play here as well. Judges sanction attorneys all the time

for advancing frivolous arguments or causing unreasonable delay. Why shouldn't a judge be notified of improper behavior that occurs in the context of a matter before him or her? Of course, many women are too embarrassed or afraid of being considered "thin skinned" to report offensive behaviors to the court or the Bar. Worse, many folks believe what my colleague above believes — that this is simply the price some have to pay if they want to play with the guys.

It is a fair question to ask whether I notified the federal judge in my case of this lawyer's behavior. No, I did not. It never occurred to me to notify either the judge or anyone else. So I admit my own complicity in this though I did call the lawyer on it at the time it occurred. His response was that he did not realize what he was saying (which, if you believe it, is a little frightening for someone who is the head of litigation) and that since he did not realize he was being offensive, I could not be angry with him.

In fact, I was not angry at him, just frustrated that after all these years, I still have to put up with this. This guy deliberately used this tactic in order to gain an advantage. And if I let him rattle me, that is on me. But the fear of seeming petty or "thin-skinned" should not stop us. That thought process needs to change. If

I were a judge, I would want to know if someone behaved badly in a matter that was before me. It is insulting not only to the person to whom it was addressed, but to the court and client as well.

I would like to see a conversation started around how to properly address this issue. The reason it persists, whether in the law, in football, or anywhere else is because we allow it. And those of us who tolerate it are perhaps as guilty as those who perpetrate it.



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