



# Sexual Harassment in the Post-Weinstein World

JOANNA L. GROSSMAN  
ELLEN K. SOLENDER ENDOWED CHAIR IN WOMEN AND LAW  
AND PROFESSOR OF LAW  
SMU DEDMAN SCHOOL OF LAW

# #MeToo #TimesUp #NotHere



- ▶ Tarana Burke and #MeToo (2006)
- ▶ Alyssa Milano and #MeToo (2017)
- ▶ #MeToo hashtag has been used millions of times on social media platforms—in at least 85 different countries
- ▶ #TimesUp: Advocates and celebrities teamed up to raise millions for legal representation of harassment victims across the economy
- ▶ #NotHere: Institutions pressured to stop covering for harassers
- ▶ Over 200 high-profile men in media, law, finance, academia, politics, tech, and Hollywood have lost their jobs over credible accusations of harassment



“

The #MeToo movement is  
accomplishing what sexual  
harassment law to date has not.”

CATHARINE A. MACKINNON, NYT OP-ED, FEB. 4, 2018

# The Prevalence and Nature of Harassment



## Prevalence

- ▶ 2016 EEOC Task Force: 60% of American women surveyed reported having experienced gender harassment
- ▶ In any 2-year period, 4 in 10 women will experience harassment at work
- ▶ Rates steady over several decades
- ▶ Millennials cite more harassment

## Nature

- ▶ 85-90% of victims of harassment are female
- ▶ Most perpetrators are male
- ▶ Co-worker harassment more common than supervisory
- ▶ Harassment and sexism go together
- ▶ “Bullying” is gendered

# Sexual Misconduct in Academia



- ▶ Sexual harassment by faculty and staff is a significant problem, especially at the graduate level
  - ▶ 7% of harassment reported by undergraduates students is by faculty or administrators; 38% of harassment of female graduate students
  - ▶ 1/10 female graduate students report experiencing harassment by a faculty member
  - ▶ Open-source *Sexual Harassment in the Academy* includes 2500 entries of harassment by faculty, staff, and peers
- ▶ Research shows that sexual harassment in education has a negative impact on a student's education, academic performance, professional life, and psychological wellbeing

# The Law of Sexual Harassment



- ▶ Sexual harassment is a kind of intentional sex discrimination
  - ▶ Quid Pro Quo
  - ▶ Hostile Work Environment
  - ▶ Retaliation
- ▶ Federal and State Anti-Discrimination Laws Prohibit Sexual Harassment
  - ▶ Title VII of the Civil Rights Act of 1964
  - ▶ Title IX of the Education Amendments of 1972
  - ▶ State Laws
- ▶ Institutions can be held liable under these laws, but individuals cannot

# The Crux of the Problem



- ▶ Sexual harassment continues to be a pervasive problem in the American workplace, educational institutions, and elsewhere
- ▶ Harassment harms physical and emotional health, career advancement, and economic well-being
- ▶ Harassment exacerbates existing problems in recruiting and retaining women and reinforces gender stereotypes
- ▶ Harassment culture impairs productivity and the advancement of knowledge
- ▶ The law provides incentives for institutions to implement cosmetic measures, regardless of whether they work
- ▶ When harassment does occur, victims often do not complain quickly or forcefully enough to preserve their rights under Title VII

# Standard Methods for Addressing Sexual Harassment



## Required Measures

- ▶ Anti-harassment policies (97%)
- ▶ Internal grievance procedures (95%)
- ▶ Training and response to complaints

## Effects

- ▶ Isolated preventative measures do not reduce the amount of harassment
- ▶ Offering training without goals or assessments
- ▶ Conducting investigations in faulty or biased ways
- ▶ Reluctance to study workplace climate and culture

# The “Open Secret” and Culture of Silence



- ▶ Most harassment victims do not report to an authority figure either in the workplace or outside it
  - ▶ Filing a formal complaint is the least common response of women who experience harassment (8-15%)
  - ▶ Most HR professionals say that unreported harassment is rare; but most employees who experienced it did not report it
  - ▶ Individual and institutional factors affect reporting rate
  - ▶ “Closed institutions” (highly insular, discrete norms and rules, membership confers a distinctive identity) are particularly challenging environments for reporting

# “Why Didn’t She Just Report It?”



- ▶ Top reasons for non-reporting
  - ▶ Fear of retaliation/blacklisting
  - ▶ Believe that report will be futile—no effective response
  - ▶ Reframing/denial (“not a big deal”)
  - ▶ Fear of not being believed
  - ▶ Fear loss of privacy
- ▶ Rationality of non-reporting
  - ▶ Gap between expected and actual response causes harm
  - ▶ Victims who complain typically end up worse off in some tangible way than those who do not

# Organizational Culture



- ▶ “Organizational climate is an important driver of harassment because it is the norms of the workplace; it basically guides employees . . . To know what to do when no one is watching.”

▶ Mindy Bergman, Psychology Professor & Sexual Harassment Researcher

- ▶ Leadership and accountability are two most significant movers of culture
- ▶ Values and culture come from the top, but must be reinforced at every level with concrete actions
- ▶ Policies and procedures are not self-executing; effective enforcement matters
- ▶ Well-handled complaints help change culture

# “Pass the Trash”



- ▶ Known harassers put in position to continue misconduct with a new employer
- ▶ Business as usual:
  - ▶ Channel complaint into arbitration or mediation, shielded from public view
  - ▶ Include non-disclosure agreement in any settlement
  - ▶ Do not disclose misconduct to future employers
  - ▶ Provide financial incentive for quiet departure
- ▶ Effect of business as usual:
  - ▶ Person credibly accused of harassment can remain employed with no consequences or seek new employment without a black mark

# “Gender Sidelining”



- ▶ Women are sidelined by reduced access to networking, mentoring, informal training, socialization
- ▶ Men react to harassment culture by avoiding women at work
  - ▶ Harvard Business Review found that 64% of male executives were reluctant to meet one-on-one with junior female colleagues.
  - ▶ New York Times survey found that 45% of men felt it was inappropriate to have dinner alone with a female co-worker, 22% at a meeting
  - ▶ NYT article interviewing women finalists for CEO found many experienced difficulty breaking into inner circle of male camaraderie
- ▶ Women face catch-22, as sidelining blocks access to mentorship and interpersonal connections that are necessary for successful career advancement

# Implications of #MeToo



- ▶ #MeToo has changed the landscape
  - ▶ Raised awareness
  - ▶ Increased reporting
  - ▶ Increased believability
  - ▶ Escalation in responses
  - ▶ Public pressure
  - ▶ Triggered legal and ethical reforms
- ▶ #MeToo highlights connection between harassment and gender inequity

# Cultural Moment or Cultural Shift?



- The long-term impact of #MeToo will turn on many factors
  - Continued momentum
  - Institutional accountability
  - Impact on low-profile work settings
  - Backlash
  - Cultural change?