

The Need for Mentors in Promoting Gender Diverse Leadership in the #MeToo Era[†]

Cindy A. Schipani* & Terry Morehead Dworkin**

ABSTRACT

It is difficult to read the news today without running across another story of sexual harassment or of women facing hostile work environments. When there is harassment, most women just leave the harassing conditions and move on to another job rather than reporting it and/or dealing with it directly. The result of this pattern is that women must re-establish themselves at the new workplace and rebuild their credibility. This in turn results in women being behind men in terms of experience, good recommendations, salary, and the ability to time their departures under conditions that benefit them. Further, many forms of employee voice are critical to organizational advancement or perceptions of leadership competence, yet women's ability to express their voice is severely stymied by a number of factors, exacerbating the dearth of women in leadership positions across many contexts.

This time, attention to the issues of sexual harassment is occurring largely outside the legal system. The focus began with Harvey Weinstein, one of Hollywood's most prominent producers. Once Weinstein's abuse of power became known, it sparked a national conversation that has led to the forced resignation or firing of many men in positions of power and leadership. In this respect, the so-called "Weinstein Effect" is much broader than an employer's liability for sexual harassment. It also means that boards and companies need to change their thinking and actions around diversity and equal treatment. In several cases it has had the secondary effect of some women being promoted to positions in the C-suite as men have been forced to resign or have been fired because of their abuse of power. Some of the new female leaders are likely to be questioned because of the way they were put in the job, however.

In this environment, mentors and networks for women are more important than ever. Access by women to networks and mentors plays a crucial role in climbing the corporate ladder. Mentors and networks can provide critical pathways for women to succeed in positions of leadership, while navigating the revelations of hostile and harassing work environments brought out in this #MeToo era.

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* Merwin H. Waterman Collegiate Professor of Business Administration and Professor of Business Law, University of Michigan.

** Wentworth Professor of Business Law, emerita, Indiana University and Scholar in Residence, Seattle University School of Law.

This Article seeks to analyze the laws prohibiting sexual harassment and the need for employee voice in the workplace. It follows with a discussion of the impact of the #MeToo movement and the value of mentoring and networking in helping women navigate these issues while climbing the corporate ladder.

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INTRODUCTION

The recent Kavanaugh Supreme Court hearings again focused attention on challenges facing women in our society. It brought back memories of the 1991 Senate hearings about Justice Thomas and his fitness for the Court in light of allegations of sexual harassment¹ as well as highlighted issues discussed in the current #MeToo movement. One thread involves why women do not speak up about harassment and illustrates what happens when they do. Professor Blasey Ford and her family were driven from their home after she received threats of harm, including death threats, for speaking up about Kavanaugh’s al-

¹ See, e.g., Peter Baker & Carl Hulse, *Echoes of Anita Hill, but in a Different Era for Women*, N.Y. TIMES (Sept. 17, 2018), <https://www.nytimes.com/2018/09/17/us/politics/anita-hill-clarence-thomas-brett-kavanaugh-christine-blasey-ford.html> [<https://perma.cc/E6GB-QV3U>]. Some of the same people were involved in both hearings. Senators Charles Grassley and Orin Hatch questioned both accusers. *Id.* Senator Dianne Feinstein, who led the fight for an investigation about Kavanaugh, said she was moved to make her first run for the Senate after seeing the Thomas hearings. Natalie Andrews & Siobhan Hughes, *Feinstein Plays Key Role in Accusation*, WALL STREET J., Sept. 19, 2018, at A4. Thomas was accused of sexual harassment in the workplace while Kavanaugh was accused of sexual assault. Baker & Hulse, *supra*.

leged sexual assault.² Some supporters of Kavanaugh's appointment claimed Ford must be mistaken about the male involved in the assault,³ while others said she should just be ignored.⁴ And when there is a long lag between the incident and the report, as in the case of Ford, many argue that the allegations must not be real.⁵ The difference between the Thomas hearings and today is that more women are speaking up and more attention is focusing on a variety of "women's" issues including harassment, unequal pay, and the lack of women in leadership positions. Indeed, it is difficult to read the news today without running across another story of sexual harassment or of women facing hostile work environments.

In this environment, the value of mentors and networks for women cannot be overstated. Not only has access by women to networks and mentors been proven to play a crucial role in climbing the corporate ladder,⁶ mentors and networks provide critical pathways for women to succeed in positions of leadership, while navigating the revelations of hostile and harassing work environments brought out in this #MeToo era.

To address these issues, this Article is organized as follows. Part I begins with an analysis of the laws prohibiting gender discrimination in the work place and the birth of the #MeToo movement. Part II then raises the issue of the need for voice in the workplace, along with some of the reasons why workers remain silent rather than report wrongdoing. In Part III, this Article finds that mentoring and networking may play an important role for women attempting to navi-

² See Tim Mak, *Kavanaugh Accuser Christine Blasey Ford Continues Receiving Threats, Lawyers Say*, NPR (Nov. 8, 2018, 9:00 AM), <https://www.npr.org/2018/11/08/665407589/kavanaugh-accuser-christine-blasey-ford-continues-receiving-threats-lawyers-say> [<https://perma.cc/3YEX-FMRY>].

³ See Avi Selk, *The Junk Science Republicans Used to Discredit Christine Blasey Ford's Memories*, WASH. POST (Oct. 7, 2018), <https://www.washingtonpost.com/health/2018/10/07/republicans-who-believed-ford-doubted-her-memory-relied-junk-science-researchers-say/> [<https://perma.cc/XE8B-N9TD>].

⁴ See Senator Dianne Feinstein, *Feinstein Speaks on Republican Decision to Ignore Blasey Ford Testimony*, COMM. ON JUDICIARY (Sept. 28, 2018), <https://www.judiciary.senate.gov/press/dem/releases/feinstein-speaks-on-republican-decision-to-ignore-blasey-ford-testimony> [<https://perma.cc/493N-75F2>].

⁵ See Sean Sullivan et al., *Senate Judiciary Chairman Says He'll Give Kavanaugh Accuser More Time to Decide Whether to Testify Before Committee*, WASH. POST (Sept. 22, 2018), https://www.washingtonpost.com/politics/trump-questions-credibility-of-kavanaugh-accuser-lashes-out-at-democrats/2018/09/21/dd557fc6-bd84-11e8-b7d2-0773aa1e33da_story.html [<https://perma.cc/EF95-8Q2Z>].

⁶ See Terry Morehead Dworkin et al., *A Half-Century Post-Title VII: Still Seeking Pathways for Women to Organizational Leadership*, 23 UCLA WOMEN'S L.J. 29, 52 (2016).

gate these issues while climbing the corporate ladder. Concluding remarks follow.

I. SEXUAL HARASSMENT: THE LAW AND THE #MeToo MOVEMENT

In many ways, modern sexual harassment law owes its origin to a last-second amendment to Title VII of the Civil Rights Act of 1964.⁷ As the act was being debated on the House floor, Howard W. Smith, the Democratic chairman of the Rules Committee, proposed that sex be added to the list of protected classes.⁸ Whether Mr. Smith, normally an opponent of civil rights legislation, genuinely supported the addition of women as a protected class or meant the amendment as a joke or means of sabotage, the amendment and the act passed through the House and Senate and was enacted into law.⁹ Title VII provides protection from sexual harassment for employees in organizations, including government agencies, with 15 or more employees¹⁰ by making it unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”¹¹

A. *Legal Prohibitions Against Sexual Harassment in the Workplace*

Since its enactment, Title VII’s protections have expanded as result of reforms, agency interpretations, and court rulings.¹² Many of these protections have been suggested by and are enforced by the Equal Employment Opportunity Commission (“EEOC”), the U.S. federal agency created in 1965 tasked with administering and enforcing laws against workplace discrimination.¹³ In 1980, the EEOC adopted guidelines for sexual harassment and stated that Title VII prohibited sexual discrimination.¹⁴ These guidelines were later adopted by the Supreme Court in 1986 in *Meritor Savings Bank v.*

⁷ See JO FREEMAN, WE WILL BE HEARD 171 (2008).

⁸ *Id.*

⁹ *Id.*; see Louis Menand, *How Women Got in on the Civil Rights Act*, NEW YORKER (July 14, 2014), <https://www.newyorker.com/magazine/2014/07/21/sex-amendment> [<https://perma.cc/P79N-J3HJ>].

¹⁰ See 42 U.S.C. § 2000e(a)–(b) (2018).

¹¹ *Id.* § 2000e-2(a)(1).

¹² See Dianne Avery & Catherine Fisk, *Overview of the Law of Workplace Harassment*, in LITIGATING THE WORKPLACE HARASSMENT CASE 1–2 (Marlene Heyser ed., 2010).

¹³ See *id.* (describing the EEOC’s guidelines as set forth in 29 C.F.R. § 1604.11 (2018) and their subsequent implementation).

¹⁴ *Id.* at 5.

*Vinson*¹⁵ which first recognized a private cause of action for sexual assault consisting of two categories: (1) *quid pro quo* and (2) hostile work environment.¹⁶ *Quid pro quo* sexual harassment occurs when an employer either requires sexual favors in exchange for job related benefits or penalizes an employee for refusing the advances.¹⁷ A hostile work environment, on the other hand, is where sexual harassment “unreasonably interfer[es] with an individual’s work performance or creat[es] an intimidating, hostile, or offensive environment.”¹⁸

A string of cases and reforms in the late 1980s and 1990s extended the protections of Title VII. In *Price Waterhouse v. Hopkins*,¹⁹ the Supreme Court found gender stereotyping to be a form of sexual discrimination and extended Title VII’s protections to mixed motive cases, where other lawful reasons in addition to sex may have influenced an adverse employment action.²⁰ Additional reforms provided for jury trials, the recovery of punitive damages,²¹ and limited the acceptability of a victim’s past sexual history.²² In *Oncale v. Sundowner Offshore Services, Inc.*,²³ the Supreme Court extended Title VII’s protections by removing the requirement that sexual harassment be based on sexual desire, and prohibiting “sexual harassment of any kind that meets the statutory requirements.”²⁴

A pair of parallel 1998 Supreme Court cases, *Faragher v. City of Boca Raton*²⁵ and *Burlington Industries, Inc. v. Ellerth*,²⁶ clarified who is liable for sexual harassment in the workplace. The cases ruled that

¹⁵ 477 U.S. 57 (1986).

¹⁶ See *id.* at 66 (“Since the Guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.”); Avery & Fisk, *supra* note 12, at 5.

¹⁷ B. Henry Alligood, *Workplace Sexual Harassment: Quid Pro Quo*, 62 AM. JURIS. TRIALS 235 (2018).

¹⁸ 29 C.F.R. § 1604.11(a) (2018).

¹⁹ 490 U.S. 228 (1989).

²⁰ See *id.* at 252 (“An employer may not, in other words, prevail in a mixed-motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision.”).

²¹ See 42 U.S.C. § 1981a(b)(1), (c) (2018).

²² See FED. R. EVID. 412.

²³ 523 U.S. 75 (1998).

²⁴ *Id.* at 80. The Court held that Title VII, which prohibits discrimination “because of . . . sex” in the “terms, conditions, or privileges of employment,” 42 U.S.C. § 2000e-2(a)(1) (2018), protects men as well as women and can apply in cases of same-sex sexual harassment where the behavior is “so objectively offensive as to alter the ‘conditions’ of the victim’s employment,” *Oncale*, 523 U.S. at 81; see Ramit Mizrahi, *Sexual Harassment Law After #MeToo: Looking to California as a Model*, 128 YALE L.J.F. 121, 122 (2018).

²⁵ 524 U.S. 775 (1998).

²⁶ 524 U.S. 742 (1998).

an employer can be held vicariously liable for employee actions if it does not exercise reasonable care to prevent and correct sexual harassment in the workplace.²⁷ However, the cases also provide companies with affirmative defenses in hostile work environment cases.²⁸ Employers may reduce, or even eliminate, liability by proving that (1) the employer had reasonable policies and would have taken appropriate action had it been aware of the harassment and (2) the employee unreasonably failed to take advantage of the employer's proper remedial measures.²⁹

Additional reforms and court rulings since 2000 regarding the Civil Rights Act of 1964 have broadened the protection women receive in the workplace, prohibiting discrimination based on pregnancy,³⁰ protecting against retaliation for complaints of sexual harassment,³¹ and extending Title VII and other laws to governmental employees.³² In addition, most states have enacted laws prohibiting sexual harassment and discrimination.³³

The extended protections by Title VII, in tandem with large jury awards and an increasing awareness of sexual harassment in popular culture, have led to an explosion of sexual harassment claims.³⁴ Even so, several studies indicate that sexual harassment is largely unreported³⁵ and that the majority of women, as high as 85% in one study, have been victims to sexual harassment in the workplace.³⁶ One concern is that the structure of the complaint process in the post #MeToo

²⁷ *Id.* at 765–66; *Faragher*, 524 U.S. at 780.

²⁸ *Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 780.

²⁹ *Ellerth*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807.

³⁰ *See* 42 U.S.C. § 2000e(k) (2018).

³¹ *See* *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (“Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action.”).

³² *See* 42 U.S.C. § 2000e(a) (2018).

³³ Maya Raghu & JoAnna Suriani, *#MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability*, NAT’L WOMEN’S L. CTR. (Dec. 21, 2017), <https://nwlc.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability> [<https://perma.cc/87KN-JR8G>] (“Almost every state also has some form of workplace antidiscrimination law providing protections.”); *see also* Mizrahi, *supra* note 24, at 121 (discussing how California can be a model for other states in preventing sexual harassment).

³⁴ *See* Alligood, *supra* note 17, § 1.

³⁵ *See, e.g.*, Alanna Vagianos, *1 in 3 Women Has Been Sexually Harassed at Work, According to Survey*, HUFFINGTON POST (Dec. 6, 2017), https://www.huffingtonpost.com/2015/02/19/1-in-3-women-sexually-harassed-work-cosmopolitan_n_6713814.html [<https://perma.cc/759H-P2QR>].

³⁶ Tara Golshan, *Study Finds 75 Percent of Workplace Harassment Victims Experienced Retaliation when They Spoke Up*, VOX (Oct. 15, 2017, 9:00 AM), <https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts> [<https://perma.cc/VTa2-X7M7>].

movement, emphasizing the individualized legal process, is inadequate to address common misogynic behavior.³⁷ The legal structure often leads to the complainant being questioned and shamed, and isolated from her colleagues.³⁸ Furthermore, the high costs and structure of the legal system may offer little relief against wider societal behavior not rising to a legal claim or where bringing a legal claim is not cost effective.³⁹ Additionally, evidence indicates that women reporting sexual harassment “had worse job and psychological well-being” than nonreporters.⁴⁰

In *Jackson v. Birmingham Board of Education*,⁴¹ the Supreme Court found that retaliation is a form of sex discrimination.⁴² Retaliation can be an adverse employment decision, but is often subtler and can come in the form of negative evaluations, changes in assignments and schedules, ostracization, and other aggressions.⁴³ One study found that 75% of employees who report harassment face some form of retaliation.⁴⁴ This issue is exacerbated by the inconsistent rulings of courts that often find that lesser forms of retaliation are not material and thus do not constitute sexual discrimination.⁴⁵ For a retaliation claim to be successful, it requires that the employee engaged in a protected activity, suffered an adverse action, and that the negative action

³⁷ See Wes Mountain, #MeToo Is Not Enough: It Has Yet to Shift the Power Imbalances that Would Bring About Gender Equality, CONVERSATION (Mar. 18, 2018, 2:56 PM), <http://theconversation.com/metoo-is-not-enough-it-has-yet-to-shift-the-thankpower-imbalances-that-would-bring-about-gender-equality-92108> [<https://perma.cc/436T-C5L4>].

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ U.S. EQUAL EMP. OPPORTUNITY COMM’N, WRITTEN TESTIMONY OF MINDY BERGMAN, ASSOCIATE PROFESSOR OF PSYCHOLOGY, TEXAS A&M UNIVERSITY (2015), https://www.eeoc.gov/eeoc/task_force/harassment/testimony_bergman.cfm [<https://perma.cc/W6LS-MG2M>].

⁴¹ 544 U.S. 167 (2005).

⁴² *Id.* at 173 (“Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action.”). Someone who quits may also sue for retaliation under a theory of constructive firing. If an employee can show that she quit because the sexual harassment was so intolerable that a reasonable person would have been compelled to resign, she can make a successful case. MARK A. ROTHSTEIN ET AL., EMPLOYMENT LAW 165 (4th ed. 1994).

⁴³ Mizrahi, *supra* note 24, at 125; see CHAI R. FELDBLUM & VICTORIA A. LIPNIC, U.S. EQUAL EMP. OPPORTUNITY COMM’N, SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE 16–17 (2016) [hereinafter EEOC STUDY OF HARASSMENT].

⁴⁴ Mizrahi, *supra* note 24, at 125.

⁴⁵ Nicole Buonocore Porter, *Ending Harassment by Starting with Retaliation*, 71 STAN. L. REV. ONLINE 49, 54 (2018) (stating discipline, reprimands, and negative evaluations alone are not material).

was a result of the protected activity.⁴⁶ Given the high standard and the extensive process for reporting a claim, women may not believe that filing a complaint is worth the effort, even if they win.⁴⁷ Additionally, victims of sexual harassment might not report a claim for the simple reason that they do not believe anything will be done, or that they will not be believed.⁴⁸

Apart from retaliation, another common reaction to a sexual harassment complaint by an employer is simply for no formal action to be taken.⁴⁹ One study found that firms have little incentive to enact sexual harassment prevention policies.⁵⁰ The end result of the onerous process and risk of retaliation is that few individuals, as low as 6 to 13%, file a complaint.⁵¹ This may only be exacerbated by recent tax changes, which removed an exemption for victims of sexual harassment.⁵²

One solution for combatting the under reporting of sexual harassment is to modify the law, such as to establish a rebuttable presumption of guilt in harassment claims.⁵³ Other solutions could come independent of the law. Companies could provide more specific train-

⁴⁶ Sandra F. Sperino, *Retaliation and the Reasonable Person*, 67 FLA. L. REV. 2031, 2037 (2015).

⁴⁷ EEOC STUDY OF HARASSMENT, *supra* note 43, at v (“The least common response to harassment is to take some formal action—either to report the harassment internally or file a formal legal complaint. Roughly *three out of four* individuals who experienced harassment never even talked to a supervisor, manager, or union representative about the harassing conduct. Employees who experience harassment fail to report the harassing behavior or to file a complaint because they fear disbelief of their claim, inaction on their claim, blame, or social or professional retaliation.”).

⁴⁸ R.J. Burke, *Addressing the Trauma of Sexual Harassment and Sexual Assault*, 1 J. TRAUMA & REHABILITATION 1 (2018).

⁴⁹ Noam Scheiber & Julie Creswell, *Sexual Harassment Cases Show the Ineffectiveness of Going to H.R.*, N.Y. TIMES (Dec. 12, 2017), <https://www.nytimes.com/2017/12/12/business/sexual-harassment-human-resources.html> [<https://perma.cc/6DY8-UBZF>].

⁵⁰ Amy Wolf, *Companies Have Little Incentive to Fight Workplace Sexual Harassment, Vanderbilt Economist Explains*, RES. NEWS @VAND. (Mar. 1, 2018, 4:51 PM), <https://news.vanderbilt.edu/2018/03/01/companies-have-little-incentive-to-fight-workplace-sexual-harassment-vanderbilt-economist-explains> [<https://perma.cc/YQ4C-NCRB>]. *But see* EEOC STUDY OF HARASSMENT, *supra* note 43 (explaining that employers have several incentives to offer anti-harassment training, including a desire to end harassment, EEOC guidelines for suggested trainings, and the Supreme Court’s rulings in *Ellerth* and *Faragher*).

⁵¹ EEOC STUDY OF HARASSMENT, *supra* note 43, at 16.

⁵² *See* Robert W. Wood, *Sexual Harassment Tax Law that Double-Taxes Victims Needs Fixing*, FORBES (June 6, 2018, 8:57 AM), <https://www.forbes.com/sites/robertwood/2018/06/06/sexual-harassment-tax-law-that-double-taxes-victims-needs-fixing/#23ebf0786d59> [<https://perma.cc/X5AA-NJ2K>].

⁵³ Mizrahi, *supra* note 24, at 150.

ings and clearly defined reporting policies that incentivize reporting.⁵⁴ In addition, as described in Part III below, mentors can also provide much needed guidance in this difficult environment that the law cannot provide while navigating the elusive path to leadership.

B. *The Birth of the #MeToo Movement and the Weinstein Effect*

The phrase “MeToo” was first coined by Tarana Burke in 2007.⁵⁵ Ms. Burke, a survivor of sexual assault and the founder of Just Be Inc., a nonprofit organization focused on supporting and empowering young women of color,⁵⁶ used the term “MeToo” as a way for women to express solidarity with other victims of sexual harassment.⁵⁷ The movement, and its namesake, gained widespread exposure in October of 2017, when a *New York Times* article first brought to light accusations of sexual harassment against Harvey Weinstein.⁵⁸ In the following months, Mr. Weinstein would be accused by over 80 women, including many famous actresses, of sexual misconduct for a period spanning three decades.⁵⁹ Just one week after the *New York Times* article, Roy Price, the head of Amazon Studios, resigned after being accused in a Hollywood Reporter interview of inappropriate behavior and sexual propositions occurring in 2015.⁶⁰ Responding to the scandals, actress Alyssa Milano tweeted on October 15, 2017, “If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet.”⁶¹ In the next 24 hours, the hashtag MeToo would be shared

⁵⁴ See Golshan, *supra* note 36 (“When acts of ‘harassment’ are specifically defined, more women report incidents.”).

⁵⁵ Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html> [<https://perma.cc/H979-AD66>].

⁵⁶ *Purpose*, JUST BE INC., <http://justbeinc.wixsite.com/justbeinc/purpose-mission-and-vision> [<https://perma.cc/4RFR-B3LT>].

⁵⁷ Jonathan Borge, *Who Started the Me Too Movement?*, INSTYLE (Jan. 7, 2018, 7:30 PM), <https://www.instyle.com/news/who-started-me-too-movement> [<https://perma.cc/86XT-6L48>].

⁵⁸ See Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [<https://perma.cc/G2SB-AP3R>].

⁵⁹ See Sara M. Moniuszko & Cara Kelly, *Harvey Weinstein Scandal: A Complete List of the 87 Accusers*, USA TODAY (Oct. 27, 2017, 11:27 AM), <https://www.usatoday.com/story/life/people/2017/10/27/weinstein-scandal-complete-list-accusers/804663001> [<https://perma.cc/XSDN-E3X6>].

⁶⁰ Christen A. Johnson et al., *#MeToo: A Timeline of Events*, CHI. TRIB. (July 19, 2019, 7:12 PM), <https://www.chicagotribune.com/lifestyles/ct-me-too-timeline-20171208-htmlstory.html> [<https://perma.cc/JA9Z-JJR4>].

⁶¹ Alyssa Milano (@Alyssa_Milano), TWITTER (Oct 15, 2017, 1:21 PM), https://twitter.com/alyssa_milano/status/919659438700670976?lang=EN [<https://perma.cc/CU48-7QHB>].

more than 12 million times on Facebook, and a movement had found its name.⁶²

Over the following months, the #MeToo movement grew exponentially as empowered victims related their stories and prominent individuals were accused publicly of sexual harassment and misconduct.⁶³ The list of perpetrators consisted of celebrities, politicians, and business leaders, including Today show co-host Matt Lauer, actor Kevin Spacey, comedian Louis C.K., Senator Al Franken, and Republican Senate nominee Roy Moore.⁶⁴ In December of 2017, *Time* magazine awarded its Person of the Year to “The Silence Breakers” who “launched a movement.”⁶⁵ Later, on January 1, 2018, the Time’s Up movement was announced in an open letter signed by over 300 prominent women in Hollywood, with the goal of addressing sexual assault, harassment, and inequality in the workplace.⁶⁶ Among other implementations, the movement created a 13 million dollar legal fund to be administered by the National Women’s Law Center and called for women to speak out at the 75th Golden Globes.⁶⁷

Despite the publicity and the high-profile names implicated, the legacy of the movements is still to be determined.⁶⁸ Although the movements have made sexual harassment in the workplace a national conversation, the laws governing sexual harassment remain the same.⁶⁹ For women to break the glass ceiling and ultimately change

⁶² Garcia, *supra* note 55.

⁶³ See Johnson et al., *supra* note 60 (describing how the movement began and gained traction).

⁶⁴ Eric Schneiderman Is One of 263 Celebrities, Politicians, CEOs, and Others Who Have Been Accused of Sexual Misconduct Since April 2017, VOX, <https://www.vox.com/a/sexual-harassment-assault-allegations-list/eric-schneiderman> [https://perma.cc/ZG2J-YCMD].

⁶⁵ Stephanie Zacharek et al., *The Silence Breakers*, TIME, <http://time.com/time-person-of-the-year-2017-silence-breakers> [https://perma.cc/S3Y3-E77Q].

⁶⁶ TIME’S UP, <https://www.timesupnow.com/home> [https://perma.cc/ZBW7-6CA9].

⁶⁷ See *id.* In one of the latest high-profile cases, Leslie Moonves, the CEO of CBS, left after allegations of sexual harassment became well-publicized. Keach Hagey & Joe Flint, *CBS Board Was Warned of Moonves Allegations*, WALL STREET J., Sept. 11, 2018, at 1.

⁶⁸ E.g., Liz Elting, *The Legacy of #MeToo Nine Months In*, FORBES (July 12, 2018, 3:07 PM), <https://www.forbes.com/sites/lizelting/2018/07/12/the-legacy-of-metoo-nine-months-in/#4149d90e4273> [https://perma.cc/93DK-D5SA]. But see Sophie Gilbert, *The Movement of #MeToo*, THE ATLANTIC (Oct. 16, 2017), <https://www.theatlantic.com/entertainment/archive/2017/10/the-movement-of-metoo/542979/> [https://perma.cc/76G4-WJXK] (suggesting that the goal of the #MeToo movement was not just to affect policy change, but “simply to give people a sense of ‘the magnitude of the problem’”).

⁶⁹ Gretchen Carlson, *To Succeed, #MeToo Must Target America’s Laws, Not Just a Few Powerful Men*, USA TODAY (Sept. 25, 2018, 9:06 AM), <https://www.usatoday.com/story/opinion/voices/2018/09/25/me-too-anniversary-women-sexual-harassment-gretchen-carlson-column/1381126002> [https://perma.cc/ZD6X-UTCB].

the corporate landscape, laws protecting women from retaliation and incentivizing reporting will need to be enacted.⁷⁰

Apart from issues concerning the law, a different worry about the ability of the #MeToo movement to affect positive change is whether workplaces will implement policies combatting sexual harassment.⁷¹ Although people were generally supportive of the movement and its goals, little shift has occurred in workplace policies.⁷² Only 19% of women and 23% of men agree that their “workplace[s] ha[ve] provided additional training”;⁷³ only 23% of women and 17% of men have “seen tangible changes at work that increase [their] confidence the system will respond appropriately”;⁷⁴ and only 16% of women and 14% of men would agree that their “workplace has introduced new policies, procedures, or systems that make it easier for people to speak up when they have concerns.”⁷⁵

Additionally, a person’s view of the #MeToo movement varied significantly depending on the person’s political identification.⁷⁶ Democrats generally viewed the movement positively, while Republicans largely viewed the movement unfavorably.⁷⁷ In particular, the movement was viewed unfavorably by Republican men, 76% of whom “th[ought] #MeToo ha[d] gone too far.”⁷⁸ This may indicate that change will be difficult in corporate America, as Republican men are disproportionately represented in senior management.⁷⁹

II. ISSUES SURROUNDING SPEAKING UP IN THE WORKPLACE

A serious issue arises in the workplace when employees fail to speak up when a problem arises, especially if it is about harmful or illegal activity. This is particularly true in the case of sexual harass-

⁷⁰ See, e.g., Dworkin et al., *supra* note 6, at 29.

⁷¹ See Candace Bertotti & David Maxfield, *Most People Are Supportive of #MeToo. But Will Workplaces Actually Change?*, HARV. BUS. REV. (July 10, 2018), <https://hbr.org/2018/07/most-people-are-supportive-of-metoo-but-will-workplaces-actually-change> [<https://perma.cc/5U79-VA6W>].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Heidi Stevens, *Think the #MeToo Movement Is a Good Thing? You’re Probably a Democrat*, CHI. TRIB. (Apr. 5, 2018, 12:55 PM), <http://www.chicagotribune.com/lifestyles/stevens/ct-life-stevens-thursday-me-too-opinions-0405-story.html> [<https://perma.cc/5U79-VA6W>].

⁷⁷ See *id.*

⁷⁸ *Id.*

⁷⁹ J. Yo-Jud Cheng & Boris Groysberg, *7 Charts Show How Political Affiliation Shapes U.S. Boards*, HARV. BUS. REV. (Aug. 23, 2016), <https://hbr.org/2016/08/7-charts-show-how-political-affiliation-shapes-u-s-boards> [<https://perma.cc/PLW3-JKJ7>].

ment where, as discussed above, women often will not report the offending behavior and instead simply leave the workplace.⁸⁰ Further, as described below, many forms of employee voice are critical to organizational advancement or perceptions of leadership competence, yet women's ability to express their voice is severely stymied by a number of factors, exacerbating the dearth of women in leadership positions across many contexts.

In the past decade, a broad literature has developed regarding women's voice or volubility in relation to their ability to advance within their organization or succeed in leadership roles as evaluated by their peers. Scholars have long noted that there exist "pervasive and widely shared" normative beliefs on how men and women ought to behave, namely, that men are to exhibit "agentic" traits and behaviors, while women are to exhibit "communal" traits and behaviors.⁸¹ Furthermore, these sets of traits are often considered opposed to each other or zero-sum—being more agential means being less communal, and vice versa.⁸² These stereotypes are directly tied to voice in the organization as described by the *Exit, Voice, Loyalty, Neglect* ("EVLN") model of employee behavior within the firm.⁸³ According to this model, expressing voice is an "active" or agential action compared to other forms of response.⁸⁴ But, because women are stereotyped as more communal, and hence less agential, when they engage in voice behaviors "there is a perceived lack of fit between the traits seen as typical of women . . . and the traits required of successful leaders."⁸⁵

Some researchers have explored how fear of backlash from peers prevents women from speaking up or engaging in agential behaviors more generally, in what one researcher has described as "backlash avoidance."⁸⁶ The study found that compared to male participants, women had more trouble engaging in self-promotion, a necessary component for advancement in an organization.⁸⁷ This difficulty, how-

⁸⁰ See Heather McLaughlin et al., *The Economic and Career Effects of Sexual Harassment on Working Women*, 31 GENDER & SOC'Y 333, 345–46 (2017).

⁸¹ Madeline E. Heilman, *Description and Prescription: How Gender Stereotypes Prevent Women's Ascent up the Organizational Ladder*, 57 J. SOC. ISSUES 657, 658–59 (2001).

⁸² See *id.*

⁸³ See ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* 4–5 (1970).

⁸⁴ See *id.*

⁸⁵ Victoria L. Brescoll, *Leading with Their Hearts? How Gender Stereotypes of Emotion Lead to Biased Evaluations of Female Leaders*, 27 LEADERSHIP Q. 415, 416 (2016).

⁸⁶ Corinne A. Moss-Racusin & Laurie A. Rudman, *Disruptions in Women's Self-Promotion: The Backlash Avoidance Model*, 34 PSYCHOL. WOMEN Q. 186, 186 (2010).

⁸⁷ *Id.*

ever, went away when female respondents were asked to promote or vouch for a peer or coworker,⁸⁸ i.e., when engaging in behavior that is more “communal.” The researchers examined the motivations behind poor performance of self-promotion by female respondents, and found that there existed an explicit fear of social backlash which caused female respondents to restrain their self-promotion activities.⁸⁹ The researchers concluded that fear of social backlash due to stereotype incongruity suppresses self-promotion, a key voice mechanism for organizational advancement, and inferred that this can explain the dearth of female leaders in organizations.⁹⁰ The results “suggest that women do not lack the skills to promote successfully. Rather, their . . . fear of backlash” is what suppresses a voice behavior key to advancement.⁹¹

With regard to the backlash effects, Corinne A. Moss-Racusin and Laurie A. Rudman cite “social and economic penalties,”⁹² such as being judged as too “pushy” or “demanding”;⁹³ indeed, it has been generally found that women who take on agential roles are viewed as “cold,” “unfeeling,” “bossy” and so on much more so than men who behave identically.⁹⁴ Backlash effects do not simply act as negative incentives for women attempting to exhibit agential behavior—they also contribute to how women are evaluated in the workplace.

In recent years, peer evaluations have become more prominent in the hiring and promotion process for many jobs, a result of recognition that one’s coworkers often have more knowledge about a given employee than a single manager may have, or than can be gathered through other methods.⁹⁵ Yet, the relationship between voice and gender stereotypes significantly disadvantages women in leadership positions or those exhibiting agential traits when they are being evaluated by their peers. One study found that when women made a mistake while holding a “gender-stereotype-incongruent” role, such as a lead-

⁸⁸ *Id.* at 198.

⁸⁹ *Id.*

⁹⁰ *See generally id.* (explaining that women’s self-promotion skills are interrupted in the workplace and that these skills play a critical role in hiring and promotion decisions).

⁹¹ *Id.* at 198.

⁹² *Id.*

⁹³ *Id.* at 188; *see* Emily T. Amanatullah & Michael W. Morris, *Negotiating Gender Roles: Gender Differences in Assertive Negotiating Are Mediated by Women’s Fear of Backlash and Attenuated when Negotiating on Behalf of Others*, 98 J. PERSONALITY & SOC. PSYCHOL. 256, 260 (2010).

⁹⁴ Brescoll, *supra* note 85, at 416, 421.

⁹⁵ *See* Joeri Sol, *Peer Evaluation: Incentives and Coworker Relations*, 25 J. ECON. & MGMT. STRATEGY 56, 56 (2016).

ership position, they were judged much more harshly for it compared to otherwise identical male counterparts.⁹⁶ Displays of anger, another agential and expressive behavior, were similarly penalized when women were the subjects.⁹⁷ Although men who expressed anger were conferred higher status,⁹⁸ women displaying similar behavior were given lower status and generally considered less competent, with respondents stating that they would be less willing to hire or promote these women, and would pay them less if they were hired.⁹⁹ Interestingly, negative evaluations of female anger were conferred by both male and female respondents; even other women in the workplace evaluate agential female coworkers or candidates more negatively.¹⁰⁰ The penalties can be incredibly severe—women who engage in avid self-promotion were actually *less* likely to be promoted to leadership roles.¹⁰¹ Backlash effects can be so powerful that they completely erase any benefit from self-promotion, and then some.

Moreover, once women attain senior leadership positions within firms, their voice is more frequently challenged compared to otherwise similar male executives. Female executives are more likely to be the targets of shareholder activism than their male counterparts,¹⁰² even controlling for other factors, including the infamous “glass cliff,” where women are often placed into “precarious leadership positions” predisposed to failure.¹⁰³ Vishal K. Gupta and others suggest that “female CEOs . . . receive more unwanted private advice and direction from external stakeholders than male CEOs,”¹⁰⁴ and that this may be due to role incongruity; women CEOs are seen as less agential, resulting in other stakeholders feeling a greater impetus to push for change

⁹⁶ Victoria L. Brescoll et al., *Hard Won and Easily Lost: The Fragile Status of Leaders in Gender-Stereotype-Incongruent Occupations*, 21 PSYCHOL. SCI. 1640, 1640 (2010).

⁹⁷ Victoria L. Brescoll & Eric Luis Uhlmann, *Can an Angry Woman Get Ahead? Status Conferral, Gender, and Expression of Emotion in the Workplace*, 19 PSYCHOL. SCI. 268, 268 (2008).

⁹⁸ *Id.*

⁹⁹ *Id.* at 271.

¹⁰⁰ *Id.* at 268.

¹⁰¹ Laurie A. Rudman & Peter Glick, *Feminized Management and Backlash Toward Agentic Women: The Hidden Costs to Women of a Kinder, Gentler Image of Middle Managers*, 77 J. PERSONALITY & SOC. PSYCHOL. 1004, 1005 (1999).

¹⁰² Vishal K. Gupta et al., *Do Women CEOs Face Greater Threat of Shareholder Activism Compared to Male CEOs? A Role Congruity Perspective*, 103 J. APPLIED PSYCHOL. 228, 228 (2018).

¹⁰³ Michelle K. Ryan & S. Alexander Haslam, *The Glass Cliff: Exploring the Dynamics Surrounding the Appointment of Women to Precarious Leadership Positions*, 32 ACAD. MGMT. REV. 549, 549 (2007).

¹⁰⁴ Gupta et al., *supra* note 102, at 233.

rather than allowing the CEO to operate relatively unhindered.¹⁰⁵ That female CEOs face this pressure is especially disconcerting because the CEO position “is highly visible to internal and external audiences”¹⁰⁶ and therefore may normalize such treatment across the entire organization. Even when women have proven themselves by achieving the highest position in a firm, they face the same biases as women further down the corporate ladder.

Aspiring female leaders in the workplace, thus, face a catch-22 in deciding how to advance. Engaging in self-promotion and displaying agential behavior is considered essential for leaders, yet a woman striving for a leadership position “may experience a mismatch in the emotional displays expected of her as a woman and those expected of her as a leader.”¹⁰⁷ As a result, aspiring women have two choices: they can either stay silent, refusing to utilize voice and hence lose the benefits of voice expression in the workplace, or they can embrace agential behaviors by speaking up within the organization, and in doing so risk being more negatively evaluated by their peers. Indeed, research has shown that women across the board are much less “voluble” than their male counterparts, regardless of their degree of power. One study, analyzing speeches in the U.S. Senate, found that while volubility (“the total amount of time spent talking”) was positively correlated with power among male Senators, the same relationship did not exist for their female colleagues.¹⁰⁸ Furthermore, the researchers found that in an experimental setting, priming male subjects with a sense of power increased their volubility, while women talked about the same amount regardless of whether they were primed with power.¹⁰⁹ To determine why women may not become more voluble with power, the researchers then examined reactions from both men and women upon observing male or female leaders with high or low volubility. They found that, indeed, female leaders are penalized in terms of evaluation for speaking up more, implying that potential fears of backlash are justified.¹¹⁰

The ability to express voice is central to both advancing within an organization¹¹¹ and in being an effective leader. Expressing one’s

¹⁰⁵ *Id.* at 234.

¹⁰⁶ *Id.* at 232.

¹⁰⁷ Brescoll, *supra* note 85, at 420.

¹⁰⁸ Victoria L. Brescoll, *Who Takes the Floor and Why: Gender, Power, and Volubility in Organizations*, 56 ADMIN. SCI. Q. 622, 622 (2011).

¹⁰⁹ *Id.* at 633.

¹¹⁰ *Id.* at 635.

¹¹¹ See, e.g., Edward E. Jones & Thane S. Pittman, *Toward a General Theory of Strategic*

voice, especially through anger or other assertive means, is considered critical to getting things done.¹¹² Yet women face a range of obstacles of effectively expressing their voice, leading to either outright avoidance of speaking up to avoid backlash or embracing a loud organizational voice, and the accompanying social and evaluator penalties.

III. MENTORING AND NETWORKING CAN HELP

One tool that is crucial for women in dealing with the issues of voice and climbing the corporate ladder is access to networks and mentors. It is well-accepted that mentor relationships benefit both the mentor and the protégé.¹¹³ Mentors, using their advanced experience and knowledge, support protégés in career development as well as psychosocially.¹¹⁴ The career development support operates by enhancing, through the mentor's position, the protégé's role in the organization, helping the protégé "learn the ropes of organizational life, gain exposure, and obtain promotions."¹¹⁵ Additionally, the mentoring process allows protégés to demonstrate their value to mentors and ultimately the organization's decision makers.¹¹⁶ The psychosocial function assists the protégé through "role modeling, acceptance and confirmation, counseling, and friendship."¹¹⁷ The mentors, in turn, are benefited through "recognition and respect from peers and superiors" for developing the talent.¹¹⁸

A. *The Importance of Mentors and Networks for Women*

The value of mentoring and networking are especially important to women, who face barriers endogenous to the corporate workplace, including overt sexual discrimination and the more common "subtle but clear cultural biases and gender stereotypes."¹¹⁹ For example, a

Self-Presentation, in 1 PSYCHOLOGICAL PERSPECTIVES ON THE SELF 231, 233 (Jerry Suls ed., 1982).

¹¹² See Larissa Z. Tiedens, *Anger and Advancement Versus Sadness and Subjugation: The Effect of Negative Emotion Expressions on Social Status Conferment*, 80 J. PERSONALITY & SOC. PSYCHOL. 86, 86–87 (2001) ("The studies show that people confer more status to targets who express anger than to targets who express sadness.").

¹¹³ E.g., Tammy D. Allen et al., *Career Benefits Associated with Mentoring for Protégés: A Meta-Analysis*, 89 J. APPLIED PSYCHOL. 127 (2004).

¹¹⁴ See Kathy E. Kram, *Phases of the Mentor Relationship*, 26 ACAD. MGMT. J. 608, 613–14 (1983).

¹¹⁵ Allen et al., *supra* note 113, at 128.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Kram, *supra* note 114, at 613–14.

¹¹⁹ Cindy A. Schipani et al., *Pathways for Women to Obtain Positions of Organizational*

barrier women often face is that they are often not assigned the most valuable clients.¹²⁰ This issue can be self-perpetuating, as firms may assign male employees to match the male-dominated senior management of their corporate clients or as mentors to males, intentionally or unintentionally, providing their male protégés access to the most valuable clients.¹²¹ Additionally, this issue may be exacerbated by gender stereotypes. Female employees often face criticisms for qualities that are seen as positive aspects of their male colleagues.¹²² Female employees risk being viewed as too “soft,” or if asserting themselves, as overly aggressive.¹²³ In the legal field, for example, more than 50% of women “believe that they are held to higher standards than men.”¹²⁴ This may lead to female employees receiving fewer favorable clients and assignments, as male senior management views them as less capable. Further, young women, whose confidence has been lowered as a result of social barriers, may be less likely to compete for valuable clients or career opportunities.¹²⁵ This in turn leads to women losing opportunities to network with valuable clients and from obtaining experience and “marketing skills that are central to advancement.”¹²⁶

Because women are classified generally as outsiders by those on the top rung of corporate leadership, integrating mentoring programs between those at the top and those a few steps down will expose both parties to the values, beliefs, and assumptions of the other. By sharing cultural backgrounds with corporate leaders, mentoring programs could be particularly useful for showing corporate leaders that marriage and family do not adversely affect the motivation of women to rise to positions of leadership.¹²⁷ Instead of being perceived as outsiders, women would more frequently be seen as part of the same club as men which combats the issues of voice and gender stereotyping as dis-

Leadership: The Significance of Mentoring and Networking, 16 DUKE J. GENDER L. & POL’Y 89, 97, 101 (2009).

¹²⁰ See Paula Santonocito, *Women Pipeline*, 27 EMP. ALERT 3, 3 (2010).

¹²¹ See Carolyn M. Janiak, *The “Links” Among Golf, Networking, and Women’s Professional Advancement*, 8 STAN. J.L. BUS. & FIN. 317, 325 (2003).

¹²² DEBORAH L. RHODE, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 6 (2001).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See Tammy D. Allen et al., *Women and Career Advancement: Issues and Opportunities*, 45 ORGANIZATIONAL DYNAMICS 206, 208 (2016).

¹²⁶ RHODE, *supra* note 122, at 6.

¹²⁷ See Terry Morehead Dworkin et al., *The Role of Networks, Mentors, and the Law in Overcoming Barriers to Organizational Leadership for Women with Children*, 20 MICH. J. GENDER & L. 83, 115–19, 123–25 (2013).

cussed above. Mentoring at the higher levels can also help prepare women for leadership positions on boards. As companies look for women to diversify boards, they will be likely to call on and find out about qualified women from mentors. Additionally, mentors may be especially valuable in many industries, such as law firms, where there is an implicit “up-or-out” policy that requires the entry-level employees to demonstrate their worth to the firm by a specified time early in their careers.¹²⁸

Yet, the value added by a mentor relationship can vary significantly in degree and form, and can even be destructive in cases.¹²⁹ A mentor relationship may be informal, whereby the mentors and protégés mutually identify each other, or formal, instigated or structured by organizational expectations.¹³⁰ Informal relationships usually focus on long-term goals while formal relationships tend to focus on short-term goals applicable to the protégé’s current position.¹³¹ Studies have indicated that informal relationships tend to be more beneficial both psychosocially and for career development, but other variables, including the satisfaction between the mentor and protégé, are important in determining whether value is added.¹³²

Similarly, it is widely acknowledged that networking can aid in an individual’s career development.¹³³ Among other benefits, networking has been associated with increased wages, career advancement, higher job performance ratings, and even as a potential job search strategy.¹³⁴

The lack of networks and mentoring, however, can be a self-perpetuating issue.¹³⁵ Women, dissatisfied with the lack of support or facing other work and family issues, are often seen as more likely to switch jobs or even abandon their chosen profession.¹³⁶ Because of this, mentors may be less likely to devote time and resources to wo-

¹²⁸ Kathleen L. McGinn & Katherine L. Milkman, *Looking Up and Looking Out: Career Mobility Effects of Demographic Similarity Among Professionals*, 24 ORG. SCI. 1041, 1042 (2013).

¹²⁹ Belle Rose Ragins et al., *Marginal Mentoring: The Effects of Type of Mentor, Quality of Relationship, and Program Design on Work and Career Attitudes*, 43 ACAD. MGMT. J. 1177, 1178 (2000).

¹³⁰ *Id.* at 1179.

¹³¹ *Id.*

¹³² See *id.* at 1179–80; Belle Rose Ragins & John L. Cotton, *Mentor Functions and Outcomes: A Comparison of Men and Women in Formal and Informal Mentoring Relationships*, 84 J. APPLIED PSYCHOL. 529, 544 (1999).

¹³³ E.g., Hans-Georg Wolff & Klaus Moser, *Effects of Networking on Career Success: A Longitudinal Study*, 94 J. APPLIED PSYCHOL. 196, 197 (2009).

¹³⁴ *Id.* at 196–97, 202.

¹³⁵ *Id.*

¹³⁶ See *id.*; Kelly C. Walter Carney, *Motherhood and Management*, 6 J. ASS’N FOR RES. ON

men, who they see as likely to leave.¹³⁷ Fortunately, this issue may improve organically, as studies have demonstrated that women and diverse representation in senior management can provide increased returns for shareholders.¹³⁸ Clients, recognizing the value of a diverse workforce, increasingly expect and demand to be assigned diverse work forces.¹³⁹ Furthermore, there is evidence that the labor market is adapting to accommodate the demands of female employees.¹⁴⁰

A more obvious issue women face is that mentors feel “most comfortable ‘supporting [and promoting] others who seem similar in backgrounds, experiences, and values.’”¹⁴¹ Especially in informal mentor relationships, mentors tend to “choose protégés whom they view as younger versions of themselves.”¹⁴² As women compose a disproportionately small percentage of senior management positions, women in lower level positions may thus find it difficult to access a mentor.¹⁴³ Studies have indicated that the vast majority of women, and an even higher percentage of men, report being mentored by men.¹⁴⁴ This may continue even as the gender gap continues to close, as a potential issue lurking in the future is a decreased awareness by potential female mentors of the need to mentor newer female employees.¹⁴⁵ This would occur as a newer generation of female workers, having not experienced the more obvious sexual discrimination of their “foremothers,” do not recognize the continued importance of supporting new generations of female employees.¹⁴⁶

MOTHERING 17, 18 (2004) (“[T]hat difficulty reconciling work/life issues has reduced the number of women in leadership roles, and even resulted in some women leaving such positions.”).

¹³⁷ RHODE, *supra* note 122.

¹³⁸ *Report: The Bottom Line: Connecting Corporate Performance and Gender Diversity*, CATALYST (Jan. 15, 2004), <https://www.catalyst.org/research/the-bottom-line-connecting-corporate-performance-and-gender-diversity/> [<https://perma.cc/RRK3-G3HD>].

¹³⁹ Karen A. Lister, *Firms Develop Initiatives to Keep Women Attorneys in the Pipelines: Demographics, Client Demands and Attorney Replacement Costs Make Attorney Retention a Priority*, 40 HOUS. LAW. 18, 19 (2003).

¹⁴⁰ See Claudia Olivetti & Barbara Petrongolo, *The Evolution of Gender Gaps in Industrialized Countries*, 8 ANN. REV. ECON. 405 (2016).

¹⁴¹ Janiak, *supra* note 121, at 325 (quoting RHODE, *supra* note 122, at 6) (brackets in original).

¹⁴² Ragins et al., *supra* note 129, at 1179.

¹⁴³ See RHODE, *supra* note 122, at 6.

¹⁴⁴ See, e.g., Fiona M. Kay & Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice*, 79 SOC. INQUIRY 418, 438 (2009) (“Not surprisingly, women are more likely than men to be mentored by women, although the majority of both men (98 percent) and women (89 percent) are mentored by men.”).

¹⁴⁵ See Lister, *supra* note 139, at 23.

¹⁴⁶ See *id.*

Despite these issues, women are no less likely than their male colleagues to engage in networking or mentoring.¹⁴⁷ This is important, as evidence indicates that networking, mentoring, and building social capital is especially important for women to progress into higher levels of management.¹⁴⁸ Mentoring can benefit female protégés, leading to higher career earnings, advancement, and job satisfaction than those without a mentor.¹⁴⁹ The type and magnitude of the effect varies depending on whether the mentor is male or female, as female protégés with a male mentor earn significantly more than those with a female mentor, while female protégés with a female mentor report higher job satisfaction and less work and nonwork conflict.¹⁵⁰

Although a male mentor may provide higher compensation for their protégés, it is important that female protégés have access to female mentors too. Female protégés with male mentors reported engaging in significantly fewer social activities and that the male mentors were less likely to provide acceptance roles.¹⁵¹ A possible explanation is that female protégés may avoid out of work activities for fear that the interaction may be “misconstrued as sexual in nature.”¹⁵² This may be especially prevalent in industries dominated by men, such as banking, where men may feel uncomfortable with a woman’s presence.¹⁵³ An additional concern is that women are less likely to benefit from formal mentor relationships, as they report reduced levels of coaching, role modeling, socializing, counseling, and friendships, both from male and female mentors.¹⁵⁴ This may be an especially critical issue, as some evidence indicates that career support, especially from a female mentor, is especially important for women in overcoming barriers and in achieving organizational advancement.¹⁵⁵

¹⁴⁷ Monica L. Forret & Thomas W. Dougherty, *Correlates of Networking Behavior for Managerial and Professional Employees*, 26 GROUP & ORG. MGMT. 283, 300 (2001).

¹⁴⁸ Isabel Metz & Phyllis Tharenou, *Women’s Career Advancement: The Relative Contribution of Human and Social Capital*, 45 GROUP & ORG. MGMT. 312, 316 (2001) (studying the importance of developing human capital through an analysis of the advancement of women in Australian banks).

¹⁴⁹ Jean E. Wallace, *The Benefits of Mentoring for Female Lawyers*, 58 J. VOCATIONAL BEHAV. 366, 367 (2001).

¹⁵⁰ Ragins & Cotton, *supra* note 132, at 545.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See Metz & Tharenou, *supra* note 148, at 312 (“The qualitative results appeared to support the view that social capital is more important to women’s advancement,” at all levels in Australian banks).

¹⁵⁴ Ragins et al., *supra* note 129, at 1191.

¹⁵⁵ See Phyllis Tharenou, *Does Mentor Support Increase Women’s Career Advancement*

In addition to a shortage of potential female mentors, female mentors that are available may not have the status or influence to provide benefits to their female protégés.¹⁵⁶ One of the most marked barriers women face is access to formal and informal networks.¹⁵⁷ Women, as result of their exclusion in senior management, are similarly excluded from access to important organizational networks.¹⁵⁸ Additionally, often as a form of unconscious discrimination, women are left out of informal networks.¹⁵⁹ The lack of informal and formal networks prevents women from access to valuable clients, mentoring, and the opportunity to prove their value to an organization.¹⁶⁰ The nature of networking provides a further barrier for women, as effective networks are based on reciprocity and women often lack equal resources to provide to their male counterparts.¹⁶¹

Perhaps because of these challenges, women, as opposed to male protégés who benefit directly from senior status mentors, tend to benefit from close relationships and multiple mentors.¹⁶² In fact, a network of mentors may have an even more profound effect at increasing social capital, as it not only gives individuals access to more information, but to “distinct information not available in [their] inner circle.”¹⁶³ This benefit may be especially pronounced for women, as female protégés with multiple mentors gain more through the mentoring process than similarly situated males, thus advancing their careers and substantially closing the gendered earnings gap.¹⁶⁴

Importantly, mentoring and networking may interact together. The mentor relationship not only expands the protégés network, but one of the principal roles of the mentor is to teach protégés networking skills.¹⁶⁵ The evidence indicates that mentoring may allow women, especially those with dependents, to more effectively benefit from networks.¹⁶⁶ Mentoring and networking allow women to obtain more

More than Men's? The Differential Effects of Career and Psychosocial Support, 30 AUSTL. J. MGMT. 77, 101 (2005).

¹⁵⁶ See Kay & Wallace, *supra* note 144, at 424.

¹⁵⁷ Janiak, *supra* note 121, at 323–24.

¹⁵⁸ Forret & Dougherty, *supra* note 147, at 287.

¹⁵⁹ Janiak, *supra* note 121, at 323.

¹⁶⁰ *Id.* at 324.

¹⁶¹ Forret & Dougherty, *supra* note 147, at 287.

¹⁶² Kay & Wallace, *supra* note 144, at 441.

¹⁶³ *Id.* at 422.

¹⁶⁴ See *id.* at 441, 444.

¹⁶⁵ Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 107 (2007).

¹⁶⁶ Dworkin et al., *supra* note 127.

challenging assignments and important clients, thus demonstrating their value and helping to eliminate gendered stereotypes.¹⁶⁷ Additionally, mentoring and support networks can indicate to female employees that they are valued, instilling in them a commitment to the organization.¹⁶⁸ This effect is larger when mentors publicly endorse their protégés.¹⁶⁹

Networks can serve another important role by helping women learn to bargain effectively.¹⁷⁰ Networks could organize practice sessions and help women arm themselves with information about the relevant salary range in their area for the type of job they are seeking.¹⁷¹ Much of this information is accessible online but many women are unaware of the available resources. Mentoring and coaching can also help women feel more comfortable and be more assertive when discussing salaries.¹⁷² The lack of effective bargaining is one of the causes cited for the persistent gap between men's and women's salaries.¹⁷³ Furthermore, mentors and networks could be particularly useful in helping women who are moving to a higher position understand what constitutes a fair salary for their position and experience, as well as the cost of their replacement.¹⁷⁴ Except for certain senior management positions where disclosure is required, this information is not generally available.¹⁷⁵

In addition, networks could help women be more effective in approaching a state attorney general or the EEOC to pursue litigation on behalf of women if there is a company-wide disparity in salaries

¹⁶⁷ Janiak, *supra* note 121, at 324.

¹⁶⁸ Lisa E. Baranik et al., *Why Does Mentoring Work? The Role of Perceived Organizational Support*, 76 J. VOCATIONAL BEHAV. 366, 369–70 (2010).

¹⁶⁹ *Id.* at 371.

¹⁷⁰ Robert D. Hisrich & Candida Brush, *The Woman Entrepreneur: Management Skills and Business Problems*, 22 J. SMALL BUS. MGMT. 30, 30 (1984).

¹⁷¹ See Carol Sankar, *Why Don't More Women Negotiate?*, FORBES (July 13, 2017, 8:30 AM), <https://www.forbes.com/sites/forbescoachescouncil/2017/07/13/why-dont-more-women-negotiate/#5e55aa9fe769> [<https://perma.cc/G3VF-5AYS>] (advocating that women join Employee Resource Groups to assist them in negotiating higher salaries).

¹⁷² Women may be more reluctant than men to negotiate salaries, in part because of the risk of social repercussions to their requests. Hannah Riley Bowles & Linda Babcock, *How Can Women Escape the Compensation Negotiation Dilemma? Relational Accounts Are One Answer*, 37 PSYCHOL. WOMEN Q. 80 (2012).

¹⁷³ See, e.g., *id.* Fifty-five years after the passage of the Equal Pay Act, women still earn about 80 cents for every dollar earned by a man. Sabrina L. Brown, Note, *Negotiating Around the Equal Pay Act: Use of the "Factor Other than Sex" Defense to Escape Liability*, 78 OHIO ST. L.J. 471, 472–73 (2017).

¹⁷⁴ See Sankar, *supra* note 171.

¹⁷⁵ See *Executive Compensation*, U.S. SEC. & EXCH. COMM'N, <https://www.sec.gov/fast-answers/answers-execomphmt.html> [<https://perma.cc/B4ZA-TUGL>].

between men and women.¹⁷⁶ The cases may also help publicize employers that systematically underpay women.

One potential solution to the issues women face in benefiting from mentors and networks is for organizations to institutionalize mentoring and provide structure to the mentoring process.¹⁷⁷ This may be more effective than relying on mentoring pathways to form naturally or “one-off mentoring programs.”¹⁷⁸ Mentoring events or programs could be scheduled on a regular basis and catered specifically to the unique interests or demands of female employees.¹⁷⁹ However, as informal relationships are often more effective than formal relationships, it is equally important to foster an environment where informal relationships can occur naturally and there is more interaction between different levels of employees.¹⁸⁰ Implementing mentoring programs would provide women fair access to top corporate leaders and give them an equitable opportunity to dissociate themselves from baseline negative presumptions. Even if this sharing of cultural capital does not completely eviscerate the effect of gender stereotypes and discrimination, it is a step in the right direction.

B. Unintended Consequences for Mentoring Resulting from the #MeToo Movement

Unfortunately, an unintended consequence of the #MeToo movement is that men have grown increasingly fearful of interacting with women in the workplace.¹⁸¹ A Harvard study found that nearly two-thirds of men indicated feeling “less safe” mentoring and coaching than before the #MeToo movement.¹⁸² A different study found that nearly half of male managers reported feeling uncomfortable interacting with women in the workplace.¹⁸³ Senior men are more than three

¹⁷⁶ See, e.g., Jayna Genti, *Employers Face Heavy Burden When Defending EPA Claims*, HR DAILY ADVISOR (May 14, 2018), <https://hrdailyadvisor.blr.com/2018/05/14/employers-face-heavy-burden-defending-epa-claims/> [<https://perma.cc/6YWY-LAQB>] (describing one case where the EEOC sued the Maryland Insurance Administration). These actors are not barred from bringing a class action, which has become increasingly difficult for workers. See Cindy A. Schipani & Terry Morehead Dworkin, *Class Action Litigation After Dukes: In Search of a Remedy for Gender Discrimination in Employment*, 46 U. MICH. J.L. REFORM 1249 (2013).

¹⁷⁷ See Santonocito, *supra* note 120.

¹⁷⁸ See *id.*

¹⁷⁹ See Lister, *supra* note 139, at 23.

¹⁸⁰ See Ragins & Cotton, *supra* note 132, at 544.

¹⁸¹ See Bertotti & Maxfield, *supra* note 71.

¹⁸² *Id.*

¹⁸³ See *Key Findings*, LEAN IN, <https://leanin.org/sexual-harassment-backlash-survey-results#key-finding-1> [<https://perma.cc/Y7RM-TYAD>].

times more likely to hesitate having a work dinner with a woman than with a man and five times more likely to hesitate at traveling with a female rather than a male colleague.¹⁸⁴

The increased fear may only serve to further limit women's access to mentors and networks. Unwritten rules already limit the interaction between men and women in the workplace.¹⁸⁵ Women are often left out of team-building activities,¹⁸⁶ are less likely to receive advice from managers than their male peers,¹⁸⁷ and when advice is given, it is more likely to be vague advice based on personal style as opposed to skills-based feedback.¹⁸⁸

Companies can take steps to avoid these negative effects.¹⁸⁹ Formal mentoring programs can be established, meetings can be scheduled for public places, and other steps can be taken to avoid the appearance of impropriety.¹⁹⁰ Communication strategies can also bridge the gap between the genders.¹⁹¹ However, as strong mentoring relationships are built on trust, further steps may be needed to negate the effects of uneasiness between men and women in the workplace.¹⁹²

CONCLUSION

In addition to the benefits mentioned above, another important role that mentors can serve is to have the mentee's "back." If the mentor is someone who is relatively powerful and connected in the organization, she or he can help stop discrimination, harassment, and demeaning language about the mentee. Indeed, such behavior is less

¹⁸⁴ See *Men, Commit to Mentor Women*, LEAN IN, <https://leanin.org/mentor-her> [<https://perma.cc/6W76-5CLV>].

¹⁸⁵ See, e.g., Leslie Larson, *A New Survey Just Revealed Shockingly Sexist Rules for Working on Capitol Hill*, BUS. INSIDER (May 15, 2015, 1:12 PM), <https://www.businessinsider.com/female-staffers-on-capitol-hill-are-barred-from-being-along-with-male-boss-2015-5> [<https://perma.cc/9XSY-PEVU>] (reporting that unwritten rules in Congress bar female staffers from meeting with their male bosses).

¹⁸⁶ See *Men, Commit to Mentor Women*, *supra* note 184.

¹⁸⁷ See *id.*

¹⁸⁸ See *id.*

¹⁸⁹ See, e.g., Melissa Lamson, *Men Need Mentors Too in the #MeToo Era*, INC. (Mar. 8, 2018), <https://www.inc.com/melissa-lamson/how-women-can-and-should-mentor-men-in-metoo-era.html> [<https://perma.cc/QP8E-BZZ6>] (advising how companies can help men support women in the workplace).

¹⁹⁰ See, e.g., Renata K. Laubman, *Networking and the #MeToo Movement*, LAW TIMES (July 23, 2018), <https://www.lawtimesnews.com/article/networking-and-the-metoo-movement-16000> [<https://perma.cc/JJ6Y-C29E>].

¹⁹¹ See Larson, *supra* note 185.

¹⁹² See Natalie Richardson, *Mentoring After #MeToo*, TRAINING INDUSTRIES (Jan. 30, 2018), <https://trainingindustry.com/blog/leadership/mentoring-after-metoo> [<https://perma.cc/6BYC-Z2RS>].

likely to happen because of the “reflected power” of the mentor to the mentee.¹⁹³ Supplying mentors can both help reduce the potential for legal liability as well as corresponding negative publicity from public disclosures of harassment.¹⁹⁴

The #MeToo movement has made it more important for companies to facilitate the ability of women to speak up about harassment. As noted above, women tend to exit the organization after episodes of sexual harassment rather than report them. Moreover, in the current climate of almost full employment, it is more difficult for companies to find and keep qualified employees.¹⁹⁵ Dealing effectively with harassment means that not only will women be more likely to remain with the organization, they are also more likely to be loyal.

There is also increasing pressure on companies to include women on their boards of directors. Some of that pressure may come from women who are more likely to want to work for a company that is seen as female-friendly, and having women on their board will help with that image.¹⁹⁶ Additionally, some of the major investment companies such as State Street Global Advisors and BlackRock, Inc. are examining gender diversity of board membership of the companies in which they invest, and may limit their investments in companies without female directors, as well as vote against some board members running for election where the board is all male.¹⁹⁷ The investors point to various studies concluding that companies with diverse boards tend to

¹⁹³ SUSAN DURBIN, *WOMEN WHO SUCCEED* 77 (2016).

¹⁹⁴ See Schipani et al., *supra* note 119, at 100.

¹⁹⁵ Eric Morath, *U.S. Job Openings Exceed 7 Million*, WALL STREET J., Oct. 17, 2018, at A2. Before March 2018, job openings had not exceeded unemployed workers in more than 17 years. The unemployment rate fell to 3.7%, the lowest in 49 years.

¹⁹⁶ See Terry Morehead Dworkin & Cindy A. Schipani, *The Role of Gender Diversity in Corporate Governance*, 21 U. PA. J. BUS. L. 105, 115–16 (2018); Stephen Brammer et al., *Corporate Reputation and Women on the Board*, 20 BRIT. J. MGMT. 17 (2009); Francisco Bravo et al., *The Board of Directors and Corporate Reputation: An Empirical Analysis*, 28 ACADEMIA REVISTA LATINOAMERICANA DE ADMINISTRACIÓN 359 (2015); Celia de Anca & Patricia Gabaldon, *The Media Impact of Board Member Appointments in Spanish-Listed Companies: A Gender Perspective*, 122 J. BUS. ETHICS 425 (2013); Frances J. Milliken & Luis L. Martins, *Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups*, 21 ACAD. MGMT. REV. 402, 416 (1996).

¹⁹⁷ See Vanessa Fuhrmans, *Boardrooms Show Increase in Share of Female Directors*, L'OPINION (June 24, 2018, 12:00 PM), <https://www.lopinion.fr/edition/wsji/boardrooms-show-increase-in-share-of-female-directors-154446> [<https://perma.cc/3J6G-D3BL>]. Although there has been an increase in women on boards—18% at this point—only 4% of boards are chaired by women.

have better financial returns, and that women often come to boards with a greater set of skills and qualifications.¹⁹⁸

Recent legislation enacted in California also increases the pressure for female board membership. In September 2018, Governor Brown signed into law¹⁹⁹ a statute that requires publicly-held domestic or foreign corporations whose principal executive offices are located in California, according to the corporation's SEC 10-K form, to have at least one female board member by the end of 2019.²⁰⁰ On boards with at least five members, they must have two or three female directors by 2021.²⁰¹ A sponsor of the legislation cited the statistic that a quarter of California companies still do not have a single woman on their board.²⁰² The California economy is one of the largest in the world, and this requirement is likely to have an important impact. It also reflects to some extent the quotas required in some European countries.²⁰³ Massachusetts, Pennsylvania, Colorado, and Illinois have

¹⁹⁸ See *id.*; see also Dworkin & Schipani, *supra* note 196 (discussing studies regarding correlations between financial results and women in leadership positions).

¹⁹⁹ See S. 826, 2018 Leg., Reg. Sess. (Cal. 2018); see also Alejandro Lazo, *Jerry Brown Signs Slew of Laws and Fires Parting Shots*, WALL STREET J. (Oct. 1, 2018, 8:12 PM), <https://www.wsj.com/articles/jerry-brown-signs-slew-of-laws-and-fires-parting-shots-1538439143> [<https://perma.cc/JZF6-EYMZ>]. Another law he signed bans secret settlements in sexual harassment cases. *Id.*

²⁰⁰ See S. 826, 2018 Leg., Reg. Sess. (Cal. 2018).

²⁰¹ *Id.*

²⁰² See Vanessa Fuhrmans & Alejandro Lazo, *California Moves to Mandate Female Board Directors*, WALL STREET J. (Aug. 29, 2018, 10:06 PM), <https://www.wsj.com/articles/california-moves-to-mandate-female-board-directors-1535571904> [<https://perma.cc/SSP3-TX5M>]. He also cited the studies showing that companies with women on their boards are more profitable and productive. See, e.g., Juliet Bourke & Bernadette Dillon, *The Diversity and Inclusion Resolution, Eight Powerful Truths*, DELOITTE INSIGHTS (Jan. 22, 2018), <https://www2.deloitte.com/us/en/insights/deloitte-review/issue-22/diversity-and-inclusion-at-work-eight-powerful-truths.html> [<https://perma.cc/MP98-TJWA>]; Vivian Hunt et al., *Why Diversity Matters*, MCKINSEY & CO. (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> [<https://perma.cc/N93W-UPRU>]; Lois Joy et al., *The Bottom Line: Corporate Performance and Women's Representation on Boards*, CATALYST (2007), https://www.catalyst.org/wp-content/uploads/2019/01/The_Bottom_Line_Corporate_Performance_and_Womens_Representation_on_Boards.pdf [<https://perma.cc/2VGR-N6R9>]; Francesca Lagerberg, *Women in Business: The Value of Diversity*, GRANT THORNTON (2015), https://www.grantthornton.global/globalassets/wib_value_of_diversity.pdf [<https://perma.cc/W23M-UCYP>]. Another sponsor, Senator Hannah-Beth Jackson, said the legislation would benefit both the companies and the economy. Laura Forman, *Heard on the Street: Critical Mass Is Key for Women in Business*, WALL STREET J., Aug. 15, 2019, at B12.

²⁰³ See Claire Zillman, *The EU Is Taking a Drastic Step to Put More Women on Corporate Boards*, FORTUNE (Nov. 20, 2017), <http://fortune.com/2017/11/20/women-on-boards-eu-gender-quota> [<https://perma.cc/8E5T-3AMQ>]. One difference is that the companies can meet the requirement by expanding the board membership rather than removing a male board member. See

followed suit and passed nonbinding resolutions to increase gender representation on boards.²⁰⁴

Although #MeToo and other groups have been very helpful in publicizing sexual harassment, there are other workplace issues, such as the gender wage gap and the dearth of women in positions of senior leadership, that also deserve attention. Mentors and networks have an important role in addressing these issues. Of course, this Article recognizes that mentoring is not the cure-all for reaching gender parity in salaries or the C-Suite. Indeed, the authors have previously advocated for judicial reforms as well as changes in various business policies to open pathways for women to rise to positions of leadership, along with mentoring.²⁰⁵ Yet the value of a good mentor cannot be overstated in assisting with these goals.

S. 826, 2018 Leg., Reg. Sess. (Cal. 2018) (“A corporation may increase the number of directors on its board to comply with this section.”).

²⁰⁴ Dechert LLP, *Will Three Become the New Two? California State Legislature Passes Boardroom Gender Quota Bill*, LEXOLOGY (Sept. 5, 2018), <https://www.lexology.com/library/detail.aspx?g=44c71e03-8b46-40c2-b0a3-177c7dfbaf63> [<https://perma.cc/6RQF-27CD>].

²⁰⁵ See Dworkin & Schipani, *supra* note 196; Terry Morehead Dworkin et al., *A Half-Century Post-Title VII: Still Seeking Pathways for Women to Organizational Leadership*, 23 UCLA WOMEN’S L.J. 29 (2016); Dworkin et al., *supra* note 127; Schipani et al., *supra* note 119; Cindy A. Schipani et al., *Women and the New Corporate Governance: Pathways for Obtaining Positions of Corporate Leadership*, 65 MD. L. REV. 504 (2006).