

# Professional Women Subjugated by Name-Calling and Character Attacks

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The #MeToo Movement reminds us that women can begin movements through individual action. The #MeToo Movement also confirms that we are still dealing with the same old strategies that keep women in subjugated spaces, including in our workplaces. This Article analyzes how name-calling and character attacks continue to be used to put professional women in a gendered place. These strategies were used to defeat Hillary Clinton in her efforts to become the first female president of the United States. If we do not challenge their destructive effect, professional women will continue to be expected to put up with conduct that is often dismissed as harmless or viewed as the price women pay to be in the workplace. This is similar to how women were once expected to put up with sexual harassment at work. My proposal is simple. We begin a movement by acknowledging the problem, illustrating the ways in which it manifests, and encouraging individual action to challenge it, with the hope that, like the #MeToo Movement, this individual approach will lead to collective action.

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### I. INTRODUCTION

“[A]t some point I let go of my compulsion to please: it’s my own standard of character that I need to meet.”<sup>1</sup>

“Then I stepped out and spoke my truth.”<sup>2</sup>

“My gender is my gender. My voice is my voice.”<sup>3</sup>

“The shift to a more equal world will happen person by person.”<sup>4</sup>

“Turning feelings into words can help us process and overcome adversity.”<sup>5</sup>

I began to write this Article long before the 2016 United States presidential election cycle. In fact, the first draft of this Article was accepted for publication by a law review journal in 2014;<sup>6</sup> however, I could not publish it

<sup>1</sup> SONIA SOTOMAYOR, *MY BELOVED WORLD* 254 (2013).

<sup>2</sup> MICHELLE OBAMA, *BECOMING* 407 (2018) (“Since childhood, I’d believed it was important to speak out against bullies while also not stooping to their level.”).

<sup>3</sup> HILLARY RODHAM CLINTON, *WHAT HAPPENED* 125 (2017) [hereinafter CLINTON, *WHAT HAPPENED*].

<sup>4</sup> SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 11 (2013) [hereinafter SANDBERG, *LEAN IN*].

<sup>5</sup> SHERYL SANDBERG & ADAM GRAN, *OPTION B: FACING ADVERSITY, BUILDING RESILIENCE, AND FINDING JOY* 62 (2017).

<sup>6</sup> The first draft of this Article was accepted for publication by the *Duke Journal of Gender Law & Policy*. Letter on file with author. There were other articles I also did not get to finish. My current communications with Jordyn N. Sindt, Senior Articles Editor of the *Iowa Journal of Gender, Race & Justice*, have served to remind me of how much I enjoy collaborating with student editors, including because they remind me of the time I served as articles editor.

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at that time because I was dealing with some of the unpleasant issues that some professional women endure at work. Truth be told, I was dealing with a brutal tenure battle.<sup>7</sup> There was little time for my research and writing.<sup>8</sup> Then came the 2016 election cycle and the topic of this Article became even more relevant.<sup>9</sup> The world witnessed United States presidential candidate Hillary Clinton become the target of all kinds of name-calling and character attacks, which were also bullying and mobbing,<sup>10</sup> by Donald Trump and some of his followers. Despite his sexist and misogynist attacks,<sup>11</sup> Trump was elected president of the United States.<sup>12</sup>

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“[T]he close interaction of authors and student editors during the editing and publication process also cultivates professionalism, a valuable skill in the often adversarial and unfriendly legal industry.” Nathan H. Saunders, Note, *Student-Edited Law Reviews: Reflections and Responses of An Inmate*, 49 DUKE L.J. 1663, 1672 (2000).

<sup>7</sup> One day I may publish about how brutal it was; the story is ongoing. A colleague from another law school, a stellar scholar and person, published a congratulatory message in one of her law review articles. She said: “Congratulations again, Maritza, on your very well deserved award of ‘Tenure!’” Angela Mae Kupenda, *Equality Lost in Time and Space: Examining the Race/Class Quandary with Personal Pedagogical Lessons From a Course, a Film, a Case, and an Unfinished Movement*, 15 SEATTLE J. FOR SOC. JUST. 391, 392 (2016). This act of kindness and solidarity meant a lot to me.

<sup>8</sup> In effect, my work conditions made it impossible to devote time to my scholarship. And the negative circumstances continued after tenure. Tenure battles that include race and gender issues have continuing negative consequences even after tenure. See Angela Mae Kupenda & Tamara F. Lawson, *Truth and Reconciliation: A Critical Step Toward Eliminating Race and Gender Violations*, 31 COLUM. J. GENDER & L. 87, 91 (2015) (“The resulting assaults to the dignity of tenure-track faculty, based on obvious and inherent characteristics as gender and race, cause them significant harm and inhibit their academic contributions post-tenure.”).

<sup>9</sup> See Helen Hershkoff & Elizabeth M. Schneider, *Constitutional Law in the Trump Era*, 34 CONST. COMMENT. 43 (2019) (“Trump campaigned for the White House on a platform of disruption, urging America’s return to a golden time when white men of privilege ruled home and country.”) (citations omitted).

<sup>10</sup> In this Article, I use the term “bullying” as defined in reference to bullying in professional settings—the repeated targeting of a person in the form of verbal abuse, threats, intimidation, humiliation, or sabotage in her job and professional career, or some combination of the aforementioned. See GARY NAMIE & RUTH NAMIE, *THE BULLY AT WORK: WHAT YOU CAN DO TO STOP THE HURT AND RECLAIM YOUR DIGNITY ON THE JOB* 3 (2nd ed. 2009) [hereinafter NAMIE & NAMIE, *THE BULLY AT WORK*]. In this Article, the term “mobbing” is distinguished from bullying as “group behavior,” whereas bullying is about “individual acts.” See MAUREEN DUFFY & LEN SPERRY, *MOBBING: CAUSES, CONSEQUENCES, AND SOLUTIONS* 29 (2012). Mobbing is also systemic and includes organizational dynamics and involvement. *Id.* at 4.

<sup>11</sup> In *What Happened*, Hillary Clinton makes a good distinction in her interpretation of sexism versus misogyny.

Sexism is all the big and little ways that society draws a box around women and says, “You stay in there.” Don’t complain because nice girls don’t do that. Don’t try to be something women shouldn’t be. Don’t wear that, don’t go there, don’t think that, don’t earn too much. It’s not right somehow, we can’t explain why, stop asking . . . . Misogyny is something darker. It’s rage. Disgust. Hatred. It’s what happens when a woman turns down a guy at a bar and he switches from charming to

Women like Hillary, who do not conform to gendered expectations defined by patriarchy, suffer name-calling and character attacks. This is a strategy meant to keep us in “our place”—subjugated and out of some workplaces (including the White House).<sup>13</sup> During the 2016 presidential race, among all kinds of pejorative terms, candidate Trump called Hillary a “nasty woman.”<sup>14</sup> She was not the only woman whom he targeted as she was running for president. In May 2016, during a campaign rally, at the same time he called Hillary “crooked Hillary,” he referred to “her friend” U.S. Senator Elizabeth Warren as a “goofus” and “a basket case.”<sup>15</sup> Both women are lawyers and former law professors.<sup>16</sup> He also name-called and attacked the character of women in his own party, including Carly Fiorina, Megyn Kelly, and Mika Brzezinski, when they stepped out of their assigned

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scary. Or when a woman gets a job that a man wanted and instead of shaking her hand and wishing her well, he calls her a bitch and vows to do everything he can to make sure she fails.

CLINTON, WHAT HAPPENED, *supra* note 3, at 115.

<sup>12</sup> The men and women who voted for Trump elected a man who said he could “do anything” to professional women, including “[g]rab them by the pussy.” *US Election: Full Transcript of Donald Trump’s Obscene Videotape*, BBC NEWS (Oct. 9, 2016), <https://www.bbc.com/news/election-us-2016-37595321>.

<sup>13</sup> In my first *Professional Women* article, I described how, in this, my second article in the series, I would “examine how name-calling and character attacks are used to” keep professional women “in gendered places (‘our place’).” Maritza I. Reyes, *Professional Women Silenced by Men-Made Norms*, 47 AKRON L. REV. 897, 931 n.184 (2015) [hereinafter Reyes, *Professional Women Silenced*]. When I refer to women being put in “our place,” “her place,” or “their place,” I mean the place that others want to assign to a woman or women when they think we do not belong in the particular professional space. It is a place subordinate to the ones who have the power to attack us, degrade us, humiliate us, marginalize us, and even alter the conditions of our professional roles and careers. For an example of how some men use the term “keep women ‘in their place,’” in the workplace, see Felhaber, Larson, Fenlon, Vogt, P.A., *Mix of Discrimination and Harassment Can Equal a Hostile Environment*, 22 NO. 5 MINN. EMP. L. LETTER 3 (2012) (citing remarks made in *LaMont v. Indep. Sch. Dist. #728*, 814 N.W.2d 14 (Minn. 2012)).

<sup>14</sup> *Trump Calls Clinton a ‘Nasty Woman’ During Final Debate—Video*, THE GUARDIAN (Oct. 20, 2016, 2:49 PM), <https://www.theguardian.com/us-news/video/2016/oct/20/donald-trump-calls-hillary-clinton-a-nasty-woman-during-final-debate-video>. In April 2020, President Trump called Speaker Nancy Pelosi “very nasty.” Anderson Cooper 360, *Pelosi: Waste of Time to Even Comment on What Trump Said*, CNN (Apr. 20, 2020), <https://www.cnn.com/videos/politics/2020/04/21/nancy-pelosi-trump-response-sot-ac360-vpx.cnn>.

<sup>15</sup> *She’s Goofy’: Donald Trump Attacks Elizabeth Warren at Oregon Rally—Video*, THE GUARDIAN (May 7, 2016), <https://www.theguardian.com/us-news/video/2016/may/07/shes-goofy-donald-trump-attacks-elizabeth-warren-at-oregon-rally-video>.

<sup>16</sup> HILLARY RODHAM CLINTON, *LIVING HISTORY* 69–71 (2003) [hereinafter CLINTON, *LIVING HISTORY*]; ELIZABETH WARREN, *A FIGHTING CHANCE* 208–09 (2014). Professor Elizabeth Warren was still teaching at the Harvard Law School when I was an LLM student. I attended her presentation on Socratic teaching. I also exchanged e-mail communications with her about the mortgage crisis, one of her areas of academic research and advocacy.

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gendered places and challenged him (while doing their jobs).<sup>17</sup> Trump's attacks against professional women have continued unabated. In 2019, he targeted four U.S. Representatives: Ilhan Omar, Alexandria Ocasio-Cortez, Ayanna Pressley, and Rashida Tlaib, all of whom are women of color.<sup>18</sup> Trump resumed his name-calling and character attacks against Senator Warren once she re-emerged as a potential leader in the Democratic primary race on the way to the 2020 presidential election.<sup>19</sup>

Admittedly, name-calling and character attacks are not novel strategies, especially against professional women who challenge the status quo. The difference is that no American presidential candidate had ever implemented the name-calling and character attacks as abusively and offensively as Trump did and continues to do as president. However, this Article is not about Donald Trump or his below the belt strategies. The Trump references are only meant to highlight the current and egregious nature of the problem, while acknowledging that the strategies pre-date Trump.<sup>20</sup> Name-calling and character attacks have been used and continue to be used to keep professional women subjugated. They are meant to make us afraid to speak up, challenge, and enter professional spaces where our assertiveness and competence are not welcome.

In her book *Lean In*, Sheryl Sandberg examined why more women are not breaking glass ceilings and why some women are opting out of the professional workforce and leadership positions.<sup>21</sup> She identified some valid reasons, including the failure of workplaces to provide support as women try to achieve work-life balance.<sup>22</sup> However, my current research points to a reason that Sandberg did not directly explore—the discrimination and hostility that professional women encounter in workplaces where women are still expected to conform to gendered views.<sup>23</sup> Some professional women

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<sup>17</sup> CLINTON, WHAT HAPPENED, *supra* note 3, at 137.

<sup>18</sup> See Nisha Chittal, *Trump's Latest Tweets Are About Silencing Women of Color in Congress*, VOX (July 15, 2019, 2:15 PM), <https://www.vox.com/policy-and-politics/2019/4/8/18272072/ilhan-omar-rashida-tlaib-alexandria-ocasio-cortez-racism-sexism>.

<sup>19</sup> Alex Isenstadt, *Trump Campaign Zeroes in On a New Threat: Elizabeth Warren*, POLITICO (June 15, 2019, 6:35 AM), <https://www.politico.com/story/2019/06/15/donald-trump-elizabeth-warren-2020-election-1365816>.

<sup>20</sup> “Donald Trump didn’t invent sexism.” CLINTON, WHAT HAPPENED, *supra* note 3, at 114.

<sup>21</sup> See SANDBERG, LEAN IN, *supra* note 4.

<sup>22</sup> *Id.* at 99–103.

<sup>23</sup> At the ABA Annual Meeting in 2018, a panel discussed why women are leaving legal practice. The panelists focused on a study conducted by the American Bar Association, which found that most of the aspects of the legal profession women lawyers do not like have to do with discrimination. *Annual 2018: Why Women Leave the Law—and What We Can Do About It*,

(in some professions more than in others) are leaving the workforce due to the barriers and disparate treatment they encounter simply because of their sex.<sup>24</sup> Some professional women of color are being harassed out of their jobs.<sup>25</sup> In an empirical study funded by the National Science Foundation (the “NSF Study”), sixty women of color in the field of science, technology, math, and engineering participated and provided insight about what happens to some women in fields dominated by men.<sup>26</sup> I refer to this study throughout this Article. Some professional women may decide to escape hostile work environments, even if it means walking away from their chosen careers.<sup>27</sup>

This Article is one more in a series of articles in which I seek to examine current issues that oppress professional women in workplaces and preclude us from reaching equality. Some men also face some of the negative situations I describe in this Article. However, because statistics show that more women are negatively affected, my focus is through the lens of the woman experience.<sup>28</sup> As in my prior article:

[W]hen I refer to equality I envision it as both a strategy and as the end goal. Equality as a strategy means assessing

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ABA (July 31, 2018), [https://www.americanbar.org/news/abanews/aba-news-archives/2018/07/annual\\_2018\\_why\\_wom/](https://www.americanbar.org/news/abanews/aba-news-archives/2018/07/annual_2018_why_wom/).

<sup>24</sup> See, e.g., Bill Steele, *Something About STEM Drives Women Out*, CORNELL CHRONICLE (Nov. 19, 2013), <http://www.news.cornell.edu/stories/2013/11/something-about-stem-drives-women-out> (citing longitudinal study about professional women in STEM field). “It’s not the family. Women leave before they have children or even get married. Our findings suggest that there is something unique about the STEM climate that results in women leaving.” *Id.* (quoting Sharon Sassler, professor of policy analysis and management at Cornell University). It is illogical that these women who have worked so hard to earn advanced degrees leave jobs that provide financial and professional rewards. *Id.* “It’s not rational to invest that amount of time in getting a degree and then exit.” *Id.* (quoting Sharon Sassler).

<sup>25</sup> See e.g., Jennifer Lisa Vest, *What Doesn’t Kill You: Existential Luck, Postracial Racism, and the Subtle and Not So Subtle Ways the Academy Keeps Women of Color Out*, 12 SEATTLE J. FOR SOC. JUST. 471, 484–85 (2013) (deciding to leave her tenured position in the academy as a result of “macroaggressions” and “microassaults” that she experienced).

My student evaluations were high, and my classes were usually enrolled to full capacity. I loved teaching. I loved my students. I loved the change we were making in the world. My story is important not because of what happened to me, but because of what happens to so many qualified and valuable women of color professors.

*Id.* at 517.

<sup>26</sup> See Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates Over Implicit Bias and Intersectionality*, 37 HARV. J.L. & GENDER 185, 186–87 (2014) [hereinafter Williams, *Double Jeopardy?*].

<sup>27</sup> During my decade in the legal academy, I have witnessed female law professors leave teaching careers to escape hostile work environments, including in my own institution.

<sup>28</sup> This is not to say that the proposal does not benefit men. In fact, the proposal benefits all in the workplace.

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the inherent inequalities of particular situations and using the means necessary to remedy the inequalities and achieve equality as the end goal. The end goal is for women (with all our complexities and intersectionalities) to achieve the *same rights and results* as men (with all their complexities and intersectionalities) and to be free from all forms of discrimination.<sup>29</sup>

One of my goals is to develop an academic body of work that identifies under-analyzed issues and also provides common sense solutions.<sup>30</sup> I also seek to educate and inform through my writings, as law professors should do.<sup>31</sup> Ultimately, we may need to test our scholarship in the courts.<sup>32</sup> This is how the development of the legal theory of “sexual harassment” began.<sup>33</sup>

In *Professional Women Silenced by Men-Made Norms*, I explained why professional women like Professor Anita Hill, a lawyer, remain silent when targeted at work.<sup>34</sup> I posited that workplace norms, including in the legal pro-

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<sup>29</sup> Reyes, *Professional Women Silenced*, *supra* note 13, at 898 (citing Jo Lynn Southard, *Protection of Women's Human Rights Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT'L L. REV. 1, 10 (1996) (citing Diana Majury, *Strategizing in Equality*, 3 WIS. WOMEN'S L.J. 169, 172–73 (1987)); Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW's Equality Principles*, 60 ALA. L. REV. 1133, 1159 (2009); Catharine A. MacKinnon, *Substantive Equality: A Perspective*, 96 MINN. L. REV. 1, 11, 27 (2011)).

<sup>30</sup> The Supreme Court often cites common sense in the analysis of issues that come before the Court. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (“Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections.”); *Cruz v. New York*, 481 U.S. 187, 193, (1987) (“It seems to us illogical, and therefore contrary to common sense and good judgment, to believe that codefendant confessions are less likely to be taken into account by the jury the more they are corroborated by the defendant's own admissions.”); *id.* at 197 (White, J., dissenting) (“Even where remorseless logic may seem to justify the extension of what otherwise might be a sound constitutional rule, common sense should prevail.”); *id.* at 196–97 (White, J., dissenting) (“Of course, the decision here is not a matter of imagination or logic, but one of common sense and judgment in interpreting the Constitution.”); *INS v. Chadha*, 462 U.S. 919, 962 (1983) (Powell, J., concurring) (“The Court thus has been mindful that the boundaries between each branch should be fixed ‘according to common sense and the inherent necessities of the governmental co-ordination.’” (citing *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406 (1928))).

<sup>31</sup> *See* Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1330 (2002) (“[F]or those who see law as a crucial strategy for social progress, the role of legal scholarship is far more expansive.”). “Life ultimately means taking the responsibility to find the right answer to its problems and to fulfill the tasks which it constantly sets for each individual.” Lawprofblawg & Darren Bush, *Law Reviews, Citation Counts, and Twitter (Oh MY!): Behind the Curtains of the Law Professor's Search for Meaning*, 50 LOY. U. CHI. L.J. 327, 330 (2018).

<sup>32</sup> *See* Maritza I. Reyes, *The Female Body in the Workplace: Judges and the Common Law*, 114 NW. U. L. REV. ONLINE 179 (2019).

<sup>33</sup> *See* CATHARINE A. MACKINNON, *WOMEN'S LIVES, MEN'S LAWS* 111 (2005).

<sup>34</sup> Reyes, *Professional Women Silenced*, *supra* note 13, at 903, 938–42.

fession and the legal academy, are used to silence professional women in the same way as we are silenced in society.<sup>35</sup> That article included a proposal in which I called on individuals to start a movement by the individual action of speaking up.<sup>36</sup> I advocated that individual action may lead to collective action when others join and also speak up.<sup>37</sup> My article was published two years before the #MeToo Movement began.<sup>38</sup> The #MeToo Movement is exactly the type of action I envisioned and proposed.

In this Article, I continue with my call to action. I propose that we must acknowledge and analyze how name-calling and character attacks harm professional women in our workplaces and our careers.<sup>39</sup> The name-calling and character attacks are forms of bullying and mobbing that have real negative consequences, which are often overlooked, ignored, or dis-

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<sup>35</sup> *Id.* at 902–03.

<sup>36</sup> *Id.* at 964–70.

<sup>37</sup> I specifically stated:

Employers, employees, judges, legislators, advocates, and the general public must be aware of the professional and workplace norms that silence professional women. This is an effort to challenge the popular myth that professional women have now reached equality in U.S. workplaces; that our conditions of employment are equal to men's because if it were otherwise more women would complain. This way, the few women who dare to challenge, speak out, and even litigate their cases will hopefully not be treated as anomalies, discontents, disgruntled employees, and troublemakers. Furthermore, this Article proposes that men and women must make a conscious decision and effort to support women's rights and equality in the workplace. Men and women can further the cause of equality through individual actions on a daily basis. Collective movements, after all, begin with the actions of individuals. Men and women must join together because the issues that women face are not "women's issues"; they are society's issues.

*Id.* at 901–02.

<sup>38</sup> Mary Ann Grovera, Comment, *They Still Just Don't Get It: The Lessons of the #MeToo Movement Through the Lens of Supreme Court Nominations*, 22 RICH. PUB. INT. L. REV. 123, 125–26 n.11, 130 (2019) (citing Maritza I. Reyes, *Professional Women Silenced*, *supra* note 13 at 899–900 (2015)). “[Tarana] Burke founded #MeToo in 2006 but really surged into the public consciousness in 2017, when the initial sexual-assault allegations against Harvey Weinstein surfaced and the movement gathered momentum online and became a viral hashtag.” Laura Brown, *Tarana Burke Can Barely Say “Me, Too” in Conversation—Here’s How She’s Bringing the Movement Forward*, INSTYLE (Jan. 14, 2020, 8:00 AM), <https://www.instyle.com/celebrity/tarana-burke-me-too-movement>.

<sup>39</sup> Law professors should be creative in proposing non-legal steps to ameliorate, mitigate, and eradicate workplace problems that may or may not currently have legal solutions. *See, e.g.*, Jessica Fink, *Gender Sidelining and the Problem of Unactionable Discrimination*, 29 STAN. L. & POL'Y REV. 57, 100 (2018) (“Accordingly, the following suggestions represent not tidy solutions to a complex problem, but instead merely food for thought as to how society could begin to move forward in addressing this phenomenon.”).



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missed, including by some courts of law.<sup>40</sup> Name-calling and character attacks are additional burdens placed on women when we are already overburdened with working harder (to prove our competence) for less pay.<sup>41</sup>

Because I am a lawyer and law professor, I often use examples from the legal profession in my articles. I seek to call attention to the reality that women lawyers and women law professors are professional women who, despite our knowledge of the civil rights laws, still endure discrimination and harassment at work because we are women and because some of us are also women of color. In fact, joining the legal profession may make women more open to attack.<sup>42</sup> Anita Hill, Hillary Clinton, and Elizabeth Warren are all lawyers and former law professors.<sup>43</sup> They all have been publicly attacked while they engaged in professional endeavors.<sup>44</sup>

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<sup>40</sup> See Robert J. Gregory, *You Can Call Me a "Bitch" Just Don't Use the "N-Word": Some Thoughts on Galloway v. General Motors Service Parts Operations and Rodgers v. Western-Southern Life Insurance Co.*, 46 DEPAUL L. REV. 741, 753–56 (1997) (criticizing grant of summary judgment in favor of employer/defendant in hostile work environment case where a woman was repeatedly called “bitch” and “sick bitch”). *But see* Passananti v. Cook Cty., 689 F.3d 655 (7th Cir. 2012) (reversing grant of summary judgment and holding that “question of whether the frequent and hostile use of the word ‘bitch’ by the employee’s supervisor was a gender-based epithet that contributed to a sexually hostile work environment was for the jury”).

<sup>41</sup> The U.S. Women’s National Team won the World Cup 2019. The women were criticized for their “arrogance” during the tournament because they celebrated their goals and their wins with conduct that women are not supposed to exhibit, according to gendered norms. The women are now proceeding with their equal pay lawsuit. “[T]he [women] secured their fourth World Cup title since the tournament began in 1991. The men have never won a World Cup, and they failed to qualify for the 2018 tournament in Russia. The women also have four Olympic gold medals. The men? Zilch.” Elliott C. McLaughlin, *World Cup in Hand, US Women’s Soccer Team Moves to Battle for Equal Pay. Here’s What You Need to Know*, CNN (July 8, 2019, 3:25 PM), <https://www.cnn.com/2019/07/08/us/us-womens-national-team-equal-pay-lawsuit/index.html>. Some women in the legal academy also receive lower pay for equal or more work. See, e.g., Elizabeth Hernandez, *DU Law School’s “Fix” for Its Gender-Pay Gap Revealed a Female Professor Makes \$30,000 Less than Her Peers*, DENV. POST (June 5, 2019, 12:01 PM), <https://www.denverpost.com/2019/06/05/du-sturm-college-of-law-pay-gap> (showing that at one law school, one woman associate professor alleged that she made \$40,000–\$50,000 less than other associates with comparable experience).

<sup>42</sup> Alice Woolley & Elysa Darling, *Nasty Women and the Rule of Law*, 51 U.S.F. L. REV. 507, 508 (2017) (“For women lawyers, attacks and criticisms are not only role-related (arising from her occupation in a professional role) but also personal, specific, and gendered.”).

<sup>43</sup> CLINTON, LIVING HISTORY, *supra* note 16, at 69–71; WARREN, *supra* note 16, at 208–09; ANITA HILL, SPEAKING TRUTH TO POWER 86–90 (1997).

<sup>44</sup> See Jane Mayer, *What Joe Biden Hasn’t Owned Up to About Anita Hill*, THE NEW YORKER (Apr. 27, 2019), <https://www.newyorker.com/news/news-desk/what-joe-biden-hasnt-owned-up-to-about-anita-hill>; Grace Panetta, *Anita Hill was ‘deeply unsatisfied’ with Joe Biden’s attempts to make amends with her ahead of his 2020 announcement*, BUSINESS INSIDER (Apr. 25, 2019, 3:36 PM), <https://www.businessinsider.com/anita-hill-deeply-unsatisfied-with-joe-bidens-apology-attempt-2019-4>; *supra* notes 13–14, 17 and accompanying text; *infra* Part III.

This Article proceeds in five parts. In Part I, the Article includes a brief history of the fight for equality by the first women lawyers and the name-calling and character attacks they endured. I include this part because I seek to demonstrate that the same old tactics are still being used to make work spaces hostile for women. Professional women must remember where we started to better appreciate where we are today and what we must continue to do to reach the ultimate destination in American workplaces—equality for all.<sup>45</sup> Some women do not know the history of women’s fight for women’s rights.<sup>46</sup> Therefore, some women take for granted the right to work, including in professions that were previously reserved for men.<sup>47</sup> This history may remind some women and educate others that we all need to do our part to make the workplace better for the women who will follow in our footsteps.

In Part II, this Article highlights the name-calling and character attacks that Hillary Clinton and Michelle Obama endured as First Ladies of the United States. These women are important examples because they were the first women attorneys to become First Ladies. First Ladies serve as “a barometer of the status of women in society and our shifting views of womanhood.”<sup>48</sup> Attorneys Hillary Clinton and Michelle Obama were put in a domesticated place because some people in the United States were (and still are) not ready to permit First Ladies, who are also professional women, to perform their role to their full potential. Hillary’s legal career was held against her husband, Bill Clinton, during his presidential campaign.<sup>49</sup>

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<sup>45</sup> “The end goal [of equality] is for women (with all our complexities and intersectionalities) to achieve the *same rights and results* as men (with all their complexities and intersectionalities) and to be free from all forms of discrimination.” Reyes, *Professional Women Silenced*, *supra* note 13, at 898 (citing Alda Facio & Martha I. Morgan, *Equity or Equality for Women? Understanding CEDAW’s Equality Principles*, 60 ALA. L. REV. 1133, 1159 (2009)).

<sup>46</sup> JESSICA VALENTI, FULL FRONTAL FEMINISM—A YOUNG WOMAN’S GUIDE TO WHY FEMINISM MATTERS 1–3 (2007). The failure to educate Americans about this history (and other histories) is a major flaw of the U.S. education system.

<sup>47</sup> “Young women and girls [nowadays] want to be lawyers, doctors, accountants, professors, police officers, fire fighters, etc.—occupations which were largely seen as ‘unsuitable’ or ‘unfeminine’ prior to Title IX.” Bernice Resnick Sandler, *Title IX: How We Got It and What a Difference It Made*, 55 CLEV. ST. L. REV. 473, 487 (2007). This is in contrast to prior time periods when most professional women “were either teachers or nurses.” CYNTHIA GRANT BOWMAN, LAURA A. ROSENBURY, DEBORAH TUERKHEIMER & KIMBERLY A. YURACKO, FEMINIST JURISPRUDENCE CASES AND MATERIALS 15 (4th ed. 2011) (citing WILLIAM H. CHAFE, THE PARADOX OF CHANGE: AMERICAN WOMEN IN THE 20TH CENTURY 73 (1991)).

<sup>48</sup> Verna L. Williams, *The First (Black) Lady*, 86 DENV. U. L. REV. 833, 835 (2009) (citing Robert P. Watson, *The First Lady Reconsidered: Presidential Partner and Political Institution*, 27 PRESIDENTIAL STUD. Q. 805, 808 (1997)) [hereinafter Williams, *The First (Black) Lady*].

<sup>49</sup> CLINTON, WHAT HAPPENED, *supra* note 3, at 118. Hillary’s response to the criticism of her legal career caused “a full-blown political firestorm, with self-righteous moralists saying [she] had insulted American mothers” when she told the press, “I suppose I could have stayed home and baked cookies and had teas.” *Id.* at 118–19.

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Michelle was accused of “emasculating” her husband, Barack Obama, during his first presidential campaign.<sup>50</sup> I include this part to demonstrate that the problem is not a past concern, but rather remains a current issue. If it can happen to these two professional women, it can happen to any professional woman.

In Part III, this Article sets forth the name-calling and character attacks that Judge Sonia Sotomayor endured on her way to becoming the first woman of color and the first Latina/o on the U.S. Supreme Court. Unlike Hillary Clinton and Michelle Obama, Justice Sotomayor is not married to a politician.<sup>51</sup> Instead, she is a divorced Latina working in the highest court of the land.<sup>52</sup> Like Hillary Clinton and Michelle Obama, however, she has been subjected to name-calling and character attacks.<sup>53</sup> When she was a judge in the U.S. Court of Appeals for the Second Circuit, anonymous evaluations were used as subterfuge for sexist attacks.<sup>54</sup> In addition, during her public confirmation hearing before the Senate Judiciary Committee, the questions and assertions sent a message to society about the abusive way in which men in positions of power felt privileged to treat a professional Latina who, bear in mind, was already a prestigious federal court of appeals judge.<sup>55</sup> If it can happen to Justice Sotomayor, someone with elite professional credentials and experiences, it can happen to other professional women.

In Part IV, this Article describes some of the name-calling expressions that are used to scare women into conformance, including the “F-feminist” word. I include this part so employees in workplaces become familiar with

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<sup>50</sup> OBAMA, *supra* note 2, at 241.

<sup>51</sup> SOTOMAYOR, *supra* note 1, at 224.

<sup>52</sup> *Id.* at 190, 220–24, 301. Justice Sotomayor separated from her high school sweetheart after five years of marriage and has not re-married. *Id.* at 220–24. In her book, she wrote: “My friends and family are incredulous, sometimes annoyingly so, that I could be as content as I appear to be without someone.” *Id.* at 223.

<sup>53</sup> *Id.* at 189, 261.

<sup>54</sup> See *infra* notes 122–24 and accompanying text; Jo Becker & Adam Liptak, *Sotomayor’s Blunt Style Raises Issue of Temperament*, INT’L N.Y. TIMES (May 29, 2009), [http://www.nytimes.com/2009/05/29/us/politics/29judge.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/05/29/us/politics/29judge.html?pagewanted=all&_r=0) (quoting Judge Guido Calabresi’s conclusion that “[i]t was sexist, plain and simple.”). The intersection of race and gender may also have influenced at least some of the lawyers’ anonymous evaluations. Justice Sotomayor is a minority and a woman. Kevin R. Johnson, *An Essay on the Nomination and Confirmation of the First Latina Justice on the U.S. Supreme Court: The Assimilation Demand at Work*, 30 CHICANA/O-LATINA/O L. REV. 97, 122–23 (2011) (“Generally speaking, women of color, for example, are subordinated in American social life in distinctively different ways than either white women or men of color - groups whose members generally possess only a single subordinating characteristic.”) (citations omitted).

<sup>55</sup> See Johnson, *supra* note 54, at 100–01 (“With 17 years on the bench [in the federal district for the Southern District of New York and in the U.S. Court of Appeals for the Second Circuit], Justice Sotomayor had more judicial experience than any nominee to the Supreme Court in decades.”).

some of the terms that are used to subjugate professional women at work. I also explain feminism and the context around the word, including how being a feminist has been used to question the character of professional women. Do feminists hate men?<sup>56</sup> The character of women associated with feminism is questioned to the point that some women do not want to claim any association with the movement, even if they enjoy the benefits of feminism. One of my goals in including this Part is to inform women of younger generations that being a feminist is good for the individual woman, for her family, for her community, and for society as a whole. We need to take the feminist word out of the name-calling category by reclaiming it as a positive term.

In Part V, this Article concludes with a proposal to help individuals consider the underlying thinking that leads to character attacks and name-calling against women whose conduct or style of delivery does not conform to whatever is determined to be acceptable “professional” woman behavior in the particular workplace. In this Part, I include questions to start a process of self-assessment and institutional assessment. This is an effort to cause men and women to analyze conscious and unexamined biases. I include specific scenarios of how women are subjugated at work. I also provide suggestions to challenge workplace abuse. My goal in this Part is to provide clear guidance for colleagues who are genuinely (or conveniently) blind to some of the tactics that are used to subjugate professional women. I also seek to call out wrongdoers by exposing how they do what they do. Each person (or groups of persons) can tailor the questions based on the specific circumstances of his or her (their) institutional environment.<sup>57</sup>

## II. THE NINETEENTH CENTURY: THE FIRST WOMEN LAWYERS

The name-calling and character attacks against women who do not “stay in their place” existed in the nineteenth century and continue in the twenty-first century. Our workplaces are no exception to these tactics that are deployed to force women to conform to expectations and stereotypes

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<sup>56</sup> I have heard, first-hand, *many times*, the allegation that feminists hate men. Just this semester (Spring 2020), two male law students (a White man and a Latino) told me this. I responded that this is not true; that feminists want fairness and equality for all. I sent them an article about feminist law professors at the Harvard Law School who are fighting for due process *for all*, including men accused in Title IX investigations. See Charlotte Hays, *Revolt of the Feminist Law Professors: They Support Due Process*, INDEPENDENT WOMEN’S FORUM (Aug. 9, 2019), <https://www.iwf.org/blog/2810276/Revolt-of-the-Feminist-Law-Professors-They-Support-Due-Process>.

<sup>57</sup> Institutional environments are not limited to our particular workplaces. We can exercise our pro-equality stance in many professional settings, such as bar associations, meetings, conferences, listservs, and other forums that are now available as a result of technological advances.

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of the “good woman,”<sup>58</sup> the “nice woman,”<sup>59</sup> and the “likeable woman.”<sup>60</sup> They are meant to keep us in gendered places; including by diverting our attention to concerns about being “liked” rather than fully focusing on reaching for our full potential.<sup>61</sup>

Assertiveness has been a required trait for women who must confront social and legal barriers that obstruct their pursuit of opportunity and liberty.<sup>62</sup>

The first generation of American women lawyers was smart, bold, and defiant. Its members were charming, idealistic, and argumentative . . . . Even the most shy of these pioneering professionals were women of considerable spirit, women who believed that legal training would permit them a new place in the world.<sup>63</sup>

Although these women had strong Christian beliefs, they did not adhere to the submissive and silent role some people expected of the “ideal” Christian woman.<sup>64</sup> However, they suffered the consequences for defying these norms. Women who asked for equal rights, including the right to join the professions, were subjected to public name-calling.<sup>65</sup> They were pejoratively labeled “unwomanly” and “unnatural.”<sup>66</sup> Women who were outspoken were demeaned and referred to as “personally repulsive.”<sup>67</sup> They were verbally

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<sup>58</sup> In Latino/Hispanic culture, a woman who rebels against the *machismo* cultural norm, which requires that woman be subservient to man, is labeled a “*mujer mala* [a bad woman].” GLORIA ANZALDÚA, *BORDERLANDS LA FRONTERA—THE NEW MESTIZA* 39 (3d ed. 2007).

<sup>59</sup> “If a woman is competent, she does not seem nice enough.” SANDBERG, LEAN IN, *supra* note 4, at 43.

<sup>60</sup> “My hope, of course, is that we won’t have to play by these archaic rules forever and that eventually we can all just be ourselves . . . . Until we can get there, I fear that women will continue to sacrifice being liked for being successful.” *Id.* at 49.

<sup>61</sup> Hillary Clinton said that “likability had an impact on the most consequential election of our lifetimes, and it will have an impact on future ones.” CLINTON, *WHAT HAPPENED*, *supra* note 3, at 124. She wished that she could just go about her business. She quoted Nigerian author Chimamanda Ngozi Adichie who wrote “It’s not your job to be likable. It’s your job to be yourself.” *Id.*

<sup>62</sup> JILL NORGREN, *REBELS AT THE BAR: THE FASCINATING, FORGOTTEN STORIES OF AMERICA’S FIRST WOMEN LAWYERS*, xiii (2013).

<sup>63</sup> *See id.* at xii.

<sup>64</sup> *Id.* at xiii.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *Id.* (citing *Our Mothers Before Us: Women and Democracy, 1789-1920* (Washington, D.C: Center for Legislative Archives, National Archives and Records Administration, 1998), 2:31).

<sup>67</sup> *Id.* (citing Evening Herald (Utica, NY) editorial, *reprinted in* GEOFFREY C. WARD & KEN BURNS, *NOT FOR OURSELVES ALONE: THE STORY OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY* 68 (New York: Knopf, 1999)).

assaulted by accusation of man-hating allegedly caused by jealousy and neglect.<sup>68</sup> In addition, they were physically assaulted by individuals throwing rotten eggs and tomatoes at them.<sup>69</sup>

The first women lawyers had to fight against notions of a “woman’s proper place” and “the Law of the Creator,” which judges interpreted to mean that a woman’s divine role was as wife and mother.<sup>70</sup> In response, the first women lawyers argued that “gender equality was guaranteed by natural law and the founding documents of the nation.”<sup>71</sup> Their persistence paid off and, through protest, hard work, and relentlessness, they opened the entire federal bar in 1879 after persuading Congress to enact anti-discrimination legislation.<sup>72</sup> They continued to fight for admission in the state bars.<sup>73</sup> Charlotte E. Ray, an African-American, was the first woman admitted to the District of Columbia Bar.<sup>74</sup> The first women lawyers were also activists in the issues of their day: suffrage, temperance, race (although some White women did not support the cause for racial equality), prison conditions, international peace, and arbitration.<sup>75</sup> These women wrote books, articles, and newspaper columns to press the issue.<sup>76</sup> In addition, they lobbied, lectured, engaged in pro bono work, challenged admission practices that denied women entrance to law schools, and tried to open a law school for women.<sup>77</sup> By doing so, they found “ways to use their knowledge of the law to shape and order society.”<sup>78</sup>

After the Revolutionary War, women continued the fight for women’s rights.<sup>79</sup> “This activism was led by a handful of courageous women who proved to be exceptionally able theoreticians, agitators, and organizers . . . . They insisted that women had the right and duty, as equals to men, to speak

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<sup>68</sup> NORGREN, *supra* note 62, at 8.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at ix–x.

<sup>71</sup> *Id.* at x.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> NORGREN, *supra* note 62, at xvi.

<sup>75</sup> *Id.* at x–xi. “Like voting, practicing law involved an unambiguous passage into the public sphere. That is why the cause of women lawyers was totally joined with the larger woman’s movement, why all women lawyers wanted suffrage, and why many actively campaigned for it.” Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689, 1696 (1998).

<sup>76</sup> *Id.* at xi.

<sup>77</sup> *Id.* at xi–xii.

<sup>78</sup> *Id.* at xi.

<sup>79</sup> *Id.* at 2–3.

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on matters of public importance.”<sup>80</sup> They did not internalize their alleged God-designed inferiority or silence themselves.<sup>81</sup> They learned to be self-confident outside of their homes.<sup>82</sup> In the end, they overcame challenges because they were assertive, outspoken, persistent, and resilient. They lived in the nineteenth century, when women were fighting to shed lady-like limitations.<sup>83</sup> They paved the way for future women lawyers.

But why are professional women today still dealing with similar name-calling and character attacks? Could it be because we did not make it a point to engage in a concerted effort to speak up against these abusive tactics like we did against sexual harassment? Some women do not demand their rights in the workplace for fear of being ostracized, becoming pariahs, or being labeled with one or several of the pejorative words or phrases used to keep women in line. Name-calling and character attacks should not be part of the job conditions that women must put up with if we want to work in professions previously reserved for men. However, for many women, they still are. Even women who achieve success on a national level are publicly attacked with name-calling and character attacks. This sends a message to all men and women that such actions are still permissible.

III. THE TWENTIETH CENTURY: THE FIRST LADY LAWYERS, INCLUDING  
THE FIRST AFRICAN-AMERICAN FIRST LADY

When Bill Clinton became President in 1992, some people had an instinctive anti-Hillary Clinton reaction because she did not conform to the expectations of a First Lady of the United States.<sup>84</sup> Hillary was the first First Lady to have a graduate degree—a law school degree nonetheless.<sup>85</sup> She was “the first career woman to serve as first lady;” she was independent, not submissive.<sup>86</sup> By the time she and her husband entered the White House, Hillary was an accomplished lawyer and law professor.<sup>87</sup> However, Hillary had to conform, for the sake of politics, starting when she became the First Lady of Arkansas. She changed her name from Rodham to Clinton after she received “a chilly reception” because some people thought “she

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<sup>80</sup> NORGREN, *supra* note 62, at 3.

<sup>81</sup> *Id.* at 4.

<sup>82</sup> *Id.* at 4.

<sup>83</sup> *See id.* at xii.

<sup>84</sup> Gregory S. Parks & Quinetta M. Roberson, “Eighteen Million Cracks”: *Gender’s Role in the 2008 Presidential Campaign*, 17 WM. & MARY J. WOMEN & L. 321, 329 (2011).

<sup>85</sup> Williams, *The First (Black) Lady*, *supra* note 48, at 838.

<sup>86</sup> Ann C. McGinley, *Hillary Clinton, Sarah Palin, and Michelle Obama: Performing Gender, Race, and Class on the Campaign Trail*, 86 DENV. U. L. REV. 709, 716 (2009).

<sup>87</sup> *Id.* at 715.

was too independent of her husband.”<sup>88</sup> In her role as First Lady she tried to contribute in the project to enact health care reform. However, she was dealt a blow when critics argued that, as First Lady, she was not allowed to participate.<sup>89</sup> After she criticized then Republican Speaker of the House Newt Gingrich’s policies, she learned (through his mother’s off-the-cuff remarks) that Gingrich often “referred to her as a ‘bitch.’”<sup>90</sup>

Hillary Clinton is not the only lawyer First Lady pressured into conforming to traditional expectations of the First Lady role. Michelle Obama was the next First Lady with all the credentials of an accomplished lawyer.<sup>91</sup> Michelle seemed destined to be “unconventional” in her role as the 2007-2008 presidential candidate’s spouse and as First Lady.<sup>92</sup> Initially, during her husband’s first presidential campaign, she was outspoken about “making sure [that her husband] was ‘keeping it real.’”<sup>93</sup> She talked about “holding [her husband] accountable for his responsibilities . . . as husband and father.”<sup>94</sup> Michelle was trying to show voters her husband’s human side beyond the politics.<sup>95</sup> But she “was ascribed the . . . angry Black woman” script by the media.<sup>96</sup> She was also labeled “sassy, unpatrician, and uppity.”<sup>97</sup>

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<sup>88</sup> *Id.* Beyond her time as First Lady, when Hillary became a presidential candidate, she had to navigate being feminine enough (but not too feminine as to be presumed incompetent) and masculine enough (but not too masculine as to become unlikeable). *Id.* at 717. She faced misogyny during her run for the presidency. Donna Brazile, *Making History: Race, Gender, and the Media in the 2008 Elections*, 24 ST. JOHN’S J. LEGAL COMMENT. 271, 276–78 (2009). And, when she ran again for the presidency, it was more of the same and even worse. CLINTON, WHAT HAPPENED, *supra* note 3, at 114.

<sup>89</sup> CLINTON, LIVING HISTORY, *supra* note 16, at 153. Similar to how the first African-American president’s efforts to enact health care reform were racialized with the term “Obamacare,” Hillary Clinton’s efforts to enact health care reform were genderized with the term “Hillarycare.” Ian Haney López, *Today’s Dominant Racial Dog Whistle? Obamacare*, HUFF POST POL. BLOG, [http://www.huffingtonpost.com/ian-haney-lopez/obamacare-dog-whistle-politics\\_b\\_4759499.html](http://www.huffingtonpost.com/ian-haney-lopez/obamacare-dog-whistle-politics_b_4759499.html) (last updated Dec. 6, 2017).

<sup>90</sup> CLINTON, LIVING HISTORY *supra* note 16, at 263.

<sup>91</sup> Williams, *The First (Black) Lady*, *supra* note 48, at 833.

<sup>92</sup> Gregory S. Parks & Quinetta M. Roberson, *Michelle Obama: A Contemporary Analysis of Race and Gender Discrimination through the Lens of Title VII*, 20 HASTINGS WOMEN’S L.J. 3, 7 (2009).

<sup>93</sup> *Id.* at 6 (citing Richard Wolffe, *Barack’s Rock*, NEWSWEEK, Aug. 28, 2007, at 33).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Holning Lau, *Identity Scripts & Democratic Deliberation*, 94 MINN. L. REV. 897, 921 (2010).

<sup>97</sup> Williams, *The First (Black) Lady*, *supra* note 48, at 834 (citation omitted). The “uppity” label when leveled against a woman of color is meant to chastise her for not staying “in her place.” See MARIA CHÁVEZ, EVERYDAY INJUSTICE—LATINO PROFESSIONALS AND RACISM 83 (2011) (recounting what a Latina lawyer reported about her experience when she was called “uppity”).



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Critics thought she was too “militant,” “too outspoken,” and “too critical of her husband.”<sup>98</sup>

Michelle had to scale back her comments when she realized that “some supporters believed her comments were emasculating.”<sup>99</sup> “If she had not backed off and adopted a more pleasing, submissive stance, Michelle Obama may have ruined her husband’s chances for the presidency . . . .”<sup>100</sup> She had to tame her image and become a “traditional” First Lady.<sup>101</sup> The first African-American First Lady also had to fit the “Black lady’ standard,” which is informed by “African-American cultural experiences.”<sup>102</sup>

The “Black lady” embodies some characteristics of traditional femininity, informed by African-American cultural experiences. The Black lady is not overly assertive or aggressive; she allows the Black man to be strong to lead their families and communities. She is attractive and sensual, but does not flaunt her sexuality, confining that part of herself to heterosexual marriage. The “Black lady” works outside the home, reflecting the reality that “middle-class Black women typically need to work in order to remain middle class.” Adopting the “Black lady” signifies an intentional move away from the deviance white patriarchy ascribes to African-American women. It also represents a deliberate claim on the femininity white patriarchy denies Black women.<sup>103</sup>

Ultimately, the name-calling and character attacks pressured both First Lady Hillary Clinton and First Lady Michelle Obama into conforming to a more

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<sup>98</sup> McGinley, *supra* note 86, at 722.

<sup>99</sup> Parks & Roberson, *Michelle Obama*, *supra* note 92, at 6 (citing Melinda Henneberger, *The Obama Marriage*, SLATE, Oct. 26, 2007, at 5). To “emasculate” is defined as (1) “to deprive of strength, vigor, or spirit,” to “WEAKEN,” and (2) “to deprive of virility or procreative power,” to “CASTRATE.” *Emasculate*, MERRIAM WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2005). The threat of women emasculating men is used to pressure women into remaining subordinate to men. Women who perform their identities from a position of equality to men are accused of somehow reducing men’s masculinity. The use of the term “emasculate” in opposition to women’s equality is an acknowledgement that, in the mind of some people, men’s strength, vigor, spirit, virility, or procreative power rests upon women’s subordination. When a man treats another man as an equal, he is not said to be emasculating the other man. But when a woman sees herself as having the same rights as men and approaches men from this stance, she is said to emasculate men.

<sup>100</sup> McGinley, *supra* note 86, at 723.

<sup>101</sup> *Id.*

<sup>102</sup> Williams, *The First (Black) Lady*, *supra* note 48, at 841.

<sup>103</sup> *Id.* at 841–42 (internal citations omitted).

“feminine” role as First Ladies.<sup>104</sup> First Ladies are still expected to act within the boundaries of the gender stereotype of femininity and “act like ‘ladies.’”<sup>105</sup> The message was sent loud and clear that First Ladies who are strong, assertive, professional women must be subjugated into conform-ance, including through the use of name-calling and character attacks.

IV. THE TWENTY-FIRST CENTURY: THE FIRST WOMAN OF COLOR U.S. SUPREME COURT JUSTICE—THE LATINA “SONIA FROM THE BRONX”

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Hillary Clinton and Michelle Obama are not the only notable, assertive, professional women subjected to name-calling and character attacks in recent times.<sup>107</sup> When Sonia Sotomayor, now U.S. Supreme Court Justice Sotomayor, was in private practice, she overheard a colleague call her “‘one tough bitch’ who could not be pushed around by an adversary.”<sup>108</sup> In her book, *My Beloved World*, Justice Sotomayor admits that “[she] was shaken to hear herself so harshly categorized.”<sup>109</sup> When she served in the U.S. Court of Appeals for the Second Circuit, lawyers made negative comments in anonymous evaluations, including the following: “She can be difficult.”<sup>110</sup> “She is temperamental and excitable. She seems angry.”<sup>111</sup> “She is overly aggressive—not very judicial. She does not have a very good temperament.”<sup>112</sup> “She really lacks judicial temperament. She behaves in an out of control manner. She makes inappropriate outbursts.”<sup>113</sup> “She dominates oral argument. She will cut you off and cross examine you.”<sup>114</sup> “She asks

<sup>104</sup> *Id.* at 835–36.

<sup>105</sup> Parks & Roberson, *Michelle Obama*, *supra* note 92, at 17 (internal citation committed).

<sup>106</sup> In an interview on *60 Minutes*, when asked how she likes to be referred to, Justice Sotomayor told the reporter that she likes to be known as “Sonia from the Bronx.” See *Justice Sotomayor Prefers ‘Sonia from the Bronx,’* 60 MINUTES (CBS News television broadcast Jan. 13, 2013), <https://www.cbsnews.com/news/justice-sotomayor-prefers-sonia-from-the-bronx-29-01-2013/>.

<sup>107</sup> Colleagues and lawyers who have argued before her describe Justice Sotomayor as having an assertive style. Becker & Liptak, *supra* note 54. Some of her critics have described her in very negative terms. *Id.*

<sup>108</sup> SOTOMAYOR, *supra* note 1, at 204.

<sup>109</sup> *Id.* at 261.

<sup>110</sup> Morgan Weiland, *Media Adopt Gender, Racial Stereotypes in Characterizing Sotomayor’s Temperament, Intellect*, MEDIA MATTERS FOR AM. (June 3, 2009, 4:06 PM), <http://mediamatters.org/research/2009/06/03/media-adopt-gender-racial-stereotypes-in-charac/150818> (emphasis removed).

<sup>111</sup> *Id.* (emphasis removed).

<sup>112</sup> *Id.* (emphasis removed).

<sup>113</sup> *Id.* (emphasis removed).

<sup>114</sup> *Id.* (emphasis removed).

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questions to see you squirm. She is very active in oral argument. She takes over in oral argument, sometimes at the expense of her colleagues.”<sup>115</sup> “She can be very aggressive in her questioning.”<sup>116</sup> “She can get harsh in oral argument.”<sup>117</sup> “She can become exasperated in oral argument. You can see the impatience.”<sup>118</sup> “You need to be on top of it with her on your panel.”<sup>119</sup> These comments in attorneys’ evaluations of a Latina judge are obviously a matter of perception, which is often informed by implicit gender and race biases.<sup>120</sup> A White male judge, such as the late Justice Antonin Scalia, known for his blunt approach on and off the bench, did not garner the same level of criticism.<sup>121</sup>

During the hearings on her nomination to the Supreme Court, Judge Sotomayor was subjected to more name-calling and character attacks; she was even questioned about her “temperament.”<sup>122</sup> During the second day of the confirmation hearings, Southern Republican Senator Lindsey Graham asked Judge Sotomayor:<sup>123</sup> “Do you think you have a temperament problem?”<sup>124</sup> He cited the anonymous evaluations by the lawyers who described Judge Sotomayor as “being nasty to lawyers” and a “a terror on the bench.”<sup>125</sup> In what was obviously a racially- and gender-coded comment, she was anonymously described as “as a fiery Latina tempest waiting to

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<sup>115</sup> *Id.* (emphasis removed).

<sup>116</sup> Weiland, *supra* note 110.

<sup>117</sup> *Id.* (emphasis removed).

<sup>118</sup> *Id.* (emphasis removed).

<sup>119</sup> *Id.* (emphasis removed).

<sup>120</sup> See Chris Chambers Goodman, *Nevertheless She Persisted: From Mrs. Bradwell to Annalise Keating*, *Gender Bias in the Courtroom*, 24 WM. & MARY J. WOMEN & L. 167, 181 (referencing study of attorney’s evaluations of judges that showed the influence of race and gender implicit biases) (citing Rebecca D. Gill, *Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This*, 35 JUST. SYS. J., 271, 271-72 (2014) (analyzing judicial performance evaluations (JPE) and attorney surveys based on ABA guidelines, and raising questions about the validity and reliability of the JPE)).

<sup>121</sup> Weiland, *supra* note 110.

<sup>122</sup> Rush Limbaugh called Justice Sotomayor a “reverse racist” and a “hack.” Andy Barr, *Rush: Sonia Sotomayor a ‘Reverse Racist,’* POLITICO (May. 26, 2009, 5:01 PM), <http://www.politico.com/news/stories/0509/22983.html>.

<sup>123</sup> At the time of the confirmation hearings, Justice Sotomayor served as a judge on the United States Court of Appeals for the Second Circuit. Supreme Court of the United States, *Biographies of Current Justices of the Supreme Court*, <http://www.supremecourt.gov/about/biographies.aspx> (last visited May 1, 2020).

<sup>124</sup> Richard Brust, *Day 2, Confirmation Hearings: Do You ‘Have a Temperament Problem?’ Sen. Graham Asks*, ABA J. (July 14, 2009, 9:32 PM), [http://www.abajournal.com/news/article/day\\_2\\_sotomayor\\_confirmation\\_hearings/](http://www.abajournal.com/news/article/day_2_sotomayor_confirmation_hearings/).

<sup>125</sup> *Id.*

knife and brutalize lawyers in the courtroom.”<sup>126</sup> With regard to her alleged “temperament,” Graham also told her: “You stand out on the 2nd Circuit like a sore thumb.”<sup>127</sup>

Senator Graham did not consider whether race and gender influenced the anonymous evaluations. He also did not cite the findings of Judge Guido Calabresi, a former dean of Yale Law School, who sat on the Second Circuit with Justice Sotomayor.<sup>128</sup> Judge Calabresi reviewed the anonymous evaluations and concluded that the complaints against her had no basis and were sexist.<sup>129</sup>

For a time, Judge Calabresi said, he kept track of the questions posed by Judge Sotomayor and other members of the 12-member court. “Her behavior was identical,” he said.

“Some lawyers just don’t like to be questioned by a woman,” Judge Calabresi added. “It was sexist, plain and simple.”

He said Judge Sotomayor’s forceful and lucid arguments had persuaded him to reconsider his position in a number of instances. “And I’m a tough act,” he said.<sup>130</sup>

Judge Sotomayor was also labeled a racist for expressing that she, as a Latina, has her particular wisdom.<sup>131</sup> She was punished for her forthrightness and honesty.<sup>132</sup> Because I foresaw that she would be attacked with the “wise Latina” comment, I published an op-ed in *The Harvard Crimson* and sent copies to the members of the Senate Judiciary Committee before the hearings.<sup>133</sup> I asked the senators to consider Judge Sotomayor’s words in their full context and to give her a fair and respectful confirmation process.<sup>134</sup> I stated:

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<sup>126</sup> Weiland, *supra* note 110. In the NSF Study, a Latina participant reported an instance when she raised her voice “only to have a colleague joke, ‘Oh, be careful, she’s Puerto Rican, and she may be carrying a knife in her purse.’” Williams, *Double Jeopardy?*, *supra* note 26, at 194.

<sup>127</sup> Brust, *supra* note 124.

<sup>128</sup> Becker & Liptak, *supra* note 54.

<sup>129</sup> *See id.*

<sup>130</sup> *Id.* (emphasis added).

<sup>131</sup> Maritza I. Reyes, *Latina Experience and Wisdom Welcomed*, THE HARVARD CRIMSON (July 8, 2009), <http://www.thecrimson.com/article/2009/7/8/latina-experience-and-wisdom-welcomed-as/> [hereinafter Reyes, *Latina Experience and Wisdom Welcomed*].

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

Judge Sotomayor's forthright statements unmistakably demonstrate her willingness to serve as a truthful and self-disciplined jurist. She should not be punished for stating explicitly what appears implicitly in the rulings of Supreme Court jurists—106 white males out of a total of 110—since the beginning of our legal system: Human wisdom is individual and undefined; it develops, in sum or in part, from our experiences. This concept is not new: As early as 1837 the Supreme Court recognized in *Charles River Bridge v. Warren Bridge* that the most profound wisdom was exercised by “[t]he wise men who framed [the] [C]onstitution” and is guided by human experience. Judge Sotomayor's appointment would add another layer of human experience to the Court.<sup>135</sup>

The rhetoric and questioning surrounding the Sotomayor confirmation hearings substantiated that some people feel threatened by a strong, assertive,<sup>136</sup> intelligent, professional Latina.<sup>137</sup>

As my mother and I watched the hearing together, we were saddened to witness the first woman of color nominee—a Latina—attacked in this manner by White men who had no reservations about what they were doing and how they were doing it. We saw Judge Sotomayor's mother sitting behind her, also being victimized by having to hear and watch the viciousness of some of the questions and downright attacks. As mothers, my mother and I empathized with what Celina Sotomayor was going through as she sat quietly, as “a reassuring presence, calm, steady, an unshakable friend and determined ally” to her daughter.<sup>138</sup>

Senator Graham and other senators treated Judge Sotomayor extremely disrespectfully.<sup>139</sup> The level of disrespect reminded me of the Senate Judici-

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<sup>135</sup> *Id.*

<sup>136</sup> Assertiveness in a woman is often perceived as abrasiveness. Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1004 (2002) (citing Deborah L. Rhode, *Gender and Professional Roles*, 63 FORDHAM L. REV. 39, 67 (1994)) [hereinafter Rhode, *Gender and the Profession*].

<sup>137</sup> Law school Dean Jennifer L. Rosato, a self-identified Latina, explains that “signs of assertiveness that are expected of white male bosses are still difficult to accept from women bosses.” Jennifer L. Rosato, *Reflections of a Reluctant Pioneer*, 48 CAL. W. L. REV. 445, 451 (2012).

<sup>138</sup> Elaine S. Povich, *Celina Sotomayor: The Nominee's Mother Is 'One Extraordinary Person'*, AARP BULLETIN (July 14, 2009), [https://www.aarp.org/personal-growth/life-stories/info-07-2009/celina\\_sotomayor\\_the\\_nominee\\_s\\_mother\\_is\\_one\\_extraordinary\\_person\\_.html](https://www.aarp.org/personal-growth/life-stories/info-07-2009/celina_sotomayor_the_nominee_s_mother_is_one_extraordinary_person_.html).

<sup>139</sup> “In the end, it appears that race together with gender proved to be an explosive combination in the Sotomayor confirmation hearings . . . [s]pecifically, a woman of color on the Supreme Court is presumed to be much more suspicious, if not dangerous, than a mere woman.” Johnson, *supra* note 54, at 149.

ary Committee's questioning of Professor Anita Hill during the Clarence Thomas confirmation hearing.<sup>140</sup> Judge Sotomayor's critics tried to put her *in her place*,<sup>141</sup> including by attempting to embarrass her in a very public forum. They showed the world what happens when a professional Latina does not conform her temperament and speech to the limitations placed on her by others.<sup>142</sup> She becomes the target of name-calling and character attacks.

The treatment that Judge Sotomayor received was also a demonstration of the more biased standard applied to women of color, in her case, a Latina.<sup>143</sup> Perhaps Judge Sonia Sotomayor would have faced fewer attacks in her professional life if she were a stereotypical professional Latina, expected to be "nice" and submissive.<sup>144</sup> In the NSF Study, Latina professional women reported that they are expected to be "feminine" and "kind of the mother" or "housewife" in the office.<sup>145</sup> When professional Latinas are perceived as "too masculine" or angry, they often elicit more negative reactions and judgment from colleagues than men or Black women who act the same way.<sup>146</sup>

This expectation of "nice" plays against women in various contexts. In rape prosecutions a common theme is that "nice women" do not get raped.<sup>147</sup> This implies that, if women are not nice and passive (accepting of

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<sup>140</sup> See HILL, *supra* note 43, at 170–98.

<sup>141</sup> Judge Sotomayor was put in a gendered place as a woman, in a racial place as a Latina, and in a double subjugated place at the intersection of both race and gender. See *supra* note 11 and accompanying text. See generally Johnson, *supra* note 54, at 148 ("Race and gender played a prominent role in the Senate confirmation hearings on the Sotomayor confirmation, just as they continue to play an important role in American social life.").

<sup>142</sup> See CHÁVEZ, *supra* note 97, at 84–86.

<sup>143</sup> Johnson, *supra* note 54, at 102–03 (analyzing how Justice Sotomayor was treated disrespectfully, which was similar to how Thurgood Marshall, the first African-American nominee, was treated). A year after Justice Sotomayor's confirmation hearings, former Harvard Law School Dean Elena Kagan became the next Supreme Court Justice after an "extremely smooth confirmation process." Susan Crabtree & J. Taylor Rushing, *Kagan Confirmed to Supreme Court*, THE HILL (Aug. 6, 2010, 12:27 AM), <http://thehill.com/homenews/senate/112879-kagan-confirmed-to-supreme-court>.

<sup>144</sup> See Williams, *Double Jeopardy?*, *supra* note 26, at 207–08.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Christopher Emrich, *The Playboy Defense in Philadelphia: How Pennsylvania Continues to Thwart Fair and Effective Sexual Assault Prosecutions by Refusing to Admit Expert Testimony About Rape Trauma Syndrome*, 6 RUTGERS J. L. & PUB. POL'Y 891, 898 (2009) (citing CHARLES W. DEAN & MARY DEBRUYN-KOPS, *THE CRIME AND THE CONSEQUENCES OF RAPE* 36 (1982)).

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whatever is done to them without resistance),<sup>148</sup> they deserve what they get. As Gloria Steinem explained it:

So passivity is rewarded as feminine. And when you stand up for yourself and try to be autonomous and self-determining, you're called a lot of names that we all know and that are very common. You may lose your job. You may lose custody of your child. You may be blamed for the failure of your marriage even though it was the man who couldn't tolerate an equal relationship. If you are beaten, you're said to have incited it. If you're raped, you're said to have invited it. I mean we all know these things that are very deep in the culture. They're diminishing. I don't want us to be discouraged because we have made progress. But they're still very deeply rooted.<sup>149</sup>

In the professional sphere, when a woman is not perceived as having a nice temperament, she often gets chastised as Judge Sotomayor was during the confirmation hearing.

Women are often expected to act “nice,” which requires that some women, who are not actually nice, engage in a two-face strategy: pretending to be nice while actively sabotaging a co-worker, for example.<sup>150</sup> Nice pretenders in the workplace engage in “[p]assive-aggressive, indirect, dishonest style of dealing with people and issues.”<sup>151</sup> Women are especially encouraged by societal norms to engage in this seemingly *nice*, but actually conniv-

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<sup>148</sup> “Much has been written about this pressure upon women to remain passive at work. In some cases, this deference may be tied to broader notions of a woman's femininity.” Jessica Fink, *Gender Sidelining and the Problem of Unactionable Discrimination*, 29 STAN. L. & POL'Y REV. 57, 87 (2018).

<sup>149</sup> *Interview: Gloria Steinem*, Article in *No Safe Place: Violence Against Women*, PBS, <http://www.pbs.org/kued/nosafeplace/interv/steinem.html> (last visited May 1, 2020).

<sup>150</sup> NAME & NAME, *THE BULLY AT WORK*, *supra* note 10, at 36.

<sup>151</sup> *Id.* To illustrate, imagine a colleague who goes out of her way to act nice by being overly jovial in all workplace interactions. She refers to colleagues as “honey” and “sweetie.” She seldom raises her voice and constantly describes herself as nice, fair, professional, and collegial. She starts every comment during meetings by thanking everyone for their contributions, always finding a way to highlight and publicize any little thing she does. She is a master at manufacturing her positive image. However, she has viciously harassed a female colleague by raising false allegations about her formally (to supervisors) and informally (through gossip) in efforts to get her fired and soil her professional reputation. If the conduct is judged by superficial actions, the woman would be deemed a “nice” colleague; however, is it nice to set up a colleague for termination with false accusations, all behind everybody's backs? In the bullying literature this “nice,” workplace abuser is known as the “two-headed snake.” *Id.* at 36–38. The two-headed snake “[a]ssassinates reputation with higher ups. Plays favorites. Satisfies need for control by managing the image of the Target in other people's minds.” *Id.* at 36.

ing strategy.<sup>152</sup> Women who do not follow this gender norm and, instead, directly confront people or issues, are chastised by men *and women* for “acting like men.”<sup>153</sup>

The NSF Study confirmed that professional women who “resist gender pressures to adhere to narrowly cabined feminine roles” are perceived as “‘too masculine,’ including allegations that they are ‘not team players’ or are ‘prima donnas’ (i.e. not as selfless as women are expected to be), or that they are ‘too aggressive’ or have ‘sharp elbows’ (i.e. are not as amiable and yielding as women are expected to be).”<sup>154</sup> In the NSF Study, Latinas reported that men can get angry at work all the time and not lose the respect of their colleagues; however, all it takes is one situation where a Latina is perceived as reacting angrily for her to lose the respect of colleagues and be labeled a “bitch.”<sup>155</sup> This sentiment was also expressed by a Latina professor in the NSF Study in reference to behavior at faculty meetings.<sup>156</sup> As Dr. Angélica Pérez-Litwin explained it:

An assertive Latina at work risks being seen as “difficult” or “opinionated.” A confident voice level makes her “confrontational” or “loud.” We are expected to be nice and supportive, and less so leaders. These social perceptions and ethnic biases form an important part of the organizational barriers that women, and especially ethnic/racial women, face in the workplace. This, of course, is in addition to the organizational culture and policies that are blatantly gender biased when it comes to promoting women leadership.<sup>157</sup>

The NSF Study also found that professional Latinas suffer worse consequences at work when they are as assertive as men or as other women, including Black women.<sup>158</sup> Law Professor Joan C. Williams added that “[i]t

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<sup>152</sup> See Brown, *supra* note 38 (“Women are supposed to behave. In order to get ahead, women are supposed to be nice or conniving and cutthroat.”).

<sup>153</sup> See Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U.L. REV. 817, 819 (1993).

<sup>154</sup> Williams, *Double Jeopardy?*, *supra* note 26, at 191–92 (2014) (citations omitted) (citing *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 751 F. Supp. 1175, 1188 (E.D. Pa. 1990)).

<sup>155</sup> *Id.* at 208.

<sup>156</sup> *Id.*

<sup>157</sup> Angélica Pérez-Litwin, *Sheryl Sandberg's “Lean in” Message Not Enough for Women, Especially Professional Latinas*, HUFF POST LATINO VOICES (May 18, 2013), [http://www.huffingtonpost.com/angelica-perezlitwin-phd/sheryl-sandbergs-lean-in\\_b\\_2901372.html?utm\\_hp\\_ref=fb&src=sp&comm\\_ref=false#sb=621008b=facebook](http://www.huffingtonpost.com/angelica-perezlitwin-phd/sheryl-sandbergs-lean-in_b_2901372.html?utm_hp_ref=fb&src=sp&comm_ref=false#sb=621008b=facebook).

<sup>158</sup> Williams, *Double Jeopardy?*, *supra* note 26, at 200, 207–08.



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may be that the stereotype of the fiery Latina means that anger is even more perilous for Latinas than it is for women in general.”<sup>159</sup>

When a professional woman is put in her place<sup>160</sup> on a national stage, it sends a message to all men and women about the boundaries that women still face at work as in society.<sup>161</sup> Women are expected to contort ourselves, to split our personalities, and to work our identities to strive for a perfect balance between smart enough, but not too smart, plus this “nice” factor. This burdensome perfect balance requires that women have the right amount of masculinity to get the job done and overcome our presumed incompetence, while maintaining a proper level of femininity and niceness to avoid the perception as being too smart or assertive, which is seen as threatening.<sup>162</sup>

The balancing act women must walk evokes the question of how much more women would be able to achieve if we were free to be who we are meant to be without any repercussions. However, the fear of being per-

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<sup>159</sup> *Id.* at 208.

<sup>160</sup> When a woman enters a workspace dominated by men, especially as “the first” woman, some men find a way to put her “in her place.” See Lisa R. Pruitt, *Law Review Story*, 50 ARK. L. REV. 77, 83 (1997) (recounting her experiences as the first female editor-in-chief of the *Arkansas Law Review* and the indignities male law review members inflicted upon her, to put her in “a woman’s place,” subservient to and subjugated by men). See also Jill Filipovic, *Blogging While Female: How Internet Misogyny Parallels “Real-World” Harassment*, 19 YALE J.L. & FEMINISM 295, 302 (2007) (“[S]exualized insults [like those experienced by Hillary Clinton and female bloggers] reflect attempts to put women in their place.”).

<sup>161</sup> See Maritza Reyes, *Women in the Media as in Society?*, FEMINIST LAW PROFESSORS (Mar. 14, 2012), <http://www.feministlawprofessors.com/2012/03/women-media-society/> (advocating for feminist law professors to teach students to speak out when they witness injustice).

<sup>162</sup> See McGinley, *supra* note 86, at 724. The more things change, the more they stay the same. Professor Deborah L. Rhode described this “double bind” in a law review article published in 1988.

Females aspiring to nontraditional or high-status positions remain subject to a familiar double bind. Those conforming to traditional characteristics of femininity are often thought lacking in the requisite assertiveness and initiative, yet those conforming to a masculine model of success may be ostracized in work settings as bitchy, aggressive, and uncooperative. As long as aspiring women are found wanting either as professionals or as women, they face substantial disincentives to aspire.

Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1183 (1988) (citing CYNTHIA F. EPSTEIN, *WOMAN’S PLACE: OPTIONS AND LIMITS IN PROFESSIONAL CAREERS* 22–24 (1971); IRENE H. FRIEZE, JACQUELYNNE E. PARSONS, PAULA B. JOHNSON, DIANE N. RUBLE & GAIL L. ZELLMAN, *WOMEN AND SEX ROLES: A SOCIAL PSYCHOLOGICAL PERSPECTIVE* 234–38, 247–51 (1978); ANN M. MORRISON, RANDALL P. WHITE & ELLEN VAN VELSOR, *BREAKING THE GLASS CEILING: CAN WOMEN REACH THE TOP OF AMERICA’S LARGEST CORPORATIONS?* 56–62 (1987)). Professor Kerry Lynn Stone described this same proverbial “catch 22” in an article published in 2011. Kerri Lynn Stone, *Clarifying Stereotyping*, 59 U. KAN. L. REV. 591, 606 (2011) (describing that women are “out of a job if they behave aggressively and out of a job if they do not”).

ceived as not nice keeps some women busy managing their identities (or personalities) and policing other women's management of their identities (or personalities). This restraint limits the contributions women are capable of making in our workplaces if we were unrestrained and truly equal. Thankfully for Justice Sotomayor, she shed the need to please others and concentrated on being her true assertive self.<sup>163</sup> She was also lucky to find male and female mentors since her first job in the New York District Attorney's Office.<sup>164</sup>

#### V. THE LABELS CURRENTLY USED TO SILENCE WOMEN AND KEEP THEM IN "THEIR PLACE," INCLUDING THE "F-FEMINIST" WORD

As Hillary Clinton, Michelle Obama, and Sonia Sotomayor learned, the good old name-calling and character attacks still serve to punish women who do not toe the gender line.<sup>165</sup> One way to keep women in gendered places is to attribute negative connotations to certain behaviors that society determines are not "lady-like"<sup>166</sup> or not feminine.<sup>167</sup> The days when women were diagnosed as insane and committed to mental asylums if they disobeyed their husbands are gone.<sup>168</sup> However, women are still labeled with pejorative terms, such as "bitch," "crazy," "fat," "hysteric," "sensitive," "slut," and "ugly," in the twenty-first century, "to manipulate [us] into compliance."<sup>169</sup>

<sup>163</sup> SOTOMAYOR, *supra* note 1, at 254.

<sup>164</sup> *Id.* at 205-06, 209-10, 213.

<sup>165</sup> When women enter professions dominated by men, male peers' hostility toward women "allows men to feel a sense of power over their female peers by 'putting women in their place,' reminding women that they have stepped beyond their traditional gender role into a man's world." Elizabeth A. Glidden, *The Emergence of the Reasonable Woman in Combating Hostile Environment Sexual Harassment*, 77 IOWA L. REV. 1825, 1836-37 (1992) (citing Peggy Crull, *Searching for the Causes of Sexual Harassment: An Examination of Two Prototypes*, in HIDDEN ASPECTS OF WOMEN'S WORK 238 (Christine Bose et al. eds., 1987)).

<sup>166</sup> See *Hopkins v. Price Waterhouse*, 618 F. Supp. 1109, 1113 (D.D.C. 1985), *judgment aff'd in part, rev'd in part*, 825 F.2d 458 (D.C. Cir. 1987), *judgment rev'd on other grounds*, 490 U.S. 228 (1989) (discussing what some men perceive as not acting "lady-like" and what this meant for a professional woman, Ann Hopkins, who was voted down for partnership in a big accounting firm).

<sup>167</sup> Williams, *The First (Black) Lady*, *supra* note 48, at 835.

<sup>168</sup> NORNGREN, *supra* note 62, at 1.

<sup>169</sup> Harris O'Malley, *On Labeling Women 'Crazy'*, HUFFINGTON POST (Nov. 12, 2013, 9:35 AM), [https://web.archive.org/web/20131113015056/http://www.huffingtonpost.com/harris-oamalley/on-labeling-women-crazy\\_b\\_4259779.html](https://web.archive.org/web/20131113015056/http://www.huffingtonpost.com/harris-oamalley/on-labeling-women-crazy_b_4259779.html). Because these words are associated with women, some third wave feminists are using them and reclaiming them. VALENTI, *supra* note 46, at 173. However, other feminists view the use of these words as giving in to sexism. *Id.*

The trend of labeling women “crazy” [and other degrading labels] is part of the culture that socializes women to go along to get along. When women are told over and over again that they’re not allowed to feel the way they feel and that they’re being “unreasonable” or “oversensitive,” they’re conditioned to not trust their own emotions. Their behavior--being assertive, even demanding or standing up for how they feel--becomes an “inconvenience” to men and they’re taught [and expected] not to give offense and to consider the feelings of others before their own.<sup>170</sup>

The litany of derogatory labels continues to grow through the generations to include old and new terms like “confrontational,”<sup>171</sup> “difficult,”<sup>172</sup> “diva,”<sup>173</sup> “high maintenance,”<sup>174</sup> “hot mess,”<sup>175</sup> “opinionated,”<sup>176</sup> “paranoid,”<sup>177</sup> and the quintessential “troublemaker.”<sup>178</sup> In her book, *What Hap-*

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<sup>170</sup> O’Malley, *supra* note 169.

<sup>171</sup> Pérez-Litwin, *supra* note 157.

<sup>172</sup> *Id.*

<sup>173</sup> See Kieu-Linh Caroline Valverde, *Fight the Tower: A Call to Action for Women of Color in Academia*, 12 SEATTLE J. SOC. JUST. 367, 381 (2013).

<sup>174</sup> See Ann Bartow, *A Portrait of the Internet as a Young Man*, 108 MICH. L. REV. 1079, 1103 (2010). A woman who asks for equal treatment in the workplace may be labeled “high maintenance.” She is chastised for seeking equality. “Men their rights, and nothing more; women, their rights, and nothing less.” National Women’s History Museum, *Susan B. Anthony*, <https://www.womenshistory.org/education-resources/biographies/susan-b-anthony> (last visited Apr. 1, 2020).

<sup>175</sup> Emilie Aries, *Moving Past ‘Hot Mess’ Chic*, HUFFINGTON POST (Aug. 24, 2013), [http://www.huffingtonpost.com/emilie-aries/moving-past-hot-mess-chic\\_b\\_3490509.html](http://www.huffingtonpost.com/emilie-aries/moving-past-hot-mess-chic_b_3490509.html).

<sup>176</sup> Pérez-Litwin, *supra* note 157.

<sup>177</sup> Deborah Tuerkheimer, *Breakups*, 25 YALE J.L. & FEMINISM 51, 94 n.337 (2013) (quoting Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1301–02).

<sup>178</sup> Women fear being labeled “troublemaker[s]” if they ask questions about matters that impact whether they get equal treatment in the workplace, such as equal pay for equal work. See Ruth Bader Ginsburg, *A Conversation with Associate Justice Ruth Bader Ginsburg*, 84 U. COLO. L. REV. 909, 925–26 (2013) (referencing example of Lilly Ledbetter and why she probably did not ask questions about how much men were getting paid until after someone slipped a note in her box with the information, as she was getting ready to retire). Many women in the military do not report being victims of sexual misconduct because they fear being labeled “troublemaker[s].” Francine Banner, *Immoral Waiver: Judicial Review of Intra-Military Sexual Assault Claims*, 17 LEWIS & CLARK L. REV. 723, 768–69 (2013) (quoting U.S. DEP’T OF DEF., SEXUAL ASSAULT PREVENTION AND RESPONSE: DEP’T OF DEF. ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2010–19 (Mar. 2011), [https://www.sapr.mil/public/docs/reports/DoD\\_Fiscal\\_Year\\_2010\\_Annual\\_Report\\_on\\_Sexual\\_Assault\\_in\\_the\\_Military.pdf](https://www.sapr.mil/public/docs/reports/DoD_Fiscal_Year_2010_Annual_Report_on_Sexual_Assault_in_the_Military.pdf)). In the legal academy, the mere act of joining the Women in Legal Education Section in the 1980s “conveyed an implicit message to deans and more traditional male colleagues that this was a potential troublemaker who would not ig-

*pened*, Hillary Clinton provided her own list of names she has been called: “angry, strident, feisty, difficult, irritable, bossy, brassy, emotional, abrasive, high-maintenance . . . ‘shrill’ . . . divisive, untrustworthy, unlikable, and inauthentic . . . [and] ‘nasty woman.’”<sup>179</sup> Critics of Justice Sotomayor also called her “difficult” and “nasty,” in addition to “sharp-tongued,” “combative,” and a “hack.”<sup>180</sup> Michelle Obama was termed a “liability,” “angry,” and “intimidating” during her husband’s first presidential campaign.<sup>181</sup> She said that she “was exhausted by the meanness, thrown off by how personal it had become, and feeling, too, as if there were no way [she] could quit;” she said “this stuff hurt.”<sup>182</sup>

It is important to acknowledge that men are not the only ones who target women with name-calling and character attacks.<sup>183</sup> Some women also engage in those behaviors because they have a stake in maintaining a status quo that benefits them.<sup>184</sup> In *Becoming*, Michelle Obama referenced a column published by Maureen Dowd in the *New York Times* in which Dowd suggested that Michelle was emasculating her husband; Dowd also referred to Michelle as “a ‘princess of South Chicago.’”<sup>185</sup> After telling the story, Michelle wrote: “I found it odd and sad that such a harsh critique would come from another professional woman.”<sup>186</sup>

Another term meant to scare women into submission is the often maligned “F-feminist” word. Women who fought for the right to vote and equal rights, although not called feminists at the time,<sup>187</sup> embodied the fundamental principles of feminism.<sup>188</sup> Today, some women, including some

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nore gender stereotypes or discrimination in her own institution.” Myrna S. Raeder, *Reflections About Who We Were When Joining Conveyed a Message*, 80 UMKC L. REV. 703, 703 (2012).

<sup>179</sup> CLINTON, WHAT HAPPENED, *supra* note 3, at 119–21.

<sup>180</sup> Becker & Liptak, *supra* note 54; Barr, *supra* note 122.

<sup>181</sup> OBAMA, *supra* note 2, at 265.

<sup>182</sup> *Id.*

<sup>183</sup> See Valverde, *supra* note 173, at 381 (disclosing that she was called a “diva” by a female professor in front of other staff). *Id.*

<sup>184</sup> CATHARINE A. MACKINNON, FEMINISM UNMODIFIED 12 (1987).

<sup>185</sup> OBAMA, *supra* note 2, at 241.

<sup>186</sup> *Id.*

<sup>187</sup> “The term ‘feminism’ came into use in the 1910s, to denote a movement that was narrower in membership than the suffrage movement but broader in its intent to revolutionize many aspects of the relations between men and women.” GRANT, ET AL., *supra* note 47, at 1 n.1 (citing NANCY F. COTT, THE GROUNDING OF MODERN FEMINISM 3 (1987)).

<sup>188</sup> Babcock, *supra* note 75, at 1698.

The opponents saw a unified band of feminists—they called them “the strong-minded”—working on many fronts to transform the place of women in American society. And the women lawyers had the same vi-

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professional women, do not want to self-identify or be identified by others as feminists.<sup>189</sup> Some women claim that they support “women’s issues,” but do not want to be tagged as feminists.<sup>190</sup> Others have bought into the fabrication that feminists are angry, men-hating women who want to be men.<sup>191</sup> When a woman exhibits characteristics and behaviors that are associated with masculinity, such as assertiveness, some people characterize the woman as acting as “one of the boys” or acting masculine.<sup>192</sup> However, when a woman is assertive, it does not necessarily mean that she is trying to act like a man; some women, like some men, are born with a naturally assertive personality or are raised to be assertive.<sup>193</sup>

Some men have been on a campaign of blaming their personal shortcomings (their unhappiness, shallow interactions with other men, troubled relationships with the women in their lives, and unfulfilled relationships

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sion. All of them believed in the emblematic cause of woman suffrage, and many were among its leaders. Even those who were not active suffragists were feminists in the fundamental sense, placing women at the center of their thought and activities. *Id.*

<sup>189</sup> Rhode, *Gender and the Profession*, *supra* note 136, at 1205; VALENTI, *supra* note 46, at 8, 12. In her book, *Lean In*, Sheryl Sandberg acknowledged how “horrible” it was that she and her college friends did not want to call themselves feminists and rejected feminism “to get male attention and approval.” SANDBERG, *LEAN IN*, *supra* note 4, at 142. They “naïvely” thought “that the world did not need feminists anymore.” *Id.* They also “mistakenly thought that there was nothing left to fight for.” *Id.* After decades as a successful business woman, Sandberg, looking back, recognized the bravery of feminists who “spoke out loudly and bravely to demand the rights that we now have.” *Id.* at 157. She regretted that she and her college friends sought to distance themselves from earlier feminists. *Id.* Now, she proudly calls herself a feminist. *Id.*

<sup>190</sup> Rhode, *Gender and the Profession*, *supra* note 136, at 1205.

<sup>191</sup> VALENTI, *supra* note 46, at viii; BELL HOOKS, *FEMINISM IS FOR EVERYBODY—PASSIONATE POLITICS* vii–viii (2000). *See also* SANDBERG, *LEAN IN*, *supra* note 4, at 142 (“We accepted the negative caricature of a bra-burning, humorless, man-hating feminist.”).

<sup>192</sup> Deborah L. Rhode, *Litigating Discrimination: Lessons from the Front Lines*, 20 J.L. & POL’Y 325, 328 (2012) (quoting *Hopkins v. Price Waterhouse*, 618 F. Supp. 1109, 1117 (D.D.C. 1985)). This is analogous to characterizing a clean, articulate Black man as trying to “act like a White man” just because some people stereotype cleanliness and articulateness as characteristics not inherent in Black men. *Cf.* Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093, 1162 n.346 (2008) (citing U.S. Senator Joe Biden’s references to U.S. Senator Obama as “clean” and “articulate”); Clifford J. Rosky, *Life Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia*, 20 YALE J.L. & FEMINISM 257, 273 n.76 (2009) (“[T]he denial of a stereotype is analogous to a familiar form of backhanded compliment, in which a white speaker describes an African-American as ‘articulate,’ thereby suggesting that as a general matter, African-Americans are inarticulate.”).

<sup>193</sup> *See* SANDBERG, *LEAN IN*, *supra* note 4, at 18–20. Justice Sotomayor acknowledged in her book that she was “fiercely competitive” when she was a prosecutor (and still is). SOTOMAYOR, *supra* note 1, at 204. She credits her competitive spirit, directed at herself, as the reason she triumphed when others in similar circumstances failed. *Id.* at 253–54. This drive to compete against herself resulted in the good habits and hard work ethic that enabled her to meet a different fate than others she grew up with. *Id.*

with their own children) on feminism and feminists.<sup>194</sup> These are men whose manhood seems to rest on maintaining women in unequal status.<sup>195</sup> Unfortunately, many men and women do not even know what feminism is, what feminists accomplished, and what benefits women *and men* enjoy today thanks to feminism.<sup>196</sup> How many women today would argue against their right to vote, to own property, and to work? How many men would argue against receiving the protections of laws that were championed by feminists, like the Family Medical Leave Act (FMLA) and anti-sexual harassment laws?<sup>197</sup>

A contemporary definition of feminism by Jessica Valenti is a “[b]elief in the social, political, and economic equality of the sexes.”<sup>198</sup> Feminism can also be defined as bell hooks stated it: “a movement to end sexism, sexist exploitation, and oppression.”<sup>199</sup> Some Christian feminists define it as:

[T]he commitment to work for the political, economic, and social equality of man and woman, boy and girl, in every area of life. To this commitment Christian feminists add the belief that mutuality—is the relational order exemplified by Jesus and specified by the New Testament epistles. Therefore, if they share a commitment to human sex-

<sup>194</sup> See Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men's Rights Movement*, 13 NEV. L.J. 368, 370, 372 (2013); Robert F. Gotcher, *Invective, Irony, Sarcasm and Other Negative Tropes in Pro-Life Rhetoric*, 3 U. ST. THOMAS J. L. & PUB. POL'Y 26, 28–29 (2009) (“Rush Limbaugh coined the phrase ‘feminazis.’”).

<sup>195</sup> See Coston & Kimmel, *supra* note 194, at 372–73.

<sup>196</sup> See Robin Abcarian, *The Debt that All Women—Even Conservatives—Owe Gloria Steinem*, L.A. TIMES, (Feb. 14, 2014), <http://www.latimes.com/local/abcarian/la-me-ra-gloria-steinem-is-turning-80-20140213,0,6014222.story#axzz2uC9q0PbN>.

<sup>197</sup> See KEITH DROMM, SEXUAL HARASSMENT—AN INTRODUCTION TO THE CONCEPTUAL AND ETHICAL ISSUES 13, 47 (2012) (referencing men's increased EEOC sexual harassment filings); Ann C. McGinley, *Masculine Law Firms*, 8 FIU L. REV. 423, 428, 432–39 (2013) (narrating story of White, male associate who filed a lawsuit under the FMLA against his law firm). The FMLA was the first bill signed into law by President Bill Clinton in 1993, after it was vetoed twice by President George H. W. Bush. MADELEINE M. KUNIN, THE NEW FEMINIST AGENDA 13 (2012). The legislation was enacted to address what was thought about as a “woman's issue”—the balancing of work and family. Stephanie C. Bovee, Note, *The Family Medical Leave Act: State Sovereignty and the Narrowing of Fourteenth Amendment Protection*, 7 WM. & MARY J. WOMEN & L. 1011, 1036–37 (2001). However, the FMLA was drafted in gender-neutral terms to protect men and women in the workplace. *Id.* Ironically, men often benefit more from “women's laws” than women themselves. MACKINNON, FEMINISM UNMODIFIED, *supra* note 184, at 35 (discussing how changes championed by women in sex discrimination, divorce, custody, and alimony laws benefitted men more than women).

<sup>198</sup> VALENTI, *supra* note 46, at 13 (citing THE AMERICAN HERITAGE DICTIONARY).

<sup>199</sup> HOOKS, FEMINISM IS FOR EVERYBODY, *supra* note 191, at 1.

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ual equality and mutuality, men as well as women may be, and indeed are, feminists.<sup>200</sup>

According to Gloria Steinem, “[a] feminist is anyone who recognizes the equality and full humanity of women and men[.]”<sup>201</sup> With the equality principle as foundation, there are many versions of feminism.<sup>202</sup> Under my definition, feminism includes a belief that men and women are all created equal, that we are endowed by our Creator with the same unalienable rights.<sup>203</sup> “[F]eminism is for everybody.”<sup>204</sup> My hope is that professional women will reclaim the feminist word as a badge of honor rather than as the negative name-calling intended by the people who hurl it at women as an insult or as a character attack.

## VI. MY PROPOSAL: PAY ATTENTION AND DO YOUR PART TO STOP THE SUBJUGATION OF PROFESSIONAL WOMEN

<sup>200</sup> VIRGINIA RAMEY MOLLENKOTT, *THE DIVINE FEMININE* 2 (1983).

<sup>201</sup> Kathleen McCartney, *Happy 80th, Gloria Steinem*, CNN Opinion, (Mar. 25, 2014, 2:19 PM), <http://www.cnn.com/2014/03/24/opinion/mccartney-steinem-at-80> (updated 2:19 PM EDT, Tue March 25, 2014).

<sup>202</sup> See e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); THIS BRIDGE CALLED MY BACK—WRITINGS BY RADICAL WOMEN OF COLOR (Cherrie Moraga & Gloria Anzaldúa eds., 1981, 1983); WOMEN AND RELIGION (Elizabeth A. Clark & Herbert Richardson, eds. 1996); MOLLENKOTT, *THE DIVINE FEMININE*, *supra* note 200; CRITICAL RACE FEMINISM—A READER 117 (Adrien Katherine Wing ed., 2d ed. 2003); COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM 196 (Daisy Hernández & Bushra Rehman eds., 2d ed. 2019); WOMEN’S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN (Elizabeth Maier & Nathalie Lebon eds., 2010). “The various schools of feminist legal analysis [include] liberal feminism, radical feminism, cultural feminism, and postmodern feminism[.]” Jo Lynn Southard, *Protection of Women’s Human Rights Under the Convention on the Elimination of All Forms of Discrimination Against Women*, 8 PACE INT’L L. REV. 1, 7–8 (1996). “Nonessentialist feminisms include third world or development feminism, women of color feminism, and postmodern feminism.” Berta Esperanza Hernández-Truyol, *Out of the Shadows: Traversing the Imaginary of Sameness, Difference, and Relationalism – A Human Rights Proposal*, 17 WIS. WOMEN’S L.J. 111, 127 (2002) (citations omitted). For a summary of the “the six basic schools of feminist thought in the American legal academy today and their genesis in different waves of feminist writing in the legal academy,” see Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277, 278 (2008). There is a debate as to whether a woman who pushes an agenda like the one that Republican vice-presidential candidate Sarah Palin promoted can fit within the equality principles of feminism, including a woman’s right to choose for herself in all ambits of her life. See Mary Ziegler, *Women’s Rights on the Right: The History and States of Modern Pro-Life Feminism*, 28 BERKELEY J. GENDER L. & JUST. 232, 258–64 (2013) (analyzing “antiabortion feminism”).

<sup>203</sup> Although the Declaration of Independence did not include the signatures of any women, the Constitution provides a process by which we continue on the path to a more perfect union. See President Barack Obama, Remarks by the President at Barnard College Commencement Ceremony, (May 14, 2012) (transcript available at <http://www.whitehouse.gov/the-press-office/2012/05/14/remarks-president-barnard-college-commencement-ceremony>).

<sup>204</sup> HOOKS, *FEMINISM IS FOR EVERYBODY*, *supra* note 191, at ix.

In the words of Justice Sonia Sotomayor: “This [proposal] may sound naively idealistic, but there is a place for idealism in the practice of the law. It is what makes many of us enter the profession in the first place.”<sup>205</sup> Two centuries after American women began the formal fight for equality and for emancipation from gendered roles, women today, like “the firsts,”<sup>206</sup> are still attacked in our professional lives when we are assertive about performing our professional roles and demanding equality. The visibility and contributions of assertive women at the U.S. Supreme Court level should help to make people understand that women have a human right to make use of our talents, diverse demeanors, and intellectual abilities. Women must not be constrained in the performance of our jobs by fear of name-calling and character attacks due to our alleged “temperaments” or “personalities.”<sup>207</sup> We should not be punished if we do not follow men-made norms of “appropriate” or “tolerable” woman behavior. As the character descriptions of the first women lawyers confirm, women, especially trailblazers (the firsts), need to be assertive to overcome hurdles and to reach professional success, especially “in racist and sexist milieu.”<sup>208</sup>

I long for the day when all women will be free to be who we are meant to be, to show the full range of personalities and temperaments in our professional endeavors that men have reserved for themselves. I envision a day when professional women will not be judged by and subjected to harsher standards than men in the workplace.<sup>209</sup> I strive for the day when we are no

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<sup>205</sup> SOTOMAYOR, *supra* note 1, at 204.

<sup>206</sup> Some women are still “the first” in their workplaces. I am the first Latinx hired in the tenure-track at Florida A&M University College of Law. I am also the first and (currently) only Latinx to achieve tenure. I am also the first (and currently only) non-Black woman to earn tenure in this HBCU law school. Therefore, I am “the first” in several categories.

<sup>207</sup> “Perform, rather, in the spirit of Martin Luther King Jr.’s credo of being ‘free at last’ and feeling fully liberated to perform according to your best intellectual and professional talents as faculty members of color in the academy.” Mary-Antoinette Smith, *Free at Last! No More Performance Anxieties in the Academy ‘Cause Stepin Fetchit Has Left the Building*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 415 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012) [hereinafter PRESUMED INCOMPETENT].

<sup>208</sup> *Id.* at 320.

<sup>209</sup> Recent studies confirm that professional women, especially women of color, continue to navigate extra hurdles in our everyday work experiences. See Williams, *Double Jeopardy?*, *supra* note 26, at 185. Four patterns of gender bias were identified in those studies: “[1] Prove-It-Again!, [2] the Tightrope, [3] the Maternal Wall, and [4] Tug of War.” *Id.* at 186, 189. “Prove-It-Again! refers to the fact that women as a group must provide roughly twice as much evidence of competence as men in order to be seen as equally competent.” *Id.* at 189. “The Tightrope is prescriptive in nature in that it stems not from assumptions about how women do behave but from *assumptions about how they should behave.*” *Id.* at 191 (emphasis added). “The Maternal Wall consists of both descriptive and prescriptive bias. The descriptive bias aspect reflects the perception that if women in general do not seem a good fit for the ‘hard driving professional,’ mothers seem an even poorer one. Consequently, motherhood



longer subjected to name-calling and character attacks when we fail to “go along to get along” with gendered expectations and stereotypes. Even if this does not happen in my lifetime, I hope it will happen in the lifetimes of at least some of my students. Until then, we must continue advocating and fighting for equality and, as the #MeToo Movement showed us, doing something is better than doing nothing. I invite *men and women* to begin the process of achieving change by paying attention to the dynamics that stand in the way of women’s equality and by questioning our actions and inaction. We must pay attention and do something!

How may we begin this process of moving into conscious action? In this section, I include some observations and questions about conduct in the workplace that may serve as a starting point in a much needed conversation. Women should also be consciously observant and ask ourselves these questions because we are not immune from internalizing and acting upon societal, gender norms. Some women can be just as sexist as some men.<sup>210</sup>

**1. *Do you feel the same level of comfort around women who exhibit stereotypically masculine traits as you do around women who exhibit stereotypically feminine traits?***

If all women are expected to live up to gender stereotypes in order to be accepted in American workplaces, including in professions where assertiveness is a positive trait, some women will continue to be subjected to name-calling and character attacks when we fail to conform. “Most descriptive and injunctive norms about the sexes pertain to communal and agentic behavior. Women are described as communal and are expected to act in delicate, sensitive, sharing, communal ways.”<sup>211</sup> Men, on the other hand, are not punished for being assertive in their professional endeavors. “Men are considered to be agentic and are expected to exhibit assertive, controlling and confident behavior such as aggression, ambition, dominance, independence, and self-confidence.”<sup>212</sup> Men are generally admired when they are

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triggers powerful negative competence and commitment assumptions.” *Id.* at 192. “The Tug of War occurs when gender bias against women turns into conflicts among women.” *Id.* The studies further show that “gender bias differs for blacks, whites, Latinas, and Asian Americans.” *Id.* at 189. In legal practice, “male and female attorneys with similar qualifications do not obtain similar positions. Studies involving thousands of lawyers have found that men are at least twice as likely as similarly qualified women to obtain partnership.” Rhode, *Gender and the Profession*, *supra* note 136, at 1003 (citations omitted).

<sup>210</sup> HOOKS, FEMINISM IS FOR EVERYBODY, *supra* note 191, at 3. See also CLINTON, WHAT HAPPENED, *supra* note 2, at 128 (2017) (explaining that a survey conducted after the 2016 election found that some women voters were “quite sexist, too”).

<sup>211</sup> Ann McGinley, *Reproducing Gender on Law School Faculties*, 2009 B.Y.U. L. REV. 99, 110 (2009).

<sup>212</sup> *Id.*

assertive.<sup>213</sup> However, when women are assertive, they are perceived in a negative way and described as abrasive.<sup>214</sup>

Equality will not be achieved in our workplaces until more people learn to be comfortable around assertive, driven women who are doing our job to the best of our abilities.<sup>215</sup> Professional women should not be expected to conform to a particular personality type (more “feminine” or more “masculine”) or to engage in the same modes of behavior – to become “Stepford Professional Women.”<sup>216</sup> I urge individuals to pay attention to the diversity of personalities, personal style, and men’s manner of speaking in your workplace. Is this type of diversity represented in the women in your workplace? Are women allowed the same latitude as men? Once you start to pay attention, if you notice different treatment, point it out the next time someone (man or woman) complains about a woman’s temperament, manner of speaking, style, or demeanor. You should consider responding, “But how about Joe Schmoe? I never hear you criticize him when he acts the same way she does. Perhaps you should examine your gender bias and stop judging her so unfairly.” This way, the bias gets confronted directly and in a timely manner, as soon as it happens,

**2. *Do the norms of your home determine how you relate to women and what you think should be the role of women in the workplace?***

Men and women who exhibit explicit or implicit gender bias (conscious or unexamined)<sup>217</sup> react to women in the workplace in ways that mirror their ideas of women in the home. “How workers relate to their mothers, sisters, and daughters influences how they see and relate to women at work.”<sup>218</sup> Men and women who think that men should be treated with deference at home may (consciously or unconsciously) react negatively toward

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<sup>213</sup> Goodman, *supra* note 120, at 175.

<sup>214</sup> *Id.*

<sup>215</sup> “[I]f a co-worker only feels comfortable when women are modest and self-effacing, even a woman whom he knows well will likely encounter backlash if she is a ‘go-getter’ rather than a ‘helpmeet.’” Williams, *Double Jeopardy?*, *supra* note 26, at 225.

<sup>216</sup> In the movie *The Stepford Wives*, married women grew “strangely similar” to please their husbands. Timothy P. O’Neill, “*The Stepford Justices*”: *The Need for Experiential Diversity on the Roberts Court*, 60 OKLA. L. REV. 701, 704 n.14 (2007) (citations omitted).

<sup>217</sup> “From a legal standpoint, it would be more productive to describe implicit bias as ‘unexamined bias’ rather than ‘unconscious bias.’” Williams, *Double Jeopardy?*, *supra* note 26, at 228.

<sup>218</sup> Stephanie M. Wildman, *Privilege in the Workplace: The Missing Element in Antidiscrimination Law*, 4 TEX. J. WOMEN & L. 171, 173 (1995). In a 2012 study, social scientists found that a man’s home arrangement (“modern” versus “traditional” marriage) affected his professional behavior. SANDBERG, LEAN IN, *supra* note 4, at 152-53.

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women who do not engage men with this same deference at work.<sup>219</sup> However, employees should not be permitted to engage in sexist behaviors that may be acceptable in their homes.

Some of the patriarchal and sexist behaviors that lead to abuse at home may also lead to abuse in the workplace.<sup>220</sup> For example, employees who perpetrate domestic violence at home may bring their abusive nature to the workplace.<sup>221</sup> The statistics show that domestic violence abusers are disproportionately men and their victims are disproportionately women.<sup>222</sup> Similarly, the majority of bully-abusers at work are men and the majority of their targets are women.<sup>223</sup> Therefore, employers and employees should be cognizant of the risk that abusive men will find some way to abuse women colleagues in the workplace.

“The very purpose of Title VII is to restrict in the workplace what might be viewed as acceptable (or at least permissible) in other, more personal settings.”<sup>224</sup> Employees must understand that the workplace is not an extension of their home environments. The mandate of laws like Title VII should guide the minimum standards of what should be allowed and should not be allowed in the workplace. As such, sexism and patriarchal tendencies must be extracted from the workplace once and for all. When a man abuses a woman in the workplace, it is the man who should be chastised and disciplined, not the woman who defends against his abusive conduct.

Given that it is sometimes easy to adopt the home atmosphere in the workplace, institutions should be attentive to the “family” norm in the workplace. Some families are dysfunctional and, when an institution is structured as a family, close attention should be paid to ensuring that dysfunctional family dynamics do not permeate into the workplace. Therefore, it is important to notice how women are treated within the work *family*. Are the members of the dominant group that set the workplace family structure guided by their own understanding of the role of women in their own families? Are women vulnerable to workplace abuse in this family workplace

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<sup>219</sup> *See id.*

<sup>220</sup> In the field of workplace abuse, the terms “abuse,” “aggression,” “bullying,” “harassment” and “mobbing” are used to describe forms of workplace abuse. DUFFY & SPERRY, *supra* note 10, at 39–42.

<sup>221</sup> *Cf.* Workplace Bullying Institute, *Bullying is Domestic Violence at Work*, <https://www.workplacebullying.org/bullying-domestic-violence/> (last visited Apr. 4, 2020) (explaining that domestic violence at home and psychological violence at work “uncannily mirror each other”).

<sup>222</sup> Deseriee A. Kennedy, *Using the NFL as a Model? Considering Zero Tolerance in the Workplace for Batterers*, 45 U. BALT. L. REV. 293, 296 (2016).

<sup>223</sup> *Id.*

<sup>224</sup> Gregory, *supra* note 40, at 774.

structure? Are women expected to put up with workplace abuse without complaining? Are some women treated as Cinderella (not really part of the family)? These are all questions that help identify whether the workplace environment mirrors a patriarchal and dysfunctional family.

Furthermore, it is equally important for employees to consider what behavior akin to domestic abuse might look like in the workplace. One difference between abuse in the home and abuse at work is that domestic violence often includes emotional and physical abuse whereas workplace abuse generally does not involve physical abuse.<sup>225</sup> Digs, ad homonym attacks, and bullying cause emotional trauma, which usually outlasts physical injury.<sup>226</sup> The following questions help identify whether your workplace and you are open to recognizing and challenging abuse at work.<sup>227</sup> What would you do if you witnessed an act of domestic abuse? How about if you witness workplace abuse? Have you witnessed workplace abuse? Did you come to the aid of the target? After reading this article, would you consider intervening and actually naming the abuse and calling out the workplace abuser? You could say something like: “Do you realize that what you are doing is similar to domestic abuse? If you do not stop it, I will have to report it because I should not be expected to witness abuse and say nothing about it.” When employees experience or witness workplace abuse and do not challenge it, they may become desensitized to it to the point that they permit the abuse to escalate and become part of the “normal” in the particular workplace.

### ***3. Do your community, cultural, or religious views impact your expectations of acceptable behavior by women or the “respect” that you think women should show to men?***

In institutions where a critical mass of employees or where key employees hold community, cultural, or religious male supremacist views, women may be even more expected to adopt submissive behaviors and punished for not doing so via workplace norms. “Frequently, strong religious ties in many communities of color also aggravate women’s gender subordination.”<sup>228</sup> Consciously or unconsciously, some men and women whose

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<sup>225</sup> Workplace Bullying Institute, *Bullying is Domestic Violence at Work*, *supra* note 221. Physical abuse in the workplace may allow the target to seek police intervention because the physical violence would be considered a crime. However, if the perpetrator acts as if the physical conduct was an accident or unintentional, such as bumping the victim, criminal prosecution may not be an option.

<sup>226</sup> *Id.*

<sup>227</sup> Some colleagues may distance themselves from the target because they do not want to witness the abuse. Friends of the abuser may rationalize and excuse the abuse. *Id.* This conduct by colleagues at work helps the work abuser to continue abusing with impunity.

<sup>228</sup> Berta Esperanza Hernández-Truyol, *Latinas, Culture and Human Rights: A Model for Making Change, Saving Soul*, 23 WOMEN’S RTS. L. REP. 21, 29 (2001).

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community, culture, or religion dictate that all women should follow the same pattern of behaviors (submissive or passive-aggressive ones, for instance) end up sabotaging the movement toward women's equality in the workplace. This is not to say that employees should give up their individual community, cultural, and religious beliefs and practices as it concerns their own behaviors. However, when some individuals in the workplace expect that fellow employees should perform the same behaviors, they force their community, cultural, and religious norms on other people, and this should not be allowed in secular workplaces.<sup>229</sup>

Instead, we must respect the separation of church and state in our secular workplaces. All people should recognize every individual's right to equality in the workplace and act accordingly. Men and women whose community, cultural, or religious beliefs preclude them from accepting that women should have *and exercise* equal rights to men in the workplace should re-think their chosen professions if they want to prioritize personal convictions that infringe upon the rights of women who do not hold the same views. In other words, the problem is not the female employee who does not conform to community, cultural, or religious expectations; the problem lies with the employers and employees who want to impose their community, cultural, and religious beliefs on other employees.

It is important to be aware of the possibility that community, cultural, and religious beliefs of members of the dominant group or of individuals with institutional power are permeating into workplace interactions to the detriment of women who do not hold those beliefs. Do you notice whether these types of personal beliefs dictate the expectations of "professional behavior"? Do members of the majority or dominant group expect all employees (in a secular workplace) to follow the norms of the dominant group's church, mosque, synagogue, or any other community, cultural, or religious forum? Once you notice that personal beliefs are being dressed as professional norms, you could remind fellow employees that it is unacceptable to expect colleagues to act in accordance with other employees' community, cultural, or religious beliefs.

**4. *Do you resort to gendered attacks (whether in front of the woman or behind her back) when you personally dislike a woman?***

Gender attacks come in all shapes and sizes when a woman has been identified as not fitting the social expectations surrounding genders. For example, during the 2008 Democratic Primary season, male political pundits described that some men heard "[t]ake off for the future" when Barack

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<sup>229</sup> *But see* *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 682–83 (2014) (holding that, as applied to privately-held corporations, mandating employer health plans to furnish women's contraceptives violates the Religious Freedom of Restoration Act, which prevents the "[g]overnment [from] substantially burdening a person's exercise of religions").

Obama spoke, but heard “[t]ake out the garbage” when Hillary Clinton spoke.<sup>230</sup> These men gendered Hillary’s speech and attacked her because they perceived that she was capable of ordering them around, like their mothers did when they were children, and they did not like it.<sup>231</sup> These same insecurities are likely what drove grown men to make derogatory comments about Hillary like: “I cross my legs whenever I see her” and “[s]he reminds me of my ex-wife.”<sup>232</sup> Hillary was characterized as a “nag” who not even Bill Clinton wanted to put up with.<sup>233</sup> Underlying the name-calling is the reality that some men resent female authority figures and retaliate against them by degrading them in gendered ways. Some men may feel insecure about their masculinity when they are around strong, assertive women. And they may react by attacking such women. However, whatever their insecurities, men should not be allowed to attack women, including in professional settings.

Now that this Article has informed you about the type of name-calling used to subjugate women, you should be able to check your own use of some of those terms in the workplace. And, you should also be able to identify them when others use them. If a colleague calls a woman a “bitch,” “high maintenance,” “difficult,” “nasty,” “sharp-tongued,” or any other such terms, you should ask the name-caller: “Do you realize that those are gendered terms that are used to subjugate women?” Employees should be made to understand that it is unprofessional to use such terms at work just because they personally dislike a woman. Do you notice if you or your colleagues have a negative reaction toward a woman because you perceive her as authoritative? Have you considered that your insecurities, biases, and perceptions may cause you to have a negative reaction toward a woman because she is strong and assertive? It is not necessary to personally like a woman to respect her professionally in a workplace. Professional respect requires that women not be subjected to gendered attacks.

**5. Do you engage in “benevolent sexism” or “selective chivalry” by rewarding (through professional perks or better treatment) women who act submissively because, in your mind, they serve as role models of “lady-like” behavior?**

“Benevolent sexism” and “selective chivalry” are “social tendencies to reward and positively judge women who conform to traditional gender ste-

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<sup>230</sup> Parks & Roberson, *Eighteen*, *supra* note 84, at 337.

<sup>231</sup> Abcarian, *supra* note 196.

<sup>232</sup> *Id.*

<sup>233</sup> Carla Spivack, *From Hillary Clinton to Lady Macbeth: Or, Historicizing Gender, Law, and Power Through Shakespeare’s Scottish Play*, 15 WM. & MARY J. WOMEN & L. 51, 52 (2008).

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reotypes.<sup>234</sup> Some women are rewarded in professional environments where men in positions of power exercise their authority to “pamper their favorites.”<sup>235</sup> Some professional women are comfortable remaining in the master’s house.<sup>236</sup> They embrace the “traditional” role assigned to women within patriarchy.<sup>237</sup> And, they should be free to engage in traditional, “lady-like” behavior at work.<sup>238</sup> However, the problem arises when other professional women do not want to go along with this traditional model.<sup>239</sup>

In workplaces where women hold different social expectations, professional women may be pitted against each other. Because of this, it is important to acknowledge this conflict. Rather than make it the women’s problem, both men and women should understand that the traditional feminine expectation should not be a workplace default. Instead, professional women should be free to exhibit the full range of behaviors as professional men, if they so choose.

Women should not be divided by patriarchal expectations. The best approach is solidarity of men and women in pursuit of equality for all in the workplace.<sup>240</sup> Do you notice whether you or your colleagues treat a woman better in the workplace and treat another one worse because one conforms to traditional gender stereotypes and the other one does not? If you engage in this conduct, you engage in gender discrimination (through conscious

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<sup>234</sup> Shabnam Javdani, Naomi Sadeh & Edelyn Verona, *Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls’ Criminal Justice Trajectories*, 17 *PSYCHOL., PUB. POLY., & L.* 161, 187 (2011) (citing B. Keith Crew, *Sex Differences in Criminal Sentencing: Chivalry or Patriarchy?*, 8 *JUST. Q.* 59, 78 (1991)); Peter Glick & Susan T. Fiske, *An Ambivalent Alliance: Hostile and Benevolent Sexism as Complementary Justifications for Gender Inequality*, *AM. PSYCHOLOGIST* 109, 109 (2001).

<sup>235</sup> JULIE BEREBITSKY, *SEX AND THE OFFICE—A HISTORY OF GENDER, POWER, AND DESIRE* 4 (2012).

<sup>236</sup> Audre Lorde, *History Is a Weapon, The Master’s Tools Will Never Dismantle the Master’s House* (1979) from *Sister Outsider*, THE CROSSING PRESS FEMINIST SERIES (1984), <http://www.historyisaweapon.com/defcon1/lordedismantle.html> (last visited Apr. 4, 2020).

<sup>237</sup> See BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* 99 (1981) (“Men of all races in America bond on the basis of their common belief that a patriarchal social order is the only viable foundation for society. Their patriarchal stance is not simply an acceptance of social etiquette based on discrimination against women; it is a serious political commitment to maintaining political regimes throughout the United States and the world that are male-dominated.”).

<sup>238</sup> “Not all women want careers. Not all women want children. Not all women want both. I would never advocate that we should all have the same objectives.” SANDBERG, *LEAN IN*, *supra* note 4, at 10.

<sup>239</sup> See Javdani, et al., *supra* note 234, at 187–88.

<sup>240</sup> “The more women help one another, the more we help ourselves. Acting like a coalition truly does produce results.” SANDBERG, *LEAN IN*, *supra* note 4, at 164. “Any coalition of support must also include men, many of whom care about gender inequality as much as women do.” *Id.* at 165.

gender stereotyping), which is unlawful in the workplace.<sup>241</sup> If you are a woman who models traditional behaviors at work, do you realize or care that your support of patriarchy in the workplace may harm other women? Are you willing to remind a man in the workplace that he should not treat another woman worse just because she does not adopt the traditional role? The goal should be for all women to be free to exercise our professional style, without negative professional consequences, regardless of our choice—traditional or not.

**6. *Do you feel comfortable when women actively participate in an assertive way during meetings?***

The nature of meetings can be very telling in the power differential between men and women.<sup>242</sup> Studies show that assertive women who speak at mixed-gender meetings receive more negative reactions.<sup>243</sup> In business conversations, men interrupt each other all the time, but when “the only way to ask a question or make an observation [is] to interrupt,” and a woman does it, she may be chastised for interrupting.<sup>244</sup> Meetings also provide a good forum in which to observe whether (or which) women are allowed to participate with the same liberties as men. If only some women are allowed to participate, there is still no equality.<sup>245</sup> For example, women who participate in supportive roles to dominant players, which are usually men in male-dominated work environments, may be allowed to speak and be heard. However, in my experience, women who retain our independence and try to participate in the same ways as the dominant players, including by disagreeing with them, may not be allowed to speak or be heard in the same way. This treatment disparity may be implemented through rushing the speaker, altogether ignoring her, silencing her, or attacking her.

Professional men and women must do better because we should know better. Professional women should be able to participate in the workplace in the same way as men participate; otherwise, diversity of perspectives,

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<sup>241</sup> See Martha Chamallas, *Of Glass Ceilings, Sex Stereotypes, and Mixed Motives: The Story of Price Waterhouse v. Hopkins*, in *WOMEN AND THE LAW STORIES* 307, 326–37 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011).

<sup>242</sup> In *Faculty Incivility*, a faculty member reported that “untenured male professors berated full-tenured female professors” during a school-wide faculty meeting. DARLA J. TWALE & BARBARA M. DE LUCA, *FACULTY INCIVILITY* 6–7 (2008).

<sup>243</sup> McGinley, *Reproducing Gender*, *supra* note 211, at 99 n. 50 (citing Dore Butler & Florence L. Geis, *Nonverbal Affect Responses to Male and Female Leaders: Implications for Leadership Evaluations*, 58 *J. PERSONALITY & SOC. PSYCHOL.* 48, 54 (1990); Alice H. Eagly et al., *Gender and Evaluation of Leaders: A Meta-Analysis*, 111 *PSYCHOL. BULL.* 3, 16 (1992)).

<sup>244</sup> See e.g., SANDBERG, *LEAN IN*, *supra* note 4, at 21.

<sup>245</sup> A Black woman in the NSF study reported that her assertiveness at meetings was not only welcomed but rewarded. Williams, *Double Jeopardy?*, *supra* note 26, at 201.



knowledge, and experiences is silenced. Institutions benefit when women bring our diverse viewpoints to our workplaces.<sup>246</sup> To test for inclusive participation, the next time you attend a work meeting, you should observe who gets to speak freely without raising a hand, who gets to talk as much as they want, and who is cut off when they are speaking. Do you notice disparate treatment based on gender and at the intersection of race and gender? Are some women allowed to assert themselves during meetings because they belong to a particular racial group? Are women of race groups that are different from men of the dominant racial group treated disparately? You should also scrutinize your internal reaction to the ways in which women participate during meetings. Is it different than when men participate in similar ways? The bottom line is that women's contributions during meetings benefit all in the workplace because some of us bring different viewpoints that add positive value to the discussions.

**7. *Do you support women who seek equal treatment in professional roles or do you attack, ignore, silence, or ridicule women who are assertive about seeking equality?***

When women seek equal treatment, we are sometimes judged as acting too “masculinely,” aggressively, “or, more generally, as lacking social skills.”<sup>247</sup> Some women want access to full equality with men in the workplace, whereas some women do not.<sup>248</sup> In workplaces that value the latter, the former may be pressured (by men *and women*) to conform. If we do not conform, we may be attacked and marginalized. This is devastating for the cause of women's equality and it is illegal sex discrimination against women who do not adhere to a stereotype of feminine behavior by refusing to accept unequal treatment.<sup>249</sup> Women who seek equality should feel comfortable doing so in today's workplaces. Otherwise, what is the point of Title VII?<sup>250</sup>

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<sup>246</sup> See SANDBERG, LEAN IN, *supra* note 4, at 153.

<sup>247</sup> See *id.*, at 191.

<sup>248</sup> See *id.*, at 193.

<sup>249</sup> Chamallas, *supra* note 241, at 307 (scrutinizing decision in *Price Waterhouse v. Hopkins*, “the best known case on sex stereotyping in the law”).

<sup>250</sup> An upheaval for nothing less than full human status impelled the Civil Rights Act of 1964, Title VII of which prohibited discrimination in employment . . . In spite of real economic progress by some, job discrimination continued, and continues, to keep the nonwhite population an economic underclass in the United States. Title VII is one attempt to address the injustice of race-based exclusion from work as well as the despair, welfare dependence, and crime endemic to poverty caused by discriminatory denial of economic opportunity.

CATHARINE A. MACKINNON, *SEX EQUALITY* 93 (2007).

Professional women will not break more glass ceilings if we are not assertive about seeking equal access, opportunities, treatment, and compensation. Have you ever heard a woman complain of unequal treatment at work? What did you do? Did you attack her for complaining? Did you respond that she was asking for special treatment? Did you ignore, silence, or ridicule her? Or, did you try to understand the basis of her complaint? What about if a woman asks for equal pay for equal work? Do you analyze, truly analyze, the situation? Pay status and other conditions of employment provide an objective bases to assess whether women (including women of different races) receive equal treatment in a particular workplace.

**8. *Do you distinguish the marital status of women in the workplace and treat them accordingly different?***

A woman's marital status (single, married, divorced, or widowed) should not subject her to different treatment in the workplace, but it might. In the law school where I work, some employees (including administrators) make it a point of distinguishing between single and married women by referring to women as "Ms." or "Mrs." including in e-mails.<sup>251</sup> Some married women, including employees and law students, designate themselves as Mrs. in their written communications.<sup>252</sup> There is no distinction for married

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<sup>251</sup> See Alexandra Buxton, *When 'Mistress' Meant 'Mrs.' and 'Miss' Meant 'Prostitute', The Weird History of the Female Title*, NEW REPUBLIC (Sept. 12, 2014), <https://newrepublic.com/article/119432/history-female-titles-mistress-miss-mrs-or-ms> (last visited Apr. 4, 2020) (providing a brief history of the terms "Mrs." and "Ms.").

<sup>252</sup> Feminists in the 1970s advocated for the use of Ms., a term that would include all women, rather than Mrs. and Miss, terms that divided women by marital status. Marc R. Poirier, *Name Calling: Identifying Stigma in the "Civil Union"/"Marriage" Distinction*, 41 CONN. L. REV. 1425, 1462 (2009). In 2009, the Oregon State Bar Bulletin published remarks from a roundtable of women who were admitted to the Oregon Bar from 1993 and 2003; one woman commented on a recent discussion in the Oregon Women Lawyers listserv about the use of the different titles to distinguish married and single women. She stated:

It is so surprising to me that the pendulum has just swung completely back, with no seeming recollection of why we tackled this issue in the first place. I think the reason that you all fought that battle was that there were various forms of discrimination against unmarried versus married women, and of course "Ms." sort of resolved that problem.

Another woman added:

But I do think there's progress, and progress moves in waves, and so there is some return of the pendulum. How I characterize it is that our daughters and the new generations are more free to choose, and there certainly has been a return to femininity as some evidence of the backlash of what is construed as "feminist."

Janine Robben, *Women in the Law: From Generation to Generation, the Ever-Increasing Ranks of Women Find Satisfaction (and No Shortage of Challenges, Too) in Their Legal Lives*, 67-JUL OR. ST. B. BULL. 16, 20 (2007).

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and single men—they are all “Mr.”<sup>253</sup> This type of different treatment in the way individuals are addressed in professional settings may signal disparate perceptions based on gender, even in seemingly innocuous ways.<sup>254</sup>

For example, single women (never married or divorced) are sometimes perceived as too independent, which causes some people to feel uncomfortable.<sup>255</sup> The same is true for women who keep their last name when they marry.<sup>256</sup> One of the professional women in the NSF Study observed that there was a significant difference in the way a man with three children was treated as opposed to a single Black woman with three children.<sup>257</sup> “The man will be treated like a breadwinner and the woman like shit,” she said bluntly.<sup>258</sup> Some men may fantasize that single women want (or need) to be tamed,<sup>259</sup> which may make single women more vulnerable to sexual harassment by these men.<sup>260</sup> Two African-American women who were employed in Clarence Thomas’s office, after Anita Hill had already left, described being subjected to similar sexual harassment by Thomas as Professor Hill described during Thomas’s confirmation hearing.<sup>261</sup> They were all single women.<sup>262</sup>

Furthermore, some people may engage in sexist thoughts about single women at work in an attempt to rationalize nontraditional behavior.<sup>263</sup> An example of a sexist thought includes something along the line of she is “dif-

<sup>253</sup> Judith D. Fischer, *Framing Gender: Federal Appellate Judges' Choices About Gender-Neutral Language*, 43 U.S.F. L. REV. 473, 478–79 (2009).

<sup>254</sup> See Loretta A. Moore, Angela Mae Kupenda, Deidre L. Wheaton, Michelle D. Deardorff & Evelyn J. Leggetteb, *What Can We Do Now? Addressing Intersectionality Challenges in Work and Social Structures, the Single Academic Woman of Color as an Exceptional Case*, 9 U. MIAMI RACE & SOC. JUST. L. REV. 91, 95–96 (2019).

<sup>255</sup> See REGINA BARRECA, *PERFECT HUSBANDS (& OTHER FAIRY TALES)*, 30–32 (1995).

<sup>256</sup> Deborah J. Anthony, *A Spouse by Any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 194–95 (2010). Hillary Clinton is one example of a woman who initially chose to keep her maiden name after marriage but eventually gave in to the pressure to drop it and adopt her husband’s. *Id.* at 194–95.

<sup>257</sup> Williams, *Double Jeopardy?* *supra* note 26, at 203.

<sup>258</sup> *Id.*

<sup>259</sup> See BARRECA, *supra* note 255, at 214. See also HILL, *supra* note 43, at 71 (describing that she eventually became convinced that Clarence Thomas’s sexual advances toward her were “a game to him, one that he controlled and intended to win”).

<sup>260</sup> HILL, *supra* note 43, at 71.

<sup>261</sup> *Id.* at 275–76 (describing the experiences shared by Sukari Hardnett and Angela Wright).

<sup>262</sup> See *id.* at 276, 283.

<sup>263</sup> See Constance Grady & Caroline Framke, *All the Women Who Have Accused Harvey Weinstein of Sexual Harassment and Assault, So Far*, VOX (Dec 13, 2017, 12:45 PM), <https://www.vox.com/culture/2017/10/11/16460164/harvey-weinstein-sexual-harassment-assault-accusations>.

ficult” (or whatever negative term is selected) because “she needs a man.” This differs from the treatment of single men, who are not thought of as deviants or unhealthy for not committing themselves to a relationship.<sup>264</sup> It also includes professional women who decide to keep our private lives private in the workplace, which is also often viewed with suspicion.<sup>265</sup>

Married women may also be subjected to discrimination because of their marital status.<sup>266</sup> The thinking is that a married woman is not (or should not be) as focused on professional advancement because her top priority is (or should be) taking care of her husband.<sup>267</sup> Accordingly, some employers do not view married women as the ideal employees.<sup>268</sup> If they are mothers, the discrimination may be worse.<sup>269</sup> Single mothers often endure the worst discrimination because they are not married and because they have children.<sup>270</sup> Race adds another layer and intersection as bases for the discrimination.<sup>271</sup>

Subjecting women to different treatment at work, because they are single versus married or vice versa, is discrimination because of marital status (in addition to discrimination because of sex).<sup>272</sup> Something as seemingly insignificant as distinguishing women by marital title may signal that such status matters in the workplace. Therefore, it is important to consider whether marital status distinctions subject women to different treatment.

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<sup>264</sup> See BARRECA, *supra* note 255, at 33.

<sup>265</sup> See Angela Mae Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT, *supra* note 207, at 415.

<sup>266</sup> Cf. Margaret F. Brinig, *In Search of Prince Charming*, 4 J. GENDER RACE & JUST. 321, 328–29 (2001) (analyzing that married men have better professional outcomes than married women).

<sup>267</sup> See *id.* at 329–30.

<sup>268</sup> Cf. *id.* at 328–29 (describing married men as the “ideal worker” sought by employers).

<sup>269</sup> *Id.*

<sup>270</sup> See Williams, *Double Jeopardy?* *supra* note 26, at 203. “The gender stories overlap and intertwine with race, and are as powerful a basis for stigma as race. Again, imagine a ‘single parent,’ and you will most likely picture a woman. The negative stigma attached to single parents is primarily directed at single mothers . . . Mothers without men are the worst patriarchal nightmare, as Martha Fineman has observed.” Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN’S L.J. 19, 49 (1995) (citing Martha Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 285–96 (1991)).

<sup>271</sup> *Id.* at 22, 44–51, 74.

<sup>272</sup> Leslie Daltona, *Marital Status Discrimination in the Workplace: The Need for Title VII Protection and a Uniform Definition of the Term “Marital Status,”* 120 PENN ST. L. REV. 867, 887 (2016). Some states have enacted anti-discrimination laws based on marital status. *Id.* at 875. Although federal anti-discrimination law does not specify marital status, these claims are often brought as sex-based discrimination claims. *Id.* at 873. See also Katrina R. Kelly, *Marital Status Discrimination in Washington: Relevance of the Identity and Actions of an Employee’s Spouse*, 73 WASH. L. REV. 135, 137 (1998) (“[S]uits against employers with policies discriminating on the basis of marital status have been brought successfully on the basis of gender discrimination.”).

Do you find it important to know a woman's marital status when interacting with her professionally? Are you suspicious of single women (including wondering why they are not married)? Do you think that single and married women should be treated differently, for example, by assuming that the single woman can (and should) work longer hours because she has no husband to take care of? Do you prefer to work with single women because you assume that they are more committed to work? Or, do you prefer to work with married women because you assume they are already tamed by a man and will be less *difficult* than single women who may be too assertive and independent? Marriage for women has entailed benefits (protection from others) and burdens (being dominated) under a patriarchal system.<sup>273</sup> The choice as to whether to be married or not should not translate into the same benefits and burdens paradigm in the workplace. Marital status should not matter at work.

**9. Do you assess women at work based on your personal views about “the place” of a woman or “the place” of a woman of color (including judgments based on a woman’s particular race/ethnicity)?**

In an interview about her book, *What Happened*, Hillary Clinton explained that the stereotypes about how women should or should not behave are part of “a cultural, political, economic game that’s being played to keep women in their place.”<sup>274</sup> What does she mean by “their place”? She means what most professional women understand—the *traditional* place. All the attacks Hillary was subjected to during the presidential race, and even before that, demonstrate the ways in which women are put “in our place” when we do not behave according to stereotypes of acceptable woman behavior.

Women walk a tightrope in the workplace stemming “not from assumptions about how women do behave but from assumptions about how they *should* behave.”<sup>275</sup> And, women of different races/ethnicities encounter biases in different degrees because we are both women and women of color.<sup>276</sup> And, there are sometimes differences in what is acceptable workplace behavior based on a woman’s race. For example, in some workplaces, “masculine-type behavior may seem less jarring when presented by a black

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<sup>273</sup> Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U. L. REV. 859, 862 (2005).

<sup>274</sup> Sabrina Siddiqui, *Hillary Clinton: There's a 'Game that Keeps Women in their Place,'* THE GUARDIAN (Sept. 16, 2017), <https://www.theguardian.com/us-news/2017/sep/16/hillary-clinton-theres-a-game-that-keeps-women-in-their-place>.

<sup>275</sup> Williams, *Double Jeopardy?*, *supra* note 26, at 191 (emphasis added).

<sup>276</sup> See Katherine E. Leung, *Microaggressions and Sexual Harassment: How the Severe or Pervasive Standard Fails Women of Color*, 23 TEX. J. ON CIV. LIBERTIES. & CIV. RTS. 79, 91 (2017).

woman.”<sup>277</sup> At least two studies found that Black women can behave in more assertive and dominant ways in the workplace without being evaluated more negatively than White women who exhibit similar behavior.<sup>278</sup>

The NSF study interviews revealed many examples in which black women used an assertive, non-deferential style at work. A woman lawyer noted that black women at her firm “are actually lauded for that sort of assertiveness, aggressiveness,” but said she was “sure it isn’t the same for some of the Caucasian female associates.”<sup>279</sup>

Another Black woman reported that “she is ‘very outspoken in meetings,’ [and] felt she was rewarded for assertive behavior.”<sup>280</sup> However, there are limits to even a Black woman’s assertiveness, depending on the particular place of employment.<sup>281</sup>

The NSF Study found that Latinas who are assertive (“too masculine”) in the workplace get the worst reception when compared to Black and White women.<sup>282</sup> Latinas are expected to be feminine, passive, and less likely to complain.<sup>283</sup> Latinas who do not conform to this gender stereotype, such as when they show anger, get backlash in the workplace.<sup>284</sup> Justice Sonia Sotomayor is a Latina who does not conform to the passive, submissive, less likely to complain stereotype; some lawyers maligned her in anonymous evaluations.<sup>285</sup> An assertive Latina is often perceived as “harsh, rude, and overbearing.”<sup>286</sup>

When you come in contact with women at work, consider whether you assess them and judge their conduct based on your personal views about

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<sup>277</sup> Williams, *Double Jeopardy?*, *supra* note 26, at 199–200 (arguing that another reason why Black women may have more room to behave more masculine is because Black women might appear less threatening to the power structure simply because they are so marginalized).

<sup>278</sup> *Id.* at 200.

<sup>279</sup> *Id.* at 201.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* 201–202 (explaining that Black women risk being labeled the “angry Black woman.”). This was one of the labels ascribed to Michelle Obama. *See supra* Part II.

<sup>282</sup> *Id.* at 207.

<sup>283</sup> *Id.* at 207; Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U. L. REV. 817, 819 (1993). The same is true for Asian women. *Id.*

<sup>284</sup> Williams, *Double Jeopardy?*, *supra* note 26, at 208.

<sup>285</sup> *See supra* Part III.

<sup>286</sup> Amber Fricke & Angela Onwuachi-Willig, *Do Female “Firsts” Still Matter? Why They Do For Female Judges of Color*, 2012 MICH. ST. L. REV. 1529, 1539 (2012). The same happens to some Black women. *Id.*

the correct place of women (and women of color). Do you try to put women “in their place”? Even if you are not the one trying to put them in a gendered, racial, or gendered/racial place, do you go along with a colleague who does try to put women in “their place”?<sup>287</sup> Are you amused by watching women being put *in their place*? It takes conscious analysis to stop the patriarchal norm that dictates that women should be put in a place different than the place reserved for men.

**10. Do you take into account power and privilege differences when judging the actions of men towards women and women’s reactions to those actions?**

In the NSF Study, a Latina participant described that she overheard a group of her “colleagues discussing her own experiment—without her;” she said to them: “[g]uys, are you talking about my project? Then I should probably be involved.”<sup>288</sup> They were surprised *by her reaction*.<sup>289</sup> They apparently did not expect that she should assert ownership of and take credit for her project or idea.<sup>290</sup> Assuming the reference to “guys” meant men in the dominant group in the workplace,<sup>291</sup> we may also assume that the Latina professional woman was lower in the power hierarchy.<sup>292</sup> Was she wrong to react like she did? Did she overreact?<sup>293</sup> The answer depends on whether you consider the power imbalance, the privilege the men exercised (to exclude her from a discussion of her own project), and the professional harm to the woman, such that she should have the right to react to claim credit for her professional work and defend her professional interest.

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<sup>287</sup> Robert L. Allen, *Stopping Sexual Harassment: A Challenge for Community Education*, in RACE, GENDER, AND POWER IN AMERICA—THE LEGACY OF THE HILL-THOMAS HEARINGS 135 (Anita Faye Hill & Emma Coleman Jordan eds., 1995) (“Men who would not engage in harassing behavior themselves may condone it in others because they agree that women must be ‘kept in their place.’”).

<sup>288</sup> *Williams, Double Jeopardy?*, *supra* note 26, at 206.

<sup>289</sup> *Id.*

<sup>290</sup> “The unequal power relationships within workplaces create an environment in which those with less power are susceptible to mistreatment by those with more power.” KEITH DROMM, SEXUAL HARASSMENT—AN INTRODUCTION TO THE CONCEPTUAL AND ETHICAL ISSUES 20 (2012).

<sup>291</sup> The interviewees in the NSF Study were sixty women of color in science, technology, engineering, and math. *Williams, Double Jeopardy?*, *supra* note 26, at 186.

<sup>292</sup> Women are often at the bottom of power hierarchies in many workplaces. See McGinley, *Reproducing Gender*, *supra* note 211, at 99; Cynthia Grant Bowman, *Bibliographical Essay: Women and the Legal Profession*, 7 AM. U.J. GENDER SOC. POL’Y & L. 149, 163–65 (1999).

<sup>293</sup> Even if some people acknowledge the wrongfulness of the men’s actions, they may still conclude that the woman was too sensitive or a troublemaker. See Jessica K. Fink, *Protected by Association? The Supreme Court’s Incomplete Approach to Defining the Scope of the Third-Party Retaliation Doctrine*, 63 HASTINGS L.J. 521, 550 (2011).

Women are bearing the dual task of attempting to convince others that we are still being oppressed while also seeking to change this reality.<sup>294</sup> A professional woman who is burdened with on-the-job inequality is often forced to react and assert her right to be treated as an equal in the workplace, which may then be interpreted by onlookers as “negative” behavior.<sup>295</sup> This negative characterization occurs when the main focus of onlookers (or those who hear about the incident) is *on the reaction of the woman*, rather than the battle (or war) she is facing.<sup>296</sup>

House Speaker Nancy Pelosi is a recent example of how some people focus on a woman’s reaction and ignore the man’s initial action. Speaker Pelosi faced criticism for her treatment of President Trump during his third State of the Union Address.<sup>297</sup> Individuals criticized Speaker Pelosi for not introducing President Trump with the “high privilege and distinct honor” phrase.<sup>298</sup> Additionally, Kay Granger, a U.S. Representative from Texas, sponsored a resolution condemning Speaker Pelosi for tearing up President Trump’s speech.<sup>299</sup> Speaker Pelosi explained that she felt she had to react to what she described as a “manifesto of mistruths.”<sup>300</sup> Republican critics called Speaker Pelosi’s reaction “a breach of decorum,” and an act of incivility.<sup>301</sup> However, Speaker Pelosi’s critics totally ignored the fact that it was President Trump who first broke with tradition, decorum, and civility when he did not shake Speaker Pelosi’s hand after she extended it to him right before she was scheduled to introduce him.<sup>302</sup>

Incidents where the man’s initial action is glossed over like the example above happen far too often. We must factor in the power and privilege differentials in the analysis of situations where a woman reacts to a prior action. “Feminists have argued that it is inappropriate to examine women’s

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<sup>294</sup> Vest, *supra* note 25, at 491.

<sup>295</sup> See Weiland, *supra* note 110 (describing how Hillary Clinton’s behavior was stigmatized as “negative” when the same behavior would not be characterized as negative if performed by a man).

<sup>296</sup> See DUFFY & SPERRY, *supra* note 10, at 26.

<sup>297</sup> Ledyard King & Christal Hayes, *He Snubbed Her Handshake, She Tore Up His Speech; Trump-Pelosi Drama on Full Display at State of the Union*, USA TODAY, (Feb. 5, 2020, 7:03 PM). <https://www.usatoday.com/story/news/politics/2020/02/04/state-union-president-trump-wont-shake-nancy-pelosi-hand/4660937002/> [hereinafter, *She Tore Up His Speech*].

<sup>298</sup> *Id.*

<sup>299</sup> Haley Byrd & Paul LeBlanc, *Resolution to Condemn Pelosi for Ripping up Trump’s Speech Tabled in the House*, CNN (Feb. 6, 2020, 2:36 PM), <https://www.cnn.com/2020/02/05/politics/house-gop-pelosi-sotu-speech/index.html>.

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> King & Hayes, *supra* note 297.



behavior . . . in a context in which men's behavior ought to be the focus."<sup>303</sup> Women should have a right to react to actions that harm us in the workplace. Moreover, we should not be subjected to bad actions, including theft of our ideas, in the first place. Have you observed what you thought was a negative reaction from a woman at work? Did you ask the woman what made her react in the way she did (what you thought was negative)? Did you allow her to provide context and perspective for why she reacted the way she did before judging her action negatively? Was the initial action(s) something that she should not have been subjected to in the first place? It is as simple as asking who caused the problem to begin with. This is what fairness requires.

***11. Do you try to cover, excuse, or rationalize personal attacks by men against women?***

In addition to identifying the initial bad action, it is equally important to assess how colleagues respond to it. In particular, it is important to scrutinize whether fellow employees attempt to justify or excuse the initial bad act. To illustrate, when Texas Senator Wendy R. Davis filibustered a Texas anti-abortion bill on June 25, 2013, Texas Governor Rick Perry leveled a personal attack against her.<sup>304</sup>

Speaking at the National Right to Life Convention, Governor Perry, in a backhanded compliment, referred to Senator Davis' personal life. He stated: "She is the daughter of a single woman. She was a teenage mother herself. She managed to eventually graduate from Harvard Law School and serve in the Texas senate. It's just unfortunate that she hasn't learned from her own example. . . ."<sup>305</sup>

Senator Davis immediately responded and disseminated news of Governor Perry's attack to her followers on social media.<sup>306</sup> In turn, Governor Perry and his supporters tried to cover up his intentions and made excuses for his message.<sup>307</sup> However, there was a video of his speech; this allowed viewers

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<sup>303</sup> Diane H. Mazur, *Women, Responsibility, and the Military*, 74 NOTRE DAME L. REV. 1, 18 (1998).

<sup>304</sup> Maritza Reyes, *Women in the Texas Legislature: Lessons in Individual Actions that Serve to Empower Movements*, FEMINIST L. PROFESSORS (July 1, 2013), <http://www.feministlawprofessors.com/2013/07/women-in-the-texas-legislature-lessons-in-individual-actions-that-serve-to-empower-movements>.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

to see and hear the delivery of his words and what he really meant by them, including in the context of the agenda behind his rhetoric.<sup>308</sup>

Unfortunately, the attacks that many women suffer in the workplace are not audio- and video-recorded; therefore, perpetrators and their apologists are free to construct narratives that support their agenda of defending, excusing, and rationalizing the misconduct, and at times even blaming the target. Men and women who provide cover for attacks by men against women go beyond a “bystander” role and join in the wrongdoing.<sup>309</sup> Have you participated in excusing or rationalizing the actions of a wrongdoer? What about victim-blaming? It is one thing not to have the courage to go beyond a “bystander” role when witnessing wrongdoing. It is a different thing to become a participant by excusing and rationalizing the behavior of the wrongdoer.

### **12. Are women as “outsiders” subordinated and ostracized in your workplace?**

Members of “insider” group(s) sometimes exclude “outsiders.” In male-dominated professions, such as the legal profession, women are often deemed outsiders.<sup>310</sup> Professional women who are treated as outsiders are marginalized and often set up for failure.<sup>311</sup>

Outsiders, unknowns, unlikes, become creatures to be shunned; the personality traits the community shares become ever more exclusive; the very act of sharing becomes even more centered upon decisions about who can belong and who cannot . . . Fraternity has become empathy for a select group of people allied with rejection of those not within the local circle . . . It is a version of fraternity which leads to fratricide.<sup>312</sup>

For example, in academia, members of insider groups try to exclude (as in deny tenure and terminate) members of outsider groups with allegations of

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<sup>308</sup> *Id.*

<sup>309</sup> In the workplace, most people do nothing to stop wrongdoing against others, and some passively and actively defend it (in their minds or otherwise); this behavior has been designated by psychologists as the “bystander effect.” David Brooks, *Let’s All Feel Superior*, N. Y. TIMES (Nov. 14, 2011), <https://www.nytimes.com/2011/11/15/opinion/brooks-lets-all-feel-superior.html>.

<sup>310</sup> Eve B. Burton, *More Glass Ceilings Than Open Doors: Women as Outsiders in the Legal Profession*, 65 FORDHAM L. REV. 565, 565 (1996).

<sup>311</sup> See Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L. 377, 408–09 (2014).

<sup>312</sup> TWALE & DE LUCA, *supra* note 242, at 6–7 (quoting ROBERT SENNETT, *THE FALL OF PUBLIC MAN: ON THE SOCIAL PSYCHOLOGY OF CAPITALISM* 265–66 (1976)).

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lack of collegiality.<sup>313</sup> Law Professor Sumi Cho wrote a seminal article on how “‘lack of collegiality’ is often successfully used as a sword in denying the discrimination claims of outsiders in the workplace.”<sup>314</sup> The outsiders are not allowed to “creat[e] truly transformative change within their work environments.”<sup>315</sup> This is what happens in many boards of directors in the United States.<sup>316</sup>

Employers and employees should recognize that outsiders play an important role in workplaces, including helping to “debias” implicit biases held by members of insider groups.<sup>317</sup> Many of these outsiders are professional women, including women of a minority race. Outsiders should be included in the workplace because they may bring different perspectives from those in the dominant group(s), which is good for the institutions where they work.<sup>318</sup> If insiders only hire and retain people similar to them—people who act, look and think like they do—the workplace becomes incestuous, which causes myopic thinking and groupthink.<sup>319</sup> This is dangerous for individuals, groups, and institutions.<sup>320</sup>

Women who are perceived as outsiders are often excluded.<sup>321</sup> To help an outsider, you must first be open to identifying her in relation to the members of the insider group. Most times, it is obvious when someone has been deemed an outsider in a particular workplace. All you have to do is be honest about her assigned reality. Have you reached out to a woman who is an outsider and tried to find ways to include her? Have you advocated within an insider group on behalf of an outsider? Have you advised that the way insiders treat an outsider signals whether that workplace and its members welcome the full diversity of women and embrace its benefits? Hiring out-

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<sup>313</sup> See generally Sumi Cho, “Unwise,” “Untimely,” and “Extreme”: Redefining Collegial Culture in the Workplace and Revaluing the Role of Social Change, 39 U.C. DAVIS L. REV. 805, 809–12 (2006) (examining the role of “collegiality” in employment discrimination cases).

<sup>314</sup> Angela Onwuachi-Willig, *Foreword: This Bridge Called Our Backs: An Introduction to “The Future of Critical Race Feminism,”* 39 U.C. DAVIS L. REV. 733, 738–39 (2006) (internal citation omitted).

<sup>315</sup> *Id.* at 738–39.

<sup>316</sup> See Rhode & Packel, *supra* note 311, at 382–83.

<sup>317</sup> Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093, 1170 (2008). “Just as implicit bias has real world effects, structural changes to group settings can change real world outcomes.” *Id.*

<sup>318</sup> See Rhode & Packel, *supra* note 311, at 384–87.

<sup>319</sup> See TWALE & DE LUCA, *supra* note 242, at 98; Laura Weiss, *Amazon Board Gains Diversity After Yielding to Investors On ‘Rooney Rule,’* CQ Roll Call, March 12, 2019, 2019 CQCRPGRPT 0093; Lisa H. Nicholson, *Making In-Roads to Corporate General Counsel Positions: It’s Only a Matter of Time?*, 65 MD. L. REV. 625, 642 (2006).

<sup>320</sup> See Nicholson, *supra* note 320, at 637–39.

<sup>321</sup> See Rhode & Packel, *supra* note 311, at 409.

siders, employees who are different from the majority or dominant group(s), and including them as a welcomed part of the institutional culture signals that an institution is healthy and functional. This is evidenced by how hiring women has improved many institutional cultures.<sup>322</sup>

## VII. CONCLUSION

In 1995, when Hillary Clinton was the First Lady, during the United Nations Fourth World Conference on Women in Beijing, she told the world that “human rights are women's rights and women's rights are human rights . . . .”<sup>323</sup> Twenty-five years after that speech, women are still subjugated in our workplaces. Hillary herself was subjugated on a national stage the two times she ran for president. Women are still subjected to name-calling and character attacks, which are forms of bullying and mobbing.<sup>324</sup> The first women lawyers actively engaged in the fight for equality even when they were ridiculed and had tomatoes thrown at them. Professional women today must claim, as the first women lawyers did, our right to reach for our individual potential without giving in to pressures to conform to other people's norms of expected “lady-like” behavior.<sup>325</sup> Like Supreme Court Justice Sonia Sotomayor, I am an idealist with a practical approach. By writing this Article and suggesting insights and questions, I hope to start a process of individual and collective thinking about certain gendered norms in workplaces. In this way, I am doing my part to further the cause of equality. I urge men and women to unite and fight together for women's rights and equality in the workplace because when women benefit, men also benefit, and society benefits.<sup>326</sup> Ultimately, as bell hooks said it, “[t]here can be no

<sup>322</sup> See Nicholson, *supra* note 320, at 637–39.

<sup>323</sup> Hillary Clinton Declares “Women's Rights are Human Rights,” Washington Week, (Sept. 8, 1995), <https://www.pbs.org/weta/washingtonweek/web-video/hillary-clinton-declares-womens-rights-are-human-rights>.

<sup>324</sup> In a future article in my *Professional Women* series, I plan to develop how workplace bullying and mobbing impact professional women. For brief definitions of workplace bullying and mobbing, see *supra* note 10. “El acoso moral en el lugar de trabajo, es un problema que afecta a muchos.” Aliceber Rivera Alfaro, *El Acoso Laboral ‘Mobbing’ Y Sus Efectos Nocivos*, 12 REV. CLAVE, REV. ESTUDIOS CRITICOS DER. 121, 124 (2016).

<sup>325</sup> “[T]he lady trope, in and of itself, is a tool of white supremacy.” Williams, *The First (Black) Lady*, *supra* note 48, at 842.

<sup>326</sup> In his 2014 State of the Union Address, President Barack Obama stated: “[W]hen women succeed, America succeeds.” President Barack Obama, *President Barack Obama's State of the Union Address*, WHITE HOUSE: OFFICE OF THE PRESS SECRETARY (Jan. 28, 2014), <http://www.whitehouse.gov/the-press-office/2014/01/28/president-barack-obamas-state-union-address>. Hillary Clinton “declared on the world stage that ‘human rights are women's rights and women's rights are human rights.’” CLINTON, WHAT HAPPENED, *supra* note 3, at 113.

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freedom for patriarchal men of all races as long as they advocate subjugation of women.”<sup>327</sup>

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327. HOOKS, *AIN'T I A WOMAN*, *supra* note 237, at 117.