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PERSPECTIVE

## 30 years after Anita Hill's testimony, how can employers finally address the problem?

By Leonid "Lonny" Zilberman

Thirty Years ago, in October 1991, then 35-year-old Anita Hill, a young law school professor appeared before the Senate Judiciary Committee and calmly and deliberately testified how her former boss, U.S. Supreme Court nominee Clarence Thomas, engaged in behavior that was both unwelcome and offensive to her, when they both worked at the Equal Employment Opportunity Commission.

It was perhaps the first time that allegations of sexual harassment had been made against a Supreme Court nominee on live television. In 1991, Hill faced a panel made up entirely of white men as she recounted comments Thomas had made to her when the two worked together. Her claims were publicly dissected and often dismissed during the hearing. Hill testified that one of the comments that offended her was Thomas' references to women's breasts. In response, then-Pennsylvania Sen. Arlen Specter said to Hill, "that's not too bad — that is a word we use all the time." Then-Wyoming Sen. Alan Simpson referred at the hearing to "this sexual harassment crap" — as senators tried to tiptoe around the awkward subject, there was a total lack of comprehension of how deeply rooted the problems were.

Now, three decades later, has anything changed?

The short answer is, not really. On any given day, you can do a Google search for "sexual harassment," and find dozens of stories crisscrossing states, industries and workplaces, showing how little has changed in combating and



New York Times News Service

Anita Hill testifies before the Senate Judiciary Committee during confirmation hearings for Justice Clarence Thomas in Washington, Oct. 11, 1991.

preventing sexual and other forms of harassment. With each story, there are sordid, troubling accounts from victims — many of whom were ignored — followed by outrage and disbelief and later, to nobody's surprise large jury verdicts to "punish" the wrongdoers.

The reality is that the prevalence of sexual harassment should no longer be surprising either in the workplace or anywhere else. Most cases occur out of sight or behind closed doors; most victims are not famous and never have their stories told on television. After 30 years to educate ourselves and try to improve our interactions, in our schools and colleges and universities and importantly, in the workplace, it seems like not much progress has occurred.

Of course, as the #MeToo movement showed in October 2017, the entertainment industry does not have a monopoly on sexual misconduct. That's why the problem of sexual harassment is really larger than an individual victim problem. Putting Harvey Weinstein in jail may have stopped his bad conduct, but it hasn't changed the industry. It's also larger than one single behavior — sexual harassment.

What are the possible solutions to the epidemic of ongoing instances of harassment in the workplace?

The sad truth is that most of what companies have historically done to battle harassment hasn't worked. Worse, in some cases, sexual harassment prevention training is doing more harm than

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good. Candidly, in my own experience defending and mediating lawsuits, it seems like sexual and other harassment lawsuits are up, not down. The most recent statistics from the EEOC show that more than one-third of annual complaints filed involve sexual or other harassment. We're talking about a systemic problem, where a sad but recent example is what happened to our Olympic gymnasts who testified about their experience of being abused by a university doctor, Larry Nassar, when they were minors. Even after reporting the abuse to the FBI and the university, it appears that neither did anything to investigate their complaints. Later, it was uncovered that Nassar had over 100 victims of his abuse. The unfortunate reality is that if Larry Nassar stays in jail for the rest of his life, that's just one person — the problem's not going to be over.

It's going to take multiple layers of responses and multiple solutions to get where we really need to be to tackle the issue of systemic sexual harassment and the criminal justice system is certainly not the best place to fix the problem. And there's also a problem with the courts — the civil courts — in terms of seeking justice and the delays inherent in jury trials. While there is no simple solution, there are at least three things that all of us (especially employers) can be doing to be more proactive on this important subject.

## **1. Showing Leadership by Clearly Communicating the Issue to All Employees.**

If there's anything positive to come out of the #MeToo movement, it's a growing awareness of the need to take proactive steps to inform all employees about the types of behaviors that will not be tolerated in the workplace. Organizations should communicate about these policies and the principles they reflect frequently — not just during

onboarding or annual training cycles — but throughout the year in team meetings, training programs and in internal company communications. A commitment to equality should be a foundational principle that firmly establishes that everyone deserves equal treatment and an equal chance to succeed. Sexual harassment undermines this core principle by interfering with an individual's employment for reasons other than their ability to do a particular job.

What we've also learned is that not all communications are created equal. Employers need to use more strongly worded and unequivocal statements that preventing harassment is a high priority for the organization and that any employee who violates the policies will be held accountable, regardless of their position. Think of how Uber's former CEO, Travis Kalanick, was shown the door when his behavior became an existential threat to the company. Uber ended up hiring former U.S. Attorney General Eric Holder to conduct an internal investigation. Things shouldn't have to get to that point and to truly be effective, it is critical that communications come from top executives, not just HR. If an organization's leadership regularly and authentically communicates that sexual harassment prevention is a high priority and will be taken seriously, managers and employees will follow suit.

## **2. Rethink Harassment Training to Make It a Positive Experience.**

We also need to rethink the training paradigm. Research shows that employees don't respond well when they are told they're doing something wrong, or that they're assumed to be guilty of engaging in bad behavior. Most current harassment training programs are focused on the negative — what not to do — which can signal a belief that employees are part of

the problem and are harassing others, knowingly or unknowingly. Instead, taking a positive approach is a better way to get the message across and engage employees in helping to nurture the desired environment. That's why "Diversity, Equity and Inclusion" has become so popular in today's corporate structures. By using positive messaging, employees want to do the right thing (most want to be part of the solution, rather than the problem) and it engages them to be a part of the harassment solution, and motivates them to help promote a respectful culture, as opposed to a "stick" approach that focuses on bad behavior and consequences to be avoided.

## **3. Engage Good Bystanders, Influencers and Allyship to Get the Message Out.**

HR leaders and managers, while tasked with enforcing the anti-harassment policies, can't be watching everyone 24/7. Organizations need to apply some of the tools that social media has enlisted, by using their own "influencers" and enlisting the aid of employees themselves to help support a positive and respectful culture. This can significantly boost the odds that incidents of harassment will be reported and acted upon — and even prevented. The message should be that preventing sexual harassment at work is everyone's job, not just HR. Another common buzzword in the diversity, equity and inclusion movement is "allyship" and how everyone can be trained to serve as good "bystanders" — helping to support a positive and respectful culture. This could include both interrupting incidences of harassment, as well as supporting others who have experienced harm after the fact and helping them report it to management.

The bottom line is that all employees, not just managers and HR professionals have an important role to play as active bystanders and

points of intervention to disrupt and stop harassment in the workplace. Letting employees know that they play this role and providing them with training and resources to help them take action are important steps in leveraging the power of the masses to create a culture of safety and respect, just like social media influencers do with their millions of followers. Who are employees most likely to listen to as a trusted source: the HR Department or their friends and peers at work? The latter, of course. People tend to be much more influenced by "someone like me" (peers or a person we believe share similar values or characteristics) as a trusted source of information.

It's been decades since we've outlawed sexual and other forms of harassment in the workplace. But, changing the law and changing workplace culture, however, are two different things. No one person can eliminate sexual harassment in the workplace. We all have to work together because at the center of sexual harassment are biases, stereotypes and perceptions that we all share. Ridding the workplace of sexual and other forms of harassment will take time — but it is possible, if we take action now.

Instead of an insurmountable obstacle, it is critical to look at these as opportunities to confront barriers head-on and not shy away from taking strong, deliberate steps to clearly enunciate that harassment has no place in the workplace and should not be explained away as harmless banter. Establishing clear, unwavering expectations about workplace dialogue and creating an environment of mutual respect must be a deliberate part of any effort to address harassment at work. Hopefully, looking ahead another 30 years into the future, we can finally report that we've rounded the corner of progress to stop harassment.