



# Learning to Be Quiet

## Our Lips Are Sealed—Because They Must

Workplace culture dominates the lives of employees each day, setting the tone for how people treat one another. For those who work in difficult cultures, there is the hope that a seismic event will someday improve the workplace in a meaningful way.

When such a major event occurs, we seize on it for an indication that this time things will be different. Our hopes move us forward, betraying past lessons that continually remind us of the slow pace of progress, particularly when the possible change threatens a shift in existing power dynamics.

Certainly it was a seismic event when the *New York Times* and the *New Yorker* first published their allegations of sexual harassment and rape against Harvey Weinstein in October of 2017. In the months that followed this unmasking of one of Hollywood's most powerful men, allegations against other high-profile figures dominated the news and unleashed a torrent of questions, demands, accusations, debate, anger, sorrow, recriminations, and, in too many workplaces, continued silence.

There has hardly been an industry, business, professional services firm, or nonprofit sector untouched by the #MeToo movement that was reignited following those news stories. And, yes, it is important to emphasize that the movement was *reignited*, since it was

founded by activist Tarana Burke. Burke launched MeToo in 2006 to help underprivileged women of color cope with sexual abuse, assault, and exploitation, connecting survivors to resources that can aid their healing, including through the power of knowing they are not alone.

As will be further described, harassment and other negative behaviors in the workplace are pervasive problems. The data points may vary somewhat, but they all basically tell a similar story of misconduct met with silence.

An ABC News/Washington Post poll revealed that 54 percent of American women have experienced unwanted and inappropriate sexual advances from men. Nearly a third reported unwanted advances from male coworkers and 25 percent stated it was from men who had influence over their work situation. Critically, only 42 percent of the women who experienced unwanted sexual advances at work reported the conduct to someone in a supervisory position, and 95 percent reported that male harassers usually go unpunished. In describing the emotional toll caused by the harassment, the respondents described feelings of anger, intimidation, humiliation, and shame.<sup>1</sup>

A survey conducted by Harris Poll on behalf of the nonprofit organization CARE (Cooperative for Assistance and Relief Everywhere) found that nearly 25 percent of men in eight countries—including the United States—said that it is sometimes or always acceptable for an employer to expect an employee to have “intimate interactions such as sex with them, a family member or a friend.”<sup>2</sup>

For those hoping that the demographics of a younger population entering the workplace would bring about significant change, the results were sobering. In the United States, 44 percent of the male respondents between the ages of eighteen and thirty-four stated that it is sometimes or always acceptable to tell a sexual joke at work. In the United Kingdom, 35 percent of those between the ages of twenty-five and thirty-four thought it is sometimes or always acceptable “to pinch a colleague’s bottom in jest.”<sup>3</sup>

In another survey of men and women in businesses and law firms conducted by the *ABA Journal* and *Working Mother*, 68 percent of the female respondents indicated they experienced sexual harassment at

work, but only 30 percent reported the behavior; 52 percent said the reason they did not report was because they feared negative impacts to their jobs. Only 27 percent said their complaints were taken seriously. For male respondents, the experiences were different. Of the 19 percent who reported they had experienced sexual harassment, 42 percent said they felt their complaints were taken seriously. The survey also showed how men and women see the workplace differently: “47 percent of the women said the behavior was tolerated in their organization (versus 30 percent of the men); and 45 percent of the women said they had no confidence their senior leadership would address the issue (versus 24 percent of the men).”<sup>4</sup>

Concerned about the continued high rates of harassment claims, the Equal Opportunity Employment Commission (EEOC) created the Task Force on the Study of Harassment in the Workplace to address the following:

*With legal liability long ago established, with reputational harm from harassment well known, with an entire cottage industry of workplace compliance and training adopted and encouraged for 30 years, why does so much harassment persist and take place in so many of our workplaces? And, most important of all, what can be done to prevent it? After 30 years—is there something we’ve been missing?*<sup>5</sup>

To better understand the answer to these questions, the EEOC Task Force spent eighteen months undertaking an in-depth investigation that included nationwide hearings to collect testimony about people’s workplace experiences, releasing its report in 2016.

Intriguingly, the EEOC Task Force found that as wide a range as 25 to 85 percent of women in various studies reported experiencing sexual harassment at work. In analyzing why there was such a wide variance in reported results, the EEOC identified that responses varied according to the survey methodology as well as the way in which the questions were phrased.

In particular, the Task Force found that when respondents were asked whether they experienced certain specific behaviors, the results

were significantly higher than when respondents were asked a more general question of whether they had experienced sexual harassment: “Based on this consistent result, researchers have concluded that many individuals do not label certain forms of unwelcome sexually based behaviors—even if they view them as problematic or offensive—as ‘sexual harassment.’”<sup>6</sup>

Another way to think about this data is that it provides victims with a way to rationalize their experiences—and their silence. After all, if it is not thought of as actual sexual harassment, then perhaps it’s not so bad.

In a *Harvard Business Review* article about workplace sexual harassment, the authors offered several reasons why victims stay silent:

*They wait to see whether the behavior will stop on its own, or they keep silent because they fear that reporting will be futile or that the harasser will retaliate. Rather than filing internal or external complaints, harassment targets tend to resort to informal and nonconfrontational remedies. They vent, cope, laugh it off, treat it as some kind of less threatening misunderstanding, or simply try to get on with their jobs (and lives). They may blame themselves, pretend it is not happening, or fall into self-destructive behaviors like eating disorders or drinking problems.<sup>7</sup>*

It has become evident that in addressing workplace misconduct, the focus must be broader than the commonly used, but more restrictive, term *sexual harassment*. The importance of using this broader lens is seen in many of the studies that will be described in subsequent chapters, as well as the important work of the EEOC Task Force.

The simple fact is that sexual harassment and other negative behaviors in the workplace will never be eliminated without first changing the circumstances that drive victims into silence—the overriding fear that reporting misconduct will risk their livelihood or result in their being ostracized in the workplace. As long as the organization’s culture continues to reinforce a victim’s fear of retaliation, the power dynamics will leave perpetrators confident that the system will shield their behavior.

Workplace cultures tolerant of misconduct impose enormous hardship on victims who try to survive the minefield. A group of scientists described the burden of coping with harassment as including:

*. . . reactions ranging from appeasing the harasser and minimizing the incidents, seeking social support from friends and family, professional therapy, strategizing on future responses, engaging in activities to improve mental and physical health, and simply trying to stay focused on the work. However, it does not typically include actually reporting the harassment to authorities.<sup>8</sup>*

The silence is reinforced by another sad fact. Even when behaviors are reported, as will be explored in depth in this book, there is rarely a satisfactory result for the victim. The reasons are varied but exist across all work sectors. One young law student described her circumstances while working as a summer associate in a law firm:

*My mentor took me out for drinks and asked very invasive questions about my sex life. I reported this to my advisor and to the coordinator in charge of the summer associate program. It doesn't seem like anything happened and he remained my mentor for the rest of the summer.*

Moreover, as will be described further, existing workplace structures and dynamics inherently thwart the very result that many policies claim to promote. For example, such structural impediments as the failure to hold people accountable are at the core of the historical inability of workplaces to eliminate harassment.

These deeply entrenched dynamics serve as a protective shield around perpetrators of negative behaviors. They also serve as a barrier that prevents victims from accessing the system that is supposed to protect them. As a group of leading academics noted:

*Existing structures that claim to address sexual harassment are inadequate and are built to protect institutions, not designed to bring justice to victims.<sup>9</sup>*

## Life Lessons in Silence as a Choice

It is not only the structures and norms within the workplace that protect those accused of misconduct. When ostensibly respectable people—particularly those in positions of power and privilege—are accused of behaviors that seem out of character, the instinct of their colleagues and advocates is often to protect and defend.

This dynamic was displayed in full force during the contentious nominations of Clarence Thomas in 1991 and Brett Kavanaugh in 2018 to the U.S. Supreme Court. More than a quarter of a century after his controversial appointment, *Boston Globe* columnist Margery Eagan questioned how Clarence Thomas has remained a justice of the U.S. Supreme Court, as the number of women who have come forward with allegations similar to Anita Hill's has grown to ten. Eagan wrote that four of these women were willing to testify when Anita Hill appeared before the Judiciary Committee, but they were not called. Another incident was reported by a young woman who stated he groped her after he began serving on the court.

In noting the research that has been done since Anita Hill first raised her concerns, Eagan questioned why no further action has been taken to impeach Justice Thomas over credible allegations that he lied to Congress. She stated that his role provides him with significant power over women's lives, as such matters come before the court:

*Here's a sampling of Thomas's votes impacting women. He voted to weaken women's pay protections . . . He voted to make it harder for a dining service worker—a woman and the department's only African-American—to sue a supervisor for racial and physical harassment. He voted to uphold a for-profit company's religious freedom over women's access to contraceptive coverage. . . .*

*Twenty-seven years ago Anita Hill said Clarence Thomas spoke to her repeatedly about big breasts, kinky sex, his own prowess, and more. . . . Yet Thomas remains empowered to rule on the most intimate parts of your life, your sister's, daughter's, even granddaughter's.<sup>10</sup>*

Eagan wrote this article approximately two months before Brett Kavanaugh was introduced to the world as a Supreme Court nominee. History, as well as the revelation of decades of silence, was soon repeated.

When Federal Circuit Court of Appeals Judge Kavanaugh was nominated to fill the open seat resulting from Justice Kennedy's retirement, Senate leadership set in motion an aggressive time frame for the review process and Judiciary Committee hearing. Shortly before the Judiciary Committee was to vote on sending the nomination to the floor of the Senate, an allegation emerged that, while he was a student at an elite private high school in Maryland, the nominee sexually assaulted fifteen-year-old Christine Blasey Ford at a party.

Dr. Ford had sent a confidential letter to Senator Dianne Feinstein, shortly after the nomination was announced, in which she shared information about her high school experience. Senator Feinstein did not publicly reveal the confidential information sent to her, but the story became the subject of a *Washington Post* article two months later, after the Judiciary Committee hearing on the nomination was concluded.

The public revelation of Dr. Ford's allegation resulted in explosive media attention and a concern about Judge Kavanaugh's fitness to serve on the highest court in the country. Amid this firestorm, people who knew the Supreme Court nominee during high school and others who attended Yale with him were coming forward, describing Brett Kavanaugh as a person who drank heavily and frequently. Other women alleged knowledge of incidents that raised further questions. Mark Judge, a high school classmate of Brett Kavanaugh, was identified by Dr. Ford as being in the room when she was assaulted. Mark Judge had previously authored a book about his battle with alcoholism that included discussion of his heavy drinking in high school and the school's social culture.<sup>11</sup>

In response to the significant public outcry, the House Judiciary Committee reopened its public hearing on the nomination, but only permitted testimony from Dr. Ford and Judge Kavanaugh. None of the others who had come forward or were otherwise identified as having key information were allowed to testify.

The all-male Republican members of the Judiciary Committee hired a female prosecutor from Arizona to ask their questions. By doing so, they hoped to avoid the scathing criticism endured by the then all-male Judiciary Committee when Anita Hill was interrogated about her sexual harassment allegations against nominee Clarence Thomas. Twenty-seven years after that hearing, there were still no Republican women serving on the Committee.<sup>12</sup>

The Judiciary Committee hearing and its aftermath painfully reinforced why Dr. Ford had chosen to keep her story secret for so long. Ford told her story quietly and carefully, answering each question posed by the prosecutor. Even as she could not remember extraneous details, she had a recall for the assault that any survivor would recognize. She described the pain of hearing the laughter of Brett Kavanaugh and Mark Judge while the assault was taking place and the fear of accidentally being murdered as a hand was placed over her mouth to keep her from screaming. She also recalled how she escaped from the room.

As victims of trauma well know, the fact that Dr. Ford could not recall the street address thirty-six years later or how she got home was irrelevant. It was the attack itself that was seared into her memory.

Judge Kavanaugh's testimony was fused with indignation. Beyond the anger he expressed for having to endure such public accusations, his testimony also demonstrated entitlement and belligerence toward some of the questioners. When asked about parties and drinking while attending prep school and college, he instead spoke about how hard he worked to get good grades and of his commitment to his athletics and his friends, avoiding direct questions about his drinking other than to stress that he liked beer.

When the female senators questioned Judge Kavanaugh, he responded dismissively, sometimes turning the questions back to them. When the prosecutor began asking Judge Kavanaugh questions on behalf of the male Republican senators, the senators instead dispensed with her role, as they actively joined the judge in his outrage. And in their angry defense of the judge against the accusations, the



country was provided with insight into the way in which institutions weave protective webs to fend off potential smears on their image.

Dr. Ford's credible testimony was not simply dismissed. It was overrun by a freight train of power and privilege that seized on any weakness, whether in her telling of the assault or the circumstances in which her story was leaked to the media.

The hearing served to reinforce why victims of sexual assault have long endured silence over reporting: women do not tell their stories because they can't. Silence has long been the fuel that perpetuates bad conduct, but reporting that conduct has been weaponized against the victim in the form of character assassination, shaming, and disbelief.

During and in the aftermath of the hearing, nationwide protests, including in the Capitol, raised questions about the need for further investigation of other witnesses. Although the leadership of the Judiciary Committee was anxious to push the vote forward, a compromise was forged to allow a limited-scope FBI investigation.

The FBI, however, did not interview all of the potential witnesses who had come forward or were otherwise identified as having knowledge of Kavanaugh's behaviors in high school and college. Instead, the FBI only spoke with a small number of witnesses, as approved by the White House.

As the truncated investigation was taking place, President Trump aggressively mocked Dr. Ford's testimony at a campaign rally. He demeaned her experience and complained that men were being negatively impacted by the #MeToo movement.

A few days later, the Senate voted to confirm Judge Kavanaugh as an Associate Justice of the U.S. Supreme Court.

Professors Deborah Epstein and Lisa Goodman have described "how routinely women survivors face a Gaslight-style gauntlet of doubt, disbelief, and outright dismissal of their stories."<sup>13</sup> The data shows a pattern of disbelieving women victims in the justice system, revealing how courts both improperly and unfairly discount women's testimony and their trustworthiness. In an article describing the harms caused by a "pervasive pattern of credibility discounting and