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U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING MEETING

FEDERAL ME TOO: EXAMINING SEXUAL HARASSMENT IN
GOVERNMENT WORKPLACES

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THURSDAY, MAY 9, 2019

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The Commission convened in Suite 1150 at 1331
Pennsylvania Avenue, Northwest, Washington, D.C. at
9:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT

- CATHERINE E. LHAMON, Chair
- PATRICIA TIMMONS-GOODSON, Vice Chair *
- DEBO P. ADEGBILE, Commissioner
- GAIL HERIOT, Commissioner
- DAVID KLADNEY, Commissioner
- KAREN K. NARASAKI, Commissioner
- MICHAEL YAKI, Commissioner *

- MAURO MORALES, Staff Director
- MAUREEN RUDOLPH, General Counsel
- * *Commissioners Present via telephone*

STAFF PRESENT

- TERESA ADAMS
- ROBERT AMARTEY
- NICHOLAS BAIR
- KATHERINE CULLITON-GONZALEZ
- PAMELA DUNSTON, Chief, ASCD
- LATRICE FOSHEE
- ALFREDA GREENE
- TINALOUISE MARTIN, OM
- WARREN ORR
- LENORE OSTROWSKY
- SARALE SEWELL
- PILAR VELASQUEZ MCLAUGHLIN
- BRIAN WALCH
- MARIK XAVIER-BRIER, Ph.D.

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MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT

IRENA VIDULOVIC

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

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Federal Me Too: Examining Sexual Harassment
in Government Workplaces

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(9:03 a.m.)

INTRODUCTORY REMARKS CHAIR CATHERINE E. LHAMON

CHAIR LHAMON: Thank you. This briefing on the Commission on Civil Rights comes to order at 9:03 a.m. on May 9, 2019 and takes place at the Commission's Headquarters at 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425. I'm Chair Catherine Lhamon and the Commissioners present at this briefing in addition to me are Commissioner Adegbile, Commissioner Heriot, Commissioner Kladney, and Commissioner Narasaki. On the phone, if you could confirm that you are present when I say your name, I believe we have Vice Chair Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIR LHAMON: Thank you. Commissioner Yaki. Not yet present.

A quorum of the Commissioners is present. Will the court reporter confirm for the record that you are present? Thank you. She's nodding and waving.

Mr. Staff Director, will you confirm for the record that you are present?

MR. MORALES: I am present.

CHAIR LHAMON: Thank you. Welcome, everyone, to our briefing titled Federal Me Too: Examining Sexual Harassment in Government Workplaces.

In today's briefing, the Commission looks to our own sector, the federal workplaces, to assess how well the federal government is addressing workplace sexual harassment. We examine the Equal Employment Opportunity Commission, otherwise known as EEOC's enforcement efforts to combat workplace sexual harassment across the federal government.

Factors that we expect to review include the frequency with which federal employees make sexual harassment claims and the frequency of findings of harassment; the resources dedicated to preventing and redressing harassment; and the impact and efficacy of those enforcement efforts.

In addition to cross-agency federal perspective that examine the EEOC offers, the Commission has also selected two federal agencies for focused evaluation of agency level practices. Those are the State Department and the National Aeronautics and Space Administration, commonly referred to as NASA.

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I will say as a personal aside that we had a scientific basis for choosing these two agencies and it's not just because they're cool, but I will say that my teenage daughters and their friends often wear clothes with NASA emblazoned on them, and it does remind of how important it is that this workplace, among all workplaces, is egalitarian in its practices. So I look forward to this examination. We will hear from current and former federal government officials including from the EEOC, NASA, and the State Department, academic and legal experts, advocates, and individuals who have experienced harassment.

Today's briefing features over a dozen distinguished speakers who will provide us with an array of viewpoints, as well as the opportunity to hear from the public.

Panel I will include a member of Congress, as well as current and former officials from the EEOC, as well as outside experts. Panel II will include current and former officials from NASA, the State Department, and STEM organizations. Panel III will include academics and community stakeholders. And Panel IV will include legal and community experts.

The day will conclude with an open public comment session during which the Commission will hear from members of the public who wish to present additional information to the Commission.

I thank all who join us. To focus on this critical topic, your views help us to fulfill our mission to be the nation's eyes and ears on civil rights.

I now turn to Commissioner Adegbile at whose instigation we are engaged in this investigation.

COMMISSIONER ADEGBILE: Good morning. Thanks for joining us. I think we're going to have an important discussion today and learn some things about an issue of tremendous importance to the country and many of our American people.

Like many forms of discrimination, sexual harassment shares some common characteristics. It imposes painful, sometimes lifelong burdens on victims. It thrives where people are willing to abuse their power. It is disproportionately borne by a particular class of people. It demeans human dignity, and there are costs for those who assert claims and costs for those people who choose not to

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assert claims. Leaving it unaddressed is corrosive personally and has societal effects.

The Me Too movement also shares some common characteristics with other movements. It gives voice to people who felt voiceless. It lets people know that they are not standing and suffering alone. But it's not just about highlighting an injustice. It's a call for a response.

And so today, the U.S. Civil Rights Commission turns its attention to this very important issue to learn and ask the questions about whether or not the federal government is using all of the tools it has, and frankly to inquire and learn about whether there are more tools that we need to use to address this issue that is an issue of human dignity, of justice, and poses a special kind of threat when it is tolerated on behalf of the United States government.

Thank you and we welcome all of your testimony.

CHAIR LHAMON: Thank you, Commissioner Adegbile. And I add my deep thanks to our Commission staff who have brought us to today for this briefing, and also I thank Staff Director Morales for his leadership.

I caution all speakers today, including our Commissioners, to refrain from speaking over each other for ease of transcription and to allow for sign language translation to my right. For any individuals who might need to view the sign language translation, there are seats available in clear view. I ask everyone present to please silence your phones and not to take flash photos to minimize health risks to persons present.

In addition, Patty Pacynski and Megan Williams are both licensed clinical social workers with the Executive Office for the United States Employee Assistance Program and the Employee Assistance Program provides confidential mental health support, training, management, consultation, and crisis response for more than 10,000 federal employees working at EOUSA Headquarters in the 94 United States Attorney's Offices. Because of their clinical expertise and extensive experience in the field of trauma, we've asked them to be here with us today to support us through this important but often difficult conversations.

These professionals will be available if you need assistance. Please let a staff member know that you

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would like to speak with them and our staff will direct you to the appropriate place. They will also be located at the back of the briefing room and are wearing name tags, if you would like to approach them directly for assistance.

As I mentioned, after the four panels and an afternoon break, we will reconvene at 5:00 p.m. for a public comment period. If you are interested in participating in the public comment period, during which each person will have up to five minutes to speak, we will be honored to hear from you. And total spots at the public comment period are allotted on first come, first served basis. If you did not already sign up for a spot online, you may sign up at the registration desk now. The spots will be available until filled. If you're one of the individuals who signed up online, please check in at the front desk so we can hold your spot.

For any member of the public who would like to submit materials for our review, our public record will remain open until Monday, June 10, 2019. Materials including if individuals wish to submit anonymously can be submitted by mail to the U.S. Commission on Civil Rights, Office of Civil Rights Evaluation, 1331 Pennsylvania Avenue, N.W., Suite 1150, Washington, D.C. 20425, or by email to [sexualharassment@usccr.gov](mailto:sexualharassment/usccr.gov).

During the briefing, each panelist will have seven minutes to speak. After each panel presentation, Commissioners will have the opportunity to ask questions within the allotted period of time, and I will recognize Commissioners who wish to speak. I do strictly enforce the time allotments given to each panelist to present, so I encourage you to stay within your time so I don't cut you off. And unless we did not receive your testimony until today, you could assume that we have read your statement and you do not need to use that as your opening remarks. Please do focus your remarks on the topic of federal employment sector sexual harassment.

I ask my fellow Commissioners to be cognizant of the interest of each Commissioner to ask questions, so please be brief in asking your questions so we can move quickly and efficiently through today's schedule and I will step in to move things along if necessary. Panelists, please notice the system of warning lights

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that we have set up. When the light turns from green to yellow that means two minutes remain. When the light turns red, you should stop talking, and my fellow Commissioners and I will do our part and keep our questions and comments concise.

As we're just about to begin I should also confirm for the record, I believe Commissioner Yaki has joined us on the line.

Commissioner Yaki, are you on the phone?

COMMISSIONER YAKI: I've been on since your introduction.

CHAIR LHAMON: Thank you. Sorry, we missed you during the first round of introductions.

So now we'll turn to our panel, EEOC and Outside Experts.

PANEL ONE: CURRENT AND FORMER EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION EMPLOYEES AND EEO EXPERTS

CHAIR LHAMON: The order in which they will speak is Congresswoman Jackie Speier, who needs no introduction, but is from the great State of California, welcome. And on whose receiving end of powerful advocacy on this topic I have been, so I look forward to hearing your testimony today.

Dexter Brooks, Associate Director of Federal Sector Programs at the Equal Employment Opportunity Commission (EEOC). Sunu Chandy, Legal Director of National Women's Law Center and George Chuzi, attorney at Kalijarvi, Chuzi, Newman & Fitch.

Congresswoman Speier, please begin.

CONGRESSWOMAN SPEIER: Thank you, Madam Chair and to all the members of the Commission. Thank you for hosting this very important briefing today. Let me also say at the outset that I have the good fortune of working with your chair when she was the head of the Office of Civil Rights in the Department of Education and the protectorate of Title IX. So we truly miss you, but California is very lucky to have you in your newest post.

So in October 2017, actress and activist Alyssa Milano tweeted those immortal words Me Too. She said if all the women who have been sexually harassed or assaulted wrote Me Too as a status, we might give people a sense of the magnitude of this problem unquote. Since then, it's been shared millions of times and became an indelible part of our national consciousness. The phrase originally founded in 2006

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by Tarana Burke was meant to bring together all of us to show we are not alone in our experiences.

Like many of you, I have had my Me Too moments as well. As a congressional staffer, my chief of staff grabbed me one night, held my face, then stuck his tongue down my throat. I was astonished and shocked and like many others who have endured this I thought what did I do wrong, as if we are the ones that had elicited this particular action. And then followed by the rush of humiliation and anger.

So I decided to share my story after the Me Too movement got under way mostly because I wanted congressional staffers to know that they had someone who had a similar experience and would have their backs. So I then was astonished to hear from so many women on Capitol Hill. I have embedded in my memory the vision of one woman who sat on my blue leather couch sobbing because a member of Congress that she had worked for, for a number of years had started to sexually harass her in ways that really undermined her.

Another staffer told me about how she was propositioned in her office at her desk by a staffer who came by and unzipped his pants. One of these women said to me I have to keep this job. I am a single parent. And so their fear associated with the incident prevented many of them from coming forward and talking about it.

It didn't stop there. Fifteen hundred former staffers of Capitol Hill wrote a letter to members of Congress saying this has to stop. And so all of that helped in the work that we undertook to deal with this issue.

But my work on this issue in Congress actually started back in 2014, when I attempted to get sexual harassment training mandatory for all members and staff. At the time, the Rules Committee Chairman looked at me and said, Jackie, we're never going to do this. Well, he was right for a period of years, but now we do have mandatory sexual harassment training for all staff, for all members, for all interns and all fellows.

So for far too long, Congress has been a breeding ground for harassment and we finally have addressed it, I believe, in a meaningful way. Last year, we passed into law the Congressional Accountability Reform Act, and it was bipartisan in nature and

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bicameral in its approach. I was joined by a very conservative Republican from Alabama. We don't agree on many things, but we certainly agreed on this issue and because of that merger of thoughts and ideals, Congressman Bradley Byrne (AL-1) and I were able to move that legislation through successfully in the House and the Senate.

So what is it we have now in the Me Too Congress bill? Survivors no longer are subjected to mandatory counseling, mediation, and cooling off periods. Workers can't be silenced by mandatory non-disclosure agreements. Interns and fellows have the same protection as permanent staff. And probably the most important element from the taxpayers' point of view no longer will settlements be paid by the taxpayers of this country.

Members of Congress will be required to pay for that settlement. The settlement will be initially paid by the U.S. Treasury and then the member has 90 days in which to provide the requisite amount of money and if they're unable to do so, they will have their wages garnished and if that's not sufficient, their Thrift Savings Plan garnished, and if that's not sufficient, their Social Security garnished. So we mean business. And I think that that one provision may have the most persuasive effect on people's behavior, at least I certainly hope so. But there's more work to be done.

We are also going to be introducing legislation again this year that will make all members liable for any discrimination they perpetuate because the original bill did not have that provision.

So as we think about sexual harassment, it's really about power, that it can derail a survivor's career and well-being, both physical and mental and that oftentimes their perpetrators are free to carry on.

In November 2017, 223 women in the national security field came forward, again with Me Too stories and I will be carrying legislation this year that is going to protect those in the State Department. But as I work on that particular area, I might point out to you that we have similar problems in so many departments and agencies across the federal system including the Department of the Interior, particularly in the Forest Service, and in many professions where there's a remoteness to people

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being associated with their peers and superiors. So I know my time has run out, so with that I think I will conclude my remarks.

CHAIR LHAMON: Thank you, Congresswoman.

Mr. Brooks?

MR. BROOKS: So Good morning, Chairman Lhamon, Commissioners, thanks for the opportunity to be here today. My name is Dexter Brooks. I'm the Associate Director of EEOC's Office of Federal Operations. As you know, EEOC is the enforcement agency that deals with anti-discrimination laws as it deals with employment. But since we're here to talk about the federal sector, I am going to skip all the private sector stuff because the chair gave me explicit direction.

So in the federal sector, EEOC serves two important roles in dealing with nondiscrimination. We serve an adjudicatory function, where there's an administrative process where federal employees who believe they've been the victim of discrimination can initiate a complaint with their agency. It's investigated through a regulatory process that we manage at EEOC and investigates and finally issues a decision by the agency. If the employee is unhappy with that determination, they have the ability to take that action to EEOC for a hearing or appeal. My office serves as the final appeal of federal sector discrimination complaints. So that's one of our primary functions.

A second function is to provide oversight of the federal government as the employer. The federal government legislates that we should not discriminate based on the protected basis under our statutes, but the statutes also have the vision of the federal government will be the model employer. So we have a unique role in looking at federal agencies' EEO programs to ensure that they're operating efficiently, that's managing their workforces in the way that maximizes opportunity. In this capacity, we're able to view federal agencies' trend developments and complaints, identify best practices that cultivate model work environments and provide guidance to federal agencies to address their challenges.

When we look at sexual harassment from those two lenses, whether it be adjudication or oversight, I'll

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start with adjudication, cases come to EEOC after they've been initially processed by the federal agencies, so roughly out of a workforce of three million employees that we have oversight for, we get roughly about 15,000 to 16,000 formal complaints of discrimination. When we look at those complaints of discrimination, the growing trend is now that over 50 percent of our complaints of discrimination contain an allegation of harassment.

Now in terms of sexual harassment as a subcategory, it's a much smaller number; 4 percent of our cases actually involve an allegation of sexual harassment. But when we get to the point of making findings, our most egregious findings of discrimination generally are on those issues of sexual harassment, even though it's a small number in our inventory. By comparison, in the private sector, 35 percent of our inventory is harassment and 10 percent is sexual harassment.

When we look at the cases that we have, make findings of discrimination in the federal sector, we see four trends that emerge: (1) that the congresswomen just mentioned, isolated work environments are vulnerable to bad behavior; (2) one gender-dominated workplaces have increased vulnerability; (3) ineffective anti-harassment programs increase risk of repeated harassment and organizational liability; and (4) organizations fail to take the adequate personnel actions to address the conduct that's underlying the harassing behavior.

On our preventative side where we have oversight authority, EEOC had a long-standing priority to address harassment in all workplaces. Beginning in 2013, we had a strategic enforcement plan with six national priorities. The sixth priority was to prevent harassment through systemic enforcement and targeted outreach.

In furtherance of that, in 2015, EEOC established a select task force on the study of harassment in the workplace. It was headed by two Commissioners, Chai Feldblum, a former Commissioner, Commissioner Victoria Lipnic, who is now our acting chair, were the co-chairs of the task force. The task force consisted of a select group of outside experts that actually met for over a year to come up with strategies to address harassment at our workplaces.

The group submitted a report and it was published in

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June of 2016. The report includes detailed recommendations for harassment prevention including effective policies to reduce and eliminate harassment and recommendations for targeted outreach of future resources.

Specific to the federal sector in terms of our oversight authority, it derives from a policy document that we have that's called EEOC's Management Directive 715. It sets forth what's required of federal executive branch agencies to establish model EEO programs. This directive mandates that agencies must have effective anti-harassment programs which consist of a policy that prohibits workplace harassment on all protected bases, procedures for addressing such matters when they arise. This anti-harassment program we should note is different than the complaint process. It has to be something that's done immediately, not something that goes through the litigation process to look to see if the conduct is inappropriate and can be addressed before it gets to the level of being unlawful.

In 2014 through 2016, we did a concerted effort to review the anti-harassment program to each federal agency under our jurisdiction. We actually have jurisdiction over probably a little bit over 200 federal organizations of different sizes to determine if their anti-harassment programs were effective. The factors that we looked at to determine effectiveness were whether the policy is conducted separate from the EEO process, its placement within the organization, the extent to which it's utilized and known by their employees, and fourth, whether the agency has a tracking system to see trends that's going on within their workplaces.

After this three-year review, we found that many federal agencies that the vast majority still have ineffective anti-harassment programs generally because they're missing essential components or it's not adequately implemented or known by their employees.

Our general finding when we're looking at all anti-harassment programs were those that had the effective programs like the one you're going to hear from NASA later on had the lowest complaint rate in the federal government.

Finally, in terms of preventative measures, EEOC is

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investing in providing training to help organizations understand how to prevent harassment. We have two training modules that we created in 2017, Leading for Respect With Managers, Respect in the Workplace for all Employees, and it goes beyond traditional anti-harassment training. It really goes to the cultural behavior that leads to incivility in the workplace, and how to address that before it becomes actionable harassment.

In conclusion, harassment, including sexual harassment, in the workplace remains a persistent problem in the workplace. Federal agencies have made some progress in addressing anti-harassment, but there's still much work to be done. EEOC looks forward to working with this Commission and the larger federal sector community to address these issues. I thank you for this opportunity today and look forward to your questions.

CHAIR LHAMON: Thank you, Mr. Brooks. Ms. Chandy.

MS. CHANDY: Good morning. My name is Sunu Chandy. Before I read my remarks I want to say thank you to this Commission for recognizing the human impact of these issues and having mental health support available. I also wanted to say thank you for recognizing that, whether you come forward or not, it's a corrosive impact on your life, either choice is hard, so thank you for acknowledging that.

My name is Sunu Chandy. I'm the Legal Director at the National Women's Law Center. I appreciate the opportunity to provide testimony regarding measures we must implement to help make the federal government a more inclusive workplace.

I want to thank all who contributed ideas for these remarks, including former EEOC Commissioner Chai Feldblum, my co-panelist Dexter Brooks, and a number of attorneys who have deep expertise representing federal workers including Debra D'Agostino of the Federal Practice Group, Jennifer Klar with Relman, Dane & Colfax, PLLC, and a final thank you to the National Women's Law Center intern, Lauren Hoffman, for her diligence in helping to prepare these remarks.

The federal government must be a model employer when it comes to eradicating sex harassment and indeed all forms of discrimination. At the outset, it must be noted that federal employees' civil rights

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protections are far less favorable than in the private sector. This is particularly appalling, given that there are tremendous gaps in the protections facing employees in the private sector, too, and these are currently being corrected in the BE HEARD in the Workplace Act. This act includes requirements for additional studies and reports concerning harassment, specifically in the federal government and importantly extends the time for filing complaints in the federal sector to match those proposed for the private sector as I will discuss.

By way of background, for most of my 20 year legal career, I have worked in the federal government as a civil rights attorney and leader. First, I was with the EEOC's New York District Office for 15 years primarily as a senior trial attorney. At EEOC, I experienced first-hand the need for additional resources so that EEOC can adequately fulfill its mission, which is critical for all stakeholders including workers and including the employer community.

When I served a detail as a supervisory investigator, each person on my team carried over 100 charges of discrimination and I, too, had 100 charges that were yet to be assigned that were brought to my office when the former supervisory investigator retired. I provide that example to make crystal clear that it is only through increased staffing that EEOC can properly fulfill its mission.

More recently, I served as the Deputy Director for Civil Rights at the Department of Health and Human Services until August 2017. While leading the HHS Civil Rights Division, I had a team of about 20 individuals including three section chiefs. This team both provided input on systemic investigations in collaboration with the field and also developed policy to address discrimination in healthcare and human services. In this role, I had to address complaints as a senior manager and also ensure that my own managers were well equipped to address issues that arose in a competent and timely manner.

In August of 2017, I joined the National Women's Law Center. The Center was founded over 45 years ago and takes on precedent-setting cases, advances new policies at the federal, state, and local level, and uses research to build support for transformative

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changes in women's lives. We work on workplace justice, education, health and reproductive rights, income security, and childcare.

At the Center, I oversee our litigation efforts and also help to build the Time's Up Legal Defense Fund. I also provide guidance for our workplace equity policy and recently provided congressional testimony in support of the Equality Act, a bill that would strengthen and clarify civil rights protections including for LGBTQ individuals.

In thinking back about the importance of EEOC's work in the federal sector, one of the major highlights while I was there was the opinion in *Macy v. Holder* in 2012 as this decision made explicit that claims of discrimination based on gender identity are included as part of Title VII, the federal law protections against sex discrimination.

And in 2015 in *Baldwin v. Fox*, another federal sector case, it decided that a claim of sexual orientation discrimination is necessarily a claim of sex discrimination under Title VII.

Through these cases, EEOC provided critical guidance as to the scope of federal protections against sex discrimination. And now as the Me Too movement has illuminated, many sexual harassment claims also include intersecting forms of discrimination. As such, the changes I'm about to recommend are not limited to sex harassment, but must be implemented across all areas of workplace discrimination so that as women of color, immigrant women, LGBTQ individuals, and others who face discrimination do not have one set of procedures and rights for sex harassment and another likely lesser set of protections as women of color.

Our recommendations are as follows. First, there are two changes that might require larger statutory or regulatory changes. One, protection for all workers, including independent contractors, unpaid interns, and volunteers who are currently left out.

Two, we must extend the current statute of limitations. As noted in the private sector, we have 300 days or 130 days which is still far too short. In light of that for federal workers to have 45 days and then if they engage in the formal process to have 15 days and otherwise they lose their claims is completely appalling.

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The next changes are ones that can be implemented more immediately. One, leadership from the top. Given the role that senior leadership has in setting the tone, we have a problem. The President of the United States has not engaged in building a culture free from sexual harassment, indeed to the contrary. Given this backdrop, other federal leaders must foster an organizational culture in which harassment is not tolerated.

The other areas that I have detailed in my written testimony including stopping misclassification of federal workers as independent contractors so then they don't have their rights; resolving claims more quickly through triage, and ending confusion that stems from having parallel processes through one harassment office, one EEO office. We also need required and effective training.

In this moment, it is extraordinary to live in this vibrant cultural time that will redefine how sexual harassment must be addressed. We call on the Commission to push federal agencies to meet this moment and to make these really critical changes. Thank you for having us.

CHAIR LHAMON: Thank you. Mr. Chuzi.

MR. CHUZI: Thank you. And I also want to thank the Commission for inviting the sole practitioner, not a sole practitioner, but a lonely practitioner.

I get to deal with the EEOC on a daily basis in my practice. I represent primarily federal employees. Commissioner Adegbile, you said something that I want to expand on, and that is you said harassment thrives in a particular environment. In my experience, and I've been doing this for over 40 years, harassment survives because the harassers are not sufficiently punished.

In my experience, harassers and discriminators do what they do because nobody stops them. And people who look on, their colleagues, understand that there are certain things they can get away with without being adequately punished. And just as observers look at somebody who is retaliated against for complaining and decides I'll skip it, people who look at harassers who get away with what they get away with feel that the threat is insufficient to deter them from doing what they do.

Expanding on what Mr. Brooks said, the EEOC has two

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roles. One of them is the complaint process and the other is adjudicative. One of the difficulties with the system that I work in is that it's the agency itself, the agency whose employee has done allegedly the discriminating or harassing that has control of the first part of the process.

The complaint goes to the agency. The agency can dismiss it. The agency tries to shift the claims in a way that is not as harmful to the agency. And if the employee still persists, ultimately the agency gets to investigate the complaint. And the investigative report shapes the way the rest of the allegations move forward.

The second aspect of what the EEOC does though is they issue decisions. And I pointed out in my written statements a series of decisions that I think were extraordinarily sensitive in the area of sexual harassment and I want to go over them just briefly. The first is a case called Tammy S. These are all pseudonyms. Tammy S. was an EEO specialist. She did training and was subjected to harassment in the form of a website that somebody at the agency started to harass her. And at one point she was the subject of a cartoon in which a weapon fired phallic-shaped missiles at this woman. The perpetrator was eventually suspended, but when he came back he continued with the harassment. Tammy then complained. The agency dismissed the complaint. They found that the harassment was not shown because they took prompt and effective suspension of the perp, pardon me.

The EEOC reversed that decision on the ground that obviously whatever they did to the harasser was not effective, and therefore the agency was not entitled to the affirmative defense which the Supreme Court had set up for them.

The second case is Celine B. from 2015 in which a female employee was subjected to harassment in the form of touching and comments over a four-day period. Her colleagues were so concerned that they would not allow her to be alone with the harasser. Nevertheless, the agency found no harassment because she didn't complain soon enough. The EEOC reversed that decision, and this is another stunning decision in my view from the EEOC on the ground that she complained, and therefore the affirmative defense of

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failure to protect herself was not available. This is an earth-shaking decision.

In Complainant versus the Army, this was a summer intern who was kissed during her last week -- kissed and really sexually harassed. Again, the agency found no discrimination because the harasser denied it and the employee when she was subjected to harassing comments a month before, didn't complain. The EEOC reversed that decision, finding that there was enough evidence of the harassment and in another remarkably sensitive decision found that frequently women will not complain about comments because they think if they just grin and bear it, they'll go away. And the EEOC said no, we understand that.

There's another decision that I didn't mention in my written remarks called Margaret M., in which three separate women, employees of the Postal Service, complained of sexual harassment by the same manager. The agency found no discrimination because the employees missed a particular time limit in filing their administrative complaints. The EEOC, once again in a really remarkable decision, said they would exercise its authority and forgive the time limit violations and send the cases back to the Postal Service for adjudication as a consolidated case involving this particular manager.

What's amazing about all of those decisions, as good as they are, is that they were all rejected by the agency. The only way they get to the EEOC is because the employee brings it to the EEOC. And to me, that's a serious problem.

I don't want to let my time go by without saying that my firm represented 564 employees, female employees, at the Coleman Federal Correction Center, who filed a class action because they were subjected to sexual harassment by inmates, without being protected by the agency and by their managers when they complained.

CHAIR LHAMON: Thank you, Mr. Chuzi.

MR. CHUZI: Thank you.

CHAIR LHAMON: I'm going to open for questions and comments from the fellow Commissioners.

Commissioner Adegbile, do you want to start?

COMMISSIONER ADEGBILE: Good morning. Thank you for that very thoughtful testimony.

Ms. Chandy, we've heard that the objective of the federal government is to make the response to sexual

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harassment be a model, a model response. And I just want your views about whether under existing experience we're meeting our aspiration as the United States?

MS. CHANDY: Thank you. I think the examples that were just given highlighted the on-going and continued problem. When my co-panelists started talking, the first thing that came to mind for me was conflict of interest in terms of sort of the current process does not seem to be set up in a way that the employee has an advocate. I mean maybe if the individual has an attorney, that is different, but to have to navigate, sort of all of these parallel systems, and that's the issue that came up again and again when I spoke to attorneys who represent federal workers.

There are parallel systems that are not clear to employees. There is a separate harassment office which is funny to me because harassment is a type of discrimination, but putting that aside, there is a separate harassment office and it sounds like it was well intended to provide an alternative route that may be less time consuming and more informal. So it sounds like a good idea. But if you go through that process, and meanwhile your 45 days are ticking, ticking, gone and you've now lost your civil rights protections in the workplace because you were attempting to do what I think we all agree is a good thing, to resolve something in a timely way and in an informal way which is absolutely a benefit to federal agencies in terms of liability and everything else. So if that process is going to continue, we must have a way that your formal complaint timeline is tolled while you go through these informal mechanisms. Without that there's no way that I would be in support of these parallel structures.

And I think that kind of tolling is firmly within the rights of the agencies to do and it is to everyone's benefit because if the actual complaint timeline is tolled, maybe more people will use the informal system which could leave to more timely resolutions which is better for everyone.

But the current system with only 45 days, with parallel structures that are not clear, and then I heard if you go to the EEO office and they work with you on it and they try to resolve, but your complaint

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is not filed, then they give you a notice that say you have 15 days to come back and file your complaint and then if you don't, you lose your civil rights protection. So that is what I understand to be the current system, which seems to be weighted incredibly against access to justice for federal workers. Thank you.

COMMISSIONER ADEGBILE: Thank you. Mr. Brooks, could you help us understand what the current status is of protections for interns and contractors under federal law and whether it's the position of the EEOC that those protections are adequate?

MR. BROOKS: I don't know if we have a position on the adequacy of the protections because they're based in law. So the law says in terms of my law it protects employees. So there's a definition of employees. So we have two similar cases where we define how a contractor can be an employee using a control test. Using a case name, one is called *Ma versus HHS*, and we lay out what's necessary if it's a contract employee to have -- the agency to have enough control once they deemed him to be an employer. But we have to deem them to be an employer before we would have statutory authority over the organization.

So we have a whole line of cases for independent contractors. Interns are a little more vulnerable because of their employment situation. It's pretty much laid out that they're not employees, but we have had cases where we made findings that interns, independent contractors are employees, in particular, where the agency exercised exceeding control over their working conditions.

COMMISSIONER ADEGBILE: So essentially, what I'm hearing from you is because of the statutory definition, there are difficult questions to be resolved about whether protections are available or not available. But none of us doubt that contractors and interns are both susceptible to discrimination and could fall outside the protection of federal law. Do I have that right?

MR. BROOKS: Interns is tricky, because you would have a paid intern, or unpaid intern, they're employees. So I should clarify that. The independent contractors is the trickier issue. We've had many cases where interns have filed cases. I don't know if George was going to mention it. We had a case

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where an intern was raped over a summer within the Department of Defense. She didn't come forward because it was embarrassing. She was a teenager. The reason her parents found out is she became pregnant, and then they asserted to the agency that this has happened and you know, the initial kind of issue, is she an employee and of course, we said she is an intern. She was a summer intern under the control of the agency and this happened, and we provided some remedies for her in those situations. So interns, paid and unpaid interns, are generally covered under our law. The real tricky area is independent contractors, and so we use that control test for independent contractors.

COMMISSIONER ADEGBILE: Ms. Chandy, it looks like you want to get in on this?

MS. CHANDY: Just to make a point about independent contractors. There are two issues. One issue is that under the current framework, independent contractors are not included in the law. So that is a statutory change that's necessary.

But there is another problem that I witnessed first-hand which is people who are working side by side with federal workers doing the same job, being controlled in the same way by the employer are misclassified as independent contractors which is a separate issue that we can fix immediately which is to say these factors that are supposed to be looked at are not looked at and instead what's looked at is who is providing the paycheck.

We all know if we've been in federal service at all, the benefits of having temporary workers, there's more flexibility. It might be easier to do the hiring. There are a whole host of reasons why there are incentives to do this. But the harsh outcome for those individuals is that they do not have civil rights protections from the federal government even though they're working side by side with federal workers who are doing the same job. They're controlled in the same way. Their day-to-day work is the same. That is not an issue that needs statutory change. That's an issue that needs oversight and for these factors to be applied correctly.

CHAIR LHAMON: I understand Commissioner Yaki has a question.

MR. CHUZI: Could I just? I think the concept we're

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talking about is joint employer status, where the federal agency, although not paying the paycheck, nevertheless provides the equipment and the management and the resources. Those employees, even though they're contractors, those individuals would be classified as joint employees of both employers and could file an EEO complaint. The difficulty is that I have not yet found an agency that would come to that conclusion on its own. They will instead classify the employee as a contractor and only on appeal will the EEOC say no, they're actually an employee.

CHAIR LHAMON: Congresswoman Speier.

CONGRESSWOMAN SPEIER: I would just like to comment on the unfair advantage that the harasser has over the harassed because typically -- certainly it was the case in Congress -- the House counsel represented the office of the member and the victim was on their own. So one of the changes we made in the law was to provide representation to the victim.

We're also doing something similar in the military with sexual assault cases, where there's a special victims counsel available to the victim to help them through the process. So if we can provide SVCs in the military for the 1.3 million service members we have, we certainly could create a SVC program in the federal sector to provide counsel to those who are sexually harassed or assaulted.

CHAIR LHAMON: Thank you. Commissioner Yaki, I understand you have a question?

COMMISSIONER YAKI: Yes. This is for the congresswoman.

Congresswoman, thank you very much for your leadership and your personal courage on this issue.

I want to ask a question that sort of goes to your proposed legislation, but in a slightly different tack. I think what we're finding here and what you'll hear in other parts of testimony from other panelists today has to do with Congress can pass laws or states can pass laws or departments can administer policies, but the question is whether or not how it's actually be carried out. And in that respect I'm looking toward the issue of oversight and accountability.

And I'm wondering if in your legislation for the State Department, you are putting in some provisions that would require the State Department or for that matter

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any other administration agency, a requirement to comply with the information requests, oversight appearances, et cetera, to monitor and follow up and provide adequate oversight on the implementation of laws or policies regarding sexual harassment. And I say this with an eye toward the current context in which we exist where the Commission has encountered, and I know the Congress has encountered, difficulties in getting information from the administration and ensuring that the oversight responsibilities of Congress or even for that matter, the Commission are not only enunciated in law, but have adequate teeth and for lack of a better word compulsion in order to get the information needed to provide the kind of oversight and scrutiny required after laws or policies are in place or enacted.

CONGRESSWOMAN SPEIER: There are two -- there are a number of elements in the legislation, but I think the two that kind of hit the issue that you're attempting to address is the requirement that there will be to have climate surveys. We already require climate surveys in the military. And it's a profound way to measure whether or not we're making any improvement.

We've just come out with the sexual assault review and it shows that the numbers have actually increased. So having climate surveys, making them permanent, will have I think a very effective way of doing that oversight.

The other aspect of the bill that is also very important is transparency. If you basically settle cases and then no one knows about it, then the perpetrator oftentimes can continue to conduct themselves in a manner that is violative of the law.

So this particular bill would require greater transparency around disciplinary actions. Again, in the congressional legislation, we're requiring that every six months in which there will have to be a posting of the cases that have been resolved and whose offices they are and for how much money.

CHAIR LHAMON: Mr. Brooks, go ahead.

MR. BROOKS: Thank you. I just wanted to add that working with the House and House Oversight Committee, they also passed a bill back in February, this deal with the Senate and it's the second time they passed it. It's a revision to the NO FEAR Act, the

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Notification of Federal Antidiscrimination and Retaliation Act.

In the House, they have put in there great measures -- it's not focused just on sexual harassment, all discrimination and retaliation, to make things more transparent in terms of the actions taken by the agency to address discrimination. Because one of the statutory limitations we have at EEOC we can't punish a management official. We can remedy the victim. We can provide make whole relief to the victim, but we don't punitive authority to say fire, terminate, demote that employee.

So the House, in particular, and the House Oversight Committee has been working to try to find ways to create greater accountability and I would encourage folks to review that legislation that was passed because it could also be a vehicle that's helpful in the area of sexual harassment.

CHAIR LHAMON: Thank you. Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Mr. Brooks. Actually, that's one of the areas I'm very interested in. The research is shocking the amount of retaliation that happens and it seems to be one of the largest reasons why understandably people then choose not to report.

What can be done? What are your suggestions about what we could be recommending could be done to try to get at this issue of retaliation?

MR. BROOKS: So I think it goes back to what I was just talking about in terms of greater accountability and transparency. So if a management official is not weary and worried about what the ramifications are, there's no dissuasion from not repeating the conducting or enhancing it, and so that's one of the critical things that's missing in this equation. So we were very pleased and happy with what the House was proposing in terms of revisions to the NO FEAR Act.

Some of the other things that we've been trying to do within our scope of our authority of oversight and guidance, one of my researchers is here and we have a social science wing and we've been helping agencies understand the behavioral science behind discrimination and how to address those things. We've worked with some management groups, the Federal Management Association, to really share with their

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team why managers retaliate and how it's disruptive to your organization. It's not just illegal, but allowing it to happen is detrimental to your mission outcome.

So we try to take the approach it's wrong, but we're also taking the approach from our guidance area that it's also detrimental to your organization. And so those are some of the strategies that we have implemented recently to try to address retaliation.

CHAIR LHAMON: Does anyone else have specific ideas?

MR. CHUZI: I don't have an idea, but I have a stunning example of what happens. We represented a female employee at one of the correction centers who was raped by an inmate and -- which is much more common. The harassment by inmates is much more common, I think, than most of us appreciate.

She immediately complained to her manager, the warden, who promptly contacted the U.S. Attorney's Office and encouraged them to file charges against her on the ground that she had actually raped the inmate. And the U.S. Attorney's Office pursued criminal charges against this female employee. It took the jury about an hour to find her not guilty. But nevertheless, who in that facility is going to raise another charge? Not likely.

MS. CHANDY: I would just add as a litigator for many years, retaliation claims are the easier ones. And perhaps there needs to be training, you know, management officials and supervisors about how that claim proceeds. I mean just from an employer-friendly business model, you need to have your managers and supervisors know that any sort of negative action that they take in response to a complaint often the timing is very clear. The range of conduct, this is an area where courts have been very expansive, surprisingly, and what retaliation means is very dependent on the workplace.

I litigated a fast food industry national case for many years, and the retaliation was you have to clean the bathroom every day. That obviously would not be relevant in many of our office settings, but that's the power they had over you, and if you brought a complaint, that's what happened to you.

I've had cases where managers put out leaflets in neighborhoods saying that the women who came forward were child molesters and put them on people's cars,

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and the employer argued that's not retaliation because it wasn't in the workplace. And fortunately the court got it, and said this is severe action that would discourage people from coming forward.

So I think maybe having some real clear training of managers about the scope of retaliation and as a manager, the only thing you should do if someone comes forward is say thank you for raising this. Let me get in front of this. Let me handle this. That is a benefit to the organization.

And fortunately, I think, in the Me Too moment, some HR offices across -- public sector, too, but definitely in the private setting, are being more transparent and are saying this issue came forward. This is how it was handled, to let everyone know it was handled.

COMMISSIONER NARASAKI: I just have one more question for Mr. Brooks. So I understand that your office has oversight authority over EEO programs. However, my understanding is that EEOC does not have an enforcement mechanism if, for example, it disagrees with how an agency's EEO program operates. Is that correct?

MR. BROOKS: Yes.

COMMISSIONER NARASAKI: So does EEOC have enough resources to effectively monitor all EEO programs of federal agencies and if it doesn't, how much more does it need, and would the ability to have enforcement mechanisms if you disagree with how an agency is conducting it be helpful?

MR. BROOKS: So in terms of resources, I don't think any federal agency wouldn't say they need more resources. So I would say yes, we would leverage resources and provide even more oversight. We do as much as we can with the resources we have. And it's gratuitous that this week we do technical assistance with each federal agency, and we come out and meet with them to go over their EEO programs. It just happened we met with the U.S. Commission on Civil Rights on Tuesday, as our oversight, to look at your EEO program. And so we try to do the most with our resources we have in terms of addressing issues.

So, of course, with more resources and more ability to manage data and help agencies track trends, we could do more in real time. Because a lot of things that we address now really deal with bad actions

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that's already happened. It would be ideal for us to be able to have access to data and trends so that we could fire the hot spot, that this is the type of occupation that has isolation, the things that went on, and we want to do a review. We just don't have the ability to do that in our current resource.

The Congress and the President was generous with us the last two years to increase our budget to address sexual harassment, so we've been leveraging the additional resources to actually come up with strategies. That's why we were able to spend so much time with federal agencies focused on anti-harassment programs over the last few years. I don't know if I answered all your questions. I apologize.

COMMISSIONER NARASAKI: Thank you.

CONGRESSWOMAN SPEIER: Madam Chair, I'm going to have to excuse myself at this time.

CHAIR LHAMON: I'm going to ask you my question, then. Can I do that before you leave?

COMMISSIONER KLADNEY: I want to ask her my question.

CHAIR LHAMON: Commissioner Kladney will ask and then I'll ask. Hope we can squeeze our time.

COMMISSIONER KLADNEY: Thank you, Congresswoman, for staying. I appreciate that. We did a report on sexual assault in the military several years ago, and I was wondering, a simple question, well, complex, actually, I guess. The numbers are up. I saw that in the paper the other day. Are they up because the military encourages reporting, or are they up because sexual assaults are up, or are they up because of both? Because the military really, in some aspect, not really, but in many aspects changed and encouraged more reporting.

CONGRESSWOMAN SPEIER: So they have encouraged more reporting. We have thrown a lot of money at the military for this issue. I think over the last ten years, we've spent \$200 million. And the truth of the matter is none of this is working.

Now for a long time I have proposed taking these cases out of the chain of command, keeping them within the military, but a separate office that would have the skills to do the investigations and the prosecutions and that would be independent, because there is an inherent conflict of interest that exists. Either the chain of command has the perpetrator in it, or is good friends with the perpetrator, or is concerned

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that it will reflect poorly on them for their next promotion if they have sexual assault cases under their command.

So it continues to plague us. And the cases are up. What is stunning and people don't realize is that the climate surveys show that about 20,000 cases a year, only 5,000 report, so that fear of retaliation I think is very serious and that's why you have only 5,000 that report and of the 5,000, only about 500 go to court martial and only 250 are convicted. So there's a very strong message that goes out that why bother? COMMISSIONER KLADNEY: Well, I would encourage you to continue fighting for the prosecutorial and investigative separate office, independent. I think that's very important. Thank you.

CONGRESSWOMAN SPEIER: Thank you.

CHAIR LHAMON: Commissioner Kladney, I promised to come back to you with your second question, but before you leave, Congresswoman, I wanted to ask two questions. One is given all that you have seen about federal sector sexual harassment, could you talk about what caused you to focus your legislative efforts this year on State Department, what was so concerning there?

And then before you answer, my second question, just so I don't lose track, is in your experience, what are the elements that are most effective to redress sexual harassment. Obviously, you've put a lot of thought into that for your fellow members of Congress and real teeth to your more recent legislation.

CONGRESSWOMAN SPEIER: So my positions really are formed in part by what we've done in the military. So I think that climate surveys are a must and we should basically require them, particularly in all of the departments where there are occupations where you have remote or isolated kinds of environments. You know that happens a lot in the Department of the Interior, National Park Service, Fire Service, Department of State. There are probably others that don't come to my mind at the moment, but also should be subject to that.

And the transparency component, where you create accountability in some respects by focusing in on under whose leadership it took place, what kind of action was taken and make that public.

The reason why we are focused on the State Department

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is first and foremost, I guess, they came forward during the Me Too movement and focus within Congress and had over 200 or so signatures. And then we met with them. And you could see why there is a need for greater accountability in that department. That's not to say there aren't other departments that require the same kind of close review and measures put in place for greater accountability.

CHAIR LHAMON: Thanks very much and thank you for your time. We really appreciate your testimony.

Mr. Kladney.

COMMISSIONER KLADNEY: Thank you, Madam Chair. In a past lifetime, I was actually a labor lawyer, so I find it interesting when you talk about discipline, talked about the suspension of an employee. Most government agencies, all government agencies, I think through union contracts and things like progressive discipline, you know, a warning, a written reprimand, a suspension, a longer suspension, a termination type of thing.

In your experience and I would probably address the whole panel with this, in your experience, what type of discipline actually fixes or cures or stops or creates an environment that is okay, where there's someone who is a sexual harasser?

MR. CHUZI: Well, one of the cases I mentioned -- and I think it was the Margaret M. case which was decided just last year --- in that case, and I think one of the things that persuaded the EEOC to forgive the timeliness problems, was the fact that there were seven other women who were subordinate to the same manager, who had told people about his harassment of them.

Frankly, Commissioner, I think removal -- the only way to get rid of that is to remove the manager. Now he's in the Postal Service, which is not exactly the same as the rest of the Title V Civil Service, but nevertheless, when you have someone who feels as free as he does to engage in the conduct that he did, I think the lesson for everybody else is to fire him.

COMMISSIONER KLADNEY: Yes, ma'am.

MS. CHANDY: In my former life, I was also a labor lawyer representing union side employees and union.

COMMISSIONER KLADNEY: Congratulations for surviving. (Laughter.)

MS. CHANDY: I may have a response that is surprising,

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but the National Women's Law Center and myself, we believe responses should be proportional to the conduct at issue. It should be for the most severe conduct, the cases that my fellow panelists mentioned, yes, they do sound like cases that should require termination. But the concern that I have is that often in the public sector and the private sector, we see transferring harassers from agency to agency, location to location, as a common way of addressing the problem, and it is not effective and it creates harm across many, many workplaces. So that is my number one issue in sort of how issues are dealt with.

I don't think people should lose their jobs if they tell a sexual joke. That is not appropriate. Somebody should be counseled. There should be a record. There should be warnings. It should be proportional. And let's bring up the racial implications. Who is going to be more likely to be disciplined or not disciplined often has racial implications. All of these pieces must be looked at holistically in coming up with a system to address complaints based on the seriousness, based on are they repeated complaints? Based on are there multiple people who have come forward, right?

So all of these elements must be considered together, and we cannot have an easy answer to save people's jobs or fire everyone. This is important to be nuanced and to consider all the equities. But at the end of the day, the workplace must know that the issues will be taken seriously and the employee who brought the complaint must be informed about what happened.

Sometimes we have EEOC -- someone would file a charge saying I made a complaint and they didn't do anything. And then the employer would say here's the six things we did secretly, never even got back to the person about any of it. Maybe you don't have to give all the details, but you should at least say the broad outline of what happened, and say please come back to us if this starts happening again and have that monitoring.

COMMISSIONER KLADNEY: So the question I have, I mean I understand proportionality in discipline. Is anybody taking this up? Is anybody -- I mean you talk about it in rules and regulations, okay, but is anybody taking it up in training? Is anybody actually

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inoculating the managers about how to perform discipline?

I mean I found years ago when I did this work, that was the last thing managers learned how to do if they ever learned how to do it.

MS. CHANDY: Yes, I would agree that training is critical. I would also say that unions have a greater role to play. There are many examples where if you bring up a wage issue or another issue, the union gets on the phone, deals with it right away, oh, let me handle this. But if it's sexual harassment, it's like oh, find the special magic form that's hard to find, and so on.

That is not an appropriate way. And I think that unions also must and have been taking more and more leadership on this because they're the ones in that interface and can help solve these problems, too.

COMMISSIONER KLADNEY: Thank you.

MR. CHUZI: So a long time ago, there was an effort to confer additional powers on the EEOC to do something about managers who are engaging in really difficult behavior. At the time, we were advocating that the EEOC should have authority to refer such cases to the Office of Special Counsel, which does have the power to discipline employees for certain violations.

I think that if that isn't done now, that really needs to be done. The Special Counsel is a separate agency. They have no quarter with personal friendships or anything else. And they are a fairly reliable protector of the merit system, and I think if they find somebody like this manager in Celine B., that case ought to be referred to them for an appropriate response.

MR. BROOKS: So in terms of what my colleagues are saying, we do have an MOU with the Office of Special Counsel where we can refer for a management official for prosecutorial -- so they can prosecute against the individual manager. They have that authority. We don't.

We've had several MOUs. Most recently, we signed the new MOU a year ago, so if we believe it's a real egregious case, and we don't think what the agency did what was necessary because once we issue an order, we always will recommend discipline even though we don't have authority to order discipline. And then

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what we'll do is track what did the agency do, and if they didn't do the discipline that we thought was appropriate, we have the option of referring it to the Office of Special Counsel.

The problem in a lot of cases that we have now is the life of it. So by the time it goes through the complete administrative process and we're able to refer it to the Special Counsel, maybe four years have passed. And so we're trying to find ways of how to how to get more of those speedily to the Office of Special Counsel.

The legislation I was talking about with the revision to the NO FEAR Act has a provision in there, every finding of discrimination automatically would be referred to Special Counsel. House passed it in February and it's with the Senate. So that could be something as a mechanism.

In terms of what discipline works, I agree what my colleagues say and our Select Task Force of Sexual Harassment, we said discipline should be proportionate because sometimes if the discipline is drastic, the harassed won't bring it because I don't want the person fired; I just want the behavior to stop.

And so really, a conversation -- what's missing in that equation I think from my perspective is there is not a conversation with the victim about what's appropriate and follow up with the victim, and there needs to be more transparency.

I don't remember the exact year, but one of the surprising things from a federal agency, we had the CIA, they had put out a report to the agency, these are the harassment cases we had last year. This was what we did, without naming people. And I always thought that was a real -- if CIA can do that, why can't other agencies --

(Laughter.)

-- yeah, so one of the things they wanted to be a deterrent that you know, if you engage in this behavior we take it seriously, and it could lead to termination and things of that nature.

COMMISSIONER KLADNEY: I have one more question in this regard. I asked about discipline for the harasser. What about the discipline for the manager that fails to adequately discipline? Has that ever happened?

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MS. CHANDY: On a related point, something that came up as I was looking into this was including how a manager addresses complaints, or whether or not the complaints against that person or in that shop in the performance evaluation and also as decisions about promotion are made.

And so keeping those metrics and data so that it's really part of your record, how you address this proactively, how you address this if a complaint comes in or if you are the target of complaints, all of that is relevant information if someone should go up in the ranks.

COMMISSIONER KLADNEY: You know, I think putting it on their evaluation is fine, but I think Mr. Chuzi, when he describes a warden as going to the U.S. Attorney's Office, I think that's more than an evaluation issue.

MR. CHUZI: I was going to suggest that what the Commission might do is ask the Justice Department how it is pursuing remedies involving the Bureau of Prisons. The Bureau of Prisons, it's a difficult job. They are difficult environments. The worst kinds of sexual harassment because they're by inmates who are already being punished takes place, but it's management's response to that.

You know, the Coleman case from the Coleman Federal Correction Center in Florida, 564 women, that settled for \$20 million.

COMMISSIONER KLADNEY: Congratulations.

MR. CHUZI: Well, of taxpayers' money and there was a companion case against another correctional center, not with our firm but another firm, that settled for \$11 million.

Now I think the real question is: what is the Department of Justice doing about that situation?

CHAIR LHAMON: Thank you.

MR. BROOKS: Just in terms of the question, I don't know of cases where the manager that failed to --- that inappropriately responded to the matter. I know in our cases what we can do is -- we can't order discipline, but we order training, so if we see that the time management team failed, we order that not only the manager -- the harasser, but any manager that allowed it to happen for their inaction or their failure to take -- to intervene in the situation, we order training to that whole management team to try

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to provide some remedy for the employee.

COMMISSIONER KLADNEY: Well, I personally think that there should be some discipline because the manager should already be trained in this.

CHAIR LHAMON: We're going to keep moving.

Madam Vice Chair, I understand you have a question?

COMMISSIONER KLADNEY: Thank you, Madam Chair.

VICE CHAIR TIMMONS-GOODSON: Yes, are you able to hear me?

CHAIR LHAMON: Yes. Thank you.

VICE CHAIR TIMMONS-GOODSON: This question is for Mr. Brooks and any others that might want to answer, but in thinking about your oversight function, I was wondering: how important is the self-reporting by the federal agencies? And what is it that you do with this data and whether there may be something, some way that the self-reporting can be strengthened or in some way helping us get to where we want to be?

MR. BROOKS: So agencies do self-report. They have to submit two reports to us annually.

VICE CHAIR TIMMONS-GOODSON: Yes.

MR. BROOKS: The first report is a summary of all of their complaint data that happened in the prior fiscal year, so we can see what are the issues bases and the timeliness indicators within the different segments of their processing of the complaint.

Then the second report is on their workforce demographics, looking at race, national origin, and gender, by their major occupations, discipline, training, and things of that nature. And it has a self-assessment part to it where they have to answer yes or no and any time they check a no, we consider it a programmatic deficiency that we follow up on.

So what we do is they certify it, they certify that everything that they report to us is accurate. It's signed by the head of their agency and the EEO directors as true. But then our staff who are more familiar with the requirements, will go through all the data. We visit agencies on site usually every three years and we'll look at three years of trends to see what were the number of harassment complaints? Was the number of harassment complaints above the government-wide average? And if they say they have an effective program, then we'll say well, why is your harassment in terms of complaints higher? And

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then we'll look at different demographics, anything that comes out in the public like I know the Congresswoman mentioned the Foreign Service, the Park Service, we track what's going on there.

We have robust correspondence that comes in from individuals that's concerned with things at their agency. So we have a repository of data on each agency. And so when we have an opportunity to do our technical assistance and feedback, we will bring those things up.

Now if they consistently -- if we find that they're not reporting correctly, or they're not making progress, our next step is we do what is like an audit. We call it a program evaluation. We have an audit function, where we go in and we do a more aggressive type of IG look where recommendations and things and we put them on a compliance plan and monitor what they're doing. We can't force them to do it, but we stay on their cases.

Mr. Chuzi brought Bureau of Prisons several times. Bureau of Prisons, I don't know if he knows, but we did a detailed evaluation of the Bureau of Prisons because they have a retaliation rate that was well beyond government-wide average. So we visited several of the penitentiaries and interviewed staff and made recommendations for Bureau of Prisons. They made some progress, but they still have a long way to go.

So in sum, we use all the data to try to inform us about the organization, how to improve them. Each agency is different. They're unique. Our largest federal agency is the Department of Defense, with over 800,000 employees. Our smallest federal agency is the Japan-U.S. Friendship Commission with four employees, and so you have everything in between. We have federal grocery stores which is Defense Commissary Agency. We have NASA where you have federal employees in space. But there's no one size fits all. We will work with each agency as an organic creature to figure out what's going on within their organization. That's how we kind of use the data.

CHAIR LHAMON: Ms. Chandy.

MS. CHANDY: On the idea of reports and studies, I just wanted to lift up that in the BE HEARD in the Workplace Act that I mentioned, Section 112 is about studying and report of harassment in the federal

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government and it calls for the Merit Systems Protection Board to help prepare and submit a report about harassment in the federal workforce, one year after enactment of this act and every three years and funding for that. And Section 113 is also about studies, reports, and further research and calls on the U.S. Commission to undertake certain programs, too.

So in addition to extending the time frame for filing complaints as it relates to federal workers, there are other provisions in the BE HEARD Act relevant to the federal protections.

CHAIR LHAMON: Thank you. Mr. Brooks.

MR. BROOKS: I just wanted to highlight because I have one of our social scientists here, and we're looking at it from other areas. She's behind me, Karen Brummond. She's done some real good work looking at sexual harassment. And we have been putting out more guidance and reports to agencies. She did a nice report on learning from the way community policing has changed behaviors, because you're really talking about how do you change the behavior and culture of an organization? I mean we can remedy discrimination after it's happened, but why do you want it to get to that point?

And she put together a real nice piece on the broken window principles of policing. If you have a community where you see broken glass everywhere, you're more likely to have more serious crime. Why wait until you get to that point? And giving federal agencies some recommendations to look at incivility that leads to inappropriate behavior.

Actually, there's some research on one of the things that we often do in this process if there's a victim of sexual harassment. We isolate the harasser, the person who engaged in the harassment, and there's never after a conversation after that traumatic event. And should there be a conversation, they're going to go back into the same workplace and should they have a conversation, should the accuser be able to say this is what you did to me, this is how it made me feel, and if we're going to continue to work together, we don't do that. We put them -- this person you work this shift, you work this shift. You don't come past this hall, you don't come past this hall. And it creates a division within the organization.

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Should we be looking at a way to find a way to remedy those situations where they can -- if they're going to coexist in the organization. So our social scientists have been looking at a lot of the behavioral aspects to give even more information to agencies versus enforcement.

CHAIR LHAMON: Mr. Brooks, would you mind submitting that report for our records, so we have it for review?

MR. BROOKS: Sure.

CHAIR LHAMON: Thank you. And I take it from your last answer that you view that kind of report and guidance to agencies as an important enforcement tool for the EEOC. Is that right?

MR. BROOKS: Yes.

CHAIR LHAMON: Thank you. Madam Vice Chair, it sounds like you have another question.

VICE CHAIR TIMMONS-GOODSON: No, Madam Chair.

CHAIR LHAMON: Great. Then I'll go to mine.

VICE CHAIR TIMMONS-GOODSON: And you're breaking up. I don't know if it's on my end, but you've begun to start breaking up.

CHAIR LHAMON: I will lean closer to my microphone. Thank you.

Mr. Brooks, you testified in your opening testimony about the value of systemic enforcement, and I wonder if you can expand on that. I have heard you speak painfully about the need for more resources for EEOC and what you would do if you had more resources. But I take it with the resources you have, you and your colleagues have chosen systemic enforcement as one important mechanism for the work that you do. Can you talk about why?

MR. BROOKS: So in the private sector and I know Ms. Chandy, she can talk about some of the work within the private sector. We really try to bring strategic cases in the private sector that sends a message across industry.

We had issues with pregnancy discrimination in the restaurant industry, so we brought some high-profile cases to show. You know, when a person becomes pregnant, they lose their job, so we try to highlight those cases.

The inequities in law firms. So we'll bring lawsuits. Strategically, we have units across the country that will work together collaboratively to bring nationwide lawsuits that send messages in the private

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sector.

In the federal sector, we try to compile all the data that we have to see what are the systemic trends going on at federal agencies and then highlight them, so we can see that retaliation is a huge part of our inventory, so we can put resources on studying retaliation, coming up with some behavioral models for agencies to use to address those issues.

So in terms of our strategic enforcement, it's very much on a litigation side. We try to take cases that can be precedential. My colleague mentioned the two cases on gender identity and sexual orientation that we issued in the federal sector. And so with the cases and the data that we have, we try to leverage it to provide information to the employer as a whole. CHAIR LHAMON: Okay. Thank you. Mr. Chuzi, in your testimony you mentioned difficulty in having to wait for agency review first before being able to go to the EEOC. I wonder if all three of our panelists could speak to your views about that.

Mr. Brooks, do you value having agencies review first? Is there another process that you think could work equally well or better for EEOC?

Mr. Chuzi, Ms. Chandy, in your experience, is there some alternative, or is the benefit of the agency review first worth the wait?

MR. CHUZI: I have long believed, I'm not sure there's an alternative, but I have long believed that giving the agencies the first crack at this is just the wrong thing to do.

I understand why they did it. Agencies have to bear the burden of these costs. If they didn't, those costs would be shifted to perhaps an independent agency which might be a better solution. But what it is, is and people have for 50 years, they've said it's the fox guarding the chicken coop, you know?

And I think the reality is, it is every -- virtually every case, agencies are allowed to appeal sometimes, too. But virtually every case that the EEOC gets on appeal is a case that the agency has turned down or they've gone to an EEOC administrative judge who has turned it down.

But the fact of the matter, every time the EEOC rules in an employee's favor, I see that as a failure of the system because that should have been found earlier. And people, you know, my firm charges for

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our services and there are people who start off and they're really eager and they get to a point when they just run out of resources.

I have a client now and I'm going to talk to Mr. Brooks about it, the EEOC just issued a decision this month. His case started, it's got a 2009 date on it. And he was just a Postal Service -- he's a Postal Service worker. We had to carry him. We carried his attorney fees because I felt strongly about his case. But it's just extraordinary.

I mean who's got the resources for a ten-year legal battle against the United States of America essentially?

COMMISSIONER ADEGBILE: Madam Chair, can I just have one follow up on this question that you've asked?

CHAIR LHAMON: Sure, but I want to make sure that the other panelists can answer, so yes, you can follow up.

COMMISSIONER ADEGBILE: Take the other answers first.

CHAIR LHAMON: Thanks.

MS. CHANDY: A couple of things. One, I like what the congresswoman had to say about ensuring that individuals bringing complaints have advocates. I think I mentioned that earlier, too. It's really lopsided otherwise and unfair.

I also want to lift up the TIME'S UP Legal Defense Fund because we provide attorney connections and even funding for individuals to bring these cases because as was just mentioned, it's not free often and usually workers are going in alone.

The third thing I wanted to say was agencies, given that they are doing that investigation on site first, should triage their complaints and prioritize systemic or egregious matters for more prompt review. As I understand it, agencies are taking them in a first come, first serve, which can seem fair, but actually these complaints run the gamut. And just as EEOC in the private sector charges, triages the cases and deals with them more immediately. Agencies must do that in house as well if they are under resourced in this area.

And the last thing I will just say in terms of making the system better is bystander training which goes to the larger point of changing the culture. I mean if you're going to bring a complaint to HR in the private

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or public sector, most people do not feel like this is someone who will be on my side, but rather feels like this is someone here to defend the employer. And somehow creating a massive culture change where these complaints are welcomed, and everyone is on the same team of having a safe and effective workplace. That work still needs to be done.

MR. BROOKS: So I guess I've been at EEOC over 20 years and so when I first heard the federal complaint process, I had the same concerns that my colleagues would have.

Like I said, being there over the 20 years and seeing the way that it works, I kind of do believe in the system in theory because the theory is the federal government should be the model employer and the model employer should address issues of discrimination without a need for a third party intervention since it's EEOC or federal court and that we give them the tools to be that model employer. But we do have these issues when they have that authority to do their own investigation, we have the oversight authority to address that.

We constantly -- this system that we have in place for the complaint process predates the Commission. It started in 1948 through an Executive Order. It was codified in statute in 1972 with an amendment to Title VII. And periodically, during the course of its history, we will ask the public, is there a better way to do this?

Most recently, we put out an advanced proposed rulemaking in 2015 with that very same question and said we've had this system in place for over 50 years of the agency. During that informal process, the investigation with ability to have it adjudicated before EEOC. Is there a better system? And we didn't get many alternatives. The general alternative would be shift all the investigations to EEOC, and EEOC would conduct the investigations.

But there's not a majority behind that. Agencies like having it. Employees are leery of putting out additional resource on EEOC. So when we got the responses to our latest advanced proposed rulemaking, there weren't many tangible comments that were proposing an alternate system. But they did give us recommendations for improving an existing system, and that's what we really work on.

We work very diligently with agencies' EEO programs

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and agencies' leadership to let them know that this EEO program should be a neutral program. It should be just like the EEOC within your organization, and it should remove conflicts of interest where we're swaying to let's defend ourselves versus let's find out what really happened here as an employer and make our employee whole because there was something done wrong.

And we constantly battle with agencies on that. It's a constant -- I think it's a natural reaction to defend versus to be open and transparent and run a neutral process the way EEOC, and that's what we really have been working with federal agencies on, how do you do the job EEOC would otherwise do within your organization because as a model employer, that's what's expected of you.

CHAIR LHAMON: Thank you. Commissioner Adegbile.

COMMISSIONER ADEGBILE: So I'm trying to sharpen our understanding on this issue because as I understand the way things go in the private sector, if there's a complaint to a company, the company in the first instance would take that up and do an investigation. Do I have that right or not?

MS. CHANDY: There are many incentives to do that because if you have such a process as a private employer, that can be used as a defense in court. So most companies have that. But it is not a legal requirement to go through any sort of internal process before one goes to EEOC to file a charge of discrimination. So that's how they're different.

COMMISSIONER ADEGBILE: So really what this comes down to the complaints that we're hearing, does it just come down to having available to federal employees that disjunctive choice to have the option of going internally or to the EEOC right away. Is that what you're talking about?

MR. CHUZI: No. Federal employees do not have that choice. Federal employees must exhaust the remedy with their agency before they do anything else.

COMMISSIONER ADEGBILE: Correct, so what I'm asking is what we're looking for in terms of a change, in terms of a remedy is to provide that parallel choice that a private employee would have. And Mr. Brooks is saying there is some concern about the capacity and perhaps other considerations about whether the EEOC could handle a world in which that choice was

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available.

MR. CHUZI: If the resources were shifted, right? I mean agencies get resources for their EEO Office to process EEO complaints. If those resources were shifted either to the EEOC, a separate sub-agency within EEOC, or another agency altogether, I think that disruption would be minimized.

MS. CHANDY: Yes, it would be shocking to me if there were employees' rights organizations that would be more in favor of keeping this in-house. I think at least having EEOC as an independent agency gives a sense of this is a separate organization that I might get a fair shake, which I don't think employees have when they go their internal.

Now having said that as Mr. Brooks said, every agency is different. There's some that might be having a very model process, but I assure you there are many that are not.

COMMISSIONER ADEGBILE: Madam Chair, I think I interrupted your questions for that clarification.

CHAIR LHAMON: No, no. You can go ahead. If you'll finish, I have more. Commissioner Narasaki has some questions as well.

COMMISSIONER ADEGBILE: So Ms. Chandy, I want to come to this question of whether or not sexual harassment sometimes happens at the intersection of different types of discrimination, and whether the existing legal framework is adequate to prosecute and remediate situations where there is so-called intersections of discrimination occurring.

Could you help us understand how it works and whether the current system is adequate?

MS. CHANDY: The main point I want to convey is in this Me Too moment, many states, localities, or even the federal government are looking to improve their processes. And it would be foolish to do so only for sexual harassment when many of us face harassment that often, even in the nature of the harassment itself, is implicating race or national origin or other areas of identity.

And so it would be inappropriate and inefficient to say okay, I'm now going to go and bring one complaint because I know this is about bias based on my sex. Go to another office or procedure because this also has racial implications. Women of color often face harassment. That is about both of these.

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People with disabilities sometimes face gender-based and disability-based discrimination that is intertwined.

And so our call is for workplace procedures to be improved across the board and to use this Me Too moment to improve how employers deal with harassment, discrimination of all sorts, and have those procedures better for everyone.

COMMISSIONER ADEGBILE: If an employee today complains about discrimination that's happening at the intersection let's say of race and sex, is the legal framework such that those can be considered together, or must you be on different tracks?

MS. CHANDY: Right now, in the federal law they're on the same track, but in making improvements we are saying that those should continue to be in a holistic sense and not just peeling off sex harassment because there might be the will to deal with sex harassment right now. We should not say, for example, for sexual harassment complaints you have four years. For race complaints, you have 45 days. Do you follow me?

I also think because courts have not grappled with inter-sexual discrimination so often, I think plaintiffs and employees have not brought those claims in ways that have allowed that body of law to develop much. But I think there's a lot of interest in doing that because that is how we experience discrimination in our lives, and it's not simply saying I have a race claim. I have a sex claim. But as a woman of color, I have a particular kind of claim and that should be put more and more before the courts.

COMMISSIONER ADEGBILE: Last question. Apart from timing, resolving claims more quickly and this choice to be able to go directly to the EEOC, can you give us two things that the EEOC could do with existing resources?

I clearly understand the point about more resources. We'll take that as given. With existing resources, to come closer to being the model agency that we aspire to be?

MR. CHUZI: Leaving aside the time delays?

COMMISSIONER ADEGBILE: Yes.

MR. CHUZI: That's like saying aside from that, this is --

COMMISSIONER ADEGBILE: Yes, I know. The point here

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is that we have that point, but if there are additional things, I want to create the opportunity for things we may have missed. So we have that point; it's a very important point. I'm not diminishing it. MR. CHUZI: For me, and I alluded to this in my written statement, I think the decision making process at the EEOC, when they have their adjudicative authority, I think it has to be more consistent.

I cited the cases of Tammy S. and Celine B.. Celine B. has not been cited by the EEOC since 2015. And Tammy S. has not been cited by the EEOC since January of 2018. And to me, this is a concern because the EEOC comes out with what I think are terrific decisions and where they go from there is anybody's guess.

MS. CHANDY: Yes, I'd just like to highlight. I put forth seven ideas and only two of them I think require statutory changes. So just to quickly mention the others. One is the misclassification of actual employees as independent contractors, a review of that. Two, EEOC could tell agencies that they are allowed to triage complaints, so at least the more egregious ones can be addressed in a more timely fashion until there are more resources. Next, to end the confusion that stems from parallel processes and toll the complaint filing timeline if an employee goes through the harassment office or another office that is not the official EEOC office, that is something that can be done immediately and I think it would be for the good of everyone involved.

And finally to have more required effective training including bystander training, which I also think will help the issues of retaliation if there are more people involved and invested in bringing these matters forward collectively, it is more of a community response instead of a lone person in isolation stepping forward.

MR. CHUZI: Federal employees are terrified to serve as witnesses. It's hard to prove these cases without contemporaneous witness testimony. They are paralyzed with fear about being retaliated against.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you, Madam Chair. I want to follow up on one of the earlier questions I had.

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Mr. Brooks, you had acknowledged that EEOC does not have an enforcement mechanism if it disagrees with how an agency's EEO program operates. So do you feel like EEOC would be stronger if it did have that kind of authority?

MR. BROOKS: Yes.

COMMISSIONER NARASAKI: Thank you. That gives me time for other questions.

The second question I have is oftentimes the goal for agencies is to show that they have zero complaints, right?

So what do you do when you have an extremely large agency and they're reporting zero, and you're thinking how is that humanly possible? Is that a red flag for you? Is that something that you raise with them?

MR. BROOKS: So we would call that a trigger because when you have humans together, you're going to have conflicts. So if you have zero and you have a significant workforce, that would be a problem. But we have other data to look at.

We'll look at if it's a homogeneous work environment. Maybe that's why. You have all folks that came from this university and have the same background, and that's not good because your recruitment efforts are not broad. So we would have instead of a complaint discussion, we'd have a discussion about inclusion. And so we also will have their results of their Federal Employment Viewpoint Survey by race, demographics, and disability status. So if there are no complaints, but your employees with disabilities are saying that they are lacking opportunities, they're not getting promotions, they are not being awarded appropriately, then that's a different data point that would undermine the fact that they had no complaints.

COMMISSIONER NARASAKI: Great.

CHAIR LHAMON: And I'm going to have to end us there because we're over time. I apologize. I know that there were several of us who had questions that we would have liked to have asked. Thank you very much for this vibrant panel and for the work that you do every day. Really appreciate it.

We will reconvene at 10:50 for our next panel.

COMMISSIONER NARASAKI: Madam Chair, can I ask the staff to be able to send questions we weren't able to

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ask for follow up?

CHAIR LHAMON: We would be delighted to send you questions, and we look forward to your willingness to respond. Thank you.

(Whereupon, the above-entitled matter went off the record at 10:44 a.m. and resumed at 10:51 a.m.)

**PANEL TWO: CURRENT AND FORMER EMPLOYEES
FROM STATE DEPARTMENT AND NASA**

CHAIR LHAMON: I'm going to call us back to order. It's now 10:51 and I want to make sure we have time to start with our next panel. We're going to proceed with a panel titled "State Department, NASA and STEM Organizations."

In the order in which they speak, our panelists are Gregory Smith, Director of the Office of Civil Rights and Chief Diversity Officer, U.S. Department of State; Jenna Ben-Yehuda, President and CEO, Truman National Security Project; Stephen Shih, Associate Administrator, Diversity and Equal Opportunity at NASA; and Heather Metcalf, Chief Research Officer, Association for Women in Science. Mr. Smith, please begin.

MR. SMITH: Madam Chair and Commission members, good morning and thank you for allowing me to appear today to share the Department of State efforts to combat sexual harassment. As you stated, you have already seen and have in your possession and have read the prepared statement.

So I would just like to limit my comments to some things that I think are -- that kind of stand out for the Department of State. Our mission of my office is to promote fairness, equity and inclusion throughout the Department of State, and one of the most critical aspects of any workplace if it's going to be successful is to take care of its people and to create a culture of respect and dignity, and that is what we tried to do.

With respect to harassment, we pursue zero tolerance, and I say "pursue" purposefully, because we have not completed or achieved zero tolerance. But that is what we are working towards. Three components are involved, our policy. We think it's a clear policy that includes a process to fairly and objectively investigate harassment allegations, and I'm talking about our internal policy that is internal and unique to the Department of State.

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We're not, not talking about one may pursue harassment claims under 1614 in terms of these remarks, so I want to be clear about that. Also awareness. There's proactive training and awareness of all employees with a view to prevention, and the training not only enumerates the employee rights, but also explains the responsibilities of leadership. Leadership participation and support is key at all levels, and also consistent follow-up on both the policy and the awareness.

My office takes every allegation seriously, and we give everyone the benefit of the doubt. In terms of our training, not only at headquarters but also in the field, and I mean around the world in over 200 countries and our embassies and consulates, that message is carried out.

So our program, we believe, is strong, and we're talking again the internal program. The aim is to ensure that potential victims are relieved of the harassing behavior as immediately as possible, and that at the conclusion of a thorough investigation, the alleged harasser is promptly disciplined if it so warranted.

I'll also add that our process, our program is collaborative, because it goes across offices. Not only in our office, the Office of Civil Rights, but also in a unit of our Human Resource office, the Office of Conduct, Suitability and Discipline, and our diplomatic security colleagues if warranted.

One of the most critical aspects of our program we believe is the mandatory requirement of supervisors to report, and in terms of our internal allegations that come into our office, I would say a little bit less than half of those come in from supervisors, adhering to this requirement.

It's plainly stated. Supervisors and other responsible management officials are required to report directly to our office any behavior that they observe, reasonably suspect or become aware that may be considered discriminatory or sexual harassment.

Individuals are able to report 24 hours a day, seven days a week because we're around the world. Something is happening all the time, and so we want our colleagues to know that we are available. In terms of the process itself, our office is responsible for gathering the facts, and that's all that we do.

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We gather the facts, we put a report together and then we share that report with our colleagues in Human Resources, for them to determine if there has been a violation of our department policy against harassment. Also it is their responsibility to determine what, if any, administrative or disciplinary sanction is warranted.

In terms of training, we train I would say from top to bottom, all new employees from Ambassadors to Chief of Missions are trained by my office. Also, we train all new foreign service officers. Of course, we train new civil service officers. We do a specific intern training.

So everyone is aware of what the requirements are per our anti-harassment program. Also, we do a lot of specific training for supervisors, because supervisors have a certain responsibility that is key to what we're trying to accomplish in terms of the culture that we would like to create.

Not only is my office trying to champion that, but also we've been privileged with Secretaries of State that have championed that as well. Just last year in 2018, the Secretary of State had a mini-stand down to talk about harassment, and what is expected in terms of the culture and how we want to treat each other. On the spot, he designated or required us to do mandatory training for the Department department-wide, and that's 75,000 employees, which we did. I'm proud to say that we did. It was a heavy lift, but we did it.

The genesis of our online training really came out of that requirement of our agency-wide training, and we learned a lot of things in the agency-wide training and a lot of that training was face to face, whether we assembled people in venues in the department or whether we were overseas.

And so we learned a lot of things, and that became the genesis of our online training. Before I close, I'd like to say a couple of things. Number one, everything that we've done in the Office of Civil Rights has been supported by our leadership both visibly and vocally, and I think that that is key in terms of the type of environment or work culture that you want to create.

Also, I heard in terms of who is covered with our in-house program, we cover all, anyone that works in our workplaces, and that would include contractors and

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interns. Thank you.

CHAIR LHAMON: Ms. Ben-Yehuda.

MS. BEN-YEHUDA: Good morning. It's an honor to testify before you today on the critical topic of sexual harassment and assault in the Department of State. I served at the Department in a range of policy and intelligence roles throughout the course of my 12 years at the agency, from 2001 to 2013.

In 2014, I founded the Women's Foreign Policy Network, with a mission to advance women's participation in foreign affairs. Five years later, the Network has grown to 3,500 women in over 100 countries, the majority of whom are current or former employees of the Department of State.

As the news of Harvey Weinstein's staggering abuses gave way to the reckoning of the Me Too movement, it became clear to our community that there was finally space for the women of the national security world to be heard. So together with my friend former Ambassador Nina Hachigian, we wrote an open letter, the same letter to which Congresswoman Speier referred, to the National Security Community titled "#MeTooNatSec."

This letter was signed by 223 women in the field, including 70 current and former U.S. Ambassadors, and was published by *Time Magazine* in December of 2017.

The full text of the letter and all of my further recommendations have been submitted for the record, and I'll read a selected portion of that here. "We the women of the National Security Community come from all walks of life and all corners of this great nation. Those of us who have worked for the United States have sworn an oath to protect and defend the Constitution.

"We too are survivors of sexual assault, harassment and abuse or know others who are. This is not just a problem in Hollywood, Silicon Valley, news rooms or Congress; it is everywhere. These abuses are born of imbalances of power and environments that permit such practices while silencing and shaming their survivors.

"Indeed, in our field women comprise a small fraction of senior leadership roles, just 30 percent. The pipeline is not the problem in much of the community. Talented women enter most of our agencies in equal numbers as their male counterparts, yet this is less

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true of the Armed Services.

"At the State Department, female foreign service officers enter at equal rates to their male colleagues, and yet with each subsequent promotion the number of foreign service women decline, especially at senior levels. Women now comprise 15 percent of all active duty military, an historic high, but women who are already serving in senior ranks are being promoted far less frequently than their peers, and the same is true at the State Department.

"Many women are held back or driven from this field by men who use their power to assault at one end of the spectrum and perpetrate, sometimes unconsciously, environments that silence, demean, belittle or neglect women at the other.

"Assault is the progression of the same behaviors that permit us to be denigrated, interrupted, shut out and shut up. These behaviors incubate a permissive environment where assault and harassment take hold, and it's time to make it stop. The institutions to which we belong or have served all have sexual harassment policies in place.

"Yet these policies are weak. They are under-enforced and they can favor perpetrators. The existence of policies, even good ones, is not enough. We are proud to have served our nation and to have safeguarded its ideals, and we are proud to have worked alongside the talented men and women who make up our workforce.

"Imagine what more we could achieve together if we took steps to ensure that women could work free from fear and conflict, and confident that their gender would not affect their opportunities."

Because *Time Magazine* published this letter on December 1st, it means we were collecting signatures over the Thanksgiving holiday, which I can assure you is not prime signature-gathering time. I wish I could tell you it was a challenge though to find hundreds of women to make themselves vulnerable and put their names to this letter, but women came forward in droves.

We held the letter open for just one week and after the letter closed, three times as many women asked to sign. Since the publication of this letter, the Department of State has begun to undertake some efforts to address organizational deficiencies

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surrounding harassment and assault, though transparency surrounding these steps has been limited, making assessing such efforts a major challenge.

In an effort to ensure that such responses continue, deepen and remain a viable and visible priority driven by accountability and transparency, additional oversight is required. Reducing the incidence of sexual harassment and assault requires really three elements: transparency, accountability and more women in leadership positions.

On transparency, the desired outcome is that all employees, regardless of seniority, know department and agency policies and processes regarding the reporting and adjudication of assault and harassment. Such processes and procedures must be clearly and consistently communicated to all employees on a recurring basis, and aggregate data on complaints and outcomes is publicly available and current. We're falling far short in the current environment.

On accountability, the desired outcome must be that complaints of sexual harassment and abuse are adjudicated in a timely, consistent fashion, and that guilty parties are disciplined swiftly, not promoted, and dealt with appropriately. Levels of harassment and abuse should decline dramatically, and under-reporting of incidents should be reduced significantly because victims have confidence in the process and do not fear retaliation.

On gender parity in leadership, this community must also address the serious gender imbalances in senior leadership positions, because male-dominated teams have been found to be more prone to abuses and more diverse teams are consistently linked to better outcomes, and we want to see leaders and managers across the community held accountable.

Gender parity reduces the imbalance of power that is widely regarded as the sine qua non of organizations where assault and harassment take hold. These are important steps, but parity is key. The best part of all of this is that we know what works. We know it, and identifying solutions it's not the problem. We have those solutions at hand.

The challenge is to implement, but implement we must. Women of the Department of State, one of the most competitive employers in our country, enter in equal

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numbers to their male counterparts and have for years. And yet fewer than 30 percent of senior positions are held by women.

Women do not become less competent over time. They are often treading water in an organization that systematically excludes them, they are harassed and assaulted regularly, passed over for awards, promoted less frequently and when they become mothers they have no paid leave and have to fight for onsite child care.

Sexual assault is a crime, pure and simple, and when the Department puts the onus on women to prove themselves while making too few resources available, and when the number of reported cases doubles from the year prior as occurred in 2018 and no additional case managers are added, and when the backlog stretches 18 months old, women are not being served. Thank you.

CHAIR LHAMON: Thank you very much. Mr. Shih.

MR. SHIH: Honorable Chair and other Commissioners of the U.S. Commission on Civil Rights, thank you so much for inviting me to speak today about sexual harassment in federal government work spaces.

CHAIR LHAMON: If you'd pull your microphone a little closer to you, the court reporter will be able to hear better. Thank you.

MR. SHIH: Is this better? Okay. Honorable Chair and Commissioners of the U.S. Commission on Civil Rights, thank you so much for inviting me to speak to you today about sexual harassment in federal government workplaces.

I very much appreciate your interest and leadership in ensuring we're jointly doing everything possible to prevent harassment in federal workplaces and promptly correct harassment when it occurs. At NASA, we place the highest importance on excellent leadership and employee engagement for mission accomplishment, and we embrace a saying, if we take care of our workforce, they'll take care of the mission.

In the past several years, the issue of sexual harassment in the workplace has received significant attention and heightened awareness in the United States. Because of this national attention and the work of academic institutions and other leading organizations such as the U.S. Equal Employment

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Opportunity Commission, we have a far greater understanding of the persistence and pervasiveness of harassment throughout our country, across multiple sectors including in places of employment.

We know from research that harassment frequently goes unreported. We know harassment causes significant mental, physical and economic harm to victims, and we know harassment in the workplace harms employees in their organizations, with many significant detrimental work impacts, including decreased attendance, decreased productivity, decreased morale, increased turnover and reputational harm.

We've also learned a great deal about contributing conditions and risk factors for harassment. At NASA, we place the highest priority on equal employment opportunity, EEO and diversity and inclusion, and on taking care of our workforce and empowering them to contribute fully to our mission.

Our emphasis on our people is reflected by our high employee engagement scores in the U.S. Office of Personnel Management's annual Federal Employee Viewpoint survey, where we've been ranked by the Partnership for Public Service as the best place to work among large federal agencies for seven consecutive years.

NASA also ranked number one among large federal agencies in OPM's new inclusion quotient, the New IQ, in each of the previous five consecutive years since OPM began using the new IQ. This is an index comprised of 20 FEVS questions that assess the inclusiveness of an agency's work environment.

Because of our emphasis on our workforce, NASA initiated a first-ever agency-wide anti-harassment campaign on February 1st, 2018. Our campaign is based upon established statutes, case law and other applicable legal authorities and guidance pertaining to workplace harassment. It has been heavily shaped by the EEOC's June 2016 report of the co-chairs of the Select Task Force on the Study of Harassment in the Workplace, and by the EEOC's model equal employment opportunity program, Management Directive 715.

The goals of NASA's anti-harassment are twofold. First, to enhance the safety and effectiveness of NASA's workforce, and then secondly to enhance the safety and effectiveness of NASA's mission. The

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campaign consists of two strategies. First, proactive prevention of harassment at NASA and then secondly prompt correction of harassment at NASA when it occurs.

I'll briefly describe each of these strategic approaches. The first strategy of the campaign, proactive prevention, includes the following components I'll briefly summarize.

First, on February 1st, 2018, the NASA administrator issued a video message and a written memorandum to all NASA personnel, communicating his expectations for the appropriate culture and values in the NASA workplace, emphasis on accountability and reinforcement of the agency's anti-harassment policy and requirements for all NASA personnel to exercise reasonable care to prevent and enable the prompt correction of workplace harassment.

This video message actually is public. It has been posted on YouTube. It's available to the entire world. Following the Administrator's messages, NASA took additional steps to ensure demonstrated commitment from agency leadership. As the executive responsible for leading diversity and equal opportunity at NASA, I personally conducted briefings for all NASA senior leaders on NASA's anti-harassment campaign in our programs.

The purpose of these briefings was to raise awareness and leadership support for agency-wide implementation of the campaign, and to enlist NASA leaders to champion anti-harassment in their organizations.

Initially, I briefed the heads of each major NASA directorate and center in the field at the Administrator's senior staff meeting in February 2018, and I followed this with briefings in 2018 for all other senior executives and managers across the agency's eight of ten NASA field centers. I plan to complete these briefings this year.

During 2018, I also personally delivered multiple anti-harassment trainings at eight of the ten NASA centers that I visited. These trainings used engaging interactive scenario-based dialogues to enhance knowledge for participants on how they may jointly take ownership for the prevention, identification, intervention and prompt response and correction of harassment.

The training also focused on helping participants

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understand the critical link between anti-harassment and the agency's mission, so NASA personnel understand the value proposition of anti-harassment, and will fully commit and contribute to helping NASA prevent and promptly correct workplace harassment. These training sessions received extremely high participation evaluations, and specific feedback on the high quality and the practical applicability of the trainings. Additionally, we're finalizing a new, modern online training solution using gamification and simulations that deliver training on anti-harassment across the entire federal agency. In 2009, we established an agency-wide anti-harassment program to help assure safety and workplace and mission success. Our program involves a highly collaborative and well-coordinated community of practice, including EEO offices, anti-harassment coordinators, Office of General Counsel, Office of the Chief Counsel, NASA's Office of the Chief Human Capital Officer and senior NASA leaders.

The community of practice brings together all relevant organizations to ensure a joint and collective, thorough response for early intervention and prompt correction. To ensure continued excellence in the operation of those programs, I convened an anti-harassment in 2018 at the Johnson Space Center to train and coordinate the community of practice.

I'll briefly mention strategy two, prompt correction, which is timely effective execution of our anti-harassment policy, procedures and programs. We've benchmarked our anti-harassment policy and procedures with the EEOC. They've validated our policies and procedures and they have held our program up as a model program.

I have a great amount of data indicating the success of both our policies and program and our campaign. That's contained in my written testimony, so I won't go into that in detail. We continue to centrally coordinate NASA's anti-harassment coordinators across the country.

We evaluate the program. As I indicated, we have data indicating initially some very positive preliminary campaign outcomes, and then we also have a role publicly as a federal science agency awarding grant funding to STEM, institutions that do research

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and development and we're able to promote anti-discrimination and anti-harassment across the public.

In conclusion, I'll just reiterate that at NASA --

CHAIR LHAMON: Thank you, Mr. Shih. Thank you.

MR. SHIH: Thank you.

CHARI LHAMON: Ms. Metcalf.

DR. METCALF: Thank you for having me here to present testimony today. I come to you today as Chief Research Officer for the Association for Women in Science, a non-profit based here in D.C., that supports equitable and inclusive STEM workplaces through research, policy and practice.

I also speak from personal experience as an interdisciplinary scientist, who's been the direct target of a variety of forms of harassment throughout her career. I'll start with a couple of definitions here and then share some of my experiences with you. So first, while we often focus solely on what is commonly understood to be sexual harassment, that is unwanted sexual attention, sexual assault or sexual coercion, behavior that is sexual in nature comprises only a small portion of harassing behaviors.

Gender harassment is most common form of sexual harassment and consists of verbal and non-verbal behaviors that convey hostility, objectification, exclusion or second class status based on a person's gender. This is so widespread that it goes unnoticed, and often isn't recognized as a form of discrimination or harassment when people experience it.

Harassment also is not just based on gender or sex, and for workers who are part of more than one marginalized social group, it often has a multiplicative effective. You'll hear these reflected in my experiences and in the data that I'll share today.

As a first generation low income college student, in some ways I was fortunate I didn't first experience much harassment and exclusionary behavior in my field until I entered graduate school in Computer Science in 2003. Walking the halls of my department, six percent of which was comprised of women, students and faculty assumed I was an administrative assistant and regularly asked me where the kitchen was.

My classmates and professors gave me quizzical looks in class and asked if I was in the right room.

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Students told me I was only admitted to the program because of affirmative action, assuming I couldn't qualify for admission on my own merit, and not knowing I had graduated top of my undergraduate class in both math and computer science, while working two jobs to pay for college.

Teaching assistants offered gendered responses to mistakes I made in assignments. Men who made the same mistakes didn't receive this commentary, and were often not docked the points that I was. I witnessed racialized comments targeted at students of color and international students. I overheard homophobic remarks at LGBTQ plus students.

I noticed students with visible disabilities were avoided and mocked. I observed how uncomfortable these interactions made not only the targets but bystanders, regardless of social group. I shared office space with an undergraduate who insisted on revealing graphic details about his sex life, despite my repeated protests.

As he began to encroach on my physical space, I felt increasingly unsafe and turned to the department for help. Rather than addressing his behavior, they moved me. I attended conferences for women in computing. At one session, a student asked how to handle situations where a respected member of the field engaged in inappropriate behavior.

The panel advised wearing wedding bands to discourage the behavior, to pretend to be something that we weren't in hope that those who crossed established professional boundaries would somehow respect feigned personal ones.

These experiences are just a small snapshot from my own career. Through 15 years of research, I've also gathered thousands of stories from STEM professionals around the country and across sectors about the bias barriers, harassment and other forms of discrimination they faced.

Every STEM professional in the federal government I've included in my work has had at least one story of sexual harassment experience or other identity-based harassment experience. There's a whole submovement, #MeTooSTEM, because of how common harassment is in these fields, even in the government.

The recent National Academies report that was just released found that 58 percent of women among faculty

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and staff in universities experience sexual harassment. This is also the same pattern in federal workplaces as you can see on the slide that I have up on the screen, where between 21 and 69 percent of women experience gender and sexual harassment.

On the next slide, you'll see that in a survey of astronomers and planetary sciences, women of color experienced the highest rates of race and gender-based harassment and assault in their STEM workplaces, at 28 percent and 40 percent respectively.

In the next slide, the American Physical Society found the LGB women, gender non-conforming and transgender physicists experienced harassment and exclusionary behavior at three, four and five times the rate of LGB men, respectively.

On Slide 5, our AWIS survey research found that 37 percent of white women with disabilities experienced disability-related stigma, discrimination and harassment at work. For women of color with disabilities, this was 73 percent. For LGBTQ women of color with disabilities, it was 100 percent. Employees who experience or witness harassment face negative health consequences, lower job satisfaction, lower field satisfaction, avoidance behaviors and if they report, they often encounter retaliation and incur financial expenses as we've heard throughout the discussion today.

Organizations suffer too, encountering reduced productivity, increased use of sick and annual leave, unnecessarily lose talented employees and public trust when the culture of harassment goes unaddressed.

These costs are even greater in environments like STEM, where harassment is normalized and downplayed. Threats of retaliation are at an all-time high, and a lack of trust in the reporting and investigative process produces barriers to reporting and support. While the Commission's work to review policies and programs to address, report and resolve federal sexual harassment claims is important, equally important are educational and cultural efforts to prevent all forms of harassment, bias and discrimination. To do this, federal workplaces should address the perceived tolerance and acceptability of harassment by making it clear that

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harassment of any kind is unacceptable. Federal workplaces should move beyond minimal legal compliance to change the existing culture to one that is inclusive and respectful. They should also improve transparency, efficacy and accountability in the reporting process in written policies, as well as everyday decision-making. They should also gather data to inform policies, procedures and cultural changes. Thank you.

CHAIR LHAMON: Thank you, Ms. Metcalf. We will now open for questions from my fellow panelists, my fellow Commissioners. Commissioner Adegbile.

COMMISSIONER ADEGBILE: Thank you for your testimony. On the previous testimony which some of you may have heard on the previous panel, there was testimony about the notion that having, requiring federal employees to report first through their agency before things can move to the EEOC creates a problem. I'm interested in your perspectives on this and whether having an option of going straight to the EEOC would afford greater remedial power.

CHAIR LHAMON: And anyone who would like to answer should go right ahead.

MR. SMITH: Yes. I heard the prior panel, and I can see both sides of it. But the one thing that I would argue in favor of the current system is number one, all agencies are different.

Even though EEOC has kind of a, and I don't mean this to be pejorative, a one-size-fits-all for all agencies in terms of process, but each agency is different and the one thing I would say in particular for agencies like my own is that there's a unique work environment, workspace and a mission.

And so I think that we have found that an example for EEO cases that go to ADR, if we bring in outside mediators we spend an inordinate amount of time in terms of trying to bring them up to speed, in terms of what the work center is like, what the work environment overseas is like.

So I would say that there is some benefit to keeping the process in-house initially. I do agree with the prior panel in terms of more oversight to ensure that the programs are doing what they're supposed to be doing.

MR. SHIH: As I mentioned in my testimony, we've learned a number of things very emphatically from the

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#MeToo movement in recent research.

That includes the importance of early intervention and also, as my fellow panelist here testified to, creating an atmosphere of psychological and physical safety, where individuals can come forward and actually report incidents.

The #MeToo movement informed us that there was a spate of reports in recent times that involved actions that occurred decades ago. That's unacceptable, and that doesn't enable us to be able to provide early intervention. So at NASA we believe the more multiple avenues and the more avenues that provide psychological and physical safety for victims to come forward to report and get early intervention are absolutely appropriate.

I won't necessarily opine in terms of whether there should be a process that circumvents the EEOC, but at NASA our anti-harassment program encourages people to come forward immediately.

We are processing reports of harassment on average in 51 calendar days. That includes all of the fact-gathering, the fact-finding and collective coordination within the agency to determine response. We've had significant percentages of those reports resolved. They never even needed to go forward, and a very, very high percentage of those reports have been resolved despite our finding that there was no violation of our anti-harassment policy. We're trying to be forward-leaning, and so if there are aspects that are not supportive of a productive workplace, we're going to fix it, even if it doesn't rise to the level of a legal violation.

MS. BEN-YEHUDA: I would just add that women deserve the choice in this regard I think. There are several circumstances in which the folks who would be adjudicating complaints could be abusers or also in the chain of command or also affecting promotions, since it is handled within Human Resources.

So there are opportunities. I think if there are ways for women to seek due process through other means, if EEOC is one of those I think that should be considered.

The bigger issue to my mind is that very few people at the Department of State seem to have an understanding of where to go first, because there are several different adjudicating bodies, depending on

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whether you're overseas or you're in the United States when the issue takes hold.

So I think it's a potential area to address grievances from folks who are facing that within their chain of command, which is a very common problem, to have the option. But it's obviously just one element.

DR. METCALF: I'd also add that part of -- when we're talking about the value of transparency in this, part of that is also making it really clear the different options that a person who's experienced behaviors like this has.

So whether it is filing a formal complaint and what the (audio interrupted). So whether there are formal pathways to filing a complaint and what that might look like, and what the costs, potential costs of that, whether it's financial, the length of time that they need to prepare themselves for if there's a review or an investigation that needs to happen.

If there are other pathways that are possible. As we heard on the first panel, there are varying degrees of severity in the behavior, where you may just need to have an educational moment with someone who says something that's inappropriate and didn't really recognize the level of inappropriateness that was there, versus someone who has been assaulting employees for decades, for example.

Very different levels of severity that you need to think about what's the best course of action there. So making sure that you're creating transparency so people can see the pathway forward, and so that they can make decisions on what they're willing to take on and what they're not.

COMMISSIONER ADEGBILE: Thank you. Ms. Ben-Yehuda, I think that there was a State Department report about, sorry an OIG report about the State Department's disjointed reporting mechanisms. In your view this was in 2014 -- in your view, has that been remedied and clarified?

MS. BEN-YEHUDA: No. Folks don't know where to go, and you hear different things depending on where you are. You hear different things depending on how experienced your manager is, especially for folks overseas in conflict zones in Afghanistan and Iraq, who might be on the ground reporting to somebody from a different agency.

There is a real lack of clarity, and so, you know I

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think maybe this is something Mr. Smith could address, when somebody goes to OCR, when somebody goes to DS, when somebody goes to Human Resources because all are adjudicating at various stages, and I think folks have a real lack of clarity about where they should go first.

COMMISSIONER ADEGBILE: Mr. Smith, 2014 reports out there says it's disjointed. Where are we today? What improvements have there been? What needs to happen?

MR. SMITH: Well currently in terms of any employee that feels that they have been harassed sexually or discriminatory harassment, the one stop in terms of reporting is to our office. To the extent and we liaise with Diplomatic Security, only when the facts demonstrate that there may be sexual assault.

My office does, as I said earlier, the fact-gathering in terms of what happened to determine what the facts are. Once we compile a report, we share that with Human Resources, for them to determine whether there's merit to the allegations and to determine whether there's any administrative or disciplinary sanction is warranted.

With respect to awareness, we do an extensive training program when individuals are assessed onto the Department. In terms of overseas, we respond to specific requests for post training and when we go through post, we will only go if everyone from the Ambassador on down agrees to sit in the training.

That does not always happen, but we try to make that mandatory and we delineate the training not only for U.S. direct hire managers and employees, locally employed staff, managers and employees because employees' rights. But managers have responsibilities in terms of the environment that we want to create, and for posts like Afghanistan, Iraq, Pakistan, we have them on a rotation, about an 18 month rotation to go back out to do the training and awareness.

So we are -- I think that we are doing a pretty good job. We can always do better. It does distress me to hear that people are out at post and they do not know where to go. Since 2013, our office with our HR office have sent a cable out to delineate not only what is required but where to go, and we have sent that out in subsequent years.

So clearly, there's more work for my office to do if

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that is the case, if that is what you are hearing.

MS. BEN-YEHUDA: I would just add very briefly that, for example, if Mr. Smith says that folks are being sent out every 18 months to a high threat post like Afghanistan and Iraq, the average tour length there is 12 months. So it's conceivable that there could be a range of people there who never experience training on the ground.

COMMISSIONER ADEGBILE: Also Mr. Smith, the criticism in the OIG report, was that fair or not fair?

MR. SMITH: You know --

COMMISSIONER ADEGBILE: A qualified yes?

MR. SMITH: A qualified yes. We'll say a qualified yes. But with respect to anyone that's going out to the high threat post our office, in association with our training organization, the Foreign Service Institute, we have a training called Fact Training for those individuals that are going to the high threat post before they go.

So we try our best to cover individuals where we can. Obviously, if individuals are saying that they are not getting the training, we will have to go back and re-look at how we are doing things.

COMMISSIONER ADEGBILE: And apart from those cables that you mentioned, were there any specific efforts taken to address the criticism of a disjointed reporting process in the OIG report?

MR. SMITH: We have continued to let individuals know, not only through those cables but also through our all training that our office is the office to submit all allegations of harassment, be they sexual harassment and/or discriminatory harassment, and we do that for training of deputy chiefs of missions going out; we do that for Ambassadors going out. We do that for HRO officers, Human Resource officers going out to the post.

So again, we try to cover the gamut of those folks that would be in charge, try to cover the gamut of those folks that are advisors to supervisors that are at post. But to the extent that we're falling short, we will redouble our efforts.

COMMISSIONER ADEGBILE: Madam Chair, I yield to other members. I'll get back in the queue after other Commissioners have had an opportunity.

CHAIR LHAMON: Thank you. I just want to follow up on those answers, Mr. Smith. Am I correct that the

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HR Department does not report through you within State Department?

MR. SMITH: No, HR does not -- I'm sorry. HR does not report to me.

CHAIR LHAMON: So you're not really the one-stop shop for resolution then? You're the one-stop shop for reporting. But as you testified, the HR Department is who decides sanctions?

MR. SMITH: Yes. I said that we are collaborative and the program goes across offices. We are -- we take the reporting; we do the investigation or inquiry; we put the report together and then we liaise with the Human Resources Conduct Suitability and Discipline Office, and they make a determination in terms of has there one, been a violation; two, if so should discipline or some type of administrative sanction be warranted.

We think that that is good because we are neutral. We just want to get the facts, what were the facts on the ground. Then we share that with, as I said, the HR for an assessment independent of us, whether or not there was a violation of our policies.

CHAIR LHAMON: So I want to push on that a little bit. I think it's helpful for you to be neutral and certainly that's what we heard in the last panel, that EEOC advocates for as well. But EEOC also adjudicates on the end. So it's helpful to be neutral in determining what the facts are, but if you determine that there is a violation of the policy or a violation of core anti-discrimination rights, if the HR Department does not resolve in a way that you would have recommended, there is no resolution for your office, is that right?

MR. SMITH: Currently yes. Technically yes, that is correct.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you, Madam Chair.

MR. SMITH: Ma'am, may I?

CHAIR LHAMON: Yes.

MR. SMITH: And I'm talking about our internal policy.

CHAIR LHAMON: Is that distinct from an external policy that actually has a mechanism --

MR. SMITH: Well it is -- there is a 1614 process that I think a lot of the last panel was addressing, and I'm talking about the process that our office manages under our Foreign Affairs manual. So --

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CHAIR LHAMON: That is certainly well outside of my experience of agencies. The agency that I'm most familiar with, the Department of Education when I worked there, the EEO Office was the neutral arbiter of what the facts were and also the determiner for what the ultimate penalty would be.

There was not someone else who did that, and I think that provided quite a bit of confidence to Department staff about whether the -- what the policy was, was also the policy that they would be expect to be living. Commissioner Kladney.

COMMISSIONER KLADNEY: Now? Thank you, Madam Chair. I just want to give an example. The other day I was at a hearing and we had done a briefing on police use of force, and one of the aspects of police use of force is de-escalation. This fellow from a police department was testifying about how great their training was. You talk about your training.

He said yeah, we include 15 to 30 minutes of it at the POST Academy. So my question comes down to what does your training consist of? How long is it? Who develops it and how often is it given? And that is to employees, managers and bosses. If anybody wants to, you can start there and work down if you'd like.

MR. SMITH: First of all, some of the training that we do is in conjunction with our Foreign Service Institute, and we have modules in all of the leadership training. We have modules in, as I said, the accessions training for new civil service employees, for interns, for new Foreign Service officers, for our DCM training, also for our Ambassador training and for Human Resource officers that are going out to post.

That is determined on the rotation -- not rotation, but when those individuals are brought into the Department and they're going through their orientation, we are invited out and typically we would have I would say any -- generally anywhere from 45 minutes to one hour, and some of those training courses they are longer, depending on the responsibilities of those individuals when they get to post.

Also, we do training upon request, not only here domestically but also for posts, embassies and consulates when they request training. Those trainings that are upon request, for example for an

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embassy, may be anywhere from two to five days, and we're trying to train the whole post, not only our direct hire American employees, but also locally employed staff.

COMMISSIONER KLADNEY: Do you have a schedule of training, like a regular schedule? I have to train in this embassy when it's every other year or once a year, or does every employee have to go through this training once a year, if it's an hour?

Is there any schedule like that or is it like when they -- when employees come in, they get the training? When they get promoted they get the training. That's what I think you said. When they get promoted they get the training; when they hit upper management they get the training and it's once? Or do the employees receive it on a regular basis?

I think that's part of my question. I mean it's not real complex. I understand training modules. I understand different levels of training. You said an hour, then you said three to five days. That's because you have so many people go to through? I mean let's get straight about the program itself, just so that I get a clear picture.

MR. SMITH: Okay. The first comments that we're making about training had to do with training that we do in conjunction with our Foreign Service Institute. They are responsible for all training for the Department of State employees. For certain individuals that are coming in, be they Foreign Service, civil service specialists, we are invited to provide a module of training for those issues that are unique to the Office of Civil Rights, whether it's EEO and/or harassment.

That is not -- that schedule is dictated by when those new employees are brought on. So we do not control that. The second training scenario that I was talking about has to do when we are -- when training is requested by our office, and it may be domestic or it may be overseas.

COMMISSIONER KLADNEY: If I'm an embassy or I'm an ambassador and I say hey, can you come out and train my people?

MR. SMITH: Correct.

COMMISSIONER KLADNEY: Okay. So that's ad hoc.

MR. SMITH: That is correct. Some --

COMMISSIONER KLADNEY: Okay. Is there a regular schedule of training on a basis to renew the training

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with every employee in your agency?

MR. SMITH: With respect to the high threat posts, yes. I mentioned earlier our 18 month rotating training. Other than that no, there is not a schedule of training.

COMMISSIONER KLADNEY: So people can go years and not get the training renewed, you know, a renewed kind of refresher course so to say, yes or no?

MR. SMITH: No, I don't think that that is fair.

COMMISSIONER KLADNEY: Thank you.

MS. BEN-YEHUDA: If I could just add, you know, the Department of State is somewhat unique in that most of its workforce is overseas. And so when you hear the gentleman talk about folks, you know, being ad hoc in receiving training maybe every 18 months or so, it's worth keeping in mind that the vast majority of folks overseas are locally employed staff.

Which is to say they're not American citizens. They are citizens of the host country. These are the most vulnerable people at a given post. These are very precious held jobs that are passed from generation to generation. It's not uncommon to meet somebody, a motor pool driver whose grandfather also drove for the embassy.

People have a lot of pride in working for our government overseas. So that means also that they're least in the position to be able to come forward. They're not regularly trained. Contractors likewise are not being trained at FSI, it's not required, and the requirements for contract companies themselves depend on the threshold, the number of employees.

COMMISSIONER KLADNEY: And do you think training should be what? Should it be improved, should it be regular? Should these people be trained?

MS. BEN-YEHUDA: Improved, regular, right. So the Department of State has a training continuum. If you come in foreign service or civil service, you have a certain number of wickets that you're moving through throughout your career. Sexual harassment and assault training and prevention efforts should be integrated as a part of that regular training continuum.

COMMISSIONER KLADNEY: But it's not?

MS. BEN-YEHUDA: It's not.

COMMISSIONER KLADNEY: Okay. Now my favorite agency in the government, NASA.

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MR. SHIH: Thank you, Mr. Commissioner. We are the best place to work in the U.S. government.

CHAIR LHAMON: Other than the U.S. Commission on Civil Rights of course.

MR. SHIH: Of course, except for the current institution.

(Laughter.)

COMMISSIONER KLADNEY: He's going through his speech.

MR. SHIH: Yes sir. So I'll answer your question very briefly, but also touch upon another really important point I believe that was central to your question. So first of all, we have a regular schedule of training. We institute required, mandatory No Fear Act training on a biennial basis every two years. We're implementing a new schedule for mandatory EEO training every single year, and for new managers and supervisors. As I indicated in my oral testimony, we're also developing an online course for anti-harassment that will be delivered on an annual basis that will be online.

It's about a 60 minute course. It's very interactive. It's focused on simulations and it's gamification.

COMMISSIONER KLADNEY: Is it important -- is it important that the training be developed by the agency itself? It sounds like you're developing the training.

MR. SHIH: Yes sir.

COMMISSIONER KLADNEY: Who develops your modules?

MR. SMITH: We develop our modules.

COMMISSIONER KLADNEY: Does it work that way, because do you do it in conjunction with EEOC or do you -- how do you, where do you get your expertise except from in-house? Do you get anything from out of house, outside?

MR. SMITH: Sometimes we do and sometimes our training is based on the issues that come into our office. So those issues that we feel that need to be highlighted, we can direct our training to address that.

COMMISSIONER KLADNEY: So in the government, there's no baseline subjects that are supposed to be trained on; is that correct?

MR. SHIH: So actually sir, EEOC has issued guidance on the effectiveness of anti-harassment procedures and policies. And so we follow those guidelines. We have decided to develop this training in-house because I'm actually a product of EEOC, having worked

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there for 12 years.

I've worked on anti-harassment for the majority of my career, and so I feel that I'm an expert in this area.

COMMISSIONER KLADNEY: I think what the question is really asking is is there consistency in training across the board, agency to agency, plus special situations that your agencies -- like you have employees around the world, you have employees around the world. Online is a great thing, but is there any consistency in the training?

MR. SHIH: So sir, I think that's an excellent question. I think the consistency does vary from agency to agency. So there's a value for consistency and standard of quality, and also to your point, there's an important need for customization for the specific needs of the agency.

I think EEOC and other organizations have provided really good leadership here, and also regularly evaluates agencies' EEO programs as well. If I could just add very briefly --

COMMISSIONER KLADNEY: You can do whatever you want to do.

MR. SHIH: I appreciate your question about the quality of the training and focus on educating the workforce, including the leaders. I would also add to that what's really important is not just education. We actually target our training on a different learning outcome. That learning objective is basically to take the onus away from the victims who have to figure out what to do if they're a victim of harassment.

They shouldn't know -- they shouldn't have to know and navigate a specific path in order to get the relief. So we put the onus on our supervisors, our managers and executives, and we put the onus on the rest of the workforce to be able to act as bystanders, to intervene and to share collective it's on us responsibility.

Then ultimately sir, our real focus of this training is not just information and knowledge; it's actually to emphasize the critical importance of this area, because it impacts our missions. When people understand it impacts you missions, and this is ultimately a broader inclusion issue, and then when they actually start seeing their fellow co-workers not as targets or potential opportunities, then they

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see them as teammates and human beings, and that prevents them from harassing others.

CHAIR LHAMON: Thank you.

COMMISSIONER KLADNEY: Thank you for your answer and just one more thing.

CHAIR LHAMON: Commissioner, I need to --

COMMISSIONER KLADNEY: Do you believe in refresher courses every other year.

MR. SHIH: Absolutely, it's critical.

CHAIR LHAMON: Thank you. We need to move on. Thank you.

COMMISSIONER KLADNEY: I'm done.

CHAIR LHAMON: Thank you, good. Commissioner Narasaki?

COMMISSIONER NARASAKI: Thank you Madam Chair. So we're going to continue on the road to training. So does either State or NASA conduct bystander intervention training for employees on how to take action when they witness something that they think is inappropriate?

MR. SHIH: Commissioner, thank you so much for that question. In the online training that we're developing, that is a key part of that. So in fact these are akin to virtual reality scenarios, and the user of a training, it's not important whether they're a supervisor or a regular employee. The idea is they witness something.

They have the opportunity to then make a series of decisions in terms of what actions to take, and it's all to encourage people to come forward and to be able to report it to somebody who can do something about it.

COMMISSIONER NARASAKI: And do you actually have bystanders reporting at this point?

MR. SHIH: We actually do. We actually do, yes.

COMMISSIONER NARASAKI: That's great. Is that something you try to measure progress on?

MR. SHIH: We're keeping the statistics. Part of this is that we don't want to report this widely to the workforce in terms of who's reporting this, because we want to provide the psychological safety for everyone in the workforce to be able to come forward and report it.

But we're seeing gains here. Again, the approach we're really targeting is to make this an issue for the entire workforce. It's not an issue for victims

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of harassment, it's not just an issue for leaders.

COMMISSIONER NARASAKI: Great, and State?

MR. SMITH: Yes. We're beginning to train on that, yes.

COMMISSIONER NARASAKI: Great. So for State, this was giving me flashbacks to when I was -- the summer before I was a senior at Yale. I was at a special international program, and I was an International Studies major basically and I was working on my application for the government because I wanted to work for the State Department.

We came into contact with State Department officials, and so I was very excited and wanted to ask about the career and I was told honey, you're a woman and you're Asian, and you have no opportunity for ever making it through the ranks at State.

I went home and I tore up my application. So it really hurts me that it's still an issue 40 years later. We really shouldn't be at this point. So I just wanted to express that, but I think for women and particularly women of color, we should have those opportunities and it's shocking to me because, you know, I was at Yale.

So to be told that I would never be able to advance despite whatever qualifications I had was just really quite shocking to me. So sorry, just had to say that. I want to ask about the topic of having, maybe having special advocates at the agencies who could help take care of the power imbalance in terms of people who are victims. What do you guys think about that concept? Is that a good idea? Would that be helpful? What are the ramifications of that?

MS. BEN-YEHUDA: Thank you Commissioner for sharing that, and I too am really sorry that I feel like not a lot has changed. You know, one of the most challenging experiences for folks is the isolation and loneliness that they experience as victims of harassment and assault.

This is compounded by not knowing where to turn, by having to do a lot of digging and -- on an issue where it's not exactly like you would want to ask somebody. Hey, by the way, George, where do I go for this kind of information?

It requires a lot of work. It's lonely. You don't know where your case is in the process, whether it's still with OCR, if it's at DS, maybe it's back in HR.

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You have to trust that the Department is being truthful frankly in telling you where you are in the process. But it's like you don't know what's coming next, you don't know what to anticipate. There is no support for victims, period, currently available.

You add to that having people overseas reporting in very limited reporting chains to people who could be the abuser in question, and it's a recipe for under-reporting and frankly for women leaving the Department. You know, if women are coming in 50-50 to their male counterparts, and 30 percent of women are senior leadership, where are these 20 percent of women going?

You know, we're not asking the questions. There are no exit interviews. I tried. I was there for 13 years. You know, nobody asked. I looked around. Anybody want to talk to me about why I'm leaving? There was no process.

So having that kind of structural support in place I think would be incredibly helpful, because so many women just leave or they decide they don't want to report because it's not worth it, because they see the high levels of impunity, and they decide I don't have the money, I don't have the time, and I'm not going to become a poster child for an issue that's going to ruin my career.

So support is needed, and I think that's an excellent start.

DR. METCALF: I would agree with that, and also thank you for sharing your own experience with us. In talking with people across all of the sectors and in the STEM disciplines, there's this like desire to believe that there's a justice in this situation, and a lot of times the decision ends up coming down to what resources do I have available to me.

Whether that's emotional resources because this takes a toll, health resources, financial resources, other kinds of support that are there. So having an advocate who is genuinely on the side of a person who's experiencing this is really important.

A lot of people also expect that HR would have that role, and then find that HR is there to protect the institution. So that's one more situation that they find themselves in, where they're disappointed and this is not really the way things work. Justice isn't really a thing that exists in this process.

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It comes down to who can hire the best attorney, and then I have to decide whether I'm going to walk away, right. And so any resources that you can give to support someone who's going through that situation would be helpful in lightening that load for them.

COMMISSIONER NARASAKI: And Mr. Shih from a government perspective?

MR. SHIH: Thank you Commissioner for the question. At NASA, I am that power advocate. I lead and I centralize all the policies and programs on anti-harassment. I have a center seat at the leadership table and I report directly to the Administrator.

But again, what I would say is that this is a collective responsibility. We know from the research that there are risk conditions, including power imbalances, that contribute to these types of factors. The lack of a homogenous workforce, the lack of diversity at leadership positions. So those are environmental factors that are important to be cognizant of and to improve.

Ultimately again, I know I keep repeating this. Our success has been really reinforcing and just putting steel behind the value proposition that anti-harassment is directly linked to mission.

And so we've really addressed that power imbalance, because the very senior leaders, the Administrator on down through our workforce, they understand that with our really, really tremendously challenging missions, we don't have the luxury of excluding a subset of our workforce, and certainly not a subset of our future workforce given the fact that we're seeing these retirements already, institutional knowledge.

We've got one of the oldest workforces in the country. We're seeing an explosion of technology positions, and with the succeeding smaller generations, we're going to be in a huge talent war to compete for talent against other agencies, other sectors and other countries.

So the people and the leaders at NASA understand, we can't afford anything that jeopardizes our ability to achieve the mission from an inclusiveness perspective, and to be able to continue recruiting the future workforce.

It's really that simple, and because of that value proposition and because of tragedies in our past, where people and their cognitive diversity weren't

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included, there were mission mishaps. So people really understand that this is a mission distractor, it's a mission failure risk and we can't afford it.

COMMISSIONER NARASAKI: So Madam Chair I have other questions, but I want to defer because I know other Commissioners have questions.

CHAIR LHAMON: Do you want to do just one more?

COMMISSIONER NARASAKI: Well, I did want to ask one of the powerful issues that came up at State was the issue of the corridor of reputation. I think that's probably true in STEM as well, right, where you have a small number of people who actually know what your expertise is.

In everything in Washington is about who you know and who's going to stand up for you. So how do you, how do we address that issue in terms of that being a block for people wanting, who should be reporting but are afraid to report?

MS. BEN-YEHUDA: I think that's a really important point you've made, Commissioner. That was one of the first terms that I learned when I entered into the Department, the corridor of reputation, because it matters a lot more than anything on your CV or anything else.

What that also becomes shorthand for is hearsay, and in a workforce where Foreign Service officers are changing positions and vying for new positions every one to three years, there's so much turnover, the corridor reputation becomes a major factor for selection and for promotion.

So one way to address that would be to look at the assignments process, and to identify additional ways to reduce bias and make that process blind, especially for senior issues. As an intelligence briefer, I was the fly on the wall to many senior level conversations about oh, she's really difficult to deal with. You don't want to deal with her. She complains, she this, she that, and that stuff really sticks.

But if there is a process to handle those issues in a blind way, to introduce ways to remove unconscious bias, I think that would go a long way. Unfortunately, that's not what we have now.

MR. SMITH: I would like -- oh, I'm sorry.

DR. METCALF: Ooh, go ahead.

MR. SMITH: Go ahead, go ahead.

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DR. METCALF: I would just add, that reputational piece is part of the reason why cases go decades without someone coming forward it's because people are waiting until they get to a position in their career where they have enough seniority to protect them from the potential ramifications of reputational harm.

MR. SMITH: I'd like to add two things. In terms of individuals coming forward, we do everything that we can to protect the fact that they came forward where we can, and we strongly enforce retaliation for taking any type of action.

Also, our office has worked with HR and also the Foreign Service Institute to develop a course on mitigating unconscious bias, and also to the extent of unconscious bias in the bidding process.

Our office worked with the ombudsman and also one of our bureaus to do some training in that, and we're also trying to spearhead an effort to do a demonstration, if you will, in terms of bidding that would tend to lessen the opportunity for conscious bias to impact on bidding.

COMMISSIONER NARASAKI: Do you fire people who retaliate? How do you fiercely enforce against retaliation?

MR. SMITH: To my knowledge, no one has been fired. But that is not, is not under the purview of my office. It would be under the purview of the Human Resource Office.

MR. SHIH: Commissioner, I think we tend to focus too much on process. It's important. It impacts the way we actually do our business and it's easier. But I think the solution ultimately to a lot of this is really culture. If we set the right culture from the top of the agency on down and it becomes institutionalized, then we actually prevent a lot of these problems. I'll give a quick example.

COMMISSIONER NARASAKI: I appreciate that, but I think that if you have people who retaliate and you don't fire them, then I think there's a pretty strong message that it's okay.

MR. SHIH: Absolutely. So we have processes that afford people due process and protections, so that they're protected from these types of behaviors. The culture element is really important.

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disasters, NASA stood up an organization led by a senior executive. He's currently a four time shuttle astronaut and a Marine, retired Marine colonel heavily decorated.

The job of that office is for safety and mission assurance. What it does is it actually promotes policies and processes, encouraging all employees to speak up on anything that could jeopardize safety and mission assurance. They have the right to actually go directly to the Administrator if there's a concern that may involve an accident to our programs.

CHAIR LHAMON: Mr. Shih, you testified earlier that you typically are able to resolve beginning to end in 51 days, which is astonishing for the federal government, and a pretty terrific record. Can you speak to how you're able to get to that resolution rate and I know this is a process question, but what are your processes involved that lead to that culture?

MR. SHIH: Absolutely. Thank you. Thank you, Madam Chair. First of all, we have the luxury of not having a high complaint volume. Again, it's I think a credit to our preventative efforts. But then secondly, we have a separate program that's specifically aimed at addressing these issues.

I coordinate that program. It's not asset poor because it involves a collaboration of all of the organizations across the agency with equities and responsibilities that address this, and that includes Office of General Counsel, it includes HR, it includes senior leadership.

So this becomes a priority to us. Again, when we get a report, we basically feel that this is a good indication of something that might have been an unknown previously. We didn't know what we didn't know. So now somebody's actually stepping forward and giving us the gift of information. We need to take it seriously.

So it's a priority for us to immediately contact the person, and to be able to get the information from that person, particularly to assess whether there's a possibility of actual physical harm. So there's immediate intervention. Then with that information, then we gather additional facts and we prioritize again getting people to the table to be able to make a decision, including resolution.

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Our focus, though, isn't on legal compliance. Our focus in this process is really about what's in the best interest of the workforce, including our agency. So we have to make the best decision, and even if there isn't a violation, even if it's an instance of bullying that is a very low level, we want to cut it off there before it gets worse.

CHAIR LHAMON: Thank you. Commissioner Adegbile, Commissioner Kladney, I know you both have questions. In our remaining ten minutes I'm going to ask you to split the time. Commissioner Adegbile.

COMMISSIONER KLADNEY: I just have a really quick question.

CHAIR LHAMON: Okay. Do you want to put your microphone on and go quickly.

COMMISSIONER KLADNEY: Mr. Shih, I was wondering when do you plan on finishing your online program, and also your training materials, the ones that you -- that are overarching and things like that. I was wondering if you could provide a copy of all that to the Commission.

MR. SHIH: Yes sir, Commissioner. Thank you for your question. We're scheduled to -- the training is actually completed. We're right now doing the Section 508 and the other technical components, to ensure that it can be delivered across the learning management system across the entire country.

I'd be happy to provide that and our current training to the Commission, and to anyone else that would like to benchmark with us.

COMMISSIONER KLADNEY: Great. If you could, I guess, send it to us, OCRE, it would be wonderful.

MR. SHIH: Thank you for that opportunity.

COMMISSIONER KLADNEY: I'm done.

COMMISSIONER ADEGBILE: Thank you, Commissioner Kladney. My question builds on some of the discussion we've had today, and picks up on the notion of culture. One way to ensure that we take these issues seriously in the context of culture is to make sure that they factor into promotion decisions, and that people who are found to be perpetrators of this, of these types of bad acts on their employees and colleagues have consequences that impact their pathway to promotion, since it's inconsistent with our values and the law in many respects.

So I want to understand from everybody's perspective

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whether or not there are mechanisms to adequately take account of this type of conduct and findings. How long do these things stay in the record, how are they taken account of when it comes -- when the question is called about whether or not somebody should serve and have their sphere of influence expanded?

The State and NASA can take it in any order they want, and I welcome comments from all of the panelists.

MR. SMITH: So we do take that into account. When individuals for Foreign Service, when they are under consideration for tenure to remain in the Foreign Service, for promotion, for appointment to senior level positions, those names go through several offices throughout the agency to be vetted.

Our office is one of those offices, and we flag, to the extent that that is someone that has come across our radar, we flag the name, pass it back to the Human Resource Office, because they are the program evaluation or the folks with an office in Human Resources that is responsible for that. So we share those names that are flagged in our processes.

COMMISSIONER ADEGBILE: Let me be more specific. If somebody is found to have created or perpetrated a violation, a finding of sexual harassment, does that appear in their record?

MR. SMITH: I'd have to check. I'm not familiar with the HR process. I'd have to check and I'd be glad to check and get back to you sir.

COMMISSIONER ADEGBILE: Because what you described as a flagging process to me seems a little idiosyncratic. People, I grant people their best intentions. But it seems to me that if there is an adjudicated finding of a bad act on the job, the typical way employers deal with that is to make sure it's recorded and known, such that it's traveling a holistic way when that person is being considered for all manner of things.

And a process that relies upon the institutional knowledge or memory of what the particular conduct of a particular individual was seems to me to be a recipe to let some people slip through who may not be in the best interest of the agency slipping through.

So I think it's important where there are findings of this type of conduct, that it be recorded, that it be recorded for some period of time so that it's not a

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vanishing slap on the hand where the conduct is serious and that that factor be considered in the context of promotion. I'm wondering if -- well Ms. Ben-Yehuda?

MS. BEN-YEHUDA: If I could just respond to that to make a couple of points. One, sexual harassment and assault claims are not adjudicated as part of the background for Senate-confirmed positions at the Department of State. Which is to say if you go forward and you're being vetted to be a chief of mission or an Ambassador, that is not a requirement on the Senate side. That's something that Congresswoman Speier is looking to change.

Two, it is possible to receive a beneficial career transaction that is not a promotion. In that case, information would not travel. For example, it could be very good for your career to receive, you know, the ability to move for a rotation to a different office, to take on additional responsibilities.

That is considered really a gift in a really stretched workforce. That is often a key way that folks who are accused are pushed out and separated from people who have made the complaint. But it ends up benefitting the accused because they get an additional opportunities, whereas it's very difficult to come by otherwise.

The same goes for additional training. You know, highly sought-after trainings are often a great place to park people when they are a problem. I just wanted -- I know we have limited time, but I do want to make sure we get to the backlog issue, which I do think is significant at the Department of State.

Mr. Shih has pointed out to the 50-some days that it takes to adjudicate a complaint. I'd like to know what that current level is at Department of State. My understanding is that from 2017 to 2018, the number of cases reported doubled. I'd like to know if there was concomitant increases in staff to adjudicate that.

I do think for federal workforce-wide, we need to look at caps on the number of cases a particular adjudicating officer, whatever he or she may be, can take on at a given time.

Because to the Commissioners' comment on corridor reputation, when a number of these cases are taking 18 months, two years to adjudicate, that silences people from coming forward, and it also can carry,

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you know, the rumor mill for many years to come because it's not adjudicated in a timely fashion. Thank you.

MR. SHIH: Commissioner, can I answer your question? So at NASA, we have disciplined individuals for violations of our anti-harassment policy, but also in the course of doing a fact finding for a report of harassment, finding other violations of conduct that warranted discipline. That discipline goes in the individual's official personnel folder, so it stays with them, and it's considered both for suitability, clearance determinations, promotions, selections and awards.

Our efforts have been very effective. We haven't had a removal in my time there because we intervene and address these issues before they become a high level issue, and I think our statistics bear that out. Last year for an agency of about 17,500 civil servants and many, many more contractors, we only had 30 EEO complaints alleging harassment.

Of those 30 EEO complaints, we had exactly zero complaints alleging sexual harassment last year.

COMMISSIONER ADEGBILE: Thank you. Time for one more?

CHAIR LHAMON: Well, this is the last one.

COMMISSIONER ADEGBILE: This is directed to Ms. Metcalf and Ms. Ben-Yehuda. So where folks are in fields with -- well, let's take the field out of it. This happens in the context of employment very often, and people have to make difficult choices about the necessity of maintaining their employment and career possibilities, and coming forward and exposing themselves to retaliation and other harmful carry-on effects of raising their hand.

I'm wondering if you could -- if each of you could speak to just how real those choices are for people, and why having mechanisms and remedies in place to address in a meaningful way, not lip service, but in a meaningful way this problem is necessary to make the nation's biggest employer, the federal government, be a model for all employees.

DR. METCALF: I'll say that they -- that those issues are very, very real. In my own research, there are hundreds of folks who have experienced these kinds of issues in their workplaces, who have had to make really tough decisions. One case in particular, she was in a three year battle with her employer about a

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situation with a serial harasser in a tech department.

And other women came forward too, and they ended up moving her department. Similar to my own situation in graduate school. They moved her, and offered her a settlement and she decided that the settlement wasn't worth it, that she wanted to fight it and she actually went public in the media with this.

But it ended up creating some backlash, where she was getting hate mail at her home. She has two young children. People were coming by her home and she felt like her children were unsafe.

She incurred tens of thousands of dollars in legal debt to pursue this case, and these are the kinds of things that people have to think about, as well as the emotional labor concern about potentially losing her job and whether she should walk away from the employer, whether she should pursue with the EEOC, you know.

All of these, all of these things matter, and this is just one case among many where people are making these decisions. So I think this is one area where I think what you've described about NASA taking that cultural approach, to making sure that it's not just about the legal process, but also about holistically addressing in the culture what's happening so that this is something that everyone takes some responsibility for, really can make a big difference.

CHAIR LHAMON: Thank you to this panel. We are out of time. Mr. Smith, I hope that in addition to the HR information that you've already said that you would provide to us, that you also can collect and provide to us data responsive to Ms. Ben-Yehuda's question about what the backlog of cases is within your office, and what the average time period is for resolution of cases and what the caseload is for investigators in your office. Is that something that you can provide to us? Thank you very much. I appreciate your --

MR. SMITH: Absolutely.

CHAIR LHAMON: Thank you. I appreciate very much this vibrant panel and the work that you all are doing. Thank you, and with that we will take a lunch break and reconvene at 1:10 p.m.

MR. SHIH: Thank you so much.

(Whereupon, the above entitled matter went off the

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record at 12:14 p.m. and resumed at 1:11 p.m.)

Panel Three:

CHAIR LHAMON: Thank you. Welcome back everyone. We are coming back to our important topic and I thank everyone for your continued attention.

I just want to offer a quick reminder that we have licensed mental health professionals available if you need assistance. Please let a Staff Member know if you would like to speak with them, and our Staff will direct you to the appropriate place.

They are located in the back of the briefing room. And they're wearing name tags, so if you'd like to approach them directly for assistance.

We'll now proceed with the Third Panel.

DR. FITZGERALD: Hello? Yes, am I on the wrong call?
(Laughter.)

CHAIR LHAMON: I think you are.

(Laughter.)

CHAIR LHAMON: But we're going to go ahead with our Third Panel, which is Academics and Community Stakeholders.

Professor Fitzgerald?

DR. FITZGERALD: Yes.

CHAIR LHAMON: Yes, you're not on the wrong call. Thank you.

(Laughter.)

DR. FITZGERALD: Oh, okay.

CHAIR LHAMON: This is Catherine Lhamon. I'm just introducing your panel --

DR. FITZGERALD: Ah.

CHAIR LHAMON: -- and we'll invite you to speak when it is your turn. But I'm just going to proceed with the introduction.

DR. FITZGERALD: I'm on the line, Madam Chair.

CHAIR LHAMON: Thank you. And the Vice Chair is on the line as well. Terrific. So, we will now proceed with our Third Panel.

**PANEL THREE: ACADEMICS AND COMMUNITY STAKEHOLDERS
ON THE IMPACT OF SEXUAL HARASSMENT
IN THE FEDERAL WORKFORCE**

CHAIR LHAMON: In the order in which they will speak, our panelists are Christine Back, Legislative Attorney, Congressional Research Service.

Tamara Chrisler, Managing Policy Director, Leadership Conference on Civil and Human Rights.

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Donald Tomaskovic-Devey, Professor of Sociology and Executive Director of the Center for Employment Equity, University of Massachusetts, Amherst. I went to Amherst College, so welcome.

Rhonda Davis, Head of Diversity and Inclusion, National Science Foundation.

And on the phone, Louise Fitzgerald, Professor Emerita, psychology, women's studies and management, University of Illinois at Urbana Champaign.

Ms. Back, please begin. Just as a reminder, you have seven minutes. Please watch the lights. And when the light turns red, please stop talking. Thanks.

MS. BACK: Madam Chair, Commissioners, thank you for the invitation to participate in today's briefing. My name is Christine Back, I'm a Legislative Attorney in the Congressional Research Service.

CRS is a legislative-branch agency that provides objective, nonpartisan analysis to members of Congress and their staff.

Rather than speak about harassment from a policy perspective or a social science perspective, I'll be speaking from a legal perspective to help situate you in how federal courts are analyzing sexual harassment claims brought under Title VII of the Civil Rights Act of 1964.

Title VII is the current Federal Statutory basis for bringing a claim alleging sexual harassment in the workplace. So we'll focus on Title VII itself and on Supreme Court precedent that sets out the relevant standards to apply to these claims.

As a general matter, there are at least three considerations for understanding how courts are analyzing these claims. First the text of the statute itself, second, the Supreme Court precedent laying out the relevant standards, and third, how lower courts are then interpreting and applying that Supreme Court precedent.

There are at least several Supreme Court cases to be aware of in this context and which are discussed in brief in my written statement. This morning I'll discuss two.

The court's 1986 decision in *Meritor Savings Bank v. Vinson*, and the subsequent decision in 1993, *Harris v. Forklift Systems, Inc.* Because both of those decisions set out what I would describe as the core elements that a plaintiff has to prove to prevail on

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a Title VII sexual harassment claim. The same standard applies to claims that are brought by federal employees who allege harassment under Title VII when they file a lawsuit in federal court. So, turning to the text of the statute itself, Title VII has two principle anti-discrimination provisions, but we'll examine the first paragraph in particular. That is the language that was before the Court in its 1996 Meritor decision.

You'll see the statute makes it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of such individual's sex, among other protected traits.

So you'll see at the outset there's no express reference to harassment. But you will notice in that first paragraph this phrase that it's unlawful otherwise to discriminate against any individual with respect to terms, conditions or privileges of employment because of that individual's sex.

And it's that language that the Court looked to when holding its Meritor decision that a plaintiff can bring a Title VII claim challenging sexual harassment as unlawful under the statute.

So the Court said in Meritor without question, when a supervisor sexually harasses a subordinate, this is discrimination based on sex. And the Court said, when it comes to discrimination in the terms, conditions or privileges, the Court interpreted that phrase to prohibit discriminatory working environments.

So the Court in the Meritor said, a plaintiff can establish a Title VII violation by proving that sexual harassment has created a hostile or abusive working environment. That's the standard that applies today.

The Court in Meritor went on to say, however, that not all workplace conduct is going to violate the statute. So what's the standard?

The Court said that a plaintiff must show that the alleged harassment was sufficiently severe or pervasive to create an abusive working environment to violate the statute.

The Court in its subsequent '93 decision, Harris v.

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Forklift Systems, Inc., introduced another component to the severe or pervasive standard. Under Harris, a plaintiff not only has to show that he or she personally or subjectively found the harassment to be sufficiently severe or pervasive, but also, the plaintiff must prove that a reasonable person would objectively view that harassment as sufficiently severe or pervasive.

So, under Meritor and Harris, we have a legal standard that includes terms like abusive, hostile, severe or pervasive. So one might ask at this point is this a clear standard.

And in a concurring opinion in Harris, Justice Scalia did not think that these terms amounted to a very clear standard for judges or for juries.

To give you a brief example of how federal courts then apply that severe pervasive standard, let's take a quick look at two appellate court decisions that appear to address similar evidence. They applied that same Supreme Court standard we just talked about but arrive at contrary conclusions about whether or not the harassment was sufficient severe or pervasive.

These cases address motions for summary judgment. So the question there is whether the evidence would allow a reasonable jury to conclude that this harassment was objectively hostile.

So, before turning to these cases, they do involve conduct that is very serious and could be described as egregious. forewarning about the allegations themselves.

So, in one case, a 7th Circuit case from 2010 called Turner v. The Saloon, this involved a male plaintiff. A waiter at a Chicago steakhouse who alleged that his female supervisor was engaging in sexual harassment.

He alleged among other conduct that she had grabbed his genitals, had asked him to kiss her, grabbed his buttocks, among other conduct. And the 7th Circuit said, yes, this would allow a reasonable jury to conclude that this is a hostile working environment. The 8th Circuit in a 2005 case, called LeGrand, also concerning a male plaintiff alleging harassment by his supervisor, alleged similar conduct. That this harasser grabbed his buttocks, reached for his genitals, gripped his thigh, forcibly kissed him on his mouth. Sought his participation in watching

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pornographic movies, among other conduct.

And the court in that case said, of viewing this claim in the light of the, quote, demanding standards set by the Supreme Court, end quote, the harassment was not sufficiently severe or pervasive to violate the statute.

So in closing, I'll just note that in addition to the evidence in a case, how courts characterize the evidence will shape its ultimate conclusion.

So, in the 7th Circuit case, for example, with the one we just talked about with the Chicago waiter, the 7th Circuit said this harassment was explicit; it was aggressively physical. The court also noted that its own precedent says, when there's unwelcome touching of an intimate body part that weighs heavily in favor of sufficient severity or pervasiveness. So the court said, yes, this meets the standard.

The 8th Circuit in the LeGrand case characterized that harassment as isolated incidents, not physically violent or overtly threatening. And the court, including based on that characterization, concluded that the harassment was not so severe.

So there's much more to be discussed when it comes to this area of the law. Hopefully that will provide a useful starting point to situate you. I'm happy to answer any further questions. Thank you.

CHAIR LHAMON: Thanks, Ms. Back. Ms. Chrisler.

MS. CHRISLER: Thank you, Madam Chair and distinguished Commissioners, my name is Tamara Chrisler and I'm the managing director of policy at the Leadership Conference on Civil and Human Rights. A coalition charged by its diverse membership of more than 200 national organizations to promote and protect civil and human rights of all persons in the United States.

Thank you for holding this hearing on sexual harassment in the workplace and thank you for allowing my testimony.

As written in my biography, I've had the honor of working in the field of employment discrimination for over two decades. And as many of my esteemed colleagues, who appear before you today, I have a comprehensive view into federal processes and procedures.

My written testimony provides details of the federal EEO complaints process, as well as some insights into

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the impacts of that process on the parties and the cultures of the agency.

For my testimony today, I would like to focus on the recommendations I make with respect to changing the culture of an agency as I believe it to be the biggest barrier to addressing harassment in the workplace. Changing the culture of an agency takes time, but it can be done through consistent messaging and consistent action that corresponds with that message. The first message must be that each agency component has its own anti-harassment policy that is periodically reviewed and updated and consistently distributed to all new hires.

It is not enough that the component rely on the parent agency's policy on anti-harassment. Having its own policies directly condemning harassment sends the message that the head of the agency recognizes the severity of these claims, their impact on the workplace and the need to prevent the conduct that leads to such claims.

The agencies must live the policy, model the appropriate behavior they want to see, thoroughly address each claim of harassment and not turn a blind eye to inappropriate behavior or make excuses for it. Implement practices that reduce or prevent inappropriate behavior that become part of the daily operations, like inappropriate jokes and comments. Second, to change the culture of an agency there must be trust. Trust that managers and coworkers who engage in inappropriate behavior will be held accountable. And trust that the systems in place, like the EEO process, are sound enough to address and resolve complaints of harassment.

Agencies can build trust in their programs by complying with procedures, meeting deadlines, ensuring that EEO counselors properly identify the issues, so that when the agency accepts the complaint and frames the issues, the accepted issues are reflective of the complainant's concerns.

HR staff in particular must develop systems to properly handle requests from investigators for witnesses and documents, which will result in more timely and efficient investigations.

Agencies should be mindful of appearances of impropriety and remove from the complaints process, management officials who are alleged to have engaged

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in wrongful behavior. If a conflict exists or the appearance of a conflict exists, agencies must act to correct it.

Requiring workplace climate surveys to be conducted after the claims of harassment are presented is another way that trust can be built in the workplace. Harassment claims are not easy on the employees who bring them, those who are alleged as harassers or staff who are involved in the claim.

Trust is often diminished during this process. Employees feel deflated and there exists a question of how to move forward.

There was testimony this morning about aggrieved individuals and alleged harassers continuing to work together in the workplace. A workplace climate survey might be the tool to start that healing.

Incorporating administrative inquiries into agency procedures can also help to change the culture of an agency. These inquiries do not replace the EEO process but would quickly allow an official investigation into a violation of policy, not a violation of the law. And may result in interim relief for an aggrieved individual.

Mandating that former federal employees participate in the EEO process, even after separation from federal service, would improve the integrity of the process. It may be easy to enforce such a mandate by simply having the federal employee acknowledge in writing at the time of hire that participation in administrative investigations extends beyond their employment in the federal service.

Training for staff who are part of the EEO process is important to ensuring a fair and efficient system, which also speaks to the culture of the agency.

Staff who serve as the first points of contact for employees who believe that they are being harassed must be trained to properly address concerns of harassment, and not meet employees with indifference or disbelief.

When employees bring such claims, the staff cannot ignore the harassing behavior or tell the employee to ignore the behavior. Or tell the employee to confront the harasser. Or consider the behavior as just a character flaw of the harasser. These responses are not acceptable.

Training managers on how to identify and correct

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harassing behaviors is key to reducing, and perhaps eliminating harassment, from the workplace. Managers are in the position to stop harassing behaviors even before they start, or rid work environments of these behaviors before they start to poison the workplace. Modeling appropriate behavior themselves and noting whether staff are modeling such behavior, is a proactive approach to ensuring a harassment-free workplace.

When managers are found to have engaged in harassing or discriminating behavior, agencies must hold them accountable and ensure that the behavior is corrected. By correcting behavior, I am not suggesting that every incident requires discipline. I do suggest, however, that every incident requires corrective action. Whether that action is training for an individual or an evaluation of certain processes to determine where the system failure occurred or where the wrongful behavior was allowed.

The culture of an agency plays a vital role in whether an employee will report claims of harassment. Providing a fair process to resolve claims of harassment and allowing sound mechanisms by which employees will be heard, tells employees that management does take these claims seriously. However, the same is not true if the agency's process is fraught with delays or there's no integrity in the process.

Likewise, maintaining long-standing practices of toughening out unprofessional behavior or considering disloyal, anyone who challenges that practice, is toxic to a work environment and it must stop.

I want to thank you for holding this briefing today. These are serious issues, worthy of your consideration. I appreciate the opportunity to provide testimony, and I'm happy to answer any questions you may have.

CHAIR LHAMON: Thank you very much, Ms. Chrisler. Professor Tomaskovic-Devey.

DR. TOMASKOVIC-DEVEY: Thank you very much for the opportunity to be here today. At the Center for Employment Equity, we are doing research with data from the EEOC.

And I want to talk today a little bit about charges filed with the EEOC and their outcomes, which might be of interest. And we also are particularly

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interested in how employers, as well as the EEOC, deal with those charges.

Our estimate is that in any single year about five million employees experience sexual harassment at work. And probably about a quarter of them, maybe somewhat more, actually report it to their employers. And additionally, we estimate that it's more than 99 percent of the people who experience sexual harassment never file a charge with the EEOC.

And what's also the case, and you've just heard it, is that men are also in this population. Eighteen percent of the people who experience sexual harassment, self-reported, are men. And 19 percent of those who file with the EEOC are as well.

Women are the primary targets, of course, but black women are at the highest risk. And that's not actually surprising because sexual harassment is largely, at least in the literature that social scientists see it, as an exercise of power. And black women are particularly vulnerable as a group.

We're also particularly interested in how managers have responded. And we can look at the sexual harassment charges to the EEOC and learn about that.

The EEOC's harassment report was mentioned earlier today. And in that, they want you to think about sexual harassment as part of a kind of a more general culture of workplaces.

And right now, the research suggests that about 20 percent of workers say in their job they've experienced some harassment in the last year. Or while in that job. And it's not just sexual, but verbal abuse, bullying, things of that nature.

And I think the EEOC was really ahead of the Me Too Movement in this by saying, it's not just sexual harassment, it's harassment. Which gives people permission to then harass sexually.

And, so what are the things that we've learned? Actually, if you can just go back for the one.

This is the sexual harassment one. In terms of employer responses, more than 60 percent of people who file a charge have lost their job. And a higher proportion have experienced retaliation.

If you go to the next one, we've also compared this to other sex-based, other bases for discrimination charges. And it's pretty much across the board.

If you file a discrimination charge you have or will

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lose your job. Of at least more than 60 percent. Sexual harassment actually stands out as having a much higher level of harassment. Or retaliation behavior after the charge is filed.

So job loss is common for sexual harassment, retaliation and job loss are the common responses to filing a charge. So far, if you get my drift, filing a charge is dangerous.

Now, past research suggest sexual harassment is more common in workplaces with a hypermasculine culture and when management tolerates abusive behavior more generally. Which is Tamara's point earlier.

We suspect at the Center that it's this kind of context, where managers are most likely to fail in treating sexual harassment cases seriously in processing them.

When we go to the EEOC and try to see how seriously the EEOC has treated sexual harassment cases, if you go to the next one please, what we actually find is they treat them as or more seriously than other sex-based charges. Right.

So, the EEOC is reacting to these charges seriously as others. On the other hand, the EEOC's basic capacity to act is pretty hamstrung in a number of ways.

It's the basic staffing and kind of inflation-adjusted budget right now is about what it was in 1980. Even though there are more bases of discrimination claims that they're responsible for and the labor force has grown by more than 50 percent. Okay. So what we do find is we they treat them quite seriously. At the same time, most individuals benefit little from the EEOC's case processing.

Only 27 percent of employees who file a sexual harassment charge with EEOC and continue to pursue get any benefit. And among those who get monetary benefits, that's 23 percent, the median is \$10,000. So I want you to think about that. Retaliation, lose your job, \$10,000 to go away basically. Problematically, only 12 percent of charges lead to management agreement to change behavior or practices. When people go to the private bar, 90 percent of those people who go to the private bar, as opposed to go through the EEOC's process, are turned away. The lawyers say your case is not good enough.

For those who do, for those cases that are accepted

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by the private bar, 60 percent receive benefits and the payout is a little bit higher. However, less likely to negotiate workplace changes and non-disclosure agreements, which I think are really problematic, are widespread.

So what's to be done? Our point is, first point is, think about this as part of a more general problem of harassment.

And that low-level harassing behavior, bullying and the like, set the tones for acceptable behavior. Most, much harassment, including much sexual harassment, won't rise to the legal level.

And there is stuff in the literature that tells us what does work. And hopefully we'll be able to talk about that a little bit more.

The EEOC's recommendation, as they talk about leadership and accountability, structures in workplaces. We heard about that earlier this morning.

I think in the scientific literature on this, transparency is really important. You can't just say we have a policy, you have to show your workers, and the outside regulatory agencies, I would say, what you're doing and why it works. And you have to think about why it doesn't work when it doesn't.

And the last thing is, we have to have metrics. You can't have accountability, you cannot have transparency if you are not keeping good records. And those records include the outcomes of the cases. Thank you very much.

CHAIR LHAMON: Thank you very much. Ms. Davis.

MS. DAVIS: Good afternoon. Thank you, Madam Chair and honorable Commissioners. I'm very pleased and honored to be here today.

Dr. France Cordova, who is the director of the National Science Foundation regrets that she's not able to attend. She's very committed to this topic. She's taken a very assertive posture to eradicate sexual harassment in the scientific research community that we find.

And back in, February of last year, I had to testify before Congress. And it was a part of their review of sexual harassment and misconduct in science.

We were the federal agency that had to testify, and I believe that's for multiple reasons. We fund approximately 27 percent of basic research in the U.S., which is about \$8 billion.

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Several prominent principle investigators, funded by NSF, were in the news for sexual harassment. And the fact that a couple years prior to then, we had taken an assertive posture to try to address sexual harassment.

The Director issued an important notice to the entire grantee community that NSF will not tolerate sexual harassment within the agency, at the awardee organizations, field sites or anywhere science is done that NSF funds.

In conjunction with this notification, to the approximately 3,000 colleges and universities that we fund, there was a concerted effort to bolster our Title IX program. We hired a senior Title IX program manager to begin doing Title IX compliance reviews in helping us bolster the things that we were failing to do in our role as a federal agency.

We think these interests, that this highlighted effort piqued the interest of Congress and they requested us to come. It also piqued media and others too.

We often get asked, why did we take the steps and why was it important. And there are multiple reasons.

It is the law to not sexually harass. People who create unsafe environments, they disrupt the entire scientific ecosystem, discourage scientists particularly young scientists from contributing and harming their careers and scientific progress.

It's our mission to protect and promote fundamental research and to broaden and increase participation in STEM.

As the primary funding agency of fundamental science and research in the U.S., NSF recognized to enable scientists, engineers and students to work at the outermost frontiers of knowledge, the agency must be a role model for teamwork, fairness and equity.

That is why we announced the steps last year to help eliminate sexual harassment from science and engineering through a new award term and condition that makes it very clear to the awarding organizations that if NSF has a funded investigator or co-PI who has committed sexual harassment, we want to be notified. If there's administrative action, we want to be notified.

Due to the importance of this issue, if we took it as a priority and fast-tracked it, the new award term

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condition went into effect October 22nd of last year. After the Federal Register notice.

When we put it in the Federal Register, we got over 200 comments. That's more comments than we ever received on our Federal Register notices.

They were all fully supportive of what we were doing, then they split 50/50. Fifty percent say we didn't do enough, 50 percent say we went way too far overboard. We think we landed somewhere in the middle, we didn't make anyone happy.

We plan to conduct evaluations in the future to determine if the term and condition needs any modifications. We don't want this good thing to be harmed, and we don't know exactly how effective it is, and so that's in our future plans.

The new term is entitled, notification requirements regarding sexual harassment, other forms of harassment or sexual assault. The reason we added those in there is because we learned, just like you said, it's not just sexual harassment. Other forms of harassment play a role too. And it impacts gender discrimination.

So we think this is going to be one solution that will be fairly effective. And hopefully after we evaluate, we will be able to prove that.

But these are the things that we consider at a minimum when we are looking at, when we are notified that someone has sexually harassed a student, postdoc or someone in the academic community we fund. The safety and security of the personnel supported by our awards, the overall impact to the NSF funded activity, the continued advancement of taxpayer-funded investments in science and scientists, and whether the awardee has taken the appropriate action to ensure continuity of science and that the continued progress, under the funded projects, can be made.

Ensuring the safety and security of the people our awards support has, and will continue to be, NSF's top priority.

At the foundation, sexual harassment is not a trending topic. For many years now, we have funded research and proactively facilitated interagency working groups so that we can gain a better perspective and propose effective solutions.

NSF also expects all awardee organizations to

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establish and maintain clear standards of behavior to ensure harassment-free workplaces.

To mine the best ideas, the Director instituted a cross-agency special task force to examine and collect promising practices and model codes of conduct. Which are now being published on one-web portal, at nsf.gov/harassment, to make it clear and to make it easy for the research community and the public to access this information.

These new steps and resources complement NSF's Title IX compliance program, which we have already bolstered. It's meant to ensure that the actions of one do not negatively affect the careers of all, it is vitally important that the work that we do, do not impact students and postdocs. We'll do everything in our power to prevent that.

I also would like to mention that we were a major funder of the National Academy of Sciences in the Engineering and Medicine sexual harassment report. This is one of the most comprehensive examinations to date of sexual harassment in academic science and engineering and medicine, as it's based on rigorous research in this area.

And it also supports some of the same things we've heard about women of color and certain categories that sexual harassment impacts even more than what you would just think on the surface.

So, I know I'm out of time, but I would love to participate in any Q&As. Thank you.

CHAIR LHAMON: Thank you, Ms. Davis.

MS. DAVIS: Thank you.

CHAIR LHAMON: Professor Fitzgerald.

DR. FITZGERALD: Good afternoon, everybody and thank you very much for inviting me to speak. I do wish I could be there in person, and I hope you can hear me.

CHAIR LHAMON: We can. Thank you.

DR. FITZGERALD: Everything I'm going to say I think it has already been said. But hopefully I'll say it a little bit differently.

As an academic, I have been studying this topic since most of you were probably in middle school. And I'm going to talk today about the common elements of harassment, the things we know for certain about this topic and how it operates across organizational settings from NASA to General Motors.

And the first thing I want to emphasize is that

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harassment is really about sex as a verb. And what I mean by this is this.

We are used to thinking about harassment as sleep with me or else or repeated, unwanted, annoying sexual attention. And that happens of course. And it's what usually hits the newspapers and is one of the reasons we're all here today.

But that is very much the tip of the iceberg. The great majority of harassment in any organization falls into a third category, gender harassment. Which is better thought of as sexist or sexual hostility.

It has nothing to do with sexual desire, it is not a come-on, rather, it is a putdown that conveys contempt for women as workers and sends a not so subtle message that they are outsiders who do not belong.

It includes the pervasive comments denigrating women as stupid or incompetent, treating them as sex objects or referring to them by degrading names for their body parts. It includes pornography and unwanted text messages, including of erect penises, sent by people you don't even know.

As long as we think of harassment as efforts to get a date, plus a few random sociopaths, we are missing 90 percent of the problem.

The second thing we know is what we don't know. And that is how widespread the problem actually is.

No one knows the true answer because the necessary national studies have yet to be done. But from many years of research we know enough to suggest with confidence that one of every two women encounters some form of harassing behavior during her working life.

And has already been mentioned, one thing we do know for certain, is that the problem is more widespread in male-dominated workplaces in which the majority of employees are men whose job duties and tasks are those that are traditionally performed by men, such as police work, firefighting, science. And where the supervisory and managerial roles are more likely to be filled by men.

Researchers refer to this as a masculine job gender context. And every study ever conducted confirms that such workplaces have far greater problems.

We also know that harassment is not a matter of

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individual deviance and that there is no such thing as a typical harasser. It is true that some individuals are more likely to harass than others, but it is also true that organizational conditions, and this has been said very clearly and articulately by earlier speakers, organizational conditions can inhibit harassment, even by those who are otherwise likely to do so.

Along with job gender context, organizational climate and culture is the most powerful factor in determining whether harassment will occur.

A climate that tolerates harassment is one in which employees believe this topic is not taken seriously, that it is risky for them to complain about it and that nothing meaningful will be done.

These workplaces have far greater problems with harassment and victims suffer far greater damage over and above the impact of harassment itself.

Conversely, research shows that workplaces whose employees understand that it does not tolerate such behavior can inhibit harassment, even by those with a propensity to do so.

We also know that encouraging more reporting will not create such a climate. Although safe reporting channels are obviously necessary, reporting alone will never solve this problem if only because it comes into play after the harassment has occurred, and at best may eliminate or improve the behavior of a single or a few individuals.

So what to do? By this point you will not be surprised to hear me say that the most important actions any organization can take are, 1) to increase gender integration, both horizontally and vertically, and 2) to create an organizational climate that will not tolerate sexual harassment.

With respect to gender integration, this is difficult. Affirmative action programs are politically incorrect these days and increasingly legally challenging.

But it is demonstrably the case that organizations that are characterized by such integration, both vertical and horizontal, have far fewer problems with sexual harassment. So we need to figure out a way to do it.

At the same time, we must work to create a climate that does not tolerate this behavior. Climate --

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someone spoke earlier about transparency -- climate is all about employee perceptions, which are critical because they drive employee behavior, both offenders and victims.

Actions that can include, I'm sorry, influence employee perceptions, include visible interventions such as a strong and visible leadership stance, raising the issue proactively and repeatedly, instituting clear policies and procedures and following through with meaningful sanctions, assessing progress with annual workplace audits and providing group-level feedback to employees.

Now, these are obviously not quick fixes. Like turning a battleship, organizational change takes a long time.

But the methods are available, they work, and they are not particularly complicated to implement. We just have to do it.

CHAIR LHAMON: Thank you, Professor Fitzgerald.

DR. FITZGERALD: Thank you very much.

CHAIR LHAMON: I'm going to open now for questions from my fellow Panelists. Professor Adegbile.

COMMISSIONER ADEGBILE: Not yet a professor.

CHAIR LHAMON: Commissioner.

(Laughter.)

COMMISSIONER ADEGBILE: One can aspire, and perhaps I've been encouraged by the wonderful testimony of our witnesses today.

I wanted to ask, Professor, and with a name like Adegbile I want to get it right, so if you could say it for me, I'd appreciate it.

DR. TOMASKOVIC-DEVEY: Tomaskovic-Devey.

COMMISSIONER ADEGBILE: Professor Tomaskovic-Devey. Could you help us understand, you said that we can know what things help and what --

DR. FITZGERALD: I'm sorry, are we still here?

CHAIR LHAMON: We are still here.

DR. FITZGERALD: Okay.

COMMISSIONER ADEGBILE: I was asking, to the extent you said that we know what works, is there data that supports the interventions that work?

Are there studies and data that show us these things?

DR. TOMASKOVIC-DEVEY: There's studies --

CHAIR LHAMON: Your microphone is not on.

DR. TOMASKOVIC-DEVEY: I'm sorry.

CHAIR LHAMON: Thank you.

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DR. TOMASKOVIC-DEVEY: There are both studies that show things that work and don't work, which might be worth asking about as well.

On the work side, what we see is when there's accountability structures, which is, that means that the managers themselves at all levels, not just the leadership, are evaluated partly in terms of outcomes, that works. It changes behavior, right. Now, accountability can also happen in small groups, like at hiring committees where you have a much more diverse hiring committee. It's not about sexual harassment. But it's part of a thing.

So, accountability is important. The idea of transparency, which I think you're hearing back and forth here, which is that in order to change behavior, people have to see what's happening.

And then the kind of the common legal approach to sexual harassment, and other forms of discrimination, the information that gets collected tends to be suppressed, made confidential and the like. Often perpetrators and victims are paid to go away, right? What that means in the next round, nobody in that workplace knows when management has even taken an action, right? Which means people can, any sense of distrust in the system can go on.

And one can think about organizations that are increasingly transparent. So, like Airbnb is really a good workplace for women. And they publish their diversity numbers on the web. They've got twice as many women in tech and managerial jobs as the rest of the tech workforces. And they're putting it out there.

Now, it's probably more important, actually, for the laggards to do the same.

So the last thing that works, and was very much a part of the panel, the NASA conversation earlier today, is you can't do accountability or transparency if you don't have metrics. You have to collect the data.

That's one of the reasons why I sort of hit you with data like, oh, retaliation is happening 78 percent of the time. Unless you can answer that question from a management point of view, right, you also just don't know where your problems are.

COMMISSIONER ADEGBILE: Following up, how does one navigate the tension between confidentiality, on the

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one hand, because there is a role in some situations for confidentiality on these matters, with the transparency imperative that you've spoken to?

I take it that not all of confidentiality is supported by bad motivate, that there's some bona fide reasons that drive it, and how do you navigate that? What's the just-right situation?

DR. TOMASKOVIC-DEVEY: I'm not sure, but all the data I showed you today is confidential data, but I didn't show you any of the confidential bits. All right.

And so, for example, a company, or a federal agency, if it's keeping its own records, right, it can then publish the aggregate record. Okay, how many kinds of problems of managerial kind of counseling on harassment behavior versus discipline on harassment behavior has gone on and what was the outcome.

You don't have to say it was Joe, but if you publish that this company is doing something and there are some actions taken, well then that actually both has a message to the harassers and the people being harassed. And these things would apply to other forms of discrimination as well.

COMMISSIONER ADEGBILE: So for example, federal agencies can have a dashboard and these --

DR. FITZGERALD: I'm not sure I'm hearing all this correctly, but if I am, and you're talking about how to be transparent but at the same time be confidential, the University, I think it was of Minnesota, has been doing this for something like 25 years.

They publish anonymous data that described the number of harassment complaints, the nature of the offenders, the nature of the complainants, the nature of the behavior, the nature of the decision and the nature of the action that was taken. And they publish it every six months.

COMMISSIONER ADEGBILE: Could you send us a proposed federal agency dashboard of the categories that federal agencies might put up and make available in this way, that navigates this? We'd like your further ideas on what the possibilities are and best practices here.

DR. TOMASKOVIC-DEVEY: I'd be happy to do it. And maybe I'll collaborate with Louise on that.

COMMISSIONER ADEGBILE: Great. Next question to --

DR. FITZGERALD: Sounds good.

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COMMISSIONER ADEGBILE: Next question to the panel, and I'll throw it up as a jump ball, you can all fight over it.

So, is this concept of reporting being dangerous I think is a very, very important concept, we've talked a lot about it today in different ways. But I think we need to understand some of the nuances here because if there isn't a way to change that paradigm, we're never going to have reliable data, we're not going to -- our dashboard information is not going to be representative, serial violators are going to have cover and continue to perpetrate.

And so, how do we navigate and break down aggressively, the retaliation that has been described to us today?

MS. CHRISLER: I'll start with saying that it starts from the top down. And it is practice and policy being consistent with each other.

So as I mentioned earlier, ensuring that each agency component has its own policy, following the parent component, following the parent department's agency but having their own policy, as well as ensuring that the practices of the agency, the practices of the managers, the practices of the employees, comport with that policy.

Professor Tomaskovic-Devey mentioned that perception of the employees creates the culture, and that is true.

Their perception is their reality, right. So we know that perception is reality.

And when the body of the employees perceive the managers just putting forth the policy, just having this paper on file but not living it and not practicing it, that's a problem.

So, aggressively breaking down retaliation starts with ensuring that the leadership of each agency is ready to step forward and say, we are not going to allow this anymore. And when they see it, stop it.

It's not just on paper, it's what they are allowing their managers to do and requiring their managers to do.

MS. DAVIS: I agree wholeheartedly.

CHAIR LHAMON: Your microphone is not on, Ms. Davis.

MS. DAVIS: I'm sorry. I agree totally with what you just said, Tamara.

Also, when I think about the Director, when she

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started this taskforce, she meets also with us. And all of her senior leadership, they must come to these meetings. And then they cascade down.

Those senior leaders also meet with their senior leaders, so it is no excuse that anyone in this organization can say that they do not know what they are supposed to do and what may happen if they do it. So I think I agree with you, it's a top-down, but it just can't be at the top talking to a few people, they all must cascade down. And when we are in any meeting, anyone GS-0, if it existed, are very much aware of our stance on a no-tolerance policy as it relates to sexual harassment.

Also, by standards are very much aware that their role to come and let us know if they see something, in case someone is afraid of retaliation, so we can kind of dive in and deal with those issues for the people who may be experiencing something and afraid.

DR. TOMASKOVIC-DEVEY: So I wanted to add that --

DR. FITZGERALD: Well, it is definitely true, it is extremely risky. We've done some of that research, and what we find is that, with respect to victim's welfare, that reporting, at best, makes no difference. And quite frequently, does make things worse.

Now, that's sort of a black box for us why that happens. But the obvious implication is that it's the reaction of the organization to the complaint.

And because victims who report have more psychological stress, they have worse health outcomes and they're more likely to leave their jobs.

DR. TOMASKOVIC-DEVEY: So, I wanted to add --

DR. FITZGERALD: Even after you take into account harassment itself. So I think it is that issue of culture and climate.

CHAIR LHAMON: Go ahead, Professor Tomaskovic-Devey.

DR. TOMASKOVIC-DEVEY: So I wanted to add two things. One is that, sort of the tenor of my remarks was to be kind of skeptical about the protection that's offered by the legal process.

And I'm not just skeptical of the EEOC here, in fact, I think the harassment report that Commissioner's Lipnic and Feldblum wrote, actually points much more towards this has to become a normal managerial responsibility. By the time it becomes a legal problem, we've failed.

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And at the firm level, or the agency level, once you treat something as a legal problem it's no longer a managerial problem, it's a question of guilt. Which means we've already failed at the managerial role.

So I wanted to say that as a caution. And then kind of more pragmatically, to the extent that there's kinds of things like employee satisfaction surveys and climate surveys, at least the federal survey in many agencies is not well integrated with the EEO process. They're done by different offices that may or may not be talking to each other.

And on the social science side, it's really, we know how to do climate surveys where you could actually target and say, okay, what are the particular niches in your agency where this kind of abusive behavior is problematic.

That is, these things are discoverable, and I don't mean discoverable in a legal sense, I mean in the same sense that if you had a production line and a factory and it was turning out shoddy goods, you'd want to know.

CHAIR LHAMON: Professor, when you refer to the climate survey in the federal agencies, are you referring to the Employee Viewpoint Survey or to something different?

DR. TOMASKOVIC-DEVEY: I was referring to the Employee Viewpoint Survey.

CHAIR LHAMON: Okay.

DR. TOMASKOVIC-DEVEY: Yes.

CHAIR LHAMON: Thanks. Commissioner Narasaki.

COMMISSIONER NARASAKI: Thanks. I am very curious as to why, for the few plaintiffs, the people who complain, actually see their cases all the way through, why they are not successful in getting the relief that they want?

So, is there a problem with the legal standard, what is the problem, I agree with you that if it gets to the legal system, you have failed on one level, but once you get to the legal system, the legal system should work. So why is it not working? What needs to be done there?

(No response.)

I have stumped all of you?

MS. BACK: Well --

DR. FITZGERALD: Well, I think you said something earlier about, there's the law and then there's a way

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that the judges interpret the law. And so, not everybody is necessarily onboard with the fact that grabbing somebody's buttocks is clear.

And so, obviously judicial education, that's where also expert witnesses come in, although judges don't tend to like them. But it does explain to juries why this is bad. I spend a lot of time in front of juries explaining, this is bad and this is why.

MS. BACK: Commissioner, the Supreme Court itself has said in its own decisions it characterized its standard as making clear that only extreme conduct under that standard is a violation of the statute.

So, to give you a sense of how courts characterize the applicable standard, and in the 8th Circuit case that we just discussed today, the 8th Circuit characterized the Supreme Court standard as demanding.

So, to give you a sense of the applicable legal standard, the judicially created standard courts, often characterize it as a difficult one to meet.

COMMISSIONER NARASAKI: So do we need to, does Congress need to change that standard?

And does it need to be clearer about, if we used severe and pervasive, what does that mean?

I mean, shocking to me that under any standard grabbing someone's private parts is not somehow seen as severe, in this day and age.

MS. BACK: Well, certainly is an option for Congress to pursue. This standard is a judicially created one, vis-a-vis statutory interpretation.

So, certainly an option that Congress could undertake, if it chose to, is to clarify or create another standard perhaps.

COMMISSIONER NARASAKI: Great, thank you. I know I have another name, Narasaki, so I'm sympathetic, so I'm going to murder your name, but, Mr. Tomaskovic-Devey, so in your report you talked about the EEOC data and compare black women to white women, their experiences, and left everyone else in other. But the EEOC data does actually include data on Latinx and Asian women who have lower incidences.

But is there any studies looking at whether there are lower numbers of charges because they are not reporting or is it actually, what they are?

I would be shocked to think that they're not experiencing it, so I'm wondering what research there

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is.

DR. TOMASKOVIC-DEVEY: So, there's actually been very, very --

DR. FITZGERALD: They may be less likely to report. I don't think anybody really knows. It's very hard to know, I mean, with all due respect, to the EEOC, who I love dearly and testify for and work for, but it's very hard to learn what's really going on from their numbers.

Because those are, by definition, kind of outliers. The people that report. And so, I don't know how much we can generalize.

My guess is that it is much more difficult for women, and this is a guess, for women of color, they have so many more barriers, socially, economically, whatever. And maybe more to lose.

But it would not, I would not assume that it's because they have less harassment. In fact, I think the National Academy of Science study suggested that they were more likely to be harassed.

DR. TOMASKOVIC-DEVEY: Yes. So I think that Dr. Fitzgerald's position here is right, which is we don't have much in the way of good national studies. And occasionally we'll have a local study. And the National Academy of Science one is the best.

And I did want to do kind of a shout-out to the, to acting Chair Lipnic at the EEOC right now. She's really, over the last year, internally at the EEOC has done some really remarkable work to increase the research capacity of the EEOC, which historically has been very, very weak.

It's been a regulatory agency and so it doesn't actually often ask those kinds of questions. But I think these are the kinds of questions we should be asking.

CHAIR LHAMON: So you're -- sorry, go ahead.

DR. FITZGERALD: Let me just say something.

CHAIR LHAMON: I'm sorry, Ms. Davis is next.

MS. DAVIS: Thank you. I agree, the NASEM report is one that we rely heavily on, and not just because we fund it, but we think it's really scientifically sound.

We put out a couple of dear-colleague letters as a result of those reports and we're asking to have some research done around sexual harassment experiences for women of color, the disabled, et cetera in various

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fields. But they will probably be limited and wouldn't be nationwide for everybody.

We're more interested in looking at those women of color in science. But I think this would be a model for others to model the same type of research.

COMMISSIONER NARASAKI: Great. I have a third question, but I would like to ask the Panel if you can, after the hearing, if you have suggestions about what kind of research we should be recommending, that would be very welcome.

So, my third question is to Ms. Davis. I am very intrigued by the work that your agency is doing in trying to get the people that you give money to and to affect the broader field.

I'm wonder though how you are going to combat the potential problem of, if you are a grantee and you're getting money and you're being asked to report these things and the threat is that you might lose your research, whether that will have the unintended consequence of people whose livelihood depends on that research being funded feeling like, well, maybe I can't report because that creates a risk, is also a problem?

MS. DAVIS: I agree. We spend a lot of hours chatting about that and trying to figure out how to address it.

What we did simultaneously, when we came up with this new term and condition, we increased the Title IX activity, which is a compliance activity. And we also did extensive outreach effort to let everyone know that we have a portal that they can go and report directly to us anything they observe, any experience they have had or any experience of others.

So, we're trying to use these as a cross check. So if we hear, a lot of things we hear from the media or a school newspaper, we do a lot of Google searches our self and we're seeking this information.

So it's, I think it's at a university's own peril and very risky to take that step because we're not relying just on the university to tell us. But it's a part of our term, it's a term and condition.

So if we learn through any form that something happened and they did not tell us, that's even riskier for losing the funding.

COMMISSIONER NARASAKI: And do you do that kind of research before you give a grant?

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MS. DAVIS: Pardon me, I'm not clear what you're asking.

COMMISSIONER NARASAKI: So, if someone is applying for a grant --

MS. DAVIS: Yes.

COMMISSIONER NARASAKI: -- do you look at, do you google --

(Laughter.)

COMMISSIONER NARASAKI: -- or do you do searches to see whether in fact there have been issues?

MS. DAVIS: No, because we fund the institution and not the PIs. And we don't want to put anybody on a blackmail list where we are interfering with our merit review process.

When they apply for a grant, we want it to truly be based on the merit review process. If we hear that is someone who has had problems over and over, then we handle that on the Title IX compliance side.

We can go out and do a compliance review of any institution. We would not stop the award, but we do a compliance review.

And if we got out there and we did a compliance review and we found out there were problems that the university wasn't addressing, then they would have to bring it into compliance.

Whether that is a replacement PI, whether that is some form of addressing the issue, the person, whoever is alleged to have committed some form of harassment, sexual harassment. But we do not let it interfere with the merit review process. We want to keep that pure and separate.

COMMISSIONER NARASAKI: So, NASA, in their process, they are actually going out to the people they give contracts to and looking at their, at least their procedures --

MS. DAVIS: Right.

COMMISSIONER NARASAKI: -- to look at whether they feel it's up to standard. Do you do that?

MS. DAVIS: We do the same thing. Actually, we've done joint compliance reviews with the NASA staff, with Department of Energy staff.

We have the same authority and we do the same type of Title IX compliance reviews. That is separate from our term and conditions.

COMMISSIONER NARASAKI: Yes. So you don't do that as a check when someone is applying for a grant to see

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whether their procedures are up to snuff before you give them the grant?

MS. DAVIS: So that's called a pre-award compliance review. We have some preliminary pre-award compliance reviews but it's not very detailed.

If we've heard a lot of activity, we could pick up the phone and call the Office of Sponsored Research, Title IX office, and start having a conversation about what we've heard.

And I'd like to make it clear about our new term and condition. We are requiring them to notify us, but prior to then, if we heard it through any form, we would pick up the phone and call and have a conversation.

The new thing that's happening now, they are required to notify us. But if someone here, says today that stuff is going on, we're going to follow-up to find out and have a conversation with the Office of Sponsored Research.

And also, another thing we learned from that, Title IX offices and Office of Sponsored Research, they don't communicate. The Office of Sponsored research is the one who signs the grant that says, there is no discriminations happening here, no sexual harassment. And the Title IX office is the one aware of all that.

So actually, those people are signing federal documents saying that nothing is happening that they have no clue about. So, our term and condition is forcing the two offices to communicate. It's really helping them to not lie on a federal document.

(Laughter.)

MS. DAVIS: So, we looked at this, how can we approach it from multiple angles. With Title IX it sends you out to go back to Congress.

There are quite a few bills out there as a result of some of the things we're doing that some of the members are trying to get through. But that would be a huge battle and we're losing a lot of time.

So we want to bolster Title IX. And we brought two other components. That's the term and condition and then the outreach effort to reach out to us and let us know what's going on and we will follow-up. And we do.

COMMISSIONER NARASAKI: And I know it's a recent term and condition, but has anyone reported?

MS. DAVIS: Absolutely. We are having people who are reporting that are not even required to report.

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What I mean by not required to report, so the way we do it at NSF, we've come up with a new term and condition, we do not make it retroactive. So, October 22nd this term and condition went into effect.

And what it says to all the awardees that receive funds from us, if you have a new award after October 22nd or you amend an old award after October 22nd and you take some action against the PI or are made aware that a PI had sexual harassment, we're going to know about it.

So, if it's something that, on an award that happened prior to, I mean, before October 22nd, they don't have to report that to us. But if we hear through another form, we still will go to them and address it the same way.

COMMISSIONER NARASAKI: Great. Thank you, Madam Chair.

CHAIR LHAMON: Thank you. Commissioner Adegbile.

COMMISSIONER ADEGBILE: I have a follow-up question on this point. So, one way that agencies require folks to tell them what they need to know is at the time that organizations are signing, that entities are signing to receive their federal funding, they have a list of certifications, there is something called the False Claims Act.

And making a false statement can subject you to very significant federal penalties, as I understand it.

I'm wondering if this new approach has been codified in that way so that there can be a very clear certification that the disclosure has been made at the time that the funding is distributed. If that's the way you're doing it or if it's in a different way?

MS. DAVIS: You're absolutely right. So once they, it's a grants.gov process. When they go and they check that they certified that they are not in the Title IX violation, no civil rights violation, they are certifying, for the institution, that they don't have any violations and that they are in compliance with the civil rights activity, which is done by the Office of Sponsored Research.

And that's been going on along. Before we came with the new term and condition. But as I was saying earlier, most Office of Sponsored Research have no idea that the Title IX office has a violation going on or if someone has done something that's involved

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in sexual harassment.

But you're right, that False Claims Act, when I spoke to COGR, and it was all university people, and when I said that, you should have seen the look on their face like oh my God, we've been signing tons of these and we haven't talked to the Title IX office and we really don't know, is it a violation or not. So, you're right, the False Claims Act does apply here.

COMMISSIONER ADEGBILE: Thank you. So, one of the themes from today, as I've heard it, is that agencies have very different ways of approaching this issue. And one of our jobs is to think about whether there is some uniformity or great emphasis under federal law that could help us to get to the standard to which we aspire.

I take the point that there is some skepticism about the role of the law in addressing these things as opposed to management, but I'd like to say that one of the things that focuses managers is managing risk. And a risk is liability under the law.

And so for example, corporations across the country have compliance departments. They have compliance departments because there's a complex network of federal and state obligations that could pose risks, reputational and monetary risks for companies.

And so people are charged with the managerial and business responsibility of managing these things. So, I think it's important not to necessarily disentangle these things.

I think we have to have an accurate articulation of where there are opportunities for success, but also understand that there may be a cross-pollination of these two things. And so, trying to lift up both sides may be the best approach.

With that too-long precis, is there a way to envision a set of best practices that is nimble enough for the broad swath of agencies to think about and not have it so idiosyncratic as to every agency that our two million federal employees are having their practices made up one at a time, agency-by-agency, and employees are being transferred through agencies, are moving through agencies. And perhaps, are continuing practices that were not okay in one agency in another federal agency.

Is there a minimum? A set of minimums we can get

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too?

MS. CHRISLER: I think if we ensure that practices follow policy, then we can have that consistency. And I think that if we ensure that every agency is training their staff, their managers, their EEO.

And my testimony focused on training HR staff, EEO staff and managers, but there is employee training that should take place as well. We have co-worker harassment that's just as prevalent as manager harassment.

So, ensuring that there is training, and not just onboard training or when there's a problem training, but annual training. So that the message is continually sent.

This is not acceptable, this is what we expect of our workforce and this is what we are, this is the model that we are giving.

So, yes, it's difficult with hundreds of thousands of individuals in different cultures and different climates, but when we look to create those climates from the policy and ensure that the practice stems from the policy, I think it's manageable.

DR. TOMASKOVIC-DEVEY: I'm pretty --

DR. FITZGERALD: I don't want to be a naysayer here, but first I want to say that the research shows that by far, most harassment is by co-workers, not managers. But the naysaying part is that everything we know about training says that it doesn't reduce harassment.

I mean, I think you can take a look at what the National Academy's report said, you can look at what the EEOC 2016 report said.

Training is problematic for employees. Very important for managers because they need to know what to do.

But I think we have it figured, maybe we figure out, sort of, how to do it, but it's with such large-scale requirements, you simply can't train people this way 50 at a time and have them sit in a room and look at a slideshow and have a discussion by lawyers. It doesn't work.

And sometimes it's counterproductive. It needs to be done in small groups; it needs to be interactive. And that is a big financial cost.

DR. TOMASKOVIC-DEVEY: And I was going to start my comments by saying I'm also skeptical of training.

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And I think the research on this is both anti-bias training tends to not work. Partly because it's trying to change, kind of deep-seated cultural stuff. It's a hard thing to change, especially in a couple of hours.

Any of you have sat through it painfully probably know what I'm saying.

Legal training actually is even worse. Legal training --

DR. FITZGERALD: Yes.

DR. TOMASKOVIC-DEVEY: -- tends to produce backlash. It instructs managers, oh, don't hire those people. Now, that doesn't mean there is no training that could work, right. So, I mean, the kinds of things that I was talking about before, accountability, transparency and the like, I think also formalization, which was talked about this morning a little bit, these are things that decision makers and managers and workers, can be trained about.

But if you try to just eradicate the bias or threaten them with legal consequences, training is unlikely to work.

DR. FITZGERALD: That's a terrible thing to do.

DR. TOMASKOVIC-DEVEY: And I actually, this morning when you guys were going back and forth with NASA and the State Department about training, you were asking how much training and I kept thinking, no, ask them what about, what's the content of the training.

DR. FITZGERALD: Right. You know, some people are suggesting that civility training, and this was in the National Academy's report, is less contentious. And I didn't have time to talk about this, but incivility is kind of like a gateway drug for harassment of various sorts. And training on civility and workplace respect is much less contentious.

And that seems to be one of the roads of the future. And I don't know, we don't know yet how effective it will be, but what we do know is that what happens now is not effective.

CHAIR LHAMON: Did you have something?

MS. CHRISLER: I did. I just wanted to respond to some of the things my colleagues said. And so glad that Professor Fitzgerald mentioned the civility training, because that's something that I was going to mention.

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The type of training, certainly, there's certainly some training that can be more productive than other training and making sure that the training is part of a whole change is essential to ensuring that the training is effective.

So, looking at it by itself and having training as the sole solution is probably not the most effective way to go about it. But I really do want to emphasize, from my experience, my belief that training is so very important.

Because, honestly, some folks don't know. Some employees don't know. No, you cannot say that in the workplace, no, you cannot do that to your colleague, no, that is not acceptable behavior in a professional environment. People need to know that.

But it also sends the message that management is laying its expectations. This is what we expect in the workplace.

We're not going to assume that you know, so we're going to provide this information to you. And now that we know you know, these are the standards that we're going to hold you to.

So, yes, putting some thought into what type of training for the particular agency is important. But having that training, sending that message and holding employees and managers accountable, is essential to eradicating harassment in the workplace. Thank you for that opportunity.

CHAIR LHAMON: Thank you. Ms. Davis.

MS. DAVIS: I was just going to follow back up on what she asked. In the NASEM report, Recommendation 13 deals with increased federal agency action and collaboration. And they've also done a lot of work up on the Hill.

And, there's some bills that are going through that have a lot to do, these are science focused, but I think these are things that could expand out, it's not limited to science as it relates to federal agency action and collaboration.

CHAIR LHAMON: Thank you. With that, I thank this Panel, as well, Professor Fitzgerald, thank you for participating by phone, we will reconvene at 2:40 p.m. And thank you, all.

DR. TOMASKOVIC-DEVEY: Thank you.

DR. FITZGERALD: Thank you.

(Whereupon, the above-entitled matter went off the

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record at 2:26 p.m. and resumed at 2:41 p.m.)

**PANEL FOUR: ADVOCACY GROUPS AND IMPACTED
PERSONS OF FEDERAL WORKPLACE SEXUAL HARASSMENT**

CHAIR LHAMON: So we will now turn to our fourth panel. And I will say this before we begin, that Commissioner Heriot will have to leave to catch a flight in the middle of the panel. It is not a comment on anything anybody says when she walks out of the room.

This panel is the Legal and Community Experts Panel. And in the order in which they will speak, our panelists are Dariely Rodriguez, Director of Economic Justice Project, Lawyers' Committee for Civil Rights Under Law; Mona Charen, Senior Fellow, Ethics & Public Policy Center; Jane Liu, Legal Director, National Asian Pacific American Women's Forum; and Debra Katz, Attorney, Katz, Marshall & Banks.

Ms. Rodriguez, please begin.

MS. RODRIGUEZ: Madam Chair and distinguished commissioners, thank you for the opportunity to discuss harassment in federal workplaces.

My name is Dariely Rodriguez and I am the Director of the Economic Justice Project at the Lawyers' Committee for Civil Rights Under Law.

The Lawyers' Committee is a national civil rights organization created at the request of President John F. Kennedy in 1963. For the past five decades, the Lawyers' Committee has been on the front lines of the fight for equality in the areas of economic justice and more.

Almost 55 years after the passage of the Civil Rights Act of 1964, workplace inequality persists. American workplaces continue to deal with the lasting effects of discrimination stemming from America's history of slavery, Jim Crow, and racial segregation.

As one of the first sectors of the economy to desegregate in the 1960s, federal government jobs historically have been a path to the middle class for communities of color. Yet the federal government workplace is still struggling with occupational segregation and power imbalances.

The federal workforce remains majority white, at 63%, and majority male, at 57%. According to recent figures from the Office of Personnel Management, nearly 80% of senior executive positions in the federal government were occupied by white workers in

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2016, while black and Latino employees comprise a mere 11 and 4.6%, respectively, of senior executive positions.

Among the 43% of women who are federal employees, only 10.8% of them are black and 3.5% are Latina. Unfortunately, sexual harassment continues to be an issue for federal employees, according to the 2018 US Merit Systems Protection Board Report, with approximately one in seven federal employees, or 14% of the entire federal workforce, experiencing harassment in the past two years.

So we must squarely focus our conversation regarding harassment in federal workplaces against this backdrop and recognize the ways in which socioeconomic status, race, ethnicity, LGBTQ status, disabilities, and other factors shape the experiences of federal female employees of color.

The #MeToo Movement, founded by Tarana Burke, an African American civil rights activist, has exposed the prevalence of sexual harassment in all segments of our society. The national conversation that has resulted from #MeToo going viral has encouraged many survivors of sexual harassment and assault to come forward and to share their stories.

Unfortunately, too often the experiences of women of color have been ignored. Therefore, we urge the Commission to incorporate in their recommendations the principle of intersectionality, that people living at the intersection of multiple forms of oppression face cumulative and distinct harms.

Women of color are more likely to experience sexual harassment and assaults. Between 2005 and 2015, women filed 80% of all sexual harassment charges, with black women being the most likely to file a claim of sexual harassment. One in 17 sexual harassment charges filed with the EEOC also alleged racial discrimination.

Women of color are more likely to experience harassment in compounded ways on the basis of their gender and race or ethnicity. For example, an article by the Guardian reported that Ms. Elisa Lopez-Crowder, a Navy veteran who started working for the US Forest Service in 2010, was subjected to racial, sexual, and physical harassment by one of her supervisors.

According to Ms. Lopez-Crowder, he told her that

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didn't believe women belonged in Fire, made derogatory remarks about her skin color, and physically assaulted her. Most victims of harassment, however, will not come forward and file complaints for fear of retaliation or inaction on their claim.

In fact, 68% of sexual harassment charges include an allegation of retaliation, with black women being the most likely to experience retaliation. Women of color with limited economic resources who rely on their jobs to support their families may feel even more deterred from filing a complaint for fear of losing their jobs.

Workplace harassment has significant and harmful consequences for survivors. Negative effects on mental and physical health, reduced career development, and forced job change or unemployment are just a few of the disruptive and sometimes life-altering effects of workplace harassment.

A growing body of research shows that for women of color in particular, experiencing racism has direct biological effects that causes increased rates of disease and disability. African American women who experience racism are more likely to have hypertension, and African American mothers who deliver pre-term infants of very low birth weight are more likely to report experiencing racism, rather, during their lifetime.

For many women of color, race and sex harassment often occur at the same time and results from power differentials in occupational segregation. While only a small percentage of survivors come forward to file complaints of harassment, unnecessary barriers that make it more difficult to file a complaint must be promptly fixed.

Federal agencies must take meaningful steps to audit the effectiveness of their internal harassment procedures and ensure that their policies, procedures, training programs, and internal complaint systems are effective and responsive to all complaints and to the ways in which women of color and other marginalized employees experience harassment.

In addition to fixing broken internal harassment policies and procedures, federal workplace cultures must change. Leadership within federal agencies must

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reflect the communities they serve and must prioritize tackling all forms of employment discrimination, including in hiring and promotion. We must do everything that we can to eradicate harassment root and branch from our federal government workplaces. We thank the Commission for undertaking the work to ensure that our federal government is at the forefront of protecting the rights of all American workers.

The Lawyers' Committee, in our fight for racial and economic justice, will continue to do its part. Thank you.

CHAIR LHAMON: Thank you very much. Ms. Charen.

MS. CHAREN: Thank you, Madam Chairman, members of the Commission. Glad to be here. As mentioned, by name is Mona Charen, I'm a syndicated columnist and author and a Senior Fellow at the Ethics & Public Policy Center.

My most recent book examines the role of feminism and the sexual revolution in shaping some of the social problems that we are experiencing as a nation. I argue that the sexual revolution has not served women well, or men for that matter. And the #MeToo Movement is a long overdue backlash against it.

On the whole, with some exceptions, the #MeToo Movement has been a necessary corrective to years of gross behavior by powerful men. Most of the prominent men in politics, media, sports, and entertainment who've been identified as sexual predators have not even attempted to deny the accusations.

But I think it would be a mistake to see the issue of #MeToo as a civil rights matter. As Samuel Johnson wrote in the 18th century, How small of all the human hearts endure that part which laws or kings can cause or cure.

The #MeToo Movement is an informal, spontaneous, grassroots cultural phenomenon, and that's good. We have had laws on the books for many years forbidding sexual harassment in the workplace. Those laws may be effective, or they may not.

In a major 2016 report, the Equal Employment Opportunity Commission's Select Task Force on the Study of Harassment in the Workplace concluded that much of the training sold to companies has not prevented harassment.

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Sexual harassment training sessions, which are mandatory at many workplaces, are dreaded by employees and mocked by comedians. That's because we are dealing with fallout from the sexual revolution. This is a cultural problem, not a political one.

I readily concede that my view of the #MeToo Movement as backlash against the sexual revolution is not widely shared. Most of the women who have spoken out have identified as feminists, some have described #MeToo as the latest chapter in female empowerment. But I'd like to suggest that whether consciously or not, many of the women who are expressing their disgust at being sexually harassed and mistreated are reacting to the obliteration of standards that the sexual revolution eliminated.

Many of the accounts we've heard about in the past two years thanks to the #MeToo Movement show not just that some men are behaving like louts, but that some women do not sense social support for their discomfort.

They've received no guidance from a culture, from our culture, about what kind of sexual behavior is acceptable and what isn't. About what they can object to and what they shouldn't.

Consider the example of Harvey Weinstein. Again and again he asked actresses to meet him in his hotel room, and they did. Sometimes he greeted them in his bathrobe and asked for massages. Many, many women have said he sexually assaulted them.

He seems to be a vile abuser, and nothing justifies his actions. But why did the women ever agree to have a business meeting in a hotel room?

There ought to be an understood social code about that kind of thing so that no decent man would ever suggest such a meeting, and any woman would instantly decline on principle. Here's the vocabulary: I don't have business meetings in men's hotel rooms.

Perhaps Hollywood is a special case. There's always been a casting couch. But take the example of Mark Halperin, former Political Director of ABC News. No fewer than six women accused him of groping, propositioning, and touching them against their will. One woman described to CNN her first encounter with Halperin that included him putting his erect penis against her shoulder while she sat in the desk, at the desk in his office.

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She said, Given I was so young and new, I wasn't sure if that was the sort of thing that was expected of you if you wanted something from a male figure. The rules about how adults are expected to behave have become so loose that a young woman just starting her career isn't sure whether what Halperin did was normal.

The confusion about what is and is not okay has also led to crazy miscarriages of justice. At a small liberal arts college in Oregon, a male student was ordered to stay away from a female classmate, he was not permitted to be in any building she in, or to, and he was cut off from his job on campus.

But he didn't even know the other student. She reminded him -- he reminded her of a man who had raped her at a different campus thousands of miles away.

In California, two students were roughhousing on the playground. There were no witnesses. One student said that the other boy had touched his upper thigh or perhaps his groin. The offending student was suspended from school and had the incident listed on his record as a sexual assault. The boys were first graders.

Some of the most prominent advocates for the #MeToo Movement have trouble drawing distinctions between immature or unseemly behavior and sexual assault. Senator Kirsten Gillibrand, for example, when she was pushing Al Franken to resign, refused to acknowledge that his conduct was any different from Harvey Weinstein's.

But drawing lines where Senator Gillibrand refuses to leads to exactly the kind of absurd outcomes we saw on that California playground.

I see my time is limited. I have three more pages, is it all right to continue? All right, I'll finish up.

I mention the Aziz Ansari story where a woman went on a bad date and decided because she was unhappy, that it amounted to rape and sexual assault.

I'll wrap up with this: the federal government cannot fix the problems that #MeToo is highlighting. I hope that the movement will result in second thoughts about the importance of self-control, courtesy, respect, and yes, even chivalry. And I hope it will not become another battle in a long-running war between men and women.

Thank you.

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CHAIR LHAMON: Thank you, Ms. Charen. Ms. Liu.

MS. LIU: Good afternoon, my name is Jane Liu, I am the Legal Director at the National Asian Pacific American Women's Forum. I want to thank you for this opportunity -- oh. I want to thank you for this opportunity to offer my perspective on an issue that deeply impacts many Asian American and Pacific Islander federal workers.

Founded in 1996, NAPAWF is the leading national multi-issue AAPI women's organization in the country. Our mission is to build the collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. Our economic justice work focuses on advocating for policies and laws that protect the dignity, rights, and equitable treatment of women AAPI workers.

A key issue we work on is workplace sexual harassment. Since the emergence of the hashtag #MeToo less than two years ago, the issue of sexual harassment in the workplace has gained unprecedented attention. At the same time, the voices and experiences of women of color, who are disproportionately impacted by sexual harassment, have often been excluded from the public conversation.

In order to bring about broader systemic change for all, it is vital that any conversation about sexual harassment center the experiences of women of color workers. My testimony today will focus on the issue of sexual harassment for AAPI women federal workers and potential solutions that the government can implement.

While data show that sexual harassment is a significant problem in federal workplaces, AAPI women workers are particularly at risk due to a number of factors. First, intersectional stereotypes of AAPI women are pervasive and permeate the workplace.

These stereotypes, such as the submissive geisha, the prostitute, and the mail order bride depict AAPI women as erotic and sensual, foreign and exotic, subservient, quiet, feminine, and passive. These stereotypes are racialized, and AAPI women often experience sexual harassment based on these generalizations.

Second, AAPI women workers face power imbalances and racial and gender inequities that increase the risk of harassment. At root, workplace sexual harassment

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is about power used to reinforce cultural norms and to exert control over people with less power and status in society.

As a result, the risk of harassment is greater in work environments with significant power imbalances and inequities. AAPI women federal workers continue to face a glass ceiling at the Senior Executive Service level, resulting in under-representation at the top levels of government.

Moreover, a 2012 EEOC report found that AAPI federal employees continue to face pervasive racial and national origin discrimination by managers and barriers to promotion.

While the vast majority of individuals who experience harassment never tell their employers about the conduct, AAPI women are even less likely to report, due to particular barriers. Social stigma and the prevalence of victim-blaming attitudes in AAPI communities are significant barriers.

These attitudes are shaped in part by traditional Asian cultural beliefs that women are expected to practice modesty and sexual restraint and are held responsible for sexual activities outside of marriage. As a result, many AAPI women do not report because they are concerned about how it would affect their own and their family's reputation.

Another barrier to reporting is that AAPI women have difficulty or are unwilling to identify conduct that is consistent with sexual harassment as sexual harassment. This may be due to fear of shame and stigma from acknowledging that they have been sexually harassed. It may also be caused by lack of knowledge of what behaviors constitute sexual harassment.

Related to this barrier, many AAPI women do not report because they are unfamiliar with the law and how to enforce their rights. AAPI immigrant workers also face language barriers in reporting, as 35% of Asian American and Pacific Islanders are limited English proficient.

The harm caused by sexual harassment to workers can be devastating. Sexual harassment has significant economic and professional consequences. Women who experience harassment are much more likely to change jobs, often to lower paying jobs. Harassment also reduces access to professional development and

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learning opportunities.

The economic consequences can be more severe for women of color because they face greater wage gaps than white, non-Hispanic women. Asian women are paid 87 cents for every dollar paid to a white, non-Hispanic man. But the wage gaps are much larger for some ethnic subgroups, with Burmese, Samoan, and Hmong women making less than 60 cents to the dollar.

Sexual harassment also has a devastating impact on health and can lead to depression and trauma. AAPI women already have higher rates of depression and report significantly more suicidal ideation. Southeast Asian women with refugee backgrounds are also at greater risk of post-traumatic stress disorder.

For women of color, the health effects are compounded by the negative health effects of racism and discrimination.

While many aspects of the federal sector complaint process need reform to better serve victims of harassment, I will focus my recommendations on addressing some of the particular issues confronted by AAPI women workers. First, better data leads to better policy. AAPI women are drastically under-represented in studies about the prevalence, nature, and impact of sexual harassment in the federal workforce.

Therefore, each agency should adopt practices to collect disaggregated data that tracks sexual harassment complaints in each department. In addition, agencies should incorporate mechanisms to fully understand the breadth of harassment, such as anonymous department-wide surveys or holding focus groups for women of color.

Other steps that the government should take include education and training of workers and employers on racialized sexual harassment and intersectional stereotypes; making educational and training materials for workers available in other languages; ensuring access to interpreters and translators throughout the complaint process; training of EEO counselors and managers on cultural competency and trauma-informed care; implementing a variety of reporting mechanisms other than the EEO complaint process, particularly more informal mechanisms that guarantee anonymity for complainants; and

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implementing culture change strategies in agencies from the top down that systemize accountability, reduce power imbalances, increase engagement of employees, and root out institutional inequities.

It cannot be emphasized enough that sexual harassment does not occur in a vacuum. For women of color workers, sexual harassment cannot be separated from racism and other discrimination. Therefore, efforts to address sexual harassment cannot be siloed from broader efforts to make federal workspaces more inclusive and more equitable.

Thank you.

CHAIR LHAMON: Thanks very much. Ms. Katz.

MS. KATZ: Madam Chair and distinguished commissioners, thank you for giving me the opportunity to testify today. My name is Debra Katz and I am a civil rights lawyer based in Washington, DC, and I've been doing sexual harassment work for 35 years.

I had an opportunity as a very young lawyer to work on Meritor Savings, so this is work that is very important to me and it's work I have great familiarity with.

And in that vein, I was asked to testify as someone who is passionate about eradicating sexual harassment in the workplace, but I do not take cases in the federal sector. And I think that's why I'm asked to testify today.

The fact is that for many practitioners who are really passionate about this area of the law, we find litigating cases in the federal sector to be too expensive, too cumbersome. The results are just not adequate, and many of us just simply opt out.

So I think I can lend my expertise to talking about the factors that lead many people like myself and many firms like ours not to undertake these kind of cases.

But before I start, I just want to reference one comment. I also represent victims of the Harvey Weinstein Company. And sexual harassment is about abuse of power, plain and simple. Developing codes for better civility is not what sexual harassment is about.

And I just feel that it's very important to put a point to that and make clear that as long as there are individuals in the workplace who have power over

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others, you're going to see sexual harassment, unless you have really robust laws that protect people from this kind of invidious discrimination.

So Congress should be a model employer. And Congress should make sure that the federal government are model employers and adhere to the spirit and the letter of our anti-discrimination laws by addressing longstanding obstacles to preventing, reporting, and remediating sexual harassment.

In the work, in the federal workplace there are significant barriers that impede individuals from getting adequate representation. Access to lawyers is essential in the sexual harassment context, where there are powerful systemic barriers to reporting and pursuing complaints.

The uniquely intimate and often traumatizing nature of sexual harassment makes coming forward especially challenging for most workers, and retaliation of course adds another layer that deters people from coming forward. So having strong, effective advocates is crucial to being able to successfully bring claims.

So what are the three factors that we have addressed in our paper that deter plaintiff-side attorneys from taking these kind of cases? The first is the statute of limitations for federal employees. It is indefensibly short.

While public sector employees have either, while public sector employees have to bring their claims within 45 days. They have to contact an agency within 45 days. People in the private sector have either 180 days or 300 days, depending on their state of residence, to file a complaint with EEOC.

Forty-five days is just not enough time. During a 45-day period, you often find people so traumatized, so unable to even consider their options, so fearful, that they do not initiate EEO counseling. And forever they lose their claims. That is just outrageous.

And once the EEO office completes the counseling, they have only 15 days to file a formal complaint with the agency, or again, they lose their right to pursue their claims. Who is that benefitting? If we care about eradicating sexual harassment in the federal workforce, we need to extend the statute of limitations.

These short statutes of limitations put the burden on

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victims to preserve their claims, and that makes it much more difficult to obtain representation. I can tell you that we receive calls on day 43 quite often, day 45 quite often, and day 50 even more often, and it's just outrageous.

So that's one factor. The second is the multi-layered idiosyncratic federal sector complaint procedures and years-long resolution times further complicate this area of the law. Because each federal agency adjudicates harassment claims within its own internal EEO offices, federal sector practice requires a blend of both administrative and employment law skill sets that few attorneys master.

You may have familiarity with one agency, but not with another. And as a result, it is very difficult for lawyers who practice even federal sector EEO law to take cases across the board against different agencies. And even the briskest path through the required steps take at least seven months. In most agencies, the times are significantly longer.

And during this process, attorneys must manage EEO office procedures that vary across dozens of federal agencies. They have to manage the innate conflicts of interest, both conscious and unconscious, that arise in adjudicatory proceedings carried out by the very agencies that are defending against an employee's claim. So this is very problematic as well.

And the third is just the economics of this. Many plaintiff-side attorneys simply financially are unable to undertake federal employment claims due to the combined fact of relatively lower federal wages for many workers and Title VII's outdated, inadequate damage caps.

A lack of punitive damages, of course, for federal sector claims is another factor. But we are dealing with 1991 levels that have lost at least 40% of their value, and they've not been looked at. And that has to be addressed.

For attorneys such as myself, most of our work is done with statutory fees or on a contingency fee basis. The reality is most individuals cannot afford legal fees.

So when attorneys look at federal sector cases, and you're looking at the fact that the caps are low, there are no punitive damages, the delays are

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enormous, the process is Byzantine, the results are really often quite uncertain, these are cases that most plaintiff's lawyers do not take. And it makes access to legal counsel very, very difficult.

So looking at the complex, time-consuming administrative proceedings that are more labor-intensive than most private sector litigation leads to a perception that these cases are onerous and they weigh against an attorney's taking private sector clients. That's just the reality.

I'm a member of the National Employment Lawyers Association, I'm a member of the Metropolitan Washington Employment Lawyers Association. And I can tell you that just a small segment of both bars, and we are passionate about these cases, handle federal sectors cases. So things really have to change.

Legal representation's central to the vindication of civil rights. And in the context of sexual harassment specifically, barriers to access can seriously erode protections of workers who already face unique personal and professional harms.

Thank you for your listening today.

CHAIR LHAMON: Thank you very much. I'll open for questions from my fellow panelists. Commissioner Adegbile.

COMMISSIONER ADEGBILE: Ms. Katz, could you help us understand the impact of Executive Order 13839?

MS. KATZ: Yes, but I'm not sure anybody quite understands the impact yet. The problem is that it indicates a hostility from this administration to the very remedies that are necessary for workers, usually --

CHAIR LHAMON: Ms. Katz, we have a couple commissioners who are on the phone. If you don't mind just leaning forward to your microphone.

MS. KATZ: Oh, I'm sorry.

CHAIR LHAMON: Thank you.

MS. KATZ: I'm sorry. The executive order, by limiting whether records can be fixed, really takes away one of the central tools that's necessary to fixing problems with discrimination.

Often the records contain, when discrimination is found, you have discriminatory personnel actions reflected in those records, you have disciplinary actions reflected in those records. You have unfair job appraisals reflected in those records.

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And if those records can't be corrected as a condition of settling a case or as part of an adjudication of a case, that discriminatory record follows the worker throughout the worker's career. And it's extremely problematic. It's one of the reasons that people often seek out legal counsel, is because they've received a discriminatory evaluation that they know they will never advance unless that's fixed.

So that executive order is extremely problematic, and I hope we never really see it be implemented.

COMMISSIONER ADEGBILE: Ms. Rodriguez and Ms. Katz and I guess Ms. Liu as well, could you speak to what specific recommendations you would have for making the federal enforcement in this area more effective? Enforcement specifically, not just training enforcement.

MS. KATZ: Well, I spoke to the statute of limitations issues. I mean, crucially, that probably bars a vast percentage of workers from coming forward. And I think that making the practices at federal agencies more uniform and more transparent is crucial.

Because if you can litigate cases against one agency, you should be able to use the same steps and the same tools to approach other agencies. And it's just not like that, it's all idiosyncratic. And that's significant.

And then the time frames that are in the regulations for what it will take to get through these various processes need to be adhered to. Now, I understand that's a real resource issue. But the fact of the matter is, some of these cases drag on for many, many, many years, and it creates a huge disincentive when combined with a fear of retaliation, for anybody to come forward.

They look at their peers who have had cases pending for many years, and they see that that person during the period not only has had an adjudication of their case, but they've suffered retaliation. So these deadlines are important and they're meaningful and need to be adhered to. So that would be another.

And then there are agencies that do things like, okay, we'll resolve your case but we're not going to pay for the attorneys' fees that were expended in the administrative process. And knowing that, I mean, from my perspective, it's best practice to try to resolve every case I can at the lowest possible level.

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A good day for me is resolving something before somebody ever has to go to court or ever has to file a charge. And in the private sector, that's pretty common. You approach the employer, you say this is the problem, the person's been discriminated against. You enter into discussion, you provide evidence, sometimes you go to mediation.

It's a flexible process that is designed to resolve disputes before they become legal problems, and there is just nothing analogous for most agencies, and that's extremely problematic as well. So I would like a policy prescription that allows mediation and provides fees for lawyers to incentivize them to take cases through that level.

MS. RODRIGUEZ: Commissioner, I was here for the last panel when you brought up the point that institutions respond to legal risk. And I think that there's a lot of truth to that.

In a prior life, I was a management-side attorney, and I advised employers on diversity and inclusion and EEO matters. And there is something to be said about requiring employers to report to a federal government agency on their, for example, their workforce demographic numbers, right. Or to report to the Department of Labor OFCCP on their affirmative action practices.

It requires businesses to look internally first and to see what's going on and to identify barriers to equal employment opportunity. And if those are there, to address them.

And so I think that there is a lot to be said about increasing transparency for federal government agencies with respect to how many complaints they're receiving, how they're being investigated, what conclusions are they arriving at, what remedial action is being taken.

And by requiring federal agencies to track that type of data, it will require them to identify whether there are any trends that are being revealed in particular departments with respect to specific supervisors, for example.

And it will put the federal government agency in a much better position to address any issues that may arise. And it would also increase the ability of the federal enforcement agencies to take action to address them.

MS. LIU: Well, I can speak to --

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CHAIR LHAMON: Your microphone's not on.

MS. LIU: I can speak to, I've had a number of conversations with women that have experienced sexual harassment in the workplace. And one of the areas that I think needs more focus is the informal and the pre-complaint process. I've heard from a number of women and also their attorneys that women have had very negative experiences in dealing with their EEO counselors.

And almost from the get-go sort of being, like the EEO counselor is trying to deter them from proceeding with their complaints. That there is sort of an accusation there. One woman was saying that the first question the EEO counselor asked was what do you want, like how much money do you want. Like that was sort of the accusation was you are only doing this because you want damages.

And I think that I've heard that from a number of different women. And the other thing that has become an issue is that in this sort of #MeToo climate, there's sort of a desire to sort of wipe the, like, sweep these issues under the rug.

So they will give the employee sort of the remediation that they're requesting, but not order the supervisor or the manager or sort of the higher-ups to undergo any sort of, you know, training or. There's no corrective measures being taken against the managers.

And even sometimes the harasser themselves. They're just putting them on administrative leave for a week or something like that and then, you know, but nothing really changes. So that's something else that I've also been seeing among federal workers.

COMMISSIONER ADEGBILE: Ms. Katz, you've talked about greater uniformity to, which I could see the merits of. One of the things that we've heard is that because there is such a variation in the size, nature of the workforces, sometimes the geographic situation or international situation of certain agencies, that there are some complexities in figuring out what a common approach would be.

How do you respond to that and do you think that there is some baseline set of core minimums that could be put forward as a best practice?

MS. KATZ: Well, I'm not a subject matter expert on that, but I do think that there are always best practices that we can look to. And there should be

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best practices implemented regardless of these issues of the size of the agency and geographic disbursement of workers. I mean, that needs to be factored in, of course.

But there are certain best practices, and one you just spoke to is how sometimes counseling is good and sometimes counseling is really not good. And there are best practices for how to conduct counseling. It may be that it's a perfectly innocuous question to ask what are you looking for. But when it's approached in a negative way, that can be a deterrent. So I think that at every step, there are best practices for how to talk to workers, how to understand what workers are looking for. And I think that we can draw on expertise of people who have good practices in their agencies. I think we can all identify what bad practices are. I guess that's easier.

COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: In our last panel, we heard a fair amount of testimony from a couple of the panelists about, raising real concern about whether these issues are even legal issues or even best addressed as legal issues. And Ms. Charen, I hear a strain of that in your testimony as well.

I wonder if the four of you could speak to the degree to which the law is equipped to address the kind of sexual harassment that is coming up in the employment sector. I know that you typically don't practice in the agency sector, but I think the questions are reasonably universal for that purpose.

And if the law is well enough equipped to address it, where are the deficiencies and how do we address them now if it's not -- is this in fact a management question that can be addressed external to the law?

MS. CHAREN: As I suggested in my testimony, I think this is a social problem that probably is easier to handle, well, not easier, but best handled by informal changes in mores in our society. The law is a very blunt instrument, very clunky.

We've seen that, as I mentioned, the sexual harassment training and various laws regarding this are not working very well. There is still a tremendous amount of sexual harassment in our society. And maybe it is a moment for thinking how else can we begin to approach this in ways that employ social shaming,

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that insist upon certain standards of behavior for everyone.

You know, if it were a society-wide effort, led, say, by celebrities, by comedians, by, you know, important figures who have prestige, something along the lines of the Gillette ad. I don't know if you happened to see that, but it was an ad that purported to show how men can be real men without being louts.

It showed men correcting one another when they were being harassing, and, or just inappropriate. That's the kind of thing that I'm hoping to see more of where it's informal, it's bottom-up, it's, and you know, people will respond to social shaming.

MS. RODRIGUEZ: So as we've discussed, Commissioner, a lot survivors do not come forward to complain in the first place. And there are local, state, and federal laws that prohibit discrimination and harassment on a variety of protected categories. But despite that, a lot of people still don't come forward to file complaints.

And so yes, it's absolutely a legal issue, but I think it's also a workplace culture issue. And ideally, workplaces have the tools in place to ensure that these issues don't happen in the first place, and if they do, that the agency is equipped with the resources that it needs to investigate them properly, promptly, and to take remedial action as quickly as possible.

I've done EEO trainings and I think that they are incredibly important, because as a prior panelist said, they set the tone. And it also gives leadership an opportunity to convey to the agency or to the organization what the policy is and that there is zero tolerance for harassment or discrimination.

And EEO policies are not in place to let people know that they need to violate the law before they get in trouble. That's not the standard within a workplace. The standard is you cannot engage in harassing behavior, and really that's determined by the recipient. And so the purpose of training is to let people know what is acceptable and what isn't.

And so I think that when we're talking about practices that should be standardized among agencies, I think it's very important for each agency to do an internal assessment to see what their EEO system looks like. Is it really equipped with the resources that it needs

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to adequately respond to the workforce at hand?
I think where we may see variations is the different types of workplaces that exist, right. Are we talking about a workplace that has a lot of employees that are out in the field, or a lot of employees that are in offices? And perhaps then, based on those differences, you develop different types of training and investigatory methods.

But I think that first and foremost the first response to workplace harassment has to be an internal response.

MS. KATZ: So I clearly think it's a legal problem. Sex harassment is just one of form of sex discrimination, as the Supreme Court said in Meritor. We certainly have no problem saying that the law should have something to say about discrimination in other terms and conditions of employment. And sex harassment is a form of discrimination. It's within a range, and it persists because of power differentials in the workplace.

So if we're looking at all of this, we need to look at pay, we need to look at promotional patterns. But it's all part of one thing, which is discriminatory patterns that keep certain workers as the underclass and leave them most vulnerable to this type of invidious discrimination.

So yes, the law is very much necessary to try to rein in this kind of behavior. The problem is in this moment of reckoning with this #MeToo Movement, we all are now understanding undeniably how pervasive this problem is. And we're shifting culturally, but our legal institutions have not shifted.

We're seeing some good work being done on a state level, but at a time when the world is really coming to terms with how pervasive sexual harassment is, we have one of the most reactionary administrations in the history of this country. And the fact is we're not going to get anything through Congress right now, and that's really a shame.

Because we understand now that there are certain things that we're all looking at. And one of things that, it doesn't pertain to the federal sector, but mandatory arbitration is something that we know now covers 68 million people in the workplace. Sixty-eight million people in the workplace cannot go to court, and we know that when people are denied that

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opportunity, people actually don't bring these kind of claims, and you know, a whole host of ills that come from that.

Which in terms of the issues that are in front of you, we have a huge segment of the workforce now that has no legal protection because we're calling them contractors. And in the federal workforce, there are four million independent contractors. And we saw what happened to those during the government shutdown. Federal workers got their money back, contractors did not get their money back.

They're particularly vulnerable, because of the work that they do, to issues of sexual harassment in the workplace. And yet, for many of these people, they have zero legal protection. And I think the law just needs to identify that and redefine what are employees. Employees should be all workers whose conduct is within the economic control of the employer.

But that's not what we're doing. And as our economy changes, and we have a 21st century economy, the law has not kept pace with what, the realities of the workplace.

With that, I would also say that --

COMMISSIONER ADEGBILE: Sorry, does that definition exclude interns?

MS. KATZ: It might. I mean, the EEOC has taken a position on that. But you know, cases are all over the place on this.

COMMISSIONER ADEGBILE: But to the extent we're defining it, would it be your intention to --

MS. KATZ: Yes, it would. People who work within the control of an employer, who are controlled in how they conduct their work, yes.

The other is the issue of vicarious liability, which we saw in *Vance v. Ball State University*. And in that case, the Supreme Court defined supervisor in a way that created a distinction that basically creates an out. No liability for employers when someone who is for all intents and purposes the supervisor of that employee, there's no liability.

So I think that we need to look at the Vance standard. I would love to see the Vance standard through some kind of civil rights restoration act of 2020. I would like to see that law changed, I think it has to change.

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As I said, damage caps are really important, and just the whole issue of severe or pervasive and the standard for sexual harassment. I know it's a longstanding standard, but the problem is it's like Rorschach test.

If I'm front of a conservative judge, five grabs, two sexual propositions, you know, those kind of things. A conservative court would say it's not severe, it's not pervasive. You go before a more liberal judge, they would have no problem with that.

And again, there's going to be discretion in how courts look at these kind of issues. But the severe or pervasive standard just lends itself to much more subjective look at some really terrible things that happen in workplaces. In one workplace it's actionable, in the other it's not.

One last thing I want to say about training. I think training is really important, but it has to be tailored to the actual workplace, and it can't be a check-the-box exercise.

We really have to stop looking at this in terms of Ellerth and Faragher as a liability mitigation issue and really say if we care about eradicating sexual harassment, training has to be effective. And to be effective, it really has to look at the realities of the workplace.

And I think bystander training is very important. Often, people are uncomfortable with the discrimination and sexual harassment they see in the workplace and they don't have the words to interrupt it. And people, not just the victim of harassment but coworkers, feel very disempowered because they don't know how to step forward and they fear retaliation. And I think bystander training is a very vital part of this whole thing.

And training also, last thing, can't be, and we've seen this where people have come to us and said, As a result of the training, we're being sexually harassed more than we ever were. Because they're taught in sexual harassment training that it has to be severe or pervasive.

Well, it could be, you know, and people are, and I've seen training that says you grab somebody five times, this court says it's not severe. And it's ha, ha, ha. Or, you know, sexual harassment is not designed to get rid of boorish behavior in the workplace.

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Well, one person's boorish is another person's serious, offensive, discriminatory.

So I think training has got to not teach people how to sexually harass under the radar, and that's often the case.

CHAIR LHAMON: Thank you. Ms. Liu, did you want to answer?

MS. LIU: No, I mean I think the only thing I wanted to say is I don't think it's an either/or proposition. I think that to the extent that there is some -- obviously this is a cultural issue as well. And so that cultural work can go on in private spaces. But that doesn't preclude the government from also ensuring that their workspaces are safe and free from discrimination and harassment.

And so I don't think it's something that, obviously legal protections matter, and that work always needs to be done. And also there's cultural work that we, you know, that needs to be done as well. And I think the government is also responsible for the culture that they create in their workspaces.

So I just want to say that it's not, they're not mutually exclusive.

CHAIR LHAMON: Thank you. Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you, Madam Chair. Ms. Katz, I prefer to go to court as well. But are employees are entitled to agree to arbitration if they'd like?

MS. KATZ: Are employees in the federal sector?

COMMISSIONER KLADNEY: In the federal sector.

MS. KATZ: Are they free to do that?

COMMISSIONER KLADNEY: Right.

MS. KATZ: Most agencies I've seen do not have the ability and offer. I'm not aware of any agency that offers arbitration to employees. In the private sector, of course, that's become more common than not.

COMMISSIONER KLADNEY: Anybody else know? Okay. My second question is, and I don't know the answer to this so I don't want to appear to be really dumb, but I probably will. A contractor in the private sector is, I think the IRS has four standards for what a contractor would be or an employee would be before they develop that.

Does the federal government have to live up to that same standard? In other words, if I contract with

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somebody and they come to my workplace five days a week from eight to five, and I direct them and I do all that stuff, that would be an employee in the private sector. What about the public sector?

MS. KATZ: I think that you're looking at the same standards of what dictates an independent contractor in both systems.

COMMISSIONER KLADNEY: So they can bring an action if they'd like, is that correct? If --

MS. KATZ: If they're misclassified, they can bring an action.

COMMISSIONER KLADNEY: Right.

MS. KATZ: If they're misclassified. But if they're classified as a contractor, they cannot avail themselves of Title VII protection.

COMMISSIONER KLADNEY: And one more question.

MS. KATZ: Yeah.

COMMISSIONER KLADNEY: Do you have the perfect definition for severe and --

MS. KATZ: Severe or pervasive?

COMMISSIONER KLADNEY: Pervasive?

MS. KATZ: Boy, that's a great question. I probably should work on one.

COMMISSIONER KLADNEY: Right. That's why I saved it to the last.

MS. KATZ: Well, I think what I'm saying is maybe that's not the right test, because it's so subjective. Clearly, the case law has evolved that a sexual assault, even if it's one time, is sufficiently severe to constitute sexual harassment. But something that is a threatened act of sexual assault may be equally harmful and damaging and career-derailing for somebody in that workplace, and you have many courts that say a threatened action of sexual assault might not be severe enough if it's a one-time thing. And so I think that we need to look at those definitions and --

COMMISSIONER KLADNEY: But there's no definition that gives a brighter line, in your mind, at this point.

MS. KATZ: No, in fact, the Supreme Court has been very clear in saying you look at the totality of the circumstances, there's no bright line test. And that's why we see cases all over the place.

And the problem is many of these cases break out on summary judgement, where you have a court saying as a matter of law it's inadequate. And if the case

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went to the jury, a jury would more often than not find that there was harassment. Thank you.

MS. JOHNSON: I have an answer to the question. I'm a contractor with the federal government. I'm going to speak later, and I --

CHAIR LHAMON: So we'll look forward to your testimony in the public comment period if we could. So thank you.

Commissioner Narasaki.

COMMISSIONER NARASAKI: I want to actually follow up on the issue of how would we define this if we had a Congress that could act and would act, and in a perfect world. So I invite people who have testified to submit, while our record is open for 30 days, suggestions, because that's what our job is, to make a recommendation to Congress about what laws need to change.

It's not enough to say this law doesn't work, we actually have, it's more effective if we could say this would be better. So I invite you to do that.

MS. RODRIGUEZ: Sure, thank you.

COMMISSIONER NARASAKI: The second is we, a lot of our questions today have been focused on how to get at retaliation, right, because that seems to be one of the major barriers. And people, I think quite rightly, are making the assessment of does it make sense for me to even raise a claim.

So what do you see, like how do you get supervisors and others to not do that in the first place, to be disciplined if they do? It's not, in the questions we asked this morning it wasn't clear to me whether they get disciplined for retaliation. So it would be very helpful to hear what you know about that question and your thoughts about how we could get at that problem.

MS. RODRIGUEZ: Commissioner, so when agencies are conducting their internal EEO training, I think it's critical to ensure that a significant portion of the training is dedicated to retaliation, both for employee training and also for supervisory training, particularly for the supervisors to know.

To know what the policy says in prohibition against retaliation, so that all employees know what the policy is. To know that supervisors who retaliate are subject to discipline up to and including termination, right, so that it's very clear that retaliation has very serious consequences.

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And for the supervisors to know that retaliation is not very hard to prove. And that there is a real, serious risk if an employee alleges that they've been retaliated in addition to having been harassed.

I think that for some supervisors, they're not really sure how broadly retaliation is defined. And so I think that there is real value in providing concrete examples, right. Not giving the employee any more assignments, and other examples. So I think that training is a critical piece of that, and it's not just a, you know, a once in your sort of tenure with the company type training, but training that occurs regularly.

MS. KATZ: Those are good answers. There's a perverse problem with the law. If someone comes forward, and we want employees to come forward and report harassment, discrimination as quickly as they can, we want that.

Well, in the sexual harassment context and racial harassment context, there's case law that's evolved that says if somebody comes forward and they suffer some job action but they have not engaged in protected activity, right, they've complained about behavior that itself is not actionable, because they've only been grabbed once, they've only been sexually propositioned once. And then they suffer retaliation.

There's case law that says that's not retaliation because they haven't engaged in the underlying protected activity.

And there was a horrible Fourth Circuit case, it was a race discrimination case where someone was subjected to really vile racially hostile remarks, and the court there said, well, they clearly suffered adverse action, but the fact is they came forward in effect too soon.

And if we're trying to tell employees you need to come forward and seek out the help you need without fear of retaliation, I've had people come to us and say, you know, if you come forward and you complain about this and it's pretty soft right now, you don't actually have protection from being retaliated in the workplace. And that's something else that's a problem.

COMMISSIONER NARASAKI: So is that an area that we would need to fix legislatively, or is that

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government agencies need to talk about how that's just bad management?

MS. KATZ: Well, I think we do need a bit of a legislative fix on that as well. But I think your point about training, because if you illustrate the behavior that can constitute retaliation, you also have cases that say, well, shunning somebody in the workplace, you know, not inviting them to things, putting them in a bad room, that may not be actionable under Burlington.

Because would a reasonable employee in that position feel that they wouldn't come forward in that circumstance? And we would say sure, you know, being shunned, being moved, having your duties changed. But often, employers and agencies employ a test that I think is too restrictive, which is whether it affects you in your pocketbook.

And those are the conditions that affect somebody day to day. Are you on the night shift or are you on the day shift. Do you have meaningful work, do you not have meaningful work. And I think that that's both a training issue and how we define it.

COMMISSIONER NARASAKI: And are you aware of whether the federal government has ever fired anyone, a supervisor for retaliation? When I asked the State Department person, he couldn't answer the question. And the department is so big, I would think that would be an easy thing to answer.

MS. KATZ: I don't know the answer.

COMMISSIONER NARASAKI: You don't know either, you haven't heard?

MS. KATZ: I haven't read about it in the newspaper.

COMMISSIONER NARASAKI: Yeah. See, that's what I wonder about, if you're trying to deter people from retaliation, if you don't know anyone who ever lost their job or was seriously affected by having done it, then, you know, why not, if you're of that mind, so.

I am wondering, after hearing about sort of concerns about the EEO counselors, what kind of training do they get for their jobs. Is there a sense that there might be a need there to look at? Our Court Reporter doesn't record nodding, so, unfortunately.

MS. RODRIGUEZ: I think generally yes. And I can't speak specifically to the federal government. But generally in my experience, yes. I feel like it's an

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area that is often overlooked.

And it's very important to ensure that EEO investigators are properly trained on investigatory practices, on how to promptly respond and investigate a matter, on how to determine credibility, which is often sort of an area where investigators get tripped up.

For example, if there is a situation only involving two employees and there isn't a third employee to corroborate what happened, you have to determine if the person making the complaint is credible. And oftentimes what I've seen in my practice is that if you only have two people, the EEO investigator will say, well, there isn't a third person to corroborate, so no finding, right.

And so I think training for EEO investigators is very, very important.

MS. LIU: Yeah, I'm definitely nodding my head on that. I think that there's, I've just heard such wide variation in terms of people's experiences with EEO counselors. But a lot of it has been negative. I've heard the same thing, that EEO counselors will make like legal judgements. They'll be like, well, that doesn't constitute sexual harassment, and then the employee will just walk away thinking that that decided their case.

And so I think it varies a lot, and I think there needs to be a lot more uniformity. I do think, and I don't know if this is required, but I do think that, based on what I've heard, there needs to be more cultural competency training and an understanding of how difficult, especially as someone who advocates for AAPI women, it's already really difficult to come through the door.

And so when an EEO counselor greets you with even a semi-accusatory question, it is very difficult to want to go forward with that process. And it has been, I've heard from women that it's very demoralizing to go through, like, to go to an EEO counselor and be greeted with that kind of question when it was difficult enough to walk through that door. And then the rest of the process is just as difficult to navigate.

So I think that I would definitely echo a need for training and more uniform training across the board. I also get the sense from, a lot of the women I've

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spoken with feel like the EEO counselor is really working for the agency. They're working for the agency to resolve the case and to make it go away, versus really trying to address the issues, the broader cultural issues.

That is something that I think should also be addressed through some kind of training or some kind of educational process.

COMMISSIONER NARASAKI: In our earlier panels, someone made the suggestion that perhaps government agencies needed to have a special advocate position, who would then instead of be seen as the employer's spokesperson, someone who could help people go through the process, understand the process. What is your reaction to that? Good idea, bad idea? Would it put attorneys out of, private attorneys out of practice?

MS. KATZ: I'm happy. You know, the Congressional Accountability Act was modified. I know Representative Speier spoke earlier today. But that was one of the things that was set up was because members of Congress and their staff have counsel when they go through that process. And, there is a real problem with that act. There's no real accountability to the numbers, so we don't know if the numbers have gone up having that kind of advocate. But I think in general, that's a good thing.

COMMISSIONER NARASAKI: And I have one more question. So we've heard a lot about training, and I myself have seen really, really bad diversity training. And how you really need to test out whether in fact the training is having the impact that you intend it to have. People have brought up today the issue about culturally responsive training, the understanding of intersectionality.

Are you aware of good training? If so, and if there's any research around that, I would invite you to share that with the Commission. That would be extremely helpful.

MS. KATZ: The EEOC Select Task Force has a whole section on their training, and I think that there's a lot of subject matter knowledge there. But there are studies cited for what is efficacious and what's not. And they're a good source.

COMMISSIONER NARASAKI: Yeah. I particularly

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interested on the issue of Latinx and Asian women, because I feel that sort of we're seen as a newer phenomenon, and I don't know how much research has really been done specifically around women who come from those different cultures. Thank you.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: So our topic today focuses on discrimination in the federal government, sexual harassment discrimination in the federal government. So I'm interested in, and we can perhaps go down the line, in the panelists' views about whether or not this form of discrimination, when it's perpetrated in the federal workplace, imposes special harms.

MS. RODRIGUEZ: Well, we've heard the term model employer over and over again, and the federal government is the largest employer. And as I mentioned in my oral comments, for the African American community in particular, it's been a pathway to the middle class. And the federal government sets the tone for everybody else.

And so I think it is very important for the federal government to hold themselves to the highest of standards to ensure that they are implementing the best practices to ensure that there is no harassment in the federal government.

Federal employees come to the workplace day in and day out to serve their country. And while anyone who experiences harassment obviously suffers from very serious harms, I do think that the federal government has a special obligation to do everything that it can to solve this problem.

MS. KATZ: I agree. And I also think that when sexual harassment is permitted and enabled in the federal sector, taxpayers are funding it. Taxpayers are paying the salaries of people who are harassing in the workplace.

And while you might in the private sector have shareholders who decide this person is so crucial to our mission we're going to allow that person to stay in our midst, that's not a decision that should ever be made in the federal sector.

And taxpayers should not be funding these kind of violations of discrimination law. They undermine our nation's commitment to equality, and we need to have this more than a slogan, this model employer.

MS. LIU: I mean, I also agree. I want to share an

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anecdote because I heard, I was speaking with lawyers that represent a Burmese woman in the Bay Area who has brought a lawsuit against the Daly City Post Office, a sexual harassment case. And this woman has been working there for 18 years, she's an immigrant. And the treatment that she's gotten in terms of going through this federal sector complaint process, it's been very difficult for her psychologically. And some of that is because she just can't reconcile the US Government treating her that way.

She has given 18 years of her life to serving in the public sector, and for them to treat her like, you know, accuse her of just wanting money or, you know, not taking her complaints really seriously and not valuing her safety. I think it's a particular, in that sense it has like a particular meaning for her, I mean even just as an American.

So I think that that sort of illustrates the points that they're bringing up.

MS. CHAREN: This could be an area of competing goods. One of the things that the federal government has provided to its employees is a lot of job security. It's very hard to fire somebody who is in the federal workforce. It requires a lot of proof. There are a lot of protections.

And that's a good thing, but it can be, it can stand in the way of holding people accountable for really bad behavior. So it can insulate some people from actually being punished when they deserve to be. So I do think it's a problem that comes from competing good things.

And in the private sector, there is less of a, there's more discretion on the part of employers to fire people.

COMMISSIONER ADEGBILE: Ms. Katz, I think you alluded to this point earlier, but I just want to clarify. Is there a statutory cap on damages for these types of claims under federal law?

MS. KATZ: Yes, \$300,000 statutory cap.

COMMISSIONER ADEGBILE: And what is your view of how that number functions to help police the problem?

MS. KATZ: Well, I think the number is too low. It creates a disincentive for somebody to risk their career to come forward to, you know, everything goes their direction, they're entitled to \$300,000 of compensatory damages.

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And proving compensatory damages is very difficult. You need, typically if you're dealing with emotional distress damages, you're dealing with needing to have an expert testify and very invasive discovery.

I think those damages need to go up significantly, the caps need to go up significantly, and certainly to keep pace with where they were in 1991. They've lost over 40% of their value.

COMMISSIONER NARASAKI: And what do you think the cap should be?

MS. KATZ: Oh, for this kind of behavior? Ten million dollars per occurrence, easily. No, it needs to be really high. It needs to make the cost be something that when someone engages in this behavior and a settlement has to be paid, that federal agencies, employers in the private sector think twice about whether they want countenance and enable this behavior. When the cost gets too high, they'll crack down, so it has to be high.

COMMISSIONER ADEGBILE: And of course it is taxpayer money, right?

MS. KATZ: Well, yes, it is that. So then get rid of everybody who engages in this kind of behavior.

CHAIR LHAMON: Well, on that note, I think we will end this panel now and --

MS. KATZ: The employment lawyers --

CHAIR LHAMON: Thanks everybody. Thank you very much for this vibrant panel also. We will reconvene at 5:00 p.m. for the public comment period. See you then.

(Whereupon, the above-entitled matter went off the record at 3:50 p.m. and resumed at 5:00 p.m.)

OPEN PUBLIC COMMENT

CHAIR LHAMON: So welcome back. We'll now proceed to the open public comment session. Thank you all for staying. I have a few opening instructions which I hope have also been provided to each participant.

Please tailor your remarks to the topic of today's briefing, which is sexual harassment in federal employment. Please do state your name for the record, and please note that the U.S. Commission on Civil Rights has a policy not to degrade, or defame, or incriminate any person.

This public comment period is a time for the Commissioners to listen, not to ask questions, so we will not engage in discussion with you, but we do

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very much look forward to your testimony and are eager to hear it, and we will not take your short time with questions or dialogue.

You will each have five minutes to speak, which will be measured by this timer, and please notice the box with the three lights. When the light turns to yellow, that means that your time is short. You have one minute remaining, and when the light turns red, you should stop speaking so I don't have to cut you off.

If you have not finished with the information you want to share with us, or if you have additional information that you would like to share with us afterwards, we encourage you to do so by mailing or emailing your written submissions to us at the addresses provided on your orange information sheets by Monday, June 10, 2019, when the public comment period for this briefing will close.

While waiting for your turn to speak, please sit in the numbered chair that corresponds to your ticket. And in order to reduce time between speakers, we ask that you move forward to the microphones before the speaker in front of you has finished, and a staff member will direct you when to come forward.

If you need to step out briefly before it is your turn to speak to use the restroom or otherwise, please let a staff person know so you do not lose your spot. Sign interpreters will be signing during the presentation, right? And a quick reminder that we have licensed mental health professionals available if you need assistance. Please let a staff member know that you would like to speak with them and our staff will direct you to the appropriate place. They're located at the back of the briefing room and are wearing name tags if you would like to approach them directly for assistance, and if you have any questions, please ask a staff member.

So with that, I invite our first speaker to speak.

MS. SEABROOK: Thank you very much, Chairperson Lhamon and members of the Commission. My name is Linda Seabrook and I am general counsel and director of workplace safety and equity for the national nonprofit Futures Without Violence.

Futures works with professionals, advocates, allies, and policy makers to improve responses to violence and abuse, and educate people around the world about

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the importance of respect and healthy relationships. At Futures, my team leads the only national resource center dedicated to addressing domestic violence, sexual harassment and violence, and stalking impacting workers in the workplace.

Authorized by the Violence Against Women Act and administered through and in partnership with the Office on Violence Against Women of DOJ, Workplaces Respond works with employers, employees, advocates, unions, and others to create workplaces that more effectively address, prevent, and respond to violence and harassment experienced by workers and impacting the workplace.

Through this program, we are also the dedicated technical assistance provider to federal agencies on the implementation of a 2012 executive order that required all federal agencies to create a written workplace policy to prevent and respond to domestic and sexual violence, including sexual harassment and stalking, for federal workers experiencing such violence and harassment.

At Futures, we are experts on social norms change, and what we are trying to do in our role as technical assistance provider to federal agencies is to help them bring these policies alive, to be more than words in an agency policy document, and create workplaces that provide support and promote greater safety and well-being.

What many panelists today have covered, having a policy in place, improving processes for reporting and accountability, changing laws and conducting training, are all necessary and important steps, but if workers do not feel that complaints of sexual harassment and misconduct will be taken seriously, and that management and their coworkers will have their back, that there will be accountability as well as support, then targets of sexual harassment will not take the great risk to their careers and livelihood by coming forward.

And I can speak to this in my role and expertise, as well as personal experience. Women and other vulnerable workers don't actually want to complain, file a lawsuit, report, or have to come forward. They just want the harassment to stop and to not occur in the first place.

So how do we get there? Policies, practices, and

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training are important, but those created from the top down drive compliance. Those created from the bottom up and side to side drive engagement and buy in.

So therefore, our recommendation would be for federal agencies to develop mechanisms for employee participation in the creation of workplace expectations, conduct, and processes to promote a culture of respect, dignity, equity, and thus, greater safety in their individual agencies.

In each workplace, I assure you workers know how and against whom sexual harassment is perpetrated, as well as what fuels such perpetration. As such, workers should be empowered to work together to create the standards, processes, and practices to prevent sexual harassment and discrimination for occurring, as well as engaged in creating that workplace environment where all employees, as well as the individual agency, can thrive.

I encourage the Commission as well as federal agency personnel to visit our online resource center at www.workplacesrespond.org to obtain information, best practices and resources for shifting the culture of workplaces toward greater support, resilience, and dignity and safety.

In addition, during sexual assault awareness month, which was last month, Futures launched a campaign with our partner, Alianza, and many others that encourages workers to act together to assess and improve their workplace culture, and create together workplaces of respect and dignity, equity, and greater safety, and what's available through www.checkyourworkplace.com.

And finally, as always, Futures stands ready to provide assistance to federal agencies on improving responses to and implementing prevention measures against sexual harassment and assault in the workplace. Thank you very much.

CHAIR LHAMON: Thank you very much. Our second speaker?

MS. JOHNSON: Good evening. My name is Leila Johnson. I am an American citizen, but I am from the Middle East originally. I am one of those who take pride in working with, at, for the State Department, at least I used to. I speak seven languages. I hold three degrees.

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I had two radio shows in the Middle East, one of which was working in collaboration with the U.S. embassies to further their message and promote the cultural programs. The other one was fighting for women's rights and gay rights in the Middle East, so I'm not very popular. The show was.

I came to FSI to work hoping that one day I can take the test and become a diplomat. I did take the test. I can count on my hands the number of points I needed to reach, but I was, you know, told that I can take it again. So I stayed at FSI to take it again the next year.

In that duration, my colleague pursued me romantically. I dismissed it. I was not interested. He tried to go straight to the point and sexually harass me. I avoided it. He mistook that I was afraid of being caught by colleagues, so assured me that he had been involved in an affair with another person who was a supervisor at the State Department for nine years, and she's becoming quite jealous.

I started having harassment directly from that supervisor, from my colleague who pursued to sexually assault me. I asked him, and her too, to stop.

I couldn't go to my direct supervisor. Rumor had it that he had six cases settled against him, allegedly, settled against him for sexual assault, and he shares a country of background with the guy who sexually assaulted me.

I didn't know where to go. I just recently came to the United States again, and we didn't have any representative at FSI. I couldn't go to my direct supervisor.

I went to the new management, the new ambassador who was replaced, and the new head of the division because the old head of the division was the best friend of the lady who was allegedly the girlfriend of the guy who had sexually assaulted me. I went there

and I talked about it, and they said we're going to hold a town hall meeting. In that town hall meeting, I raised my hand and I said that in the Department, they hold one-on-one meetings that is not documented to talk down to women.

From where I come from, they treat them differently than they treat men. They make them feel, whether they're mothers or graduates, that they're little, that they're small, that they've got them to work

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this job. They could have been at home peeling potatoes. I witnessed horrible things.

They held that town hall meeting. People were afraid to talk. People told me, you're going to lose your job, but I had a radio show in Beirut talking about gay rights. I'm not afraid.

I raised my hand and I said, I was sexually assaulted, and these are things I've heard, and these managers and supervisors are doing the following. One week later, I was fired.

The Me Too movement happened, and by the way, I documented everything and BCC'd my email knowing that if I were to be fired, I don't have access to my state emails, only the material that is not sensitive.

They knew that I had this material. They rehired me. I was the only contractor who was rehired. My English improved because of what happened to me because I had to learn all of the laws, everything about EEO. They rehired me with a 33 percent increase in salary.

Going through the process of EEO was traumatizing. The people who talked to me, counselors, were accusative, degrading. It was humiliating. The day I was fired, they came to me at my desk and asked me to be escorted out of the building as if I had breached security.

I was not treated as a human being and nobody provided a reason why I was being fired. I had to go through an informal and formal process to later find out a year and a half later, what really happened and why was I let go.

When my EEO case continued, they hired me and fired me again for holding an EEO case against the Department. I was fired twice for reporting wrongdoing. I would like you to do something about it. Thank you.

CHAIR LHAMON: Thank you. Our third speaker?

MS. KREPP: My name is Denise Krepp. Let's see if you can hear me. I'm coming here as a locally elected official and as a former Obama political appointee. I was fired. The retaliation you guys talk about, got it. I was fired for asking for an IG investigation in September of 2011.

I had joined the Department in 2009, and between 2009, 2010, and 2011, I became aware of sexual assaults that were occurring at the U.S. Merchant Marine Academy. It was student on student, professor on student, industry on student.

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Students were not talking to me. They were refusing because they were afraid of retaliation. I kept saying, please talk to me. I cannot prosecute unless you talk to me, they wouldn't talk, and then we had a whistleblower come forward, made several allegations.

So acting on my authority as the agency chief counsel, I asked for an IG investigation. Secretary Ray LaHood lost his mind. He accused me of being -- what were the words he used?

I needed more supervision according to the Secretary. I was incompetent. I didn't understand what was going on and I said, yeah, I do, sexual assault, sexual harassment. We have kids that are being harmed. I understand.

Shortly thereafter, the Deputy Secretary of Transportation pulled me aside and said, the Secretary has lost confidence in your ability to lead. You have a choice. You can either be fired today and, you know, pretty much perp walked out, or you can stay on the books for three months. Well, I was the main breadwinner of my family at that point in time, two young kids. I decided to stay on.

So what happened during that three-month period, I was banned from the Federal Building, had a miscarriage. I asked my husband to have a vasectomy because I couldn't risk being pregnant because I didn't know how long the blackballing was going to happen.

So I forgo having additional children because, again, I wasn't sure if I was ever going to have a job again because of reporting the sexual assault that was occurring, and then left, yeah, left.

2014 happened. A young girl called me and said, Denise, I need your help. I'm being sexually harassed at the Academy. I put her in touch with lawyers. In 2017, a mom calls me up and says, my son has been sexually assaulted at Kings Point. I need your help. I put her in touch with lawyers.

Last Friday, I received a phone call from the lawyer that's helping that young boy. The IG had done an investigation. The IG found that the soccer players were being sexually assaulted by seniors. They were systematically going after the freshmen, boy on boy. It was happening in 2016, 2017.

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So why am I sharing all of this with you? Because there's been no accountability. There's been no prosecution for any of these crimes. The only person that's been fired is me, me, blackballed from the building, or, sorry, blackballed from jobs, banned from the Federal Building, had a miscarriage, suffered financially.

That's what happened to me. I got better. It took a lot of time, but I got better, but those boys, those boys. They were nominated by members of Congress who said, please, I want to nominate you. I want to send you to a prestigious federal service academy. I want you to succeed in life. They didn't succeed. They became victims. They became victims by perpetrators who knew that nothing was going to happen.

So what's my ask from you today, is to ask Ray LaHood, John Porcari, and Bob Rivkin why they didn't act on the IG investigation I asked for in 2011. You know why I know they didn't? Because Ray LaHood went to the IG and said, don't do it. The IG did not do it. The IG came to me and said, Denise, were you fired because of the IG investigation you requested? and I said, yeah, Cal, I was. Did anything happen after that? No.

In 2011, in 2014, a girl calls me. In 2017, a boy, you know, has been sexually assaulted. And last week, we find out from the DOT IG at least seven kids were sexually assaulted by seniors, because according to them, it was tradition.

It was tradition, folks, to sexually assault one another at that school. That tradition needs to stop and that's my ask. Find out why they didn't do it in 2011 and make it very clear to everybody that it is not tradition.

It is not acceptable to sexually assault one another. That is not acceptable in 2019 and it certainly wasn't acceptable in 2011. Thank you.

CHAIR LHAMON: Thank you.

MS. LOPEZ: Chair Lhamon, distinguished Commissioners, thank you for the opportunity to speak before you today. My name is Adriana Lopez. I am here representing Alianza Nacional de Campesinas, the National Alliance for Farmworker Women.

Alianza is the first national organization of farmworker women and their families fighting for campesinas' human rights and comprised of over a dozen campesina serving organizations nationwide.

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Alianza's mission is to unify the struggle and promote farmworker women's leadership in a national movement to create broader visibility and advocate for changes that ensure their human rights. I'm

here to express Alianza's solidarity with federal employees who have experienced sexual harassment in the workplace, including the women of the U.S. Forest Service.

We thank the Commission on Civil Rights for holding this important hearing, and we deeply appreciate the efforts made by the Equal Employment Opportunity Commission to combat and prevent workplace sexual harassment.

With a community study showing that approximately 80 percent of farmworker women experience some form of sexual violence in the workplace compared to 25 percent to 50 percent of all women across the workforce, farmworker women understand all too well what it means to work under this unbearable reality and what it also entails for the long-term physical and psychological health outcomes of those affected. Alianza and our member organizations across the country recognize the importance of having the federal government set an example of how to address sexual misconduct and discrimination in the workplace. It sends a strong message that these types of attitudes and behaviors are not tolerated, period.

It is for this reason that Alianza urges this Commission to extend its inquiry beyond the federal government. We urge you to hold an additional hearing to examine employment and labor contracting practices of entities that received federal funds, contracts, and benefits, especially within the agricultural sector, and with respect to campesinas.

It is critical that this Commission review the degree to which these employers and labor contractors are educated or not on the responsibilities to comply with the rules and regulations related to sexual harassment under Title VII and of existing gaps in the monitoring and enforcement of these rules and regulations.

Ensuring the safety of campesinas is of highest priority to Alianza and our member organizations across the country. We hope that you are able to honor our request and we thank you in advance for your attention to these important matters.

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CHAIR LHAMON: Thank you. Next speaker?

MS. YOUNG: My name is Stacey Young and I'm a senior litigator at the Justice Department. My supervisor stalked me for over a year and it was a terrifying and life altering experience.

He admitted to it, but my office responded largely with indifference. They didn't fire, demote, or suspend him, involve outside law enforcement, or even mention the episode in his permanent file. Instead, they merely transferred him to a different office and I feared for the women there.

When I later learned about other instances of egregious sexual harassment in my office that were similarly mishandled, I filed a complaint with DOJ's Inspector General's Office. This sparked a multiyear investigation into sexual harassment at the Department's Civil Division.

While the investigation was ongoing, I founded the DOJ Gender Equality Network, an employee group that now has more than 400 members across DOJ.

To achieve our goal of enhancing equality of opportunity at the agency regardless of gender, we promote more effective sexual harassment policies, seek to eliminate gender-based barriers to advancement in leadership, work to ensure that DOJ hiring practices don't create a gender wage gap, and push for improved family leave policies.

We've urged the leaders at DOJ to take the following steps to address sexual harassment that can apply to any federal workplace. First, limit or abolish the practice sometimes referred to as pass the trash, whereby serious offenders are moved from one office to another.

Transferring predators around an agency telegraphs a permissive attitude toward harmful behavior and subjects new offices to future incidents. A predator who must be removed from an office should likely be removed from an agency entirely.

Second, strengthen training requirements. We encouraged the DOJ to develop trainings that comport with best practices such as the use of interactive learning components.

Third, supplement training requirements with regular reminders about the ways employees can report allegations and educate those new to the department about their rights. It's critical that employees

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understand how they can report complaints to the EEO, and that unlike the private sector, they only have 45 days to do so.

They should also know to whom in their office they can turn if they feel uncomfortable reporting to direct managers and that retaliation is also actionable.

Finally, conduct an agency wide climate survey to assess the effects of sexual harassment and employees' perceptions about the department's response to it. A recent Interior Department survey revealed a pervasive sexual harassment problem and the agency responded forcefully shortly thereafter. In May of 2017, DOJ's Inspector General released a damning and extensive report finding systemic failures at the agency. IG Michael Horowitz recommended that the Deputy Attorney General, Rod Rosenstein, take several measures that we also endorse strongly.

They include instituting a table of penalties which consists of recommended, but not mandatory, disciplinary actions for sexual harassment that help standardize responses.

A recent report issued by the House Committee on Oversight and Government Reform helpfully outlined how penalty tables can mitigate inconsistent and inadequate handling of substantiated cases. Many agencies like DOJ have failed to institute one.

The Inspector General also recommended banning serious perpetrators and those under investigation from receiving awards or promotions. Rewarding these individuals signals a lax policy towards sexual harassment and discourages people from reporting.

To date, DOJ has acted on some of these recommendations. We hope they'll eventually implement all of them.

Federal agencies' disparate and often ineffective policies on sexual harassment have been given short shrift and this hearing is an important step towards fixing that.

The nation's largest employer should set an example for the companies it regulates, and as the history of civil rights in America shows, Uncle Sam's own practices can shove the private sector into action or hold it back. Thanks for this opportunity.

CHAIR LHAMON: Thank you. Our sixth speaker?

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MS. REDMOND: My name is Alissa Redmond. I'm a Foreign Service Officer with the Department of State. An American non-DOS member of my mission overseas assaulted me after attending the Marine Ball many years ago. It took me about a year to recognize that incident for what it was, date rape, and at that point, the guy had left the country.

Within hours of the assault, I convinced myself I was entirely to blame for the incident. I was terrified to speak about my experience to anyone in my vicinity given the paramount importance myself and my colleagues place on our corridor reputations.

This was my first assignment in the Foreign Service. I know my rank as a junior officer meant I had to keep my head down, handle all tasks thrown my way, and never, ever complain, especially to HR, yet after a year of panic attacks and nightmares, I knew I couldn't function as a professional without additional support that wasn't available to me overseas.

I ultimately felt somewhat comfortable admitting to a med in HR at post that I had been assaulted when I read Secretary Clinton's directive to state employees which explicitly stated that those who sought mental health treatment would not automatically face loss of or a downgrade in their security or medical clearances to continue to serve.

It was impossible for me to step away from post, quite a large one, without notice, as I was one of two staffers to our male ambassador. I remain profoundly grateful to those at post who did grant me the leave I requested to treat subsequently diagnosed anxiety, depression, and PTSD.

To leave, I did have to sit through the male psychiatrist at our med office, employed by our med office telling me, you don't need to dramatize things to leave this post if that's what you want to do.

I tallied up for my female psychiatrist, private psychologist, psychiatrist in the U.S., whose exorbitant, but worthwhile fees I paid for out of pocket, recouping in part through medical insurance reimbursements after the fact, that I had to tell over half a dozen men that I was raped by our colleague before I could complete all of the paperwork I needed to leave post for counseling.

To my knowledge, my supervisors never reported this

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incident to the Office of Civil Rights as was likely mandated at that time, and certainly is now per the Foreign Affairs Manual.

I had to advance sick leave over three months with a reduction in pay, loss of differential, while purchasing my own plane ticket and accommodations in the U.S. to remain away from my work overseas to treat my PTSD domestically. I'm extremely proud of myself for returning to complete that assignment.

I don't believe my career was negatively impacted by initially reporting my need for help. I received additional opportunities to serve senior leaders in our department directly, yet I am increasingly challenged within the confines of my profession by interpersonal issues that are a direct result of that incident many years ago.

I will likely take anti-anxiety medication for the rest of my life and will seek extremely costly counseling whenever I feel overwhelmed by my emotions.

In 2016, upon receipt of documentation by my then supervisor's bullying of local female staff under my supervision, post management relieved my then boss of his supervisory duties over my unit six days after our review statements were complete and in the file for promotion review.

He was promoted that year. I cannot comment publicly on further actions I had to take to rectify in part my career trajectory, but suffice it to say that I do not anticipate receiving a promotion in the coming years.

Early in my career, I worked on diverse teams that produced tremendous foreign policy gains. The last four bosses I've had were white males, one of whom asked me somewhat earnestly after a session I led for the Federal Women's Program at post to explain unconscious bias to him. I no longer have the energy to teach a 65-year-old man how he had the ability to turn my career on its head.

Our workplace culture is utterly horrendous at times, with embassies and consulates often taking on the misogyny that surrounds our compound's walls, but our work can be so incredible. I feel like a masochist for remaining an American diplomat as I do not believe the State Department's culture towards low-ranking female employees will markedly change

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during my career, but I keep hoping a better version of myself will appear under each layer of skin I shed for this job I continue to adore. Thanks.

CHAIR LHAMON: Thank you. Our next speaker?

DR. YOUNG: Thank you. My name is Lih Young.

CHAIR LHAMON: Could you turn your microphone on?

DR. YOUNG: Oh, sorry.

CHAIR LHAMON: Thank you.

DR. YOUNG: Okay, my name is Lih Young. I am a PhD in economics by training. I was here the last time in your public hearings November 2, 2018, and I submitted in writing comments too with an attachment, an addition of 17 files.

I consider America as very sick, very, very sick. Now, we have a lot of employee I considered and basically they are to produce a fraudulent document in their businesses.

Currently they have PPP, public-private partnership, that reflects extremely fraud and a crime, abuse, and for official misconduct, whatever you can name it, including murder, and my husband was murdered by this group, PPP, including Rockville's city council and mayor, and their development team, the Rockville town center.

And now we can see all of the civil organizations basically, and all of our government basically is PPP everywhere. So this is the thing. How could I get a position in the government? I got a PhD in economics. I have two children. I have a happy family.

At that time, my husband was a graduate of Columbia and a PhD, and my son and my daughter are MIT graduates, and they both are two years graduation ahead in high school, but my son got valedictorian, but they would not give my daughter a graduation certificate or diploma, and instead, they spread all the bad word, maybe even prosecute or something, so this is the sort of society we are in.

If you want to see my own achievement, I was rated as the number, probably number one in the reviewer's review in reviewing the grants, my research projects, number one. I handled the most research project and then I also handled a contract, and I was given the comment what they should do, and then I go from intramural to intermural.

It was expected to be the director, but then that

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fraudulent, they said PhD candidates don't even have PhD, and then they produce all of this fraudulent procedure and deprive all of my rights, all of the employees' right.

Now, in the attachments, 17, the amount of 17, you have an affidavit, my affidavit that was about, at that time, that I support the No FEAR Institute for the congressional bill. There, I have the detail about what's wrong with our federal system.

They denied all my right, every right at all for the sick leave, benefits, whatever. They denied it. And at that time, computers is just sort of at the beginning, and they are, so we were just coming up. I requested a computer for training. They denied it. Instead they all and the big words against me.

So you're going to see this affidavit. That will give you more detail. So what's wrong is all our government agency, whether it's EEOC, MSPB, DOJ, FBI, everything is a fraudulent and criminal network.

If you see this in my December 1 reason statement with all of the attachment file, look at it carefully, the robberies, and put this word together, murder, fraud, crime, unjust network operation.

So it was all kind of crime, including all of those of women and minority group, no sense of project legislation. They took all of my rights, including my driver license or my ability or something to write or to talk. I cannot do that. They took every of my right.

So you must do it because I haven't seen you respond to my request.

CHAIR LHAMON: Thank you very much.

DR. YOUNG: So I'll write you again.

CHAIR LHAMON: The public comment period is over.

DR. YOUNG: And I just come from the National Academy of Science. Today, I tell them they cannot do the PPP again.

CHAIR LHAMON: The public comment period is closed.

DR. YOUNG: Okay, thank you.

CHAIR LHAMON: This brings us to the end of our briefing. I thank all of our panelists and our public participants. Today has been tremendously informative, and on behalf of the entire Commission, I thank all of those who presented to us for sharing your time, your expertise, and your experience with us.

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As I said earlier, the record for this briefing will remain open until Monday, June 10, 2019. Panelists or members of the public who would like to submit materials for Commission consideration, including if individuals would like to submit anonymously, may mail them to the U.S. Commission on Civil Rights Office of Civil Rights Evaluation, 1331 Pennsylvania Avenue Northwest, Suite 1150, Washington, D.C. 20425 or email them to sexualharassment@usccr.gov.

I ask that our attendees move any continuing conversations outside of this hearing room so our staff can complete the logistics necessary to close the room, and please make sure you exit the building through the F Street lobby as the exit to the Pennsylvania Avenue side is now closed.

ADJOURN

If there is nothing further, I adjourn this meeting at 5:35 p.m. eastern time. Thank you.

(Whereupon, the above-entitled matter went off the record at 5:35 p.m.)

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