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THEY STILL JUST DON'T GET IT: THE LESSONS OF THE  
#METOO MOVEMENT THROUGH THE LENS OF SUPREME  
COURT NOMINATIONS

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## ABSTRACT

*Many have hailed the #MeToo Movement as a turning point in the way this country discusses sexual assault and sexual harassment, but when looking at the #MeToo Movement through the lens of Supreme Court nominations, it is unclear whether the impact of the Movement will be as far-reaching as some imagine. The hearing of Anita Hill, which came before the #MeToo Movement, and the hearing of Dr. Christine Blasey Ford, which came after the #MeToo Movement, perhaps demonstrate that the #MeToo Movement has reached its limit culturally and now institutional change must be the focus in order for the goals of the #MeToo Movement to be fully realized. Looking to the hearing of Professor Hill to analyze what we should have learned, the #MeToo Movement to assess what we thought we learned, and the hearing of Dr. Ford to recognize what we still have to learn about survivors of sexual assault, this Article begins to develop creative solutions to ensure that our institutions change as our society changes, with the ultimate goal of creating a society where no one else has to say #MeToo.*

## INTRODUCTION

Those who fear public speaking have no difficulty imaging the nightmare of standing before a group of twenty-one<sup>1</sup> people, fully exposed.<sup>2</sup> The pure terror of knowing you have no control over what happens next and the understanding that this might all be for nothing is likely not far from your mind. Yet, you stand there, fully exposed, waiting to be bombarded with questions, probed about the most traumatic experiences of your past. This nightmare was a reality for Professor Anita Hill and Dr. Christine Blasey Ford as they testified before the Senate Judiciary Committee accusing now-Justice Clarence Thomas and now-Justice Brett Kavanaugh, respectively, of sexual misconduct, just as it is a reality for each victim of sexual harassment or assault, if they confront their assaulter or seek to bring them to justice. The #MeToo Movement has encouraged many survivors of sexual vio-

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<sup>1</sup> At the time of Anita Hill's hearing there were only fourteen members of the Senate Judiciary Committee. At the time of Dr. Christine Blasey Ford's hearing, there were twenty-one members of the Senate Judiciary Committee. Richard Cowan, *Senate's Judiciary Committee, Then and Now*, REUTERS (Sept. 26, 2018), <https://www.reuters.com/article/us-usa-court-kavanaugh-committee/senates-judiciary-committee-then-and-now-idUSKCN1M635A>.

<sup>2</sup> See Susan Estrich, *Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings: What Went Wrong*, 65 S. CAL. L. REV. 1393, 1393 (1992).

lence to come forward to acknowledge their assault and name their assault-er.<sup>3</sup> It remains to be seen, though, the full effect that the #MeToo Movement has had on those in positions of great power, like those nominated to the Supreme Court of the United States.

Article II of the United State Constitution grants the President the power to nominate “and by and with the advice and consent of the Senate...appoint...judges of the Supreme Court.”<sup>4</sup> This grant of power, to advise and consent—or not—is most importantly wielded in the Senate Judiciary Committee.<sup>5</sup> Once the Senate Judiciary Committee favorably recommends a nominee, it is rare for the entire body to not approve the nominee.<sup>6</sup> In 1991, the members of the Senate Judiciary Committee and those of the full body were accused of “just not getting it” when Professor Anita Hill levied charges of sexual harassment against Justice Clarence Thomas.<sup>7</sup> In response to similar accusations by Dr. Christine Blasey Ford against Justice Brett Kavanaugh, Professor Hill authored an article in which she asserted that because of “years of hindsight, mounds of evidence of the prevalence and harm that sexual violence causes individuals[,]” and the #MeToo Movement, “‘not getting it’ is not an option for our elected representatives.”<sup>8</sup>

With that assertion, Professor Hill raises questions about how much society has actually learned from her experience and the #MeToo Movement, why the lessons we have learned in the #MeToo Movement seem to fall short when it comes to Supreme Court nominations, and what impact that will have going forward. This article seeks to address those questions. In Part I, this article analyzes Professor Hill’s experience stemming from her

<sup>3</sup> See Elizabeth Blair, *After One Year of Headlines, #MeToo is Everywhere*, NAT’L PUB. RADIO (Oct. 6, 2018), <https://www.npr.org/2018/10/06/654993350/after-one-year-of-headlines-metoo-is-everywhere>.

<sup>4</sup> U.S. CONST. art. II, § 2, cl. 2.

<sup>5</sup> See BARRY J. McMILLION, CONG. RESEARCH SERV., R44236, SUPREME COURT APPOINTMENT PROCESS: CONSIDERATION BY THE SENATE JUDICIARY COMMITTEE I (2018).

<sup>6</sup> See *id.* at 19–20 (stating that

During the 20th century, the Senate usually, but not always, agreed with Judiciary Committee recommendations that a Supreme Court nominee be confirmed...a favorable recommendation by the committee has, in a few instances (each occurring during the period 1968 to 1970), not been followed by the Senate confirmation of the nomination.))

<sup>7</sup> Ruth Marcus, Opinion, *Have We Learned Nothing Since Anita Hill?*, WASH. POST (Sept. 21, 2018), [https://www.washingtonpost.com/opinions/have-we-learned-nothing-since-anita-hill/2018/09/21/bdc649a4-bddb-11e8-8792-78719177250f\\_story.html?utm\\_term=.51aefb8272b2](https://www.washingtonpost.com/opinions/have-we-learned-nothing-since-anita-hill/2018/09/21/bdc649a4-bddb-11e8-8792-78719177250f_story.html?utm_term=.51aefb8272b2).

<sup>8</sup> Anita Hill, Opinion, *How to Get the Kavanaugh Hearings Right*, N.Y. TIMES (Sept. 18, 2018), <https://www.nytimes.com/2018/09/18/opinion/anita-hill-brett-kavanaugh-clarence-thomas.html>.

allegations against Justice Thomas and discusses what we should have learned from such an experience. In Part II, this article assesses the growth of the #MeToo Movement and what we thought we learned from the Movement. Part III of this article applies what we should have learned from Professor Anita Hill's experience and what we thought we learned from the #MeToo Movement to Dr. Ford's experience challenging the nomination of Justice Brett Kavanaugh. This section also explores the question of what we still have to learn and makes four recommendations as to how—drawing from Professor Hill's experience, the #MeToo Movement, and Dr. Ford's experience—society can move forward, respecting the experiences of survivors of sexual harassment and assault. These lessons include the need for definitive procedures in the handling of sexual misconduct claims against judicial nominees, the need to understand and respect that each survivor processes and reacts to their assault differently, the need for additional leadership opportunities for women<sup>9</sup> whose experiences tend to allow them to better support survivors of sexual violence, and the realization that these lessons cannot be confined to vocal supporters but must be taught, even to dissenters, in order for these lessons to truly impact society's treatment of sexual violence and survivors of sexual violence.

### I. THE LESSONS OF PROFESSOR ANITA HILL

Anita Hill was a law professor at the University of Oklahoma when President George H.W. Bush nominated now-Justice Clarence Thomas to the Supreme Court of the United States on July 1, 1991.<sup>10</sup> She had previously worked with Justice Thomas at the United States Department of Education and the Equal Employment Opportunity Commission (EEOC).<sup>11</sup> It was at those agencies, one of which is tasked with investigating and charging claims of sexual harassment,<sup>12</sup> that Professor Hill alleged that Justice Thomas sexually harassed her repeatedly.<sup>13</sup> While sexual harassment was prohibited as sex discrimination under Title VII of the Civil Rights Act of

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<sup>9</sup> Throughout this Article, I refer to the experiences of women because, statistically, they are more likely to experience sexual assault or harassment than men, but the experiences I discuss here are not unique to women and should not be understood as such. Instead, women, here, is used broadly to encompass both individuals who have experienced sexual violence and those who understand its serious implications.

<sup>10</sup> Judith Resnik, *Hearing Women*, 65 S. CAL. L. REV. 1333, 1333 (1992).

<sup>11</sup> Maritza I. Reyes, *Professional Women Silenced by Men-Made Norms*, 47 AKRON L. REV. 897, 899–900 (2015).

<sup>12</sup> FACT SHEET: SEXUAL HARASSMENT, U.S. EQUAL EMP. OPPORTUNITY COMMISSION, <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm> (last visited Jan. 22, 2019).

<sup>13</sup> Reyes, *supra* note 11.

1964,<sup>14</sup> “[e]vidence that sexual harassment was regarded as unimportant by the Senate abounded in the events leading up to the hearings concerning Professor Anita Hill’s charges.”<sup>15</sup> In fact, upon hearing the accusations against Justice Thomas – that he described pornography and genitalia and repeatedly asked Professor Hill on dates – Senator Howard M. Metzenbaum (D-OH) stated, “[i]f that’s sexual harassment, half the senators on Capitol Hill could be accused.”<sup>16</sup> Furthermore, even though Professor Hill submitted a statement detailing the harassment to the Senate Judiciary Committee on September 23, 1991, her statement was not shared with the remainder of the Senate until the existence of the statement was picked up by the press and public sentiment surrounding the statement forced the Senate Judiciary Committee to take Professor Hill’s charges seriously.<sup>17</sup>

This initial political misstep in the investigation of Professor Hill’s charges was compounded by the Senate Judiciary Committee’s widely-recognized mishandling of Professor Hill’s hearing held on October 11, 1991.<sup>18</sup> The hearing was marred by attacks on Professor Hill personally, her credibility, and her personal response to her harassment.<sup>19</sup> The missteps of the Committee are detailed below, followed by a discussion of what society should have learned from such missteps.

#### A. A Hearing Marred by Ignorance

An all-white male Senate Judiciary Committee, that had little understanding of sexual harassment or assault and its effects on survivors, conducted Professor Hill’s hearing.<sup>20</sup> Professor Hill was attacked for not hav-

<sup>14</sup> See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

<sup>15</sup> Adrienne D. Davis & Stephanie M. Wildman, *The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings*, 65 S. CAL. L. REV. 1367, 1369 (1992).

<sup>16</sup> Batya Ungar-Sargon, *The Kavanaugh Controversy is a #MeToo Victory – However It Turns Out*, WASH. POST (Sept. 24, 2018), <https://www.washingtonpost.com/outlook/2018/09/24/kavanaugh-controversy-is-metoo-victory-however-it-turns-out/>.

<sup>17</sup> Davis & Wildman, *supra* note 15, at 1369–70; see also Nina Totenberg, *A Timeline of Clarence Thomas-Anita Hill Controversy as Kavanaugh to Face Accuser*, NAT’L PUB. RADIO (Sept. 23, 2018), <https://www.npr.org/2018/09/23/650138049/a-timeline-of-clarence-thomas-anita-hill-controversy-as-kavanaugh-to-face-accuse> (establishing a timeline of events leading to the Senate Judiciary Committee seriously considering Anita Hill’s charges against Justice Thomas).

<sup>18</sup> Scott Lemieux, *Echoes of Anita Hill in Kavanaugh Hearings*, REUTERS (Sept. 24, 2018), <https://www.reuters.com/article/us-lemieux-kavanaugh-commentary/commentary-echoes-of-anita-hill-in-kavanaugh-hearings-idUSKCN1M41SB>.

<sup>19</sup> *Id.*

<sup>20</sup> Cowan, *supra* note 1.

ing come forward sooner, for moving with Justice Thomas from the Department of Education to the EEOC after she thought she had put an end to the harassment, and for maintaining a professional relationship with Justice Thomas after the alleged harassment.<sup>21</sup> The Senate Judiciary Committee failed to recognize, though, that Professor Hill did exactly what study after study says most women do when placed in such a vulnerable position: she sought to “find a way for her to avoid the harassment but keep her job.”<sup>22</sup> In fact, it would have been “unreasonable to have expected Professor Hill to jeopardize her career by alienating Justice Thomas after leaving his employ.”<sup>23</sup>

Her hearing, or rather her “rigorous interrogation,” was proof enough of what happens when a woman accuses a powerful man—soon to be one of the most powerful men in the country—of such misconduct.<sup>24</sup> Throughout the hearing, Professor Hill was portrayed as a “woman scorned or as someone who had fantasized her sexual desirability.”<sup>25</sup> Senator Arlen Specter (R-PA) went so far as to accuse Professor Hill of perjury and suggest that “the accusations were the result of Hill seeking revenge because Thomas didn’t show enough sexual interest in her.”<sup>26</sup> Senators levied these personal attacks while Professor Hill was unable to present all of the evidence that supported her allegations.<sup>27</sup> “[C]rucially, three women who wanted to corroborate Hill’s testimony were not allowed to testify before Congress.”<sup>28</sup>

Ultimately, after not actually listening to Professor Hill’s testimony and only being read “her edited words,” Justice Thomas issued a forceful re-

<sup>21</sup> Davis & Wildman, *supra* note 15, at 1375–76.

<sup>22</sup> Reyes, *supra* note 11, at 939; see Rhitu Chatterjee, *A New Survey Finds 81 Percent of Women Have Experienced Sexual Harassment*, NAT’L PUB. RADIO (Feb. 21, 2018), <https://www.npr.org/sections/thetwo-way/2018/02/21/587671849/a-new-survey-finds-eighty-percent-of-women-have-experienced-sexual-harassment>; Beverly Engel, *Why Don’t Victims of Sexual Harassment Come Forward Sooner?*, PSYCHOL. TODAY (Nov. 16, 2017), <https://www.psychologytoday.com/us/blog/the-compassion-chronicles/201711/why-dont-victims-sexual-harassment-come-forward-sooner>.

<sup>23</sup> Davis & Wildman, *supra* note 15, at 1376.

<sup>24</sup> Cowan, *supra* note 1.

<sup>25</sup> Estelle B. Freedman, *The Manipulation of History at the Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1361, 1364 (1992).

<sup>26</sup> Ungar-Sargon, *supra* note 16.

<sup>27</sup> Marcia Coyle, *Lawyers Who Guided Anita Hill Offer Advice to Kavanaugh’s Accuser*, NAT’L L.J. (Sept. 17, 2018), <https://www.law.com/nationallawjournal/2018/09/17/lawyers-who-guided-anita-hill-offer-advice-to-kavanaughs-accuser/> (stating that “In the case of Thomas, there was a lot of corroborating evidence for Hill but (the committee) deliberately kept it out.”).

<sup>28</sup> Lemieux, *supra* note 18.

ply.<sup>29</sup> He denied “each and every single allegation against” him<sup>30</sup> and accused liberals on the Senate Judiciary Committee of “a high-tech lynching.”<sup>31</sup> The next Tuesday, October 15, 1991, Justice Thomas was confirmed to the United States Supreme Court by one of the narrowest margins in modern times, 52-48.<sup>32</sup>

## B. What We Should Have Learned

Prior to Dr. Christine Blasey Ford’s testimony before the Senate Judiciary Committee, Professor Hill acknowledged, “[t]here is no way to redo 1991, but there are ways to do better.”<sup>33</sup> First among those ways, according to Professor Hill, is demonstrating appreciation for “both the seriousness of sexual harassment claims and the need for public confidence in the character of a nominee to the Supreme Court.”<sup>34</sup> The Senate Judiciary Committee failed in these areas in 1991.<sup>35</sup> This failure and the subsequent confirmation of Justice Thomas sent a clear message to many women: “Who cared if we, like Anita Hill, spoke out about sexual harassment on the job? It wouldn’t get us anywhere.”<sup>36</sup>

To many other women, though, Professor Hill gave them the courage they needed to speak up about sexual harassment in the workplace.<sup>37</sup> In fact,

<sup>29</sup> Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1292 (1992).

<sup>30</sup> Marcia Coyle, *Confirmation in Turmoil, Kavanaugh and His Accuser Will Testify at Public Hearing*, NAT’L L.J. (Sept. 17, 2018), <https://www.law.com/nationallawjournal/2018/09/17/confirmation-in-turmoil-kavanaugh-and-his-accuser-will-testify-at-public-hearing/>.

<sup>31</sup> Ron Elving, *Anita Hill’s Challenge to Clarence Thomas: A Tale of 2 Lives and 3 Elections*, NAT’L PUB. RADIO (Sept. 20, 2018), <https://www.npr.org/2018/09/20/649721806/anita-hills-challenge-to-clarence-thomas-a-tale-of-2-lives-and-3-elections>.

<sup>32</sup> *Id.*; see also Marcia Coyle, *Kavanaugh Accuser, Speaking Publicly, Puts New Pressure on Republicans*, NAT’L L.J. (Sept. 16, 2018), <https://www.law.com/nationallawjournal/2018/09/16/kavanaugh-accuser-speaking-publicly-puts-new-press-on-republicans/> (discussing Justice Clarence Thomas’s slim Senate confirmation margin after Anita Hill’s testimony).

<sup>33</sup> Hill, *supra* note 8.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Carol Costello, *Christine Blasey Ford Signals End of He-Said-Who-Cares-What-She-Said Era*, CNN RADIO (Sept. 27, 2018), <https://www.cnn.com/2018/09/27/opinions/christine-blasey-ford-dawn-new-generation-costello/index.html>.

<sup>37</sup> Reyes, *supra* note 11, at 965 (explaining that “Anita Hill’s courageous testimony led women of all races and ethnicities to come forward with their own stories of sexual harassment.”) (citing JULIE BEREBSKY, SEX AND THE OFFICE - A HISTORY OF GENDER, POWER, AND DESIRE 4 (2012)).



between 1991 and 1993, sexual harassment civil lawsuits almost doubled.<sup>38</sup> This helped shift society's perception of sexual harassment from "just the way it was" to a serious harm.<sup>39</sup> By recognizing sexual harassment as a serious harm, society was able to "name experiences," like sexual violence, date rape, marital rape, and discrimination, and "to link these private moments of discomfort, pain, and terror to political and legal wrongs."<sup>40</sup> In this way, the Thomas/Hill hearings should have taught society that actions should have consequences, even when those actions were taken by powerful men and seemingly rewarded by a group of powerful white men. Furthermore, the hearing and the subsequent backlash at the treatment of Professor Hill should have taught society that women deserve to be heard and they will not be fully silenced. This was evident when, in 1992, an unprecedented number of women ran for and were elected to public office, in part because of outrage at the way Professor Hill was treated during her hearing.<sup>41</sup> As a result of this election, 1992 was dubbed the "Year of the Woman."<sup>42</sup> The "Year of the Woman" and the lessons society should have learned from Professor Hill's hearing, though, seemed to only last an instant, as the #MeToo Movement gained prominence only twenty-five years later and demonstrated how little society had actually evolved.

## II. THE LESSONS OF THE #METOO MOVEMENT

On October 5, 2017, Jodi Kantor and Megan Twohey published the story that propelled a movement to the front of the nation's consciousness.<sup>43</sup> It was on that day that the world first learned of nearly three decades of undisclosed sexual assault and harassment allegations against Harvey Weinstein.<sup>44</sup> Throughout those three decades, "after being confronted with allegations including sexual harassment and unwanted physical contact, Mr. Weinstein...reached at least eight settlements with women."<sup>45</sup> Ten days after the story broke, actress Alyssa Milano invited her Twitter followers to

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<sup>38</sup> *Id.* (quoting JULIE BEREBITSKY, *SEX AND THE OFFICE - A HISTORY OF GENDER, POWER, AND DESIRE* 4 (2012)).

<sup>39</sup> Resnik, *supra* note 10, at 1337.

<sup>40</sup> *Id.*

<sup>41</sup> Reyes, *supra* note 11, at 965 (citing JULIE BEREBITSKY, *SEX AND THE OFFICE - A HISTORY OF GENDER, POWER, AND DESIRE* 4 (2012)).

<sup>42</sup> Elving, *supra* note 31.

<sup>43</sup> See generally Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> (detailing Harvey Weinstein's history of sexual assault and harassment).

<sup>44</sup> See *id.*

<sup>45</sup> *Id.*

tweet #MeToo if they had ever experienced harassment or assault, and so began the national phenomenon.<sup>46</sup> The #MeToo hashtag was created by Tarana Burke in 2007 to support survivors of sexual harassment and violence,<sup>47</sup> but did not rise to national prominence until Milano's tweet in 2017.<sup>48</sup> "Over the next few weeks, millions of women decided that sharing the hashtag was worth the ensuing sense of vulnerability, the inevitable skepticism, and, for many, the emotional and physical risk."<sup>49</sup>

The #MeToo Movement and the lessons society has learned from it have not yet proven to have as short of a lifespan as those lessons society should have learned from Anita Hill's experience. Instead, the Movement has been championed by movers and shakers in Hollywood,<sup>50</sup> on Capitol Hill,<sup>51</sup> and throughout the world. Time Magazine even declared "The Silence Breakers" of the #MeToo Movement its Person of the Year for 2017.<sup>52</sup> This is not to say, though, that society has learned all it can from this movement. The Movement continues to grow and transform. Below, this Article discusses the progress made since the Movement gained prominence in October 2017 and analyzes the lessons we thought we learned from the Movement that need to be reinforced in light of the Kavanaugh/Ford hearings.

#### A. The Movement's Impact

Between October 2017 and October 2018, "sexual harassment reports to the Equal Employment Opportunity Commission [went] up 12 percent, after years of remaining steady."<sup>53</sup> This is a sign of what many have come to recognize as a refusal to tolerate such misconduct any further.<sup>54</sup> However, it

<sup>46</sup> Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 MINN. L. REV. 230, 231 (2018).

<sup>47</sup> *Id.*

<sup>48</sup> Caroline Kitchener, *For the Third Autumn in a Row, a National Reckoning with Sexual Assault*, ATLANTIC (Sept. 28, 2018), <https://www.theatlantic.com/politics/archive/2018/09/brett-kavanaugh-and-autumn-sexual-assault-reckoning/571609/> (explaining that "the mantra was tweeted more than half a million times in 24 hours, often accompanied by deeply personal stories of harassment and assault.").

<sup>49</sup> *Id.*

<sup>50</sup> Blair, *supra* note 3 (quoting "Oprah Winfrey at the Golden Globe Awards: 'Take us to a time when nobody ever has to say 'me too' again.'").

<sup>51</sup> Rozina Sabur, *'Me Too' Victory in US Congress as Politicians Change Sexual Harassment Rules*, TELEGRAPH (Dec. 13, 2018), <https://www.telegraph.co.uk/news/2018/12/13/metoo-victory-us-congress-politicians-change-sexual-harassment/>.

<sup>52</sup> Stephanie Zacharek et al., *Person of the Year 2017: The Silence Breakers*, TIME (Dec. 18, 2017), <http://time.com/time-person-of-the-year-2017-silence-breakers/>.

<sup>53</sup> Blair, *supra* note 3.

<sup>54</sup> *Id.*

remains unclear how committed society is to this position, particularly in light of how contentious and partisan the Movement has become.<sup>55</sup>

Regardless of the political implications of the Movement, though, it is impossible to deny its impact on many working-women. This impact is best demonstrated by a recent New York Times study that found that, since October 2017, “at least 200 prominent men have lost their jobs after public allegations of sexual harassment.”<sup>56</sup> Some of these men have also faced criminal charges for their sexual misconduct, and “nearly half of the men who have been replaced were succeeded by women.”<sup>57</sup> These women successfully created more #MeToo friendly workplaces throughout the country, as studies show that female leaders tend to “create more respectful work environments, where harassment is less likely to flourish and where women feel more comfortable reporting it.”<sup>58</sup> Furthermore, these women leaders are more likely to hire and promote other women and pay them equally, allowing these other women to likewise enter leadership positions.<sup>59</sup>

The progress of the #MeToo Movement is not limited only to those able to take advantage of leadership opportunities when prominent men are removed from their positions. Instead, the #MeToo Movement has led to the creation of the TIME’S UP Legal Defense Fund, among other organizations, which provide funding and services to women who are seeking aid and legal services in the face of sexual harassment or misconduct.<sup>60</sup> Furthermore, advances in the #MeToo Movement have created “an opportunity [for educators] to talk about serious and relevant issues like consent and sexual harassment” in the classroom.<sup>61</sup> Thus, the #MeToo Movement began a culture shift, but, as the Kavanaugh hearings have demonstrated, that cul-

<sup>55</sup> See *id.*; see also *One Year Into #MeToo Movement, How Far Have We Come?*, PBS NEWSHOUR (Oct. 5, 2018), <https://www.pbs.org/newshour/show/one-year-into-metoo-movement-how-far-have-we-come> [hereinafter PBS NEWSHOUR] (referencing a Huffington Post and YouGov poll “which showed, for example, that, among Trump supporters, the majority feel like the MeToo movement moment has gone too far.”).

<sup>56</sup> Audrey Carlsen et al., *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*, N.Y. TIMES (Oct. 29, 2018), <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Blair, *supra* note 3 (quoting Sharyn Tejani, director of the Time’s Up Legal Defense Fund:

I have been a civil rights lawyer and a women’s rights lawyer for the last 20 years... And if you had told me at any point in those 20 years that there would be money available to help people come forward, to help people with their cases, I would have told you, ‘That’s just never going to happen.’)

<sup>61</sup> See *id.* (stating that “It’s important to teach our students when they’re younger so they don’t grow up in a culture where they think it’s OK”).

tural shift has not completely taken hold in the highest echelons of society where it is most critical that it does.

### B. What We Thought We Learned

The #MeToo Movement brought to the national consciousness issues of “sexual assault, sexual harassment, but, even more broadly, the imbalance of power between men and women across our institutions, political, corporate, media, educational, and religious institutes.”<sup>62</sup> Simply because these issues have come to the forefront of the nation’s consciousness does not mean that society has actually started to ask questions “about how we actually start to change these institutions in ways that not only prevent the abuse in the first place, but also figure out ways to adjudicate and hold folks accountable for that abuse that both upholds due process, as well as ensuring the safety” and wellbeing of those survivors who come forward.<sup>63</sup>

This lack of definitive answers forces individuals in positions of great power, such as the senators on the Senate Judiciary Committee, to tread with more caution than they did during Professor Hill’s hearing.<sup>64</sup> Furthermore, this led Justice Kavanaugh—even before Dr. Ford’s allegations arose, and in accepting President Trump’s nomination—to speak about the impact women have had on his life and to tout “his efforts to promote women in the judiciary through his clerk-hiring.”<sup>65</sup> It is also what led Senator Mazie Hirono (D-HI) to ask each federal judicial nominee who comes before the Senate Judiciary Committee about sexual harassment—because she does “not want the Me Too movement to be swept under the rug.”<sup>66</sup> These subtle changes in behaviors, whether motivated by good faith or the desire to not be implicated in misconduct, are part of the legacy of the #MeToo Movement. But just because these individuals in positions of power tread with caution does not mean they are internalizing the lessons of the #MeToo Movement in a productive manner. And shouldn’t the actual motivation for change be a variable in weighing the societal value of that change? Has society truly learned anything from #MeToo if the changes are motivated by a desire to not be implicated in misconduct? Does that make the #MeToo Movement a Band-Aid solution without long-term implications, like the lessons learned following Professor Hill’s hearing? There are no easy answers to these questions, but if the true lessons of the #MeToo

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<sup>62</sup> PBS NEWSHOUR, *supra* note 55.

<sup>63</sup> *Id.*

<sup>64</sup> Ungar-Sargon, *supra* note 16.

<sup>65</sup> Coyle, *supra* note 30.

<sup>66</sup> *Id.*

Movement are to take hold, these are questions society must wrestle with as we decide how sexual harassment claims against prominent men are to be adjudicated.

### III. THE LESSONS OF DR. CHRISTINE BLASEY FORD

Dr. Christine Blasey Ford is a psychology professor at Palo Alto University and a research psychologist at Stanford University School of Medicine.<sup>67</sup> She was living in California and acting in this capacity when reporters appeared at her home and her job asking questions about a letter she had written to Senator Diane Feinstein (D-CA) detailing her sexual assault by Supreme Court nominee Brett Kavanaugh.<sup>68</sup> Throughout the summer of 2018, Dr. Ford contacted the Washington Post, her United States Representative, and her Senator about her assault, but she requested confidentiality and refused to speak on the record, hoping to avoid being labeled a liar and experiencing the pain Professor Hill had suffered over twenty-five years earlier.<sup>69</sup> “As the story snowballed, Ford said, she heard people repeating inaccuracies about her and, with the visits from reporters, felt her privacy being chipped away.”<sup>70</sup> Thus, because the publicity she was trying to avoid could no longer be evaded, Dr. Ford decided to come forward to tell her story.<sup>71</sup> It was then, in an interview with the Washington Post, that she detailed how a drunk Kavanaugh pinned her to a bed and laughed while “grinding his body against her and clumsily attempting to pull off her one-piece bathing suit and the clothing she wore over it,” as she tried to scream for help.<sup>72</sup> Following Dr. Ford’s allegations, two other women came forward to accuse Kavanaugh of sexual misconduct.<sup>73</sup> While Dr. Ford was giv-

<sup>67</sup> *Nomination of the Honorable Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Judiciary Comm.*, 115th Cong. 1 (2018) [hereinafter *Blasey Ford Senate Written Testimony*] (written testimony of Professor Christine Blasey Ford, Ph.D.).

<sup>68</sup> *See id.* at 6.

<sup>69</sup> Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks Out About Her Allegation of Sexual Assault*, WASH. POST (Sept. 16, 2018), [https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b\\_story.html?utm\\_term=.c2ef47bac2ff](https://www.washingtonpost.com/investigations/california-professor-writer-of-confidential-brett-kavanaugh-letter-speaks-out-about-her-allegation-of-sexual-assault/2018/09/16/46982194-b846-11e8-94eb-3bd52dfe917b_story.html?utm_term=.c2ef47bac2ff) (quoting Dr. Ford as saying “Why suffer through annihilation if it’s not going to matter?”).

<sup>70</sup> *Id.*

<sup>71</sup> *See id.*

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

<sup>73</sup> *See* Sarah Fitzpatrick et al., *Kavanaugh Accuser Julie Swetnick Alleges He ‘Spiked’ Punch at Parties So Intoxicated Women Could be Raped*, NBC NEWS (Sept. 26, 2018), <https://www.nbcnews.com/politics/supreme-court/woman-alleges-kavanaugh-spiked-punch-parties-so-intoxicated-girls-could-n912491>.

en an opportunity to be heard by the Senate Judiciary Committee, Deborah Ramirez and Julie Swetnick were denied an opportunity to testify.<sup>74</sup>

#### A. A Hearing Reminiscent of 1991

On September 26, 2018, Dr. Ford pledged to “tell the truth, the whole truth, nothing but the truth, so help [her] God” before testifying in front of the Senate Judiciary Committee.<sup>75</sup> Leading up to her hearing, Dr. Ford repeatedly requested that the FBI investigate her claim, much like Professor Hill’s claim was over twenty-five years ago; but her request was summarily denied as merely a delay tactic.<sup>76</sup> This denial of a full investigation represented a shift in the mentality and strategy of the Senate Judiciary Committee from 1991 to 2018. No longer could members of the Senate Judiciary Committee level personal attacks against Dr. Ford, the #MeToo Movement made sure of that, but they could deny the full and fair investigation that Dr. Ford requested. Dr. Ford admitted that she did not have answers to questions about how she got to the party and where it took place, as she did not remember as much as she would like to.<sup>77</sup> She requested an FBI investigation because of these gaps in her memory.<sup>78</sup> But her request was denied, as she reassured the Committee that “the details about that night that bring me here today are ones I will never forget. They have been seared into my memory and have haunted me episodically as an adult.”<sup>79</sup>

Like Professor Hill, Dr. Ford’s motives in coming forward when she did were the subject of great criticism,<sup>80</sup> even as she detailed her fear of telling

<sup>74</sup> See Martin Pengelly, *FBI Contacts Kavanaugh Accuser Deborah Ramirez in Investigation*, GUARDIAN (Sept. 30, 2018), <https://www.theguardian.com/us-news/2018/sep/29/fbi-contacts-kavanaugh-accuser-deborah-ramirez-in-investigation>.

<sup>75</sup> *Nomination of the Honorable Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Judiciary Comm.*, 115th Cong. (2018) (quoting hearing testimony at minute 47:09).

<sup>76</sup> Daniella Diaz, *Grassley Sets Friday Deadline to Hear Back from Kavanaugh Accuser*, CNN (Sept. 19, 2018), <https://www.cnn.com/2018/09/19/politics/kavanaugh-ford-grassley-judiciary-committee-supreme-court/index.html> (explaining that “[the FBI is not] tasked with investigating a matter simply because the Committee deems it important. The Constitution assigns the Senate, and only the Senate, with the task of advising the President on his nominee and consenting to the nomination if the circumstances merit.”).

<sup>77</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 2.

<sup>78</sup> See Letter from Debra S. Katz & Lisa J. Banks, Attorneys for Dr. Christine Blasey Ford, Katz, Marshall & Banks, LLP, to Charles E. Grassley, U.S. Senator, Chairman, Comm’n on the Judiciary (Sept. 18, 2018) (available at <https://int.nyt.com/data/documenthelper/306-180918-letter-to-grassley/ae9bd7724aedce4bd15f/optimized/full.pdf>).

<sup>79</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 2.

<sup>80</sup> Tara Golshan, “*She’s Afraid of Being Trapped*”: *Christine Blasey Ford’s Friend*

her parents that at age fifteen she went to a house party where she drank beer with boys.<sup>81</sup> Her fear immediately following the assault is the same fear that silenced Professor Hill when she was sexually harassed, and it is the same fear that keeps many survivors from reporting their own assaults.<sup>82</sup> Even that fear, though, was little compared to her “greatest fears” of what would happen when she actually accused Kavanaugh.<sup>83</sup> In her written testimony, Dr. Ford testified,

[m]y family and I have been the target of constant harassment and death threats. I have been called the most vile and hateful names imaginable...My family and I were forced to move out of our home. Since September 16, my family and I have been living in various secure locales.<sup>84</sup>

This is not even to mention that she has “had to relive [her] trauma in front of the entire world, and [has] seen [her] life picked apart by people on television, in the media, and in [the Senate] who have never met [her] or spoken with [her].”<sup>85</sup> Common experience and numerous studies demonstrate that Dr. Ford is not alone in these fears.<sup>86</sup> Even those whose accusations do not occur on such a prominent stage fear similar repercussions.<sup>87</sup> It is no wonder that victims often remain silent, particularly when they see Professor Hill and Dr. Ford take a stand only for Justice Thomas and Justice Kavanaugh to be confirmed shortly thereafter.<sup>88</sup>

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*Describes How the Alleged Kavanaugh Assault Has Followed Her*, VOX (Sept. 19, 2018), <https://www.vox.com/2018/9/19/17878968/christine-blasey-ford-brett-kavanaugh-sexual-assault> (quoting Senator Bob Corker (R-TN): “I have no reason not to believe him. We have never seen this person. It just happened five days before a vote and 35 years ago.”); Marcus, *supra* note 7 (quoting a tweet by President Donald Trump: “I have no doubt that, if the attack on Dr. Ford was as bad as she says, charges would have been immediately filed with local Law Enforcement Authorities by either her or her loving parents.”).

<sup>81</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 3.

<sup>82</sup> Engel, *supra* note 22 (citing shame and fear of consequences as two reasons survivors may not report their assaults).

<sup>83</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 7 (quoting Dr. Ford as saying “my greatest fears have been realized – and that reality has been far worse than what I expected.”).

<sup>84</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 7.

<sup>85</sup> *Id.*

<sup>86</sup> See Engel, *supra* note 22; Jacey Fortin, *#WhyIDidntReport: Survivors of Sexual Assault Share Their Stories After Trump Tweet*, N.Y. TIMES (Sept. 23, 2018), <https://www.nytimes.com/2018/09/23/us/why-i-didnt-report-assault-stories.html>.

<sup>87</sup> See Fortin, *supra* note 86.

<sup>88</sup> See Amy Howe, *Kavanaugh Confirmed as 114th Justice*, SCOTUSBLOG (Oct. 6, 2018), <http://www.scotusblog.com/2018/10/kavanaugh-confirmed-as-114th-justice/>.

The reality of Justice Kavanaugh's confirmation hearing has raised the question as to how much society has actually learned from the #MeToo Movement. Like before the Movement, public officials have continued to make jokes at the expense of survivors<sup>89</sup> and to undermine the experiences of survivors by suggesting they were simply mistaken.<sup>90</sup> And "[a]s the Supreme Court confirmation battle over Brett Kavanaugh showed, Americans disagree about how people accused of sexual misconduct should be held accountable and what the standard of evidence should be."<sup>91</sup> Instead of affirming the success of the #MeToo Movement, it appears more as if the Kavanaugh/Ford hearings have demonstrated the limits of such societal movements and how much society still has to learn in order to fully realize the goals of the #MeToo Movement and support survivors of sexual misconduct.

### B. What We Still Have to Learn

Even as Professor Hill admonished that "[n]ot getting it' isn't an option for our elected representatives...our senators must get it right," it is clear that our senators did not get the Kavanaugh/Ford hearings right.<sup>92</sup> That does not mean, though, that nothing was learned from the hearings. Instead, the Kavanaugh/Ford hearings highlighted four lessons that society must learn in order to "get it right" and fully effectuate the purposes of the #MeToo Movement. First, defined processes are necessary for vetting sexual harassment and assault claims that arise both during the confirmation process and in the workplace generally because such processes can serve as a check on the most powerful members of society. Second, in order to fully realize the purposes of the #MeToo Movement, society must recognize and respect that each survivor processes their assault differently. This understanding can be better internalized by utilizing the third lesson: because of their unique experiences, more women must be provided leadership opportunities. Finally, and perhaps most crucially, the Kavanaugh/Ford hearings have taught us that the #MeToo Movement cannot occur in a vacuum. Allies are necessary to the success of the movement. Below the contours of each lesson are discussed in turn.

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<sup>89</sup> Marcus, *supra* note 7 (quoting Representative Pal Norman (R-S.C.) at the Rock Hill Kiwanis Club: "Did y'all hear the latest late breaking news from the Kavanaugh hearings? Ruth Bader Ginsburg came out [saying] she was groped by Abraham Lincoln.").

<sup>90</sup> Golshan, *supra* note 80 (quoting Orrin Hatch: "I think she's mistaking something.").

<sup>91</sup> Carlsen et al., *supra* note 56.

<sup>92</sup> Hill, *supra* note 8.



## 1. Process is Required

The Kavanaugh/Ford hearing highlighted that “the Senate Judiciary Committee still lacks a protocol for vetting sexual harassment and assault claims that surface during a confirmation hearing.”<sup>93</sup> Some process is necessary going forward as it is the only check on an otherwise autonomous Senate Judiciary Committee, and that process must allow for the full investigation of the allegations, with each side being given an opportunity to be heard and present evidence on their behalf.

Senate Committee hearings are not judicial proceedings. Thus, due process is not constitutionally required,<sup>94</sup> evidence does not have to be fully heard, and decisions can be made without full consideration of the issue.<sup>95</sup> Instead, the Committee is supposed to “find the facts...and then let the Senate and let the American people make their judgment.”<sup>96</sup> The problem with that theory, though, is that because only a simple majority is required for confirmation,<sup>97</sup> the majority then decides alone when the facts have been found.<sup>98</sup> Thus, “Republicans don’t really need Democrats’ ‘advice and consent.’ As a result, neither Democrats nor their constituents have meaningful power to influence the outcome.”<sup>99</sup> This unnecessarily injects politics into the judicial nomination process and threatens the credibility of the body that is meant to be a neutral arbiter. Regardless of which party benefits from this lack of process, the reality is that such lack of process is “a lose-lose for everyone: for Kavanaugh, whose legitimacy on the court will be forever questioned if people feel the process was stacked against them, and for Ford, who has been accused of lying and doesn’t feel safe in her own home right now. The American people also lose.”<sup>100</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> See *Hurtado v. California*, 110 U.S. 516, 533 (1884) (explaining that “This requirement of the Constitution is met if the trial is had according to the settled course of judicial proceedings. Due process of law is process according to the law of the land.”).

<sup>95</sup> See Kimberly Wehle, *Four Legal Takeaways from a Sad Day for the Supreme Court*, THE HILL (Sept. 28, 2018), <https://thehill.com/opinion/judiciary/408895-four-legal-takeaways-from-a-sad-day-for-the-supreme-court>.

<sup>96</sup> Tom Brune, *Five Things to Watch for in the Kavanaugh, Ford Hearing*, NEWSDAY (Sept. 26, 2018), <https://www.newsday.com/news/nation/kavanaugh-ford-hearing-five-things-to-watch-1.21276586>.

<sup>97</sup> Scott Bomboy, *What Happens Next in the Supreme Court Confirmation Process?*, NAT’L CONST. CTR. (Sept. 7, 2018), <https://constitutioncenter.org/blog/what-happens-next-in-the-supreme-court-confirmation-process>.

<sup>98</sup> See Wehle, *supra* note 95.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

Creating a defined process for the vetting of sexual harassment and assault claims that arise during the confirmation process would “produce an out-come that garners ‘buy-in’ from Americans of every political affiliation[,]” and it would create an air of neutrality around the proceedings.<sup>101</sup> Supreme Court justices go to great lengths to ensure they avoid political issues because they understand that the legitimacy of the Supreme Court as an institution is undermined when people perceive them as engaging in the political process.<sup>102</sup> So too, is the legitimacy of the institution undermined when those confirmed to the Court are thought to have been confirmed because of political jockeying.<sup>103</sup>

Therefore, the Senate should adopt definitive procedures for handling claims of sexual harassment and assault during the confirmation process. These procedures should include FBI investigations, like the one granted to Professor Hill.<sup>104</sup> This would still allow the Senate to make credibility determinations, but it would allow allegations to be fully vetted and allow some semblance of power to be returned to the hands of the electorate. Additionally, claimants should be allowed to introduce evidence supporting their claims, including the testimony of witnesses that can corroborate the claimant’s testimony. The proceedings should mirror those used in federal and state agencies, where due process is likewise not required, but some procedural rules apply.<sup>105</sup> The procedures would not only ensure a more neutral adjudication of claims, but also would protect the legitimacy of the Supreme Court and provide survivors a safer avenue through which they can present their claims.

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

<sup>102</sup> *See* *Bush v. Vera*, 517 U.S. 952, 985 (1996) (asserting that “Our legitimacy requires, above all, that we adhere to *stare decisis*, especially in such sensitive political contexts as the present, where partisan controversy abounds.”); *see also* *Dennis v. United States*, 341 U.S. 494, 525 (1951) (Frankfurter, J. concurring) (“History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.”).

<sup>103</sup> *See* Charles W. “Rocky” Rhodes, *Navigating the Path of the Supreme Appointment*, 38 FLA. ST. U.L. REV. 537, 573–74 (2011) (explaining that

The legitimacy of the Judicial Branch depends ultimately on public perception that it can be trusted to engage in impartial decision-making [sic] in a nonpartisan fashion...The judiciary’s fitness to undertake this role requires a judicial process viewed by the American people as both sufficiently principled in application and appropriately distinct from ordinary politics.)

<sup>104</sup> Totenberg, *supra* note 17.

<sup>105</sup> Wehle, *supra* note 95.

## 2. Survivors and Their Wishes Should be Respected

While study after study has acknowledged the unique ways in which survivors process their assaults, powerful members of society have yet to fully recognize the import of these studies.<sup>106</sup> Because of the powerful claim that survivors would have come forward earlier or would have handled their assaults differently, the only logical conclusion is therefore that it is impossible this survivor was actually assaulted and did not come forward.<sup>107</sup> Powerful white men, who have never faced such realities, often make these statements, failing to recognize that survivors stay silent for a whole host of reasons.<sup>108</sup> Survivors may be scared of what society will think of them, what will happen to their career, or what their assaulter will do to them.<sup>109</sup> They may likewise view it as a fruitless endeavor, like Dr. Ford did prior to coming forward.<sup>110</sup> Even women who have not been assaulted “move through life knowing that they are always vulnerable, and if the worst happens and they are victimized, they will probably be disbelieved and attacked for having the temerity to complain about what was done to them.”<sup>111</sup>

To fully realize the goals of the #MeToo Movement, society—and particularly the powerful institutions that tend to evaluate claims of sexual assault—must recognize that each survivor processes their assault differently, and that process needs to be respected. Politicians and powerful members of society cannot fall back on how they *would* act in such a scenario when they have no experience with the trauma and lingering effects of assault. When the powerful say that they understand, they minimize the harm and

<sup>106</sup> See Meera Jagannathan, *Why We’re Still Asking Why Survivors Don’t Report Sexual Assault – And How We Can Change*, MKT. WATCH (Sept. 27, 2018), <https://www.marketwatch.com/story/why-were-still-asking-why-survivors-dont-report-sexual-assault---and-how-we-can-change-2018-09-27>.

<sup>107</sup> See Marcus, *supra* note 7 (quoting President Trump’s Tweet: “I have no doubt that, if the attack on Dr. Ford was as bad as she says, charges would have been immediately filed with local Law Enforcement Authorities by either her or her loving parents.”); Jennifer Peltz & Michael Kunzelman, *How 65 Women Came to Kavanaugh’s Defense in Matter of Hours*, U.S. NEWS & WORLD REP. (Sept. 19, 2018), <https://www.usnews.com/news/politics/articles/2018-09-19/how-65-women-came-to-kavanaughs-defense-in-matter-of-hours> (quoting Sharon Crouch Clark: “I feel like I would know all that.”).

<sup>108</sup> Engel, *supra* note 22 (citing shame, denial/minimization, fear of consequences, low self-esteem, feelings of hopelessness and helplessness, a history of being sexually violated, lack of information, and disbelief/dissociated/drugged as reasons survivors may not report their assaults).

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

<sup>110</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 6.

<sup>111</sup> Paul Waldman, Opinion, *Americans Are Not Going to Forget This Day. Especially Women.*, WASH. POST (Sept. 27, 2018), <https://www.washingtonpost.com/blogs/plum-line/wp/2018/09/27/americans-are-not-going-to-forget-this-day-especially-women/>.

trauma of victims; if society has learned anything from the overwhelming response to the #MeToo Movement, it is that we never know what a person is going through.

### 3. Women, Because of Their Unique Experiences, Must be Given More Leadership Opportunities

The recognition that survivors experience their assaults in their own way can be better realized by utilizing the third lesson of the #MeToo Movement: society must provide women more leadership opportunities. Regardless of whether women have personally experienced sexual misconduct, they at least understand the fear of it,<sup>112</sup> and this understanding allows women to create more respectful environments where the goals of the #MeToo Movement can be better realized.<sup>113</sup>

This need for women in leadership positions was made clear when Dr. Ford faced a Senate Judiciary Committee “dominated by white males, including all 11 of its Republicans.”<sup>114</sup> On the Democratic side of the Committee, Ranking Member Feinstein acknowledged that “[f]or any woman, sharing an experience involving sexual assault – particularly when it involves a politically connected man with influence, authority and power – is extraordinarily difficult.”<sup>115</sup> On the other hand, the all-white male Republican side of the Committee hired Rachel Mitchell, a female prosecutor who specialized in sexual assault cases, to question Dr. Ford.<sup>116</sup> This served to highlight the Republicans as “a group of men unwilling to ask any questions of a vulnerable woman.”<sup>117</sup> Even when Dr. Ford expressed a desire for committee members to “engage directly” with her,<sup>118</sup> the Republican committee members refused to do so.<sup>119</sup> Only during Justice Kavanaugh’s testi-

<sup>112</sup> *Id.*; see PBS NEWSHOUR, *supra* note 55.

<sup>113</sup> Carlsen et al., *supra* note 56.

<sup>114</sup> Cowan, *supra* note 1.

<sup>115</sup> Coyle, *supra* note 32.

<sup>116</sup> Sean Sullivan et al., *Arizona Prosecutor Rachel Mitchell is GOP Choice to Question Kavanaugh and Accuser at Hearing*, WASH. POST (Sept. 25, 2018), [https://www.washingtonpost.com/powerpost/arizona-prosecutor-rachel-mitchell-emerges-as-gop-choice-to-question-kavanaugh-and-accuser-at-hearing/2018/09/25/47964afa-c0ff-11e8-9005-5104e9616c21\\_story.html?noredirect=on&utm\\_term=.5aa13b3a6b97](https://www.washingtonpost.com/powerpost/arizona-prosecutor-rachel-mitchell-emerges-as-gop-choice-to-question-kavanaugh-and-accuser-at-hearing/2018/09/25/47964afa-c0ff-11e8-9005-5104e9616c21_story.html?noredirect=on&utm_term=.5aa13b3a6b97).

<sup>117</sup> Ben Terris, *The Hearing That Shut Up Washington. And Then...*, WASH. POST (Sept. 27, 2018), [https://www.washingtonpost.com/lifestyle/style/the-hearing-that-shut-up-washington-and-then-/2018/09/27/c18e62c0-c28a-11e8-a1f0-a4051b6ad114\\_story.html](https://www.washingtonpost.com/lifestyle/style/the-hearing-that-shut-up-washington-and-then-/2018/09/27/c18e62c0-c28a-11e8-a1f0-a4051b6ad114_story.html).

<sup>118</sup> Blasey Ford Senate Written Testimony, *supra* note 67, at 8.

<sup>119</sup> See Zack Beauchamp, *Lindsey Graham, Brett Kavanaugh, and the Unleashing of White Male Backlash*, VOX (Sept. 28, 2018), <https://www.vox.com/policy-and-politics/2018/9/28/17913774/brett-kavanaugh-lindsey-graham-christine-ford->

mony did Senator Lindsey Graham (R-SC) interrupt Ms. Mitchell to deliver a furious rant in defense of Kavanaugh.<sup>120</sup> “After Graham spoke, Mitchell was denied a single additional question” throughout the remainder of Kavanaugh’s testimony.<sup>121</sup> This difference in approaches taken to the Kavanaugh/Ford hearings by female committee members on one side the aisle compared to male committee members on the other side of the aisle demonstrates how critical it is to have women in leadership positions.

Study after study has shown the positive impact women in leadership have on their environments.<sup>122</sup> By bringing their life experiences and perspectives to organizations, women “create more respectful work environments, where harassment is less likely to flourish and where women feel more comfortable reporting” harassment.<sup>123</sup> This impact is not limited to the corporate world. In fact, “[i]n government, women have been shown to be more collaborative and bipartisan, and promote more policies supporting women, children and social welfare.”<sup>124</sup> By providing women more leadership opportunities throughout society, and particularly in institutions that have traditionally perpetuated a patriarchal focus, the goals of the #MeToo Movement can be better realized and accusations of sexual misconduct can be better vetted, while protecting survivors’ needs.

#### 4. Allies are Indispensable

Finally, and perhaps most crucially, the Kavanaugh/Ford hearings should have taught society that the #MeToo Movement cannot occur in a vacuum. Allies are necessary for the Movement’s goals to be achieved, because institutional change is necessary to realize the substantive changes that the Movement demands. When alliances are not cultivated, people begin to feel alienated by a movement—and this alienation ultimately undermines the success of the movement.<sup>125</sup> It is when alliances are not cultivated that a senator is able to shout in a committee hearing, “I’m a single white male from South Carolina, and I’m told I should just shut up, but I will not shut

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backlash (discussing the Republican Party’s refusal to listen to Ford’s account of Kavanaugh’s behavior).

<sup>120</sup> Grace Panetta, *‘This is Not a Job Interview, This is Hell’: Lindsey Graham Unloads on Senate Democrats in Angry Rant During Kavanaugh Testimony*, BUS. INSIDER (Sept. 28, 2018), <https://www.businessinsider.in/this-is-not-a-job-interview-this-is-hell-lindsey-graham-unloads-on-senate-democrats-in-angry-rant-during-kavanaugh-testimony/articleshow/65987204.cms>.

<sup>121</sup> Beauchamp, *supra* note 119.

<sup>122</sup> Carlsen et al., *supra* note 56.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *See, e.g.*, Beauchamp, *supra* note 119.

up.”<sup>126</sup> Such hostility towards the #MeToo Movement makes a hearing about the sexual assault of a woman thirty-five years ago not about that allegation, but about “beating back the challenges from feminists and people of color demanding a seat at the table; it is about showing that white men in power are not going anywhere—that they will not listen, will not budge.”<sup>127</sup> This creates an us-versus-them mentality in which our patriarchal institutions will never change, as opposed to the us-versus-assaulters-and-harassers mentality that is the Movement’s ultimate thrust.

For the #MeToo Movement to succeed, fear of repercussions and the anger that it creates cannot motivate compliance with the mandates of the Movement. Instead, respect and understanding are critical to making this Movement and its lessons cultural norms that permeate all corners, and all of the powerful institutions, of society. This last lesson is perhaps the hardest one to learn, as it reminds us that our learning is not over and that there is so much more to do. However, in order to support and demonstrate solidarity with survivors of sexual assault and harassment, and to progress to a place where such misconduct is not tolerated at all levels of society, everyone must internalize these lessons, not just the vocal majority who agree.

#### CONCLUSION

Today is a day we will not forget. It will be remembered, replayed, revisited and reexamined for years. It is a day with enormous sociological and political significance, not just as a symbol or an emblematic event of a tumultuous era, but also something we will probably look back on as a direct cause of change.<sup>128</sup>

This sentiment was shared after the Kavanaugh/Ford hearing, but it was also felt after the Thomas/Hill hearing. At that time, society thought we had learned so much from the treatment and experience of Professor Hill, but it turns out we had learned little, and what we had learned was not internalized in powerful institutions. It was through the #MeToo Movement that the lessons we learned from the Thomas/Hill hearings were truly brought to the forefront of the national consciousness. Millions of survivors shared their stories, and it seemed like society finally reached a point where enough was enough. Nevertheless, the Kavanaugh/Ford hearing raised questions of whether the lessons of the #MeToo Movement were actually as ingrained in society, and in our governing institutions, as we thought. It is time for society to take seriously the allegations of sexual misconduct, and to truly

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<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Waldman, *supra* note 111.

learn the lessons that the Thomas/Hill hearing, the #MeToo Movement, and the Kavanaugh/Ford hearings have tried to teach us. Those lessons have a staying power to which society can no longer turn a blind eye. In order to effectuate the lessons of these events and the #MeToo Movement, society must develop definitive procedures for handling claims of sexual misconduct; must recognize that all survivors process their assaults differently and respect those differences; must provide more leadership opportunities for women; and must bring everyone into the fold in a unified fight against sexual assault and sexual harassment. Until that occurs, I fear society will continue this trend, making the same mistakes over and over again.