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INFORMATIONAL HEARING

THE SENATE COMMITTEE ON JUDICIARY
AND
THE SELECT COMMITTEE ON WOMEN, WORK & FAMILIES

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Justice for Victims: Developing a Harassment-Free Culture in California

Tuesday, February 13, 2018
1:30 p.m.
State Capitol, John L. Burton Hearing Room 4203

BACKGROUND PAPER

I. Introduction

Ignited by courageous victims and fueled by online movements like "MeToo," and "WeSaidEnough," accounts of workplace sexual harassment swept across the U.S. throughout 2017. In response, victims, advocates, and policymakers have offered up a variety of proposals intended to address the ongoing problem.

In the context of this broader effort, the Senate Committee on the Judiciary and the Senate Select Committee on Women, Work, and Families are conducting these informational hearings with a focus on statewide policy solutions.[1] A month ago, we convened a hearing on the legal standard for sexual harassment in California. This

[1] The Legislature's Joint Rules Committee Subcommittee on Sexual Harassment Prevention and Response is conducting separate hearings focused on addressing sexual harassment in and around the Capitol.

second hearing now looks at ways that our current culture may operate to enable sexual harassment and seeks to identify steps that could make lasting changes to that enabling culture.

The hearing will focus on three policy areas in particular. First, we will examine the role of bystanders and what can be done to encourage effective intervention in sexual harassment scenarios. Second, we will analyze some of the legal tactics that have been used to protect harassers in various industries, institutions, and other workplaces, and how the Legislature might step in to limit abuse of those tactics. Finally, we will look at methods for combatting harassment that do not rely on traditional legal enforcement mechanisms and probe whether any of these alternative models of accountability could be marshalled in the effort to achieve lasting cultural change.

II. Encouraging Bystanders to Intervene in Harassment Scenarios

In the context of large employers, California has had sexual harassment prevention training requirements on the books for over a decade. In 2004, California enacted AB 1825 (AB 1825, Reyes, Ch. 933, Stats. 2004) mandating that all employers with 50 or more employees conduct two hours of sexual harassment prevention training for all supervisory employees. (Gov. Code Sec. 12950.1.)

More recently, the State has adopted legislation that imposes sexual harassment prevention training requirements for certain industries in which sexual harassment and violence has been especially well-documented and problematic. In 2014, Senator Monning's bill, SB 1087 (Ch. 750, Stats. 2014), made it mandatory for farm labor contractors to provide at least two hours of sexual harassment prevention training annually to their supervisory employees and at least an hour of sexual harassment prevention training to all other employees. (*See* Lab. Code Sec. 1684(a)(8).) After a study documented spotty compliance, Senator Monning followed up last year with SB 295 (Ch. 424, Stats. 2017) in order to beef up enforcement. (*See* Lab. Code Sec. 1697.5.) In the janitorial sector, Assemblymember Gonzalez-Fletcher's 2016 bill, AB 1978 (Ch. 373, Stats. 2016), mandated development of biennial, in-person sexual harassment prevention training for all employees. (*See* Lab. Code Secs. 1420-1434.) That program is just coming online now.

In addition to these specific mandates, California's Fair Employment and Housing Act exposes employers to potential liability if they fail to take all reasonable steps to avoid harassment, discrimination, and retaliation, in their workplaces. (Gov. Code 12940(k).) As a result, many employers undertake some form of sexual harassment prevention training for their employees even where it is not explicitly required by law.

The use of these kinds of sexual harassment prevention trainings may have helped address the problem to some degree. Nonetheless, the revelations of 2017 demonstrate that significant amounts of sexual harassment and violence have persisted in spite of these prevention training programs. That has led to a re-examination of the format and content of these trainings with an eye toward making them more effective. For example, many sexual harassment prevention training programs have been developed by lawyers and focus on what sort of conduct is unlawful. Critics of such trainings have argued that, in effect, they do more to instruct people on what it is they can get away with legally, rather than providing any positive guidance about how people can interact in more appropriate and respectful ways toward their colleagues.[2]

One alternative training approach gaining increasing popularity in recent years is bystander intervention training. Such training focuses on how community members can identify and effectively disrupt instances of sexual harassment, violence, and potential violence. The idea is, in effect, to train people to bypass the common inclination to "mind your own business." Instead, trainees are encouraged to proactively check in on others. Rather than verbally or physically confronting the perpetrator, however, bystander intervention trainees are generally taught techniques for de-escalation, distraction, and diversion. At the same time, trainees who can do so safely are urged to utilize that position to draw the perpetrator's attention to the inappropriate nature of the conduct at an appropriate time.

Bystander intervention training is appealing not merely as a mechanism for disrupting and preventing individual incidents. Proponents of such training also point out that, by creating a shared sense of responsibility to stop sexual harassment and sexual violence from taking place, the trainings also encourage a cultural shift toward greater respect.

There is some evidence that bystander intervention training does, in fact, have this effect. Research on the impacts of bystander intervention training has revealed shifts in attitudes and increased likelihood that trainees will act to intervene in situations they perceive to involve sexual harassment or the risk of sexual violence.[3] Not surprisingly given these upsides, the use of bystander intervention training has enjoyed rapid growth. Since its origins in the mid-1990s, bystander intervention training has become a

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[2] *See, e.g.,* Dobbin and Kalev. *Training Programs and Reporting Systems Won't End Sexual Harassment. Promoting More Women Will.* (Nov. 15, 2017) Harvard Business Review <https://hbr.org/2017/11/training-programs-and-reporting-systems-wont-end-sexual-harassment-promoting-more-women-will> (as of Feb. 9, 2018).

[3] Coker, Cook-Craig, Williams, Fisher, Clear, Garcia and Hegge. *Evaluation of Green Dot: An Active Bystander Intervention to Reduce Sexual Violence on College Campuses.* (June 2, 2011) Violence Against Women <http://vaw.sagepub.com/content/17/6/777> (as of February 8, 2018), pp. 780-781.

standard feature in many of the orientation sessions that California colleges and universities provide for incoming students.[4]

The key policy questions to be addressed in this hearing are whether bystander intervention training can be effective on a larger scale and across many contexts, and, if so, whether the State should consider incorporating some element of bystander intervention training into its sexual harassment prevention requirements?

III. Curbing the Use of Legal Tactics that Enable Harassers

In addition to drawing public attention to the prevalence of sexual harassment and exposing a string of prominent perpetrators, the events of 2017 also lifted the curtain on a number of legal techniques that may enable harassment to persist. Achieving the shift to a harassment-free culture requires examination of how these legal tactics sometimes act to silence victims and shield perpetrators, as well as consideration of whether the Legislature should impose any additional limitations on their use.

a. *Mandatory Confidential Arbitration*

Arbitration is a form of alternative dispute resolution that allows for the resolution of disputes outside of the court system. The Federal Arbitration Act (FAA; 9 U.S.C. Sec. 1 et seq.), enacted in 1925, and the California Arbitration Act (CAA; Code Civ. Proc. Sec. 1280 et seq.), enacted in 1927, both provide that arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. In other words, under federal and California law, arbitration agreements must be enforced, and such enforcement is limited only by certain general contract principles that would apply to any other contract (such as fraud, duress, or unconscionability).

The benefits and drawbacks of mandatory arbitration have long been a subject of intense debate in the legal community. In 2016, the California Senate Committee on the Judiciary held an informational hearing devoted entirely to the topic. (Sen. Com. on the Judiciary, The Federal Arbitration Act, the U.S. Supreme Court, and the Impact of Mandatory Arbitration Clauses on California Consumers and Employees (March 1, 2016).) For purposes of this hearing, the critical thing to note is that, whatever the other merits or problems it may have, when arbitration is both mandatory and bound by confidentiality requirements, it can act to prevent information about sexual harassment from coming to light publicly.

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[4] Kingkade. *This Is Why Every College Is Talking About Bystander Intervention*. (Feb. 8, 2016) Huffington Post <https://www.huffingtonpost.com/entry/colleges-bystander-intervention_us_56abc134e4b0010e80ea021d> (as of Feb. 8, 2017).

Companies have considerable latitude to design the terms under which arbitration will take place, including to what degree the proceedings must be kept confidential. Thus, unlike the regular court system, which is generally open to public view, parts or even all of an arbitration may take place in private, with the parties bound to maintain secrecy regardless of who prevails.

A common confidentiality provision within a mandatory arbitration clause looks something like this:

> The arbitration proceedings and arbitrator's award shall be maintained by the parties as strictly confidential, except as is otherwise required by court order or as is necessary to confirm, vacate or enforce the award and for disclosure in confidence to the parties' respective attorneys, tax advisors and senior management and to family members of a party who is an individual.

As a result of such clauses, victims of the same perpetrator may never learn of one another's existence. Instead of being able to understand their experience as part of a pattern of behavior, victims can be left believing that what happened to them was an isolated incident or wondering whether they misread the situation. At the same time, when arbitration takes place confidentially, the public may never be alerted to the underlying allegations.

To critics of mandatory confidential arbitration, it is a key component of a culture that enables sexual harassment. Knowing that any dispute will be resolved behind closed doors and absent public scrutiny emboldens perpetrators to act in inappropriate ways. It also clears a path for them to engage in repeated misconduct, since they emerge from any individual allegation without the broader community being any the wiser. Former Fox News reporter Gretchen Carlson, whose own struggle against sexual harassment was complicated by arbitration clauses in her employment contracts, described the relationship between mandatory arbitration and sexual harassment this way: "[f]orced arbitration is a sexual harasser's best friend."

The key policy questions to be addressed in this hearing are whether California should try to limit those aspects of mandatory confidential arbitration that can act to enable harassment, avoid transparency, and evade accountability, and, if so, how it can be done without interfering with the purpose of the Federal Arbitration Act.

b. "Sneaky" Releases

In legalese, when people "release" or "waive" a legal claim they might have against someone else, it means that the person promises not to pursue that claim any further. If

someone sues based on a legal claim that they previously agreed to waive or release, the party being sued can raise the waiver as a defense. If the judge agrees that the release or waiver was valid, the defendant will prevail, regardless of the merits of the underlying case.

A typical example of such a waiver is as follows:

> <Employee>, on behalf of himself/herself and his/her estate, executors, administrators, successors and assigns, fully releases and discharges <employer> and all agents, partners, directors, employees, attorney, successors, assigns and insurers of <employer>, and each of them, from all actions, causes of actions, claims, judgments, obligations, damages, and liabilities, of whatsoever kind and character, occurring at any time or prior to the date of this release, including to any such acts or events involving him/her and <employer>, including any contract, tort and any federal and state employment statutory claims. <Employee> represents and warrants that he/she has not assigned any such claim or authorized any other person or entity to assert any such claim on his/her behalf. Further, <Employee> agrees that by this release he/she waives any claim for damages incurred at any time after the date of this release because of alleged continuing effects of any alleged acts or omissions involving <employer> that occurred on or before the date of this release and any right to sue for monetary or injunctive relief arising out of the alleged continuing effects of acts or omissions that occurred before the date of release.
>
> <Employee> understands and expressly agrees that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which existed before the execution of this release. <Employee> expressly waives all rights under §1542 of the California Civil Code. The section reads as follows: 1542. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.

So-called "sneaky" releases are waivers of claims imbedded deep in documents or presented at odd times when it is not especially evident that any claims are at issue. For example, a waiver of all prior claims might appear in paperwork offering an employee a small wage increase.

California law already places certain restrictions on the use of releases. (*See, e.g.,* Code Civ. Proc. Sec. 1542.) Courts have found that some claims may not be released as a matter of public policy. (Civ. Code Sec. 1668; *Tunkl v. Regents of the University of California* (1963) 60 Cal.2d 92 (1963).) Moreover, releases and waivers of claims are subject to the general principals of contract law. If a court finds that worker waived claims under the influence of fraud or duress, for instance, it would invalidate the waiver and the worker could proceed on the underlying claim in spite of having signed a waiver.

In many instances, these existing protections would invalidate releases obtained in a "sneaky" fashion, if that release gets challenged in court. Nonetheless, such releases set up an additional barrier that aggrieved workers must overcome in order to get their day in court. Moreover, even if a "sneaky" release might not hold up under judicial scrutiny, a potential defendant can still use it as a tool to try to dissuade would-be plaintiffs – including victims of sexual harassment -- from even bringing their claims before the court to begin with.

The key policy questions are whether additional limitations are needed to prevent nefarious use of releases and waivers and, if so, how to ensure those limitations still leave ample room for waivers and releases within the confines of the genuine resolution of disputes.

c. Non-Disparagement Agreements

As the name implies, non-disparagement agreements are promises not to criticize an employer or perpetrator publicly. Significantly, and unlike tort defamation scenarios, whether or not the criticism is true or not is irrelevant.

Non-disparagement agreements can come as part of employment contracts at the time of hire. In that scenario, candidates are agreeing never to criticize the company publicly as part of the terms of employment. Non-disparagement agreements can also form part of settlement agreements or severance deals at the end of an employee's tenure. The latter type of non-disparagement agreement strongly correlates with non-disclosure agreements. They are, together, the typical components of so-called "secret settlements," discussed below.

Here is an example of a non-disparagement clause, described in the Harvard Business Review as a "boilerplate non-disparagement clause from a major corporation's employment contract":

> You shall not, at any time, directly or indirectly, disparage Company, including making or publishing any statement, written,

> oral, electronic, or digital, truthful or otherwise, which may adversely affect the business, public image, reputation or goodwill of the company, including its operations, employees, directors and its past, present or future products or services.[5]

To further discourage employees from speaking negatively about their employers, non-disparagement clauses often come with liquidated damages[6] provisions, some reportedly as high as a million dollars for a single violation.[7]

Draconian liquidated damages provisions probably would not stand up in court. (Civ. Code Sec. 1671.) Moreover, there are already certain limitations on what a non-disparagement agreement can lawfully cover. Most notably, the National Labor Relations Act does not permit employers to prevent workers from discussing sexual harassment or discrimination complaints at work or in a legal claim. (29 U.S.C. Sec. 158(a)(1).) Courts have nonetheless upheld and enforced many non-disparagement agreements. As a practical matter, even a legally infirm non-disparagement clause can still have a powerful deterrent effect on victims or witnesses who might otherwise come forward publicly.

The key policy question for us to consider is whether further limitations on the use of non-disparagement clauses are warranted.

d. Non-Disclosure Agreements in "Secret Settlements"

A non-disclosure agreement is a provision in a contract that binds the parties to secrecy regarding information specified in the contract. "Secret settlements" are contracts to resolve a dispute that contain a non-disclosure agreement.

A typical non-disclosure agreement looks something like this:

> The terms and conditions of this Agreement are absolutely confidential between the parties and shall not be disclosed to anyone else, except as shall be necessary to effectuate its terms. Any

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[5] Lobel, *NDAs Are Out of Control. Here's What Needs to Change.* (Jan. 30, 2018) Harvard Business Review <https://hbr.org/2018/01/ndas-are-out-of-control-heres-what-needs-to-change> (as of Feb. 8, 2018).

[6] The term "liquidated damages" refers to a pre-determined amount of money to be awarded for breach of a contract. In the absence of a liquidated damages clause (or if a liquidated damages clause is found to be invalid), courts determine the amount of damages to be awarded only after the breach and based upon an assessment of the financial harm caused by the breach.

[7] Soloman. *Arbitration Clauses Let American Apparel Hide Misconduct.* (July 15, 2014) New York Times <https://dealbook.nytimes.com/2014/07/15/arbitration-clauses-let-american-apparel-hide-misconduct/> (as of Feb. 9, 2018).

disclosure in violation of this section shall be deemed a material breach of this Agreement.

This non-disclosure language would keep the details of the contract secret. In the settlement context, such non-disclosure agreements are frequently supplemented with non-disparagement agreements (see above) or other additional language that prevents the parties from speaking not only about the terms of the settlement itself, but also about the nature of the underlying dispute. To try to ensure the promised secrecy, "secret settlements" typically contain some kind of financial punishment as an ongoing deterrent against disclosure.

The case of U.S. Olympic gold medalist McKayla Maroney is illustrative. Maroney was among the more than 200 victims sexually abused by former USA Gymnastics team doctor Larry Nasser. The agreement she reached to settle her claims against Nasser contained a non-disclosure provision. By the reported terms of the agreement, if Maroney spoke publicly about what happened to her, she faced a $100,000 penalty.[8] Similar non-disclosure agreements reportedly bound many of Harvey Weinstein's victims to silence. [9]

California law already places restrictions on the use of non-disclosure and non-disparagement clauses in the context of certain civil actions. For instance, such confidentiality provisions may not be used in cases involving certain types of elder abuse or civil cases in which the underlying allegations would constitute a felony sex offense. (Code Civ. Proc. Secs. 1002 and 2017.310.) In 2016, AB 1682 (Ch. 876, Stats. 2016) extended these limitations to prohibit secret settlements in cases of childhood sexual abuse and exploitation, as well as cases of sexual abuse of elder and dependent adults. Outside of these limitations under current California law, parties are generally free to settle allegations of sexual harassment under terms that bind to silence everyone involved.

On the one hand, this seems problematic. Just as in the case of child abuse, elder abuse, and sexual felonies, there is a strong public interest in alerting the public to allegations of sexual harassment. Public awareness is key to ensuring that victims are not isolated from one another and to preventing serial perpetrators from going undetected. At the same time, the parties have legitimate privacy interests as well. The desire of alleged

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[8] Bailey, *Chrissy Teigen Pledges to Pay $100K Fine for McKayla Maroney*. (Jan. 16, 2018) Elle <http://www.elle.com/culture/career-politics/a15174640/mckayla-maroney-larry-nassar-nda-chrissy-teigen-response/> (as of Feb. 10, 2018). (Maroney ultimately elected to speak out about the abuse in spite of the non-disclosure clause. To date, USA Gymnastics has elected not to seek to impose the penalty for the breach.)

[9] Fabio, *The Harvey Weinstein Effect: The End Of Nondisclosure Agreements In Sexual Assault Cases?* (Oct. 26, 2017) Forbes <https://www.forbes.com/sites/michellefabio/2017/10/26/the-harvey-weinstein-effect-the-end-of-nondisclosure-agreements-in-sexual-assault-cases/#3dc80fea2c11> (as of Feb. 10, 2018).

perpetrators to keep the matter secret is more obvious, but victims too may strongly desire to keep what happened to them private, even as they seek redress for it. It is possible that requiring settlements to be public might actually deter some victims from coming forward in order to avoid drawing attention to their experience.

The key policy questions are whether California should place limitations on secret settlements in all civil cases involving sexual harassment, and, if so, how to strike the right balance between the public interest in disclosure and the parties' interest in privacy.

e. *Suppression of Victims through Threats of Immigration Enforcement*

According to the Public Policy Institute of California, approximately 2.5 million undocumented immigrants reside in California.[10] They constitute one out of every 10 California workers.[11] The precarious circumstance these workers face is a major factor facilitating sexual harassment in the state. Simply put, perpetrators can coerce and silence victims and witnesses by threatening to report them to immigration enforcement agents.

Two PBS Frontline documentary programs, "Rape in the Fields," and "Rape on the Night Shift," and several academic studies have highlighted just how pervasive the problem is in the agricultural and janitorial industries, two sectors characterized by high undocumented participation in the labor force.

There are a number of California laws that prohibit employers and landlords from trying to use immigration status to prevent people from exercising their lawful rights, including the right to be free from sexual harassment and violence. (*See, e.g.*, Civ. Code Secs. 1940.3 and 1940.35; Gov. Code Sec. 12940(h); and Lab. Code Sec. 98.6.) As a practical matter, however, there is nothing that prevents a perpetrator from reporting victims or witnesses to immigration enforcement and little that can be done to deter immigration enforcement from following up on a tip.

This dynamic is somewhat mitigated in the case of relatively drastic forms of sexual harassment and abuse. For situations involving "sexual assault; abusive sexual contact; prostitution; sexual exploitation" or similar crimes, a victim who "has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity" may be eligible to obtain a U-Visa. (8 C.F.R. Sec. 214.14 (a)(9) and (b)(3).) There is a multi-year backlog in the processing and

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[10] Hayes and Hill. *Just the Facts: Undocumented Immigrants in California* (March 2017). Public Policy Institute of California <http://www.ppic.org/publication/undocumented-immigrants-in-california/> (as of Feb. 9, 2018).
[11] *Ibid.*

granting of U-Visa petitions; however, once obtained, a U-Visa authorizes the holder to live and work in the United States, subject to certain limitations, without fear of detention or deportation.

Yet U-Visas may not cover non-criminal forms of harassment. Moreover, victims must be aware of their existence and know how to apply for one to obtain their protection. Frequently, that requires the assistance of legal counsel, which may not be accessible or affordable. As a practical matter, therefore, the existence of legal protections on the books often pales in comparison to the real possibility of detention, separation from family, loss of livelihood, and forced displacement out of the country. As the non-profit organization Legal Aid at Work advises undocumented workers:

> Retaliation is illegal, however. In fact, employers who retaliate against you because you complained about their unlawful working conditions are breaking the law a second time. [...] If you are undocumented, the choice of whether to go ahead with a complaint against your employer is one you must make only after very careful thought, and after obtaining competent legal advice from attorneys knowledgeable about both employment law and immigration law. Many undocumented workers, given the serious possible consequences of being reported to the immigration authorities, or of having their lack of status revealed in the litigation process, quite understandably choose not to complain about their working conditions.[12]

The key policy questions in this area are whether any State endeavor to change the culture underlying sexual harassment can fully achieve that goal in the absence of some form of comprehensive immigration reform at the federal level, which the California Legislature cannot control. In the meantime, is there anything further the State can do to mitigate the problem?

IV. Alternative Models of Accountability for Sexual Harassment

The project of changing the culture that allows for sexual harassment requires changing mindsets. Sometimes this can be accomplished through the imposition of rules and consequences for breaking them. But getting someone to comply is not necessarily the same as getting them to agree. Alternative models of accountability offer the prospect of encouraging people to behave respectfully and think differently, rather than merely

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[12] Legal Aid at Work, *As An Undocumented Worker, Do I Run Any Risks If I Choose to File a Claim Against My Employer?* <https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/> (as of Feb. 10, 2018).

punishing them for misconduct. Our hearing will conclude with three examples of such alternative models of accountability.

The key policy questions in each instance is whether models like the one in question could be effective on a larger scale and in varying contexts across the state and, if so, is there a role for the State to play in encouraging their use?

a. Restorative Justice Practices

The term restorative justice is used to describe a variety of alternative approaches to addressing crime and other forms of socially disruptive behavior. In general, and in contrast to approaches focused on discipline or punishment of the person causing the harm, restorative justice practices are characterized by a focus on repairing the harms done to the victim, to the community, and to the relationships between people.

Since formal adoption of the policy in 2009, the San Francisco Unified School District has utilized restorative practices as part of its methods for addressing student misconduct. The department charged with operating that program describes it as follows:

> Restorative Practices is a movement grounded in principles designed to create powerful relationships, which are central to building thriving communities. RP represents a paradigm shift that focuses on the harm done, rather than on the rule broken, in the restoration of relationships. RP is a reflective practice that encourages personal responsibility, giving a voice both to the person harmed as well as the person who caused the harm. RP aids in the acceptance of cultural differences by offering an equitable process where all members of a community feel valued and heard, and in turn, are more likely to bring their best self to the community.[13]

b. Supply Chain Monitoring Programs

Supply chain monitoring refers to the practice of observing and interacting with how something gets produced, rather than simply receiving and assessing the end product in its final form. Different market players may have different reasons for conducting supply chain monitoring. Customers may want to ensure the quality of components going into the final product they are buying. Retailers may have a similar quality

[13] San Francisco Unified School District. *What Are Restorative Practices?* <http://www.healthiersf.org/RestorativePractices/WhatIsRP/index.php> (as of Feb. 10, 2018).

control interest or simply want to keep an eye out for any potential disruptions in their supply lines.

Another impetus for supply chain monitoring has arisen in recent years: ensuring that goods are produced in socially responsible or environmentally sustainable ways. Retailers and producers who care about the world or simply wish to avoid liability and embarrassing press may inspect the factories and farms that produce the goods they sell. Consumers who do not want to feel complicit in unfair labor practices or environmental degradation may demand products be produced in certain ways.

One outgrowth of this phenomenon is third party labeling and certification programs. Large retailers and producers can conduct their own supply chain monitoring, but customers may not trust the results. It is not feasible or financially possible for individual consumers to conduct supply chain monitoring on their own. However, independent third parties like government agencies, non-profit organizations, and even private companies can play this role.

Though typically not targeted at sexual harassment prevention specifically, when these supply chain monitoring programs involve audits and monitoring of labor conditions, sexual harassment prevention is included. Some, like the Fair Foods Standards Council in Florida, also investigate worker complaints. These mechanisms instill a culture of transparency and accountability that make incidents of sexual harassment less likely.

The Equitable Food Initiative (EFI) is one particular approach to supply chain monitoring currently underway at approximately 25 farms in California. EFI is a separate monitoring and certification organization formed out of a collaboration between farmworkers, growers, and retailers. Farmworkers get better wages, conditions, and a voice in the process. Growers pay a fee to be in the program, but obtain higher prices for their certified crops from the retailers. The retailers, in turn, use the certification to assure consumers that the produce has been sourced responsibly.

c. Worker-to-Worker Organizing

Janitorial work is disproportionately performed by immigrant workers and workers of color in California. For those reasons, and because janitorial work is often done late at night and in isolated conditions, janitorial workers are especially vulnerable to sexual harassment and violence.

To try to combat this problem, a group of community organizations including Worksafe, the Labor Occupational Health Program, Equal Rights Advocates (ERA), Futures Without Violence, and the California Coalition Against Sexual Assault (Cal-

CASA), banded together in 2016 to form the ¡Ya Basta! Coalition, which describes its mission as follows:

> to advance workplace safety, dignity, and working conditions of women and other workers vulnerable to sexual violence and harassment in the janitorial industry and to serve as a model for worker-community collaboration in similarly situated industries.

The Coalition conducts peer-to-peer organizing through a cohort of janitorial worker women ("promotoras") and men ("compadres") who lead trainings and discussions among their fellow employees on workplace sexual harassment and violence prevention in the janitorial industry. According to the Coalition, many of the promotoras speak from personal experience. As a result, the worker-to-worker conversations are grounded in the realities of the work. In this way, the Coalition seeks not only to inform janitorial workers about their rights, but to get workers talking to one another about creating a more respectful workplace.

The Coalition has also teamed with the Service Employees International Union (SEIU) United Service Workers West (USWW) to sponsor a state law, AB 1978 (Gonzalez-Fletcher, Ch. 373, Stats. 2016), which expanded sexual harassment training requirements for the janitorial sector. Significantly, however, the bill left design of the trainings up to a task force on which representatives of the janitorial workers served, thus ensuring that the trainings would remain realistic to the conditions janitors confront.

V. Conclusion

Achieving a lasting shift toward a harassment-free culture in California is not a simple matter. Because so many factors influence the way we interact with one another, changing the culture is not likely to come from any single "magic bullet" solution. Rather, it may require piecing together a number of legal and policy reforms and re-examining sexual harassment prevention tools that were long assumed to be effective, or at the least, acceptable.

This hearing will attempt to advance that effort by evaluating the promise of bystander intervention training, questioning some of the legal tactics that appear to have facilitated harassment, and exploring the potential for alternative models of accountability to help realign attitudes and incentives so as to more successfully reduce the epidemic of harassment in the workplace today.