

NOTES

‘DELETE YOUR ACCOUNT’ OR DEAL WITH IT? HOW NEWS ORGANIZATIONS ARE FAILING TO SUPPORT FEMALE REPORTERS AGAINST ONLINE HARASSMENT

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ABSTRACT

For journalists today, online harassment is often dismissed as “just part of the job.” However, online harassment of female reporters is more explicitly gendered, vitriolic, and sustained than that leveled at male reporters—and its rate appears to be growing. While this harassment arrives via cyberspace, female reporters experience concrete harms including negative mental and physical reactions. Further, there is the potential for harassers to escalate their behavior offline. Despite this landscape, more and more news organizations expect—and often require—their reporters to develop online “presences.” This Note argues that if news organizations intend to continue requiring their journalists to engage online, they must also address the disproportionate harassment experienced by their female reporters as a result. Where news organizations fail to voluntarily do so, female reporters should be prepared to bring legal actions to force the issue.

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INTRODUCTION

Your alarm rings: Time to get ready for work. You sit up, grab your smartphone, and swipe through various social media platforms, bracing for the first attack of the day. It arrives via Twitter: “Do you get paid for writing this?”¹ You breathe a tentative sigh of relief; it could be so much worse.

Yet, on your commute to work, your phone continues to ping, alerting you to new, escalating messages and comments: “You are so ugly that if you got pregnant I would drive you to the abortion clinic myself.”² “I will rape you and throw you in the gutter.”³

You reach your office, sit down at your desk, and steel yourself for another endless volley: “Shut up you musty old fuck go raise your kids and get off Twitter.”⁴ “I hope someone slits your throat and cums down your gob.”⁵ “You

1. Becky Gardiner et al., *The Dark Side of Guardian Comments*, THE GUARDIAN (Apr. 12, 2016), <https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>.

2. *Id.*

3. Sonia Elks, *‘I Will Rape You’: Female Journalists Face ‘Relentless’ Abuse*, REUTERS (Sept. 13, 2018, 4:56 PM), <https://www.reuters.com/article/us-global-women-media/i-will-rape-you-female-journalists-face-relentless-abuse-idUSKCN1LT39G>.

4. Julie DiCaro, *Threats. Vitriol. Hate. Ugly Truth About Women in Sports and Social Media*, SPORTS ILLUSTRATED (Sept. 27, 2015), <https://www.si.com/cauldron/2015/09/27/twitter-threats-vile-remarks-women-sports-journalists>.

5. Amanda Hess, *Why Women Aren’t Welcome on the Internet*, PACIFIC STANDARD, <https://psmag.com/social-justice/women-arent-welcome-internet-72170> (last updated Jun. 14, 2017).

need to be killed.”⁶

You glance around to see whether anyone has noticed—your colleagues, after all, use the same social media platforms for their work. No one bats an eye.

For many female reporters, this extreme-sounding scenario is their daily, lived experience. Online harassment of journalists is often dismissed as “just part of the job.”⁷ Yet attacks against female reporters are more gendered, vitriolic, and sustained than those directed toward male reporters.⁸ Members of the media are certainly not the exclusive targets of online harassment, but “online engagement” is now expected—and often required—in newsrooms.⁹ That engagement is translating into a larger amount of online harassment toward female reporters.¹⁰ And while online harassment itself generally stems from external sources, implicit and structural biases within news organizations maintain the status quo at best—and perpetuate the attacks at worst.

If news organizations intend to require their reporters to engage online, those organizations must address the disproportionate harassment experienced by female reporters as a result. Where news organizations fail to voluntarily do so, female journalists should be prepared to take legal action to force the issue. Part I of this Note provides a brief history of workplace sexual harassment law and developing responses to the general issue, particularly in the #MeToo era. Part II homes in on online harassment, describing its disparate impact on female journalists. Part III critiques news organizations’ thus-far anemic responses to online harassment, highlighting the implicit and structural biases impeding more robust reforms. Part IV acknowledges that, like other employers, news organizations are unlikely to proactively address such concerns; female reporters must be prepared to bring lawsuits to force change, accordingly.¹¹ Finally, Part V argues that where the threat of liability does push news organizations to act, they can look to existing legal options to support female reporters, revamp workplace trainings for employees and supervisors alike, and consider more cutting-edge options, such as sharing the financial and procedural burdens of addressing online harassment across companies. Without such reforms, female reporters will be left with

6. Christina Caron, *‘Never Do This to a Woman’: Men Harass 2 Sports Reporters at the World Cup*, N.Y. TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/sports/female-broadcasters-world-cup-harassment.html>.

7. See Hess, *supra* note 5 (“[M]y colleague Jim Pagels wrote in *Slate* . . . ‘anyone who’s spent 10 minutes online knows that these assertions are entirely toothless.’”).

8. See Gina Masullo Chen et al., *Women Journalists and Online Harassment*, UNIV. TEX. CTR. FOR MEDIA ENGAGEMENT 1 (2018), <https://mediaengagement.org/wp-content/uploads/2018/04/Report-Women-Journalists-and-Online-Harassment.pdf>.

9. Denise-Marie Ordway, *Study Shows Female Journalists Face ‘Rampant’ Online Harassment*, SHORENSTEIN CTR. ON MEDIA, POLITICS & PUB. POL’Y (Aug. 2, 2018), <https://journalistsresource.org/studies/society/news-media/female-journalists-harassment-online-research/>.

10. See Elks, *supra* note 3.

11. See Susan Bisom-Rapp, *Sex-Harassment Training Must Change: The Case for Legal Incentives for Transformative Education and Prevention*, 71 STANFORD L. REV. ONLINE 62, 74 (2018) (“Greater potential exposure to liability may spur employers to make changes not only to training but to transforming workplace culture.”).

limited recourse: Deal with the abuse, drop the beat—or get out of the newsroom altogether.

I. WORKPLACE SEXUAL HARASSMENT AND THE LAW

The behaviors that may constitute workplace sexual harassment are hardly new: “We can point to the sexual abuse and harassment of female slaves by their masters, the sexual hostility and attacks of early twentieth-century female industrial workers in the factories where they worked, or the generations of secretaries groped by their bosses in the office.”¹² Naming and developing a legal structure to address these and additional, harmful behaviors, however, did not begin in earnest until the mid-1970s.¹³ Feminists drew what had long been considered a private matter into the public domain, buoyed in large part by Catharine MacKinnon’s book, *The Sexual Harassment of Working Women*.¹⁴ MacKinnon argued that sexual harassment is a type of discrimination—and that the law should respond to it as such.¹⁵

In 1986, the Supreme Court answered that call in *Meritor Savings Bank, FSB v. Vinson*, finding sexual harassment actionable where it is “sufficiently severe or pervasive to alter the conditions of [the plaintiff’s] employment and create an abusive working environment.”¹⁶ The Court broadened this standard a little more than a decade later, in *Oncale v. Sundowner Offshore Servs. Inc.*, noting that “harassing conduct need not be motivated by sexual desire.”¹⁷ In these two cases, the Supreme Court interpreted Title VII of the Civil Rights Act of 1964 to include sexual harassment within its prohibition of sex discrimination.¹⁸

Two types of behavior thus developed as actionable under federal¹⁹ sexual harassment law.²⁰ The first, quid pro quo harassment, occurs “when a supervisor threatens harm or promises a benefit in exchange for sexual compliance.”²¹ The second, hostile work environment, arises where a supervisor, co-worker, or third

12. Joanna Grossman, *Moving Forward, Looking Back: A Retrospective on Sexual Harassment Law*, 95 B.U. L. REV. 1029, 1032 (2015).

13. See Einat Albin, *Customer Domination at Work: A New Paradigm for the Sexual Harassment of Employees by Customers*, 24 MICH. J. GENDER & L. 167, 203 (2017).

14. See *id.*

15. See Grossman, *supra* note 12, at 1030–31.

16. 477 U.S. 57, 67 (1986).

17. 523 U.S. 75, 80 (1998).

18. See Thomas Brierton & Peter Bowal, *The Creative Necessity Defense, Free Speech, and California Sexual Harassment Law*, 25 HOFSTRA LAB. & EMP. L.J. 63, 65 (2007).

19. A number of state and local laws do provide additional protections for employees from sexual harassment—some of which may offer legal avenues of recourse for female reporters experiencing online harassment in the workplace. See, e.g., California Fair Housing and Employment Act, Cal. Gov’t Code §§ 12950–12950.1 (West 2019); N.Y.C. Admin. Code § 8–107 (2019). However, this Note’s analysis is limited to a federal-law lens, with the exception of one suggested strategy for legal action—bringing a defamation suit—mentioned in Part V.

20. Martha Chamallas, *Writing About Sexual Harassment: A Guide to the Literature*, 4 UCLA WOMEN’S L.J. 37, 39–40 (1993).

21. *Id.* at 58 n.9.

party “has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”²² While sexualized harassment is certainly covered under either type of Title VII action, “patronizing treatment, personal ridicule, social ostracism, exclusion or marginalization, denial of information, and work sabotage” are actually more common behaviors.²³ Nor is the sole risk factor for workplace sexual harassment the stereotype of a male supervisor preying on a female subordinate.²⁴ Facially non-sexual risk factors include “workplaces with significant power disparities, workplaces that rely on customer service or client satisfaction, [and] isolated or decentralized workplaces.”²⁵

Pointing to these facially non-sexual but equally problematic factors, some commentators have critiqued the #MeToo movement’s focus on “unwanted sexual overtures”²⁶ as exclusionary to sexual harassment’s wider swath of potential behaviors or actions.²⁷ Problematic parts of the #MeToo movement aside, however, it has catalyzed conversation about sexual harassment and spurred many women²⁸ to speak up about harassment they experience in the workplace.²⁹ In 2018, the EEOC attributed a more than twelve percent increase in workplace

22. 29 C.F.R. § 1604.11(a)(3) (2019).

23. Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. F. 22, 33–34 (2018) [hereinafter Schultz, *Reconceptualizing*].

24. See Chamallas, *supra* note 20, at 54–55 (describing Samuel Marcossou’s argument that “antigay harassment indirectly targets women because it reinforces stereotypes about appropriate gender roles and perpetuates male-created and male-dominated norms regarding sexual conduct and language at work.”).

25. See *Chart of Risk Factors for Harassment and Responsive Strategies*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm.

26. Schultz, *Reconceptualizing*, *supra* note 23, at 31.

27. This is not the #MeToo movement’s first brush with claims that it is exclusionary: A black woman named Tarana Burke coined the phrase “me too” in 2007, but it did not gain widespread popularity until, more than a decade later, the actress Alyssa Milano encouraged her Twitter followers to reply with “me too” if they had “been sexually harassed or assaulted.” See Sandra Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/me-too-movement-tarana-burke.html>. Many commentators pointed out the irony of marginalizing a black woman’s contribution to a movement purportedly focused on empowering the marginalized. See Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 YALE L. J. F. 105, 107 (2018) (“This marginalization of women of color has occurred . . . despite the fact that #MeToo began with a woman of color; and despite the fact that women of color are more vulnerable to sexual harassment than white women and are less likely to be believed when they report harassment.”).

28. Men can and do experience sexual harassment. See, e.g., Schultz, *Reconceptualizing*, *supra* note 23, at 24 (“[h]arassment is a way for dominant men to label women (and perceived ‘lesser’ men) as inferior and shore up an idealized masculine work status and identity.”). However, I have limited this Note’s scope to the online harassment experienced by female journalists, so I am also limiting the discussion of more general sexual harassment to that experienced by women.

29. See Daniel Wiessner, *U.S. Agency Saw Sharp Rise in Sexual Harassment Complaints After #MeToo*, REUTERS (Oct. 4, 2018, 4:49 PM), <https://www.reuters.com/article/us-usa-harassment/u-s-agency-saw-sharp-rise-in-sexual-harassment-complaints-after-metoo-idUSKCN1ME2LG>.

sexual harassment complaints to the movement.³⁰ Further, the EEOC filed fifty percent more lawsuits involving sexual harassment claims against employers in fiscal year 2018.³¹ The translation from reports to lawsuits may provide a blueprint for female reporters facing online harassment.³² Before news organizations will invest time and resources in developing policies or changing company culture, they will need to acknowledge that a problem exists. This will likely require both public pressure and legal action—steps that have also been taken under the broader #MeToo umbrella.³³

II. ONLINE HARASSMENT AND FEMALE JOURNALISTS

Online harassment can constitute a number of actions, such as “the repetitive posting of inflammatory or hateful comments [‘trolling’]; cyberstalking; physical threats; the publishing of sexually explicit images without consent [‘revenge porn’]; and the public posting of private information [‘doxing’].”³⁴ These actions are a widespread problem: Forty-four percent of men and thirty-seven percent of women have experienced some form of online harassment.³⁵

Attacks against female reporters are more frequent than those directed toward male reporters,³⁶ and they are more likely to be gendered or sexualized.³⁷ Unlike “traditional” workplace harassment, where the offender is often a colleague or supervisor, online harassers are generally external to news organizations.³⁸ Still,

30. *See id.* (reporting that “the number of sexual harassment complaints workers filed rose for the first time in nearly a decade.”).

31. *See id.*

32. *See* Chamallas, *supra* note 20, at 37 (“This feminist intervention into the law has affected the cultural meaning of interactions between men and women in the workplace, even when the new meanings have not translated into legal victories.”).

33. *See* Ramit Mizrahi, *Sexual Harassment Law After #MeToo: Looking to California as a Model*, 128 YALE L.J. F. 121, 126 (2018) (“[T]he #MeToo and #TimesUp movements have galvanized the public, leading people to speak out who would not have done so before, while motivating many employers to respond—lest they face the consequences of inaction.”).

34. Laura Macomber, *A New Manual for Writers and Journalists Experiencing Harassment Online*, COLUMBIA JOURNALISM REV. (Apr. 20, 2018), <https://www.cjr.org/analysis/online-harassment-manual.php>.

35. *See* Maeve Duggan, *Men, Women Experience and View Online Harassment Differently*, PEW RESEARCH CTR. (July 14, 2017), <https://www.pewresearch.org/fact-tank/2017/07/14/men-women-experience-and-view-online-harassment-differently/>.

36. *See* Rachel Schallom, *Women in Public-Facing Journalism Jobs are Exhausted by Harassment*, POYNTER (Jun. 28, 2018), <https://www.poynter.org/business-work/2018/women-in-public-facing-journalism-jobs-are-exhausted-by-harassment> (reporting that “female journalists receive[] three times as much abuse on Twitter as their male colleagues.”).

37. *See* Alana Barton & Hannah Storm, *Violence and Harassment Against Women in the News Media: A Global Picture*, INT’L WOMEN’S MEDIA FOUND. 4, <https://www.iwmf.org/wp-content/uploads/2018/06/Violence-and-Harassment-against-Women-in-the-News-Media.pdf> (last visited Oct. 31, 2019).

38. Note, however, that female reporters have historically experienced in-person harassment from sources and other external individuals “in the field,” as well. For example, female baseball reporters were blocked from entering men’s locker rooms when they first lobbied for equal post-game interview access. Upon finally being granted access, players presented female reporters with a cake in the shape of a penis (the New York Yankees), refused “to talk to any woman . . . unless they are on top of me or I am on top of them,” (the Detroit Tigers); and even sent one female reporter a dead rat (the Oakland A’s).

they are not limited to the cliched malcontent firing off missives from a basement.³⁹ Public figures—most notably the current president of the United States—are normalizing this online behavior, providing tacit approval or even overt encouragement to followers.⁴⁰ Such actions are not without consequence: Female reporters experience negative mental and physical reactions to online harassment, and they face an escalated risk of connected, “offline” attacks.⁴¹ News organizations’ general engagement requirements therefore result in disproportionate harm to a subset of employees.

A. “ONLINE ENGAGEMENT”—AND ITS DISPARATE IMPACT ON FEMALE REPORTERS

Social media has blurred the line between personal and professional identities.⁴² Most companies now use branded accounts on Facebook, Twitter, Instagram, and other social media platforms to market their products and connect with customers.⁴³ Some brands even pay “influencers” to hawk products on the influencers’ ostensibly “personal” accounts.⁴⁴ However, newsroom leaders expect—and often require—their reporters to “engage” online to an unparalleled extent.⁴⁵ From developing sources to posting story links to responding to readers, journalists today utilize social media at nearly every step of their work.⁴⁶ This

See Aishlin Hicks, *Unsportsmanlike Conduct: Female Sportswriters As Targets for Sexual Harassment*, 23 HASTINGS WOMEN’S L.J. 219, 222 (2012). More recently, fans and passerby sexually harassed several female broadcast journalists conducting live reports on the 2018 World Cup, in Russia. See Vanessa Romo, *World Cup: 3rd Female Journalist Sexually Harassed On Camera*, NPR (Jun. 26, 2018), <https://www.npr.org/2018/06/26/623441842/world-cup-a-third-female-journalist-sexually-harassed-on-camera-because>.

39. Joel Stein, *How Trolls Are Ruining the Internet*, TIME (Aug. 18, 2016), <https://time.com/4457110/internet-trolls/> (“‘Trolls are portrayed as aberrational and antithetical to how normal people converse with each other. And that could not be further from the truth,’ says Whitney Phillips, a literature professor at Mercer University and the author of *This is Why We Can’t Have Nice Things: Mapping the Relationship Between Online Trolling and Mainstream Culture*. ‘These are mostly normal people who do things that seem fun at the time that have huge implications. You want to say this is the bad guys, but it’s a problem of us.’”).

40. See Schallom, *supra* note 36; Cheng et. al., *Anyone Can Become a Troll: Causes of Trolling Behavior in Online Discussions*, CSCW CONFERENCE ON COMPUTER-SUPPORTED COOPERATIVE WORK 1217–1230 (2017) (finding that “negative behavior can persist in and permeate a[n online] community when left unchecked.”).

41. See Schallom, *supra* note 36.

42. See Michelle Ferrier, *Attacks and Harassment: The Impact on Female Journalists and Their Reporting*, INT’L WOMEN’S MEDIA FOUND. 11 (Sept. 13, 2018), <https://www.iwmf.org/wp-content/uploads/2018/09/Attacks-and-Harassment.pdf> (“Journalists . . . are also using social channels that blend personal and professional identities, exposing them to threats 24 hours a day, seven days a week, from domestic and international sources.”).

43. See James Jorner, *4 Industries That Will Dominate Social Media in 2018*, ADWEEK (Feb. 23, 2018), <https://www.adweek.com/digital/4-industries-that-will-dominate-social-media-in-2018>.

44. See Simon Owens, *Is It Time to Regulate Social Media Influencers?*, N.Y. MAG. (Jan. 17, 2019), <http://nymag.com/intelligencer/2019/01/is-it-time-to-regulate-social-media-influencers.html> (“The [influencer] industry has grown rapidly in recent years and is projected to generate as much as \$10 billion by 2020.”).

45. See Ordway, *supra* note 9.

46. See Ferrier, *supra* note 42, at 10.

expectation stems in large part from the news industry's reliance on reporters to maintain and increase readership—and thereby revenue—in an era of branding and personalization.⁴⁷ Journalists no longer just report; they also act as online ambassadors for their news organizations, providing longtime and new readers alike with behind-the-scenes looks on Instagram or Facebook, inside scoops via Twitter, and a familiar avatar as reason to click on one site's story over another's.⁴⁸ As one reporter notes, "this can be both a blessing and a curse. You learn . . . how to make yourself present, but not how to make yourself invisible if desired or necessary."⁴⁹

That inability to make oneself invisible is underscored by the fact that female journalists are three times more likely to be harassed online than male reporters.⁵⁰ And that rate appears to be growing: Nine in ten female journalists experienced an increase in physical or online threats in the past five years.⁵¹ Compounding more frequent attacks is the difference in tone and focus that characterizes online harassment of female reporters. Comments and messages are far more likely to be gendered or sexualized.⁵² In short, "[m]en get attacked for their opinions, and women get attacked because they have opinions."⁵³

Female reporters of color often face the worst online harassment.⁵⁴ Jemele Hill, a female journalist of color, says she receives regular online attacks, especially via Twitter: "I've been called a whore, a black bitch, a nigger, a monkey, an Uncle Tom, and had my sexuality questioned."⁵⁵ Legal reporter Imani Gandy says she does not "know how any woman of color can have their [Twitter] DMs open . . . I see white guys saying, 'you really need to follow people you disagree with,' but they don't spend all day being attacked just for their identity."⁵⁶ This increased harassment toward female reporters of color tracks the increased

47. See Elizabeth Hansen & Emily Goligoski, *New Study: How to Build Revenue By Connecting With Your Audience*, COLUMBIA JOURNALISM REV. (Feb. 8, 2018), https://www.cjr.org/tow_center/how-to-decide-between-subscription-membership-donation.php.

48. *See id.*

49. *See Chen, supra* note 8, at 3.

50. *See Trolls and Threats: Online Harassment of Female Journalists*, AL JAZEERA (Oct. 6, 2018, 2:17 PM), <https://www.aljazeera.com/programmes/listeningpost/2018/10/trolls-threats-online-harassment-female-journalists-181006101141463.html>.

51. *See Elks, supra* note 3; *see also Ferrier, supra* note 42, at 11, 26 (finding that sixty-eight percent of female respondents are worried about their online safety).

52. *See Chen, supra* note 8, at 1.

53. Schallom, *supra* note 36.

54. *See* Avi Asher-Shapiro & Lucy Westcott, *For Local Female Journalists in US, Rape Threats, Stalkers, Harassment Can Come With The Beat*, COMM. TO PROTECT JOURNALISTS (Jan. 17, 2019, 4:33 PM), <https://cpj.org/blog/2019/01/for-local-female-journalists-in-us-rape-threats-st.php> (noting that "female journalists, particularly women of color, bear the brunt of online harassment.").

55. DiCaro, *supra* note 4.

56. Anne Helen Petersen, *The Cost of Reporting While Female*, COLUM. JOURNALISM REV. (2018), https://www.cjr.org/special_report/reporting-female-harassment-journalism.php.

harassment that women of color generally experience, as well as that of LGBTQ individuals.⁵⁷

Female reporters also face more “virulent” attacks when they cover “male” topics, such as video gaming and sports, or “divisive” topics, such as feminism and politics.⁵⁸ Sports reporters Sarah Spain and Julie DiCaro addressed these differences in a 2016 public awareness campaign called #MoreThanMean.⁵⁹ The women highlighted actual tweets they received while covering sports, including, “Hopefully, this skank Julie DiCaro is Bill Cosby’s next victim,” and “Sarah Spain is a bitch I would hate-fuck.”⁶⁰ Spain says of the online harassment, “It’s not just, ‘You’re an idiot, and I’m mad at you for your opinion.’ It’s: ‘I hate you because you are in a space that I don’t want you in.’”⁶¹ Research has found that women are more likely to be sexually harassed in male-dominated workplaces—not because there are more men in those workplaces, but because female employees “pose a threat to the masculine composition and image of the men’s jobs and to their sense of manhood.”⁶² Online harassment of female reporters thus may be a digital corollary and a response to perceived “threats” to masculinity.

B. HOW TRUMP’S TWEETS FUEL ONLINE HARASSMENT

It would be nearly impossible to discuss online harassment without also discussing Donald Trump’s tweets.⁶³ The sitting president of the United States has tweeted thousands of times since taking office.⁶⁴ From the launch of his presidential campaign to the end of his second year in the White House in January 2019, eleven percent of those tweets were attacks on individual journalists or news

57. See Vicki Schultz, *Open Statement on Sexual Harassment from Employment Discrimination Law Scholars*, 71 STANFORD L. REV. ONLINE 17, 19 (2018) [hereinafter Schultz, *Open Statement*].

58. Chen, *supra* note 8, at 2.

59. Just Not Sports, *#MoreThanMean—Women in Sports ‘Face’ Harassment*, YOUTUBE (Apr. 25, 2016), <https://www.youtube.com/watch?v=9tU-D-m2JY8>.

60. *Id.*

61. Caron, *supra* note 6.

62. Schultz, *Reconceptualizing*, *supra* note 23, at 45; see also James Gruber, *The Impact of Male Work Environments and Organizational Policies on Women’s Experiences of Sexual Harassment*, 12(3) GENDER & SOC. 301, 303 (1998) (noting that “[a]lthough women professionals in male-traditional fields face greater harassment than other white-collar women, they experience less severe and pervasive harassment than their blue collar counterparts” and positing that this may be because they are “better protected from harassment and hostility by virtue of norms of professionalism that stress respectful treatment of, and cooperation with, others.”).

63. While Trump may be the clearest—and most ubiquitous—example of a public figure fueling online harassment, the trend is not a purely partisan problem. Bernie Sanders’ supporters also harassed female reporters online at several points during his first presidential campaign. See Callum Borchers, *The Bernie Bros Are Out in Full Force Harassing Female Reporters*, WASH. POST (Jun. 7, 2016), <https://www.washingtonpost.com/news/the-fix/wp-2016/06/07/the-bernie-bros-are-out-in-full-force-harassing-female-reporters>.

64. See TRUMP TWITTER ARCHIVE, <http://www.trumptwitterarchive.com/archive> (last visited Aug. 31, 2019).

outlets.⁶⁵ Trump has certainly not ignored white, male reporters: *CNN*'s Jim Acosta,⁶⁶ *NBC*'s Chuck Todd,⁶⁷ and *The Washington Post*'s Bob Woodward⁶⁸ have been favored targets at various points of this presidency. However, many media members say the president escalates his attacks on female reporters and reporters of color, zeroing in on "the reporters' basic intelligence and competence."⁶⁹ For example, at the first Republican presidential debate in August 2015, then-*Fox News* broadcaster Megyn Kelly questioned Trump about disparaging remarks he had made toward women, noting, "You've called women you don't like fat pigs, dogs, slobes and disgusting animals."⁷⁰ In the months that followed, of the 148 tweets Trump sent involving *Fox News*, he tweeted at or about Kelly in nearly half of them—sixty-four times.⁷¹ Tweets included "@megynkelly recently said that she can't be wooed by Trump. She is so average in every way, who the hell wants to woo her!"⁷² and "I refuse to call Megyn Kelly a bimbo, because that would not be politically correct. Instead I will only call her a lightweight reporter!"⁷³

In short, Trump's "got mad trolling skills: He doxed Republican primary opponent Senator Lindsey Graham by giving out his cell-phone number on TV and indirectly got his Twitter followers to attack GOP political strategist Cheri Jacobus so severely that her lawyers sent him a cease-and-desist order."⁷⁴ Trump supporters appear to be accepting his behavior as license to increase their own online—and in some cases, offline—harassment of reporters.⁷⁵ Security officials for major media organizations have reported a steady increase in threats to the

65. Stephanie Sugars, *From Fake News to Enemy of the People: An Anatomy of Trump's Tweets*, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019, 10:00 AM), <https://cpj.org/blog/2019/01/trump-twitter-press-fake-news-enemy-people.php#methodology>.

66. See Brian Stelter, *CNN's Jim Acosta is Writing a Book About Trump's War With the Media*, CNN BUSINESS (Jan. 24, 2019, 1:11 PM), <https://www.cnn.com/2019/01/24/media/jim-acosta-book/index.html>.

67. See John Bowden, *Trump Knocks 'Sleepy Eyes Chuck Todd': Press Has Been 'Fighting Back' Since He Announced Campaign*, THE HILL (Sept. 5, 2018, 7:38 AM), <https://thehill.com/homenews/media/405099-trump-knocks-sleepy-eyes-chuck-todd-press-has-been-fighting-back-since-he>.

68. See *Donald Trump Condemns Bob Woodward Book As 'Con'*, BBC NEWS (Sept. 5, 2018), <https://www.bbc.com/news/world-us-canada-45417959>.

69. Rebecca Morin, *Trump Draws Rebukes for Scolding Female Reporters of Color*, POLITICO (Nov. 9, 2018, 7:12 PM), <https://www.politico.com/story/2018/11/09/trump-cnn-white-house-access-980280>.

70. Paola Chavez et al., *A History of the Donald Trump-Megyn Kelly Feud*, ABC NEWS (Oct. 26, 2016, 1:23 PM), <https://abcnews.go.com/Politics/history-donald-trump-megyn-kelly-feud/story?id=36526503>.

71. See Sugars, *supra* note 65.

72. Donald Trump (@realDonaldTrump), TWITTER (Jan. 11, 2016, 12:20 PM), <https://twitter.com/realDonaldTrump/status/686643969657319426>.

73. Donald Trump (@realDonaldTrump), TWITTER (Jan. 27, 2016, 3:44 AM), <https://twitter.com/realDonaldTrump/status/692312112115380224>.

74. Stein, *supra* note 39.

75. See Sugars, *supra* note 65 ("In the wake of the Annapolis [newspaper] shooting in June, CPI, press freedom advocates and media outlets called on Trump to moderate his rhetoric.").

outlets and their journalists throughout Trump's presidency.⁷⁶ Officials say especially significant spikes in threats occur after the president criticizes an outlet by name.⁷⁷ Katy Tur, an *MSNBC* anchor who attracted Trump's Twitter fire during his 2016 campaign, highlighted the inclusion of "MAGA"—an acronym for "Make America Great Again," Trump's oft-used campaign phrase—at the end of a note she received which said, "I hope you get raped and killed."⁷⁸ Similarly, fifty-eight percent of U.S.-based female journalists say that a more hostile press climate has been fanned by claims that they are "fake news"—one of the president's go-to criticisms of media organizations and journalists.⁷⁹ "Something happened . . . with the ramp-up to the [2016 presidential] election," female reporter Scaachi Koul says. "If you were a female writer, you couldn't say something without someone wanting to kill you. It shifted our understanding of a threat."⁸⁰ For female reporters, Trump's behavior is yet another factor increasing the likelihood that they will be targeted for online harassment—and its attendant, concrete harms.

C. ONLINE HARASSMENT'S CONCRETE HARMS

Female reporters are being harassed online at significantly higher rates than their male colleagues.⁸¹ Too often, the response from newsroom leaders, law enforcement, and the public writ large is a collective shrug.⁸² The most extreme online harassment—"threats to kill, rape, or maim"—is indeed relatively rare.⁸³ Yet "imagine going to work every day and walking through a gauntlet of 100 people saying, 'You're stupid,' 'You're terrible,' 'You suck,'" says *The Guardian*⁸⁴ columnist Jessica Valenti. "It's a terrible way to go to work."⁸⁵

Taken in isolation, the words most often used in cases of online harassment do not "universally cause harm."⁸⁶ But this is hardly a case of confusing a bad theoretical commute with sticks and stones; the harms female reporters experience occur outside of cyberspace, too. The effects seep well beyond the moment a

76. See Mark Follman, *Trump's 'Enemy of the People' Rhetoric is Endangering Journalists' Lives*, MOTHER JONES (Sept. 13, 2018, 6:00 AM), <https://www.motherjones.com/politics/2018/09/trump-enemy-of-the-people-media-threats/>.

77. See *id.*

78. See *id.*

79. See Ferrier, *supra* note 42, at 30.

80. Petersen, *supra* note 56.

81. See *Trolls and Threats*, *supra* note 50.

82. See Ferrier, *supra* note 42, at 12 ("One of the conclusions of this research is that online and offline abuse is often underestimated by media management and minimized by authorities and others who are best positioned to provide support.").

83. Gardiner et al., *supra* note 1.

84. I worked at *The Guardian*'s U.S. office as an engagement editor from 2015 to 2017.

85. Gardiner et al., *supra* note 1.

86. See Timothy Jay, *Do Offensive Words Harm People?*, 15 PSYCHOL. PUB. POL'Y & L. 81, 89 (2009) ("The meaning and impact of speech is entirely determined by the contextual factors, such as the relationship between the speaker and listener and the topic of discussion. Couples can agree that words . . . are not offensive at a given time and place, regardless of what other people may think.").

tweet, comment, or message is received and give rise to any number of mental health issues.⁸⁷ Harms include “significant trauma, shame, and stress.”⁸⁸ Physical responses, such as loss of sleep or appetite, are other possible effects.⁸⁹ Valenti’s colleague, Steven Thrasher, expounded on the psychological effects of pervasive, sustained online harassment: “Even if I tell myself that somebody calling me a nigger or a faggot doesn’t mean anything, it has a toll on me: And over time, it builds up.”⁹⁰ Nor is that build-up limited to the journalist: Family and friends may experience “secondary harm” because hateful speech “can have a rippling effect on those who identify with the victim.”⁹¹ Online harassers may also turn their attacks directly toward those friends and relatives, going so far as to post home addresses or even show up at a relative’s workplace.⁹²

While less common, online harassment can escalate from a one-off tweet toward a female reporter into a sustained, abusive campaign. For example, in 2008, a stalker secretly filmed sports broadcaster Erin Andrews at several hotels she stayed at while covering games.⁹³ Michael David Barrett posted the videos he made of Andrews undressing in her hotel rooms online.⁹⁴ When apprehended, he admitted to singling Andrews out “because she was popular” and he anticipated making money off of the videos.⁹⁵ They went viral, and Andrews found herself the subject of an online harassment campaign which lasted for years: “This happens every day of my life,” Andrews testified at Barrett’s trial in 2016. “Either I get a tweet, or somebody makes a comment in the paper, or somebody sends me a still of the video, or someone screams it at me in the stands—and I’m right back.”⁹⁶

In an effort to minimize such harms, many female reporters say they choose not to cover certain stories or issues.⁹⁷ Others leave the journalism industry altogether.⁹⁸ Some online vitriol may indeed be managed by avoiding certain topics, becoming “quick with the block button,”⁹⁹ or utilizing resources made

87. *See id.* at 83–84.

88. *See* Mel Grau, *How to Be a Better Leader in the #MeToo Era*, POYNTER (Oct. 2, 2018), <https://www.poynter.org/business-work/2018/how-to-be-a-better-leader-in-the-metoo-era/>.

89. *See id.*

90. Gardiner et al., *supra* note 1.

91. *See* Jay, *supra* note 86, at 83–84.

92. *See* Schallom, *supra* note 36.

93. *See* Matt Wilhalme, *Erin Andrews Breaks Down During Testimony About Secretly Taped Nude Videos*, L.A. TIMES (Feb. 29, 2016, 8:18 PM), <https://www.latimes.com/sports/sportsnow/la-sp-sn-erin-andrews-testifies-lawsuit-nude-videos-20160229-story.html>; Sarah Kaplan, *The Ordeal of Sportscaster Erin Andrews: ‘Oh, My God . . . I was Naked All Over the Internet.’* WASH. POST (Mar. 1, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/03/01/the-ordeal-of-espns-erin-andrews-target-of-nude-peephole-videos-and-sexist-affronts/?utm_term=.f065e0105e46.

94. *See* Wilhalme, *supra* note 93.

95. *Id.*

96. *Id.*

97. *See* Ferrier, *supra* note 42, at 7 (“Approximately 40 percent [of female journalists surveyed] said they avoided reporting certain stories as a result of online harassment.”).

98. *See* Schallom, *supra* note 36.

99. *See* DiCaro, *supra* note 4.

available through groups such as PEN America, which has published an Online Harassment Field Manual to support reporters experiencing attacks.¹⁰⁰ However, these strategies leave the onus on the individual reporter to respond to the harassment. Reviewing and flagging posts or blocking accounts not only takes a mental toll on journalists, it also takes time.¹⁰¹ Journalist Amanda Hess says she has spent “countless hours over the past four years logging the online activity of one particularly committed cyberstalker, just in case.”¹⁰² Those hours represent lost bylines at best, and lost wages at worst. They are hours that could have been spent completing the substantive work these reporters were hired and paid to do. Elie Mystal, a male editor of color, noted that, like Hess, his workflow is negatively impacted by upticks in online harassment that require a “true threat analysis.”¹⁰³ “It sends you down a hole and, even when you come out clean on the other side, the journey still takes hours that could have been spent doing something productive.”¹⁰⁴

The need to spend time separating troubling-but-benign tweets from legitimate threats, rather than on tasks related to their actual jobs, falls disproportionately on female reporters and reporters of color. This point was underscored following an August 2019 Twitter-fueled fight between George Washington University professor David Karpf and *New York Times* columnist Bret Stephens.¹⁰⁵ Karpf first compared Stephens to a “bedbug” in a little-seen tweet that Stephens nevertheless spotted.¹⁰⁶ Stephens responded by emailing Karpf and inviting him to “call me a ‘bedbug’ to my face”—and copying Karpf’s university provost on the message.¹⁰⁷ The exchange quickly went viral, prompting a number of female reporters and reporters of color to highlight the overblown nature of the interaction—between two white men—when considered beside the types of regular online harassment female reporters and reporters of color experience: “It probably is a bummer to be called a bedbug, but people have written to me that they hope I get raped,” wrote *HuffPost* editor Elise Foley.¹⁰⁸ “I just need white guys to understand: Women and people of color don’t ‘challenge’ trolls to come to their home because we don’t want to get RAPED OR SHOT,” tweeted editor Mystal.¹⁰⁹

100. *Online Harassment Field Manual*, PEN AMERICA (2019), <https://onlineharassmentfieldmanual.pen.org>.

101. See Hess, *supra* note 5.

102. *Id.*

103. Elie Mystal, *Getting Emails From Trump Supporters While Black*, ABOVE THE LAW (Aug. 16, 2019, 12:45 PM), <https://abovethelaw.com/2019/08/hate-mail-dump-from-trump-supporters/?rf=1>.

104. *Id.*

105. Allan Smith, *A Professor Labeled Bret Stephens a ‘Bedbug.’ Here’s What the NYT Columnist Did Next.*, NBC NEWS (Aug. 27, 2019, 11:05 AM), <https://www.nbcnews.com/politics/politics-news/professor-labeled-bret-stephens-bedbug-here-s-what-nyt-columnist-n1046736>.

106. *Id.*

107. *Id.*

108. Elise Foley (@elisefoley), TWITTER (Aug. 27, 2019, 6:19 AM), <https://twitter.com/elisefoley/status/1166339434478018560>.

109. Elie Mystal (@ElieNYC), TWITTER (Aug. 27, 2019, 7:53 AM), <https://twitter.com/ElieNYC/status/1166363109034012672>.

For his part, the university professor Karpf said he had found the whole exchange and its resulting media attention “entertaining.”¹¹⁰ Still, Karpf conceded, “[i]t does keep occurring to me the reason why this is actually pretty fun for me is that I’m a white guy with tenure . . . if I was pre-tenure or I was a woman and had to deal with harassment on Twitter all the time, then I imagine this would be a lot less fun.”¹¹¹ Female reporters disproportionately face situations like the ones Karpf alludes to, and news organizations are failing to address the resulting harms.

III. HOW NEWS ORGANIZATIONS ARE FAILING TO ADEQUATELY ADDRESS ONLINE HARASSMENT

Some news organizations have proactively taken steps to address online harassment. The *Associated Press* and *NPR*, for example, each provide reporters with social-media guidance “not [to] express personal opinions on controversial issues of the day” (*AP*) and not to “SHOUT IN ALL CAPS when we’re angry” (*NPR*).¹¹² It is worth noting, however, that each of these strategies require the reporter to adjust *her behavior*. They would not provide relief if a reporter were harassed online because of *her identity*. And, even these bare-bones types of policies are far from the industry norm.¹¹³

The lack of institutional assistance stems from issues at both the micro and macro levels. Many female journalists fear that their male bosses will not understand their situation because men experience online harassment that differs in frequency and kind.¹¹⁴ That disconnect is amplified by structural discrimination that continues to prop up internal workplace sexual harassment.¹¹⁵ Further, employers may take their workplace harassment compliance cues from the courts, which currently require basic trainings or policies, but little more in the way of tangible change or protection.¹¹⁶ Any one of these issues could affect a female reporter’s ability to address online harassment; in too many newsrooms, she faces several hurdles to relief at once.

110. Ben Mathis-Lilley, *A Q&A With the Man Who Called Bret Stephens a Bedbug*, SLATE (Aug. 27, 2019, 3:15 PM), <https://slate.com/news-and-politics/2019/08/bret-stephens-bedbug-david-karpf-interview.html>.

111. *Id.*

112. *Best Practices for Employees*, PEN AMERICA, <https://onlineharassmentfieldmanual.pen.org/best-practices-for-employers/>.

113. *See* Schallom, *supra* note 36.

114. *See id.*

115. *See* Frank Dobbin & Alexandra Kalev, *Training Programs and Reporting Systems Won’t End Sexual Harassment. Promoting More Women Will*, HARV. BUS. REV. (Nov. 15, 2017), <https://hbr.org/2017/11/training-programs-and-reporting-systems-wont-end-sexual-harassment-promoting-more-women-will>.

116. *See* Bisom-Rapp, *supra* note 11, at 74.

A. HOMOGENOUS NEWSROOM LEADERSHIP

Women are outpacing men in completing college,¹¹⁷ gaining professional degrees,¹¹⁸ and even purchasing homes.¹¹⁹ Yet in the United States, women still account for just sixteen percent of corporate executives.¹²⁰ This gender gap exists in journalism management as well, albeit at a lower level: Men continue to hold more than sixty percent of newsroom leadership positions.¹²¹ Therefore, when a female reporter first raises an issue of online harassment, she is still usually doing so to a male supervisor less likely to have personally experienced such attacks.¹²² In too many cases, that lack of first-hand experience translates into an inability or refusal to understand the extent of online harassment's attendant, concrete harms.¹²³

Often, the gulf between female reporters' experiences and male editors' understanding of those experiences begins not with animus but oblivion: "Depending on [editors'] own identit[ies], they don't know the complex matrix of decisions women make in the field to render themselves less threatening, or the thought put into how and who to block, report, or ignore online."¹²⁴ Still, too often, even when those challenges faced by female journalists are brought to their male editors' attention, efforts to grasp the seriousness of the situation and provide attendant support are lacking. Female reporter Nadra Nittle said one editor brushed her off with a "don't worry about it" when she raised concerns about receiving threatening online messages.¹²⁵ As another female reporter put it: "The first time I told my boss [about online harassment I was experiencing], he said, 'Oh, that's annoying.'"¹²⁶

117. *Among Millennials, Women Outpacing Men in College Completion*, PEW RESEARCH CTR. (Feb. 13, 2019), https://www.pewsocialtrends.org/essay/millennial-life-how-young-adulthood-today-compares-with-prior-generations/psdt_02-14-19_generations-00-01/ (reporting that forty-three percent of millennial women ages twenty-five to thirty-seven have completed at least a Bachelor's degree, as compared to thirty-six percent of millennial men).

118. Alexandre Tanzi, *Education: Demographic Trends*, BLOOMBERG (Aug. 6, 2018, 3:14 PM), <https://www.bloomberg.com/news/articles/2018-08-06/u-s-women-outpacing-men-in-higher-education-demographic-trends> (highlighting the gender disparity in professional- and advanced-degree attainment, in which women are now gaining the majority of master's and doctoral degrees).

119. Tendayi Kapfudz, *A Different Kind of Gender Gap: Homeownership is More Common Among Single Women Than Single Men*, LENDINGTREE (Dec. 11, 2018), <https://www.lendingtree.com/home/mortgage/homeownership-gender-gap-study/> (finding that while women continue to earn less than the average male worker in the United States, single women are significantly more likely to own homes in most U.S. geographic regions than single men).

120. See Vivian Hunt et al., *Why Diversity Matters*, MCKINSEY & CO. (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>.

121. See Schallom, *supra* note 36.

122. See *id.*

123. See Ordway, *supra* note 9 ("Many of the women we interviewed felt unsupported or even afraid to complain about the problems to their supervisors. This suggests that newsroom leaders need to change the culture at their organizations to deal with this issue.").

124. Petersen, *supra* note 56.

125. *Id.*

126. Asher-Shapiro & Westcott, *supra* note 54.

Such dismissals have left many female reporters “unsupported or even afraid” to raise the issue of online harassment with male supervisors.¹²⁷ This leads to a chicken-or-egg problem: Female reporters feel unsupported, so they do not speak up about a problem their male supervisors do not often experience themselves. Without hearing those reports, male supervisors have no reason to implement changes to newsroom culture or work practices that could help support female reporters experiencing online harassment. Instead, female reporters continue to suffer in silence at best, or leave their positions at worst. Newsroom leaders must recognize that the pervasive, sustained nature of online harassment is more than an “annoyance”—it is an ongoing harm that must be addressed.

B. STRUCTURAL ISSUES PERPETUATING WORKPLACE SEXUAL HARASSMENT

Even in the #MeToo era, workplace sexual harassment is far from eradicated.¹²⁸ For female reporters, this means they may be trying to raise complaints about online harassment stemming from *external* sources at the same time they are facing *internal* harassment from male colleagues or supervisors. Generally, sexual harassment occurs most often in workplaces where women are few in number and where they are underrepresented in leadership specifically.¹²⁹ In such environments, “people may chuckle over misbehavior rather than calling it out, or they may ostracize harassed women, privately ashamed of not having spoken up.”¹³⁰ Nor does sexual harassment stem from a few “bad apples.” Rather, it is a byproduct of the organization’s culture.¹³¹ Speaking up can often exacerbate harassment rather than remedy it.¹³² Nearly seventy-five percent of employees who raise a workplace harassment complaint face some retaliation, which can range from a heavy-handed termination to “subtle aggressions that can undermine a person’s security and success.”¹³³ This presents a double disadvantage for female reporters facing online harassment. Not only are they likely working under male supervisors who have not experienced online harassment, but raising the problem may result in the same types of retaliatory conduct that general sexual harassment claims often prompt.

Even when companies do fire individual harassers, this piecemeal approach is a band-aid for a bullet wound. Such steps fail to account for the “severe

127. Ordway, *supra* note 9.

128. See Mizrahi, *supra* note 33, at 121 (“There is finally broad recognition by courts that harassment is perpetrated by and against people of all sexes and genders, takes both sexual and nonsexual forms, and is often motivated by bias and hostility, not sexual desire. Yet sexual harassment persists and remains largely unreported.”).

129. See Dobbin & Kalev, *supra* note 115.

130. *Id.*

131. See Anne Lawton, *Between Scylla and Charybdis: The Perils of Reporting Sexual Harassment*, 9 U. PA. J. LAB. & EMP. L. 603, 604 (2007).

132. See *id.* (“The hazards of reporting rarely are discussed, because the law assumes that employers are objective, non-discriminating entities that do not tolerate harassment in the workplace and that employers’ and victims’ interests coincide. Nothing is further from the truth.”).

133. Mizrahi, *supra* note 33, at 125.

professional and personal setbacks” experienced by targets of harassment.¹³⁴ Further, they do not address the “underlying conditions that foster harassment in the first place.”¹³⁵ This holds true for female reporters experiencing online harassment: The problem is not one which can be solved by blocking individual attackers or only responding to issues as they arise for a particular female reporter.¹³⁶ Supporting reporters, and especially female reporters, against online harassment will require newsrooms to implement more significant structural changes.

C. THE LIMITS OF CURRENT LEGAL RESPONSES TO WORKPLACE SEXUAL HARASSMENT

While “law alone cannot create change . . . change rarely occurs without the law.”¹³⁷ Courts have signaled to employers just how little effort they need to put into general workplace harassment initiatives to remain in compliance—and how egregious the behavior must often be before the courts are willing to find liability.¹³⁸ For example, the Supreme Court held in a pair of 1998 judgments that merely providing anti-harassment training and developing a system for reporting issues could suffice to protect companies against many harassment claims, regardless of the effectiveness of the training or reporting systems.¹³⁹

Even more concerning is the “stray remarks” doctrine, which can “discount explicitly discriminatory statements.”¹⁴⁰ The Supreme Court “unwittingly”¹⁴¹ gave rise to this doctrine thanks to a concurrence by Justice O’Connor in *Price Waterhouse v. Hopkins*.¹⁴² “[S]tray remarks in the workplace,” O’Connor wrote, “while perhaps probative of sexual harassment,” do not satisfy a plaintiff’s burden when attempting to succeed on a workplace discrimination claim.¹⁴³ That concurring comment has guided courts in the two decades since to find many overtly discriminatory or sexually harassing comments to be “too far removed in time, too out of context, [or] too isolated, *as a matter of law*, to permit a plaintiff’s case to go forward or to sustain a jury verdict [finding discrimination].”¹⁴⁴ For example, in *Murphy v. City of Aventura*, a female employee detailed multiple incidents over three years during which a male supervisor hurled epithets at her, including “‘whore,’ ‘stupid bitch,’ and ‘hooker.’”¹⁴⁵ Yet the court found that the

134. See Schultz, *Reconceptualizing*, *supra* note 23, at 26.

135. *Id.*

136. See *id.* (“[S]ooner or later, other harassers will take their place—unless the underlying conditions that foster harassment in the first place are addressed.”).

137. Schultz, *Open Statement*, *supra* note 57, at 17.

138. See Nancy Gertner, *Sexual Harassment and the Bench*, 71 STAN. L. REV. ONLINE 88, 91 (2018) (“[R]emedial steps have not stopped sexual harassment in the ordinary employment setting, in large part because of crabbed judicial interpretations of harassment.”).

139. See Dobbin & Kalev, *supra* note 115.

140. Gertner, *supra* note 138, at 96–97.

141. Kerri Stone, *Taking in Strays: A Critique of the Stray Comment Doctrine in Employment Discrimination Law*, 77 MO. L. REV. 149, 149 (2012).

142. 490 U.S. 228, 277 (1989).

143. *Id.*

144. Stone, *supra* note 141, at 149–50.

145. 383 F. App’x 915, 917 (11th Cir. 2010).

behavior only amounted to a “general vulgarity that Title VII does not regulate.”¹⁴⁶ The repeated, hate-fueled messages female reporters receive online parallel the repeated, hate-fueled remarks this female employee received when harassed in her workplace. If courts are unwilling to find such in-person invective actionable, they are likely to be similarly skeptical of such missives delivered online.

The courts have been slow to find sexual harassment even in supervisor-employee or employee-employee situations. As described further in Part V, female reporters therefore face an uphill battle to prevailing where the offender is an outsider—and an outsider who, as is often the case with online harassers, may be nameless, faceless, and enjoy the anonymity of cyberspace. There is currently “little incentive” for news organizations to proactively address online harassment because the legal risks for failing to do so are low.¹⁴⁷ However, some legal avenues do remain open to female reporters pushing news organizations to address online harassment.

IV. FEMALE REPORTERS MUST CONSIDER LEGAL ACTION TO SPUR NEWS ORGANIZATIONS TO IMPLEMENT STRONGER POLICIES

The EEOC’s Guidelines on Discrimination Because of Sex state that “prevention is the best tool for the elimination of sexual harassment.”¹⁴⁸ And news organizations may be beginning to take online harassment more seriously in the wake of escalated threats against outlets and reporters of all genders.¹⁴⁹ However, “taking it seriously” is still a far cry from implementing lasting, significant changes. Further, even if news organizations collectively recognize online harassment’s outsized effects on female reporters and proactively move to address the issue, it is unlikely that total prevention can be attained. As described in Part II, online engagement brings with it the constant risk of new attacks from different accounts over ever-changing stories. That being said, news organizations must be held liable where female reporters raise issues of sustained online harassment and are not provided institutional support in addressing the attacks. Because news organizations are unlikely to voluntarily implement such policies, female reporters should look to disparate impact theory and cases finding employer liability for third-party sexual harassment to force the issue via legal action.

146. *Id.* at 918.

147. See Bisom-Rapp, *supra* note 11, at 74 (“Greater potential exposure to liability may spur employers to make changes not only to training but to transforming workplace culture.”).

148. 29 C.F.R. § 1604.11(f) (2019) (“An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.”).

149. See Follman, *supra* note 76.

A. DISPARATE IMPACT THEORY

Disparate impact theory aims to prohibit employment practices that are “fair in form, but discriminatory in operation.”¹⁵⁰ Unlike disparate *treatment* theory, disparate *impact* claims do not require a showing of discriminatory intent nor of “causation at an individual level.”¹⁵¹ Rather, the plaintiff may prevail if she can statistically establish that an employment practice had a disparate impact, and that there was an alternative practice the employer could have used to meet its business necessity.¹⁵² Disparate impact theory has been “less successful” in cases concerning employment requirements that are not explicit.¹⁵³ This could present a challenge for female reporters whose employers only “encourage” rather than require online engagement. However, female reporters who work at news organizations that do explicitly require online engagement could bring a claim under this theory. They would need to show that the facially gender-neutral employment policy—engaging online—has a disparate impact on female reporters, as a subset of employees who are part of a protected class.

Female reporters would face several challenges if bringing a disparate impact claim. First, it would not be enough to show that news organizations require online engagement and that female reporters are more likely to be harmed by online harassment: “They must show that the former causes the latter.”¹⁵⁴ News organizations might be able to argue that any online presence raises the possibility of attendant harassment, so it is impossible to point to an engagement policy as the clear cause of the instant harm. Second, news organizations might be able to meet their burden of showing that the online engagement policy is job-related and a business necessity with no viable alternative.¹⁵⁵ Establishing that online engagement is job-related would be fairly simple, based on the current journalistic practices described in Part II. And news organizations might be able to show that no reasonable alternative exists. Online engagement is now threaded into the journalism industry’s very fabric; barring a major shift, a better option will likely be a commitment to establish proactive measures—and to take reactive steps where necessary.

B. EMPLOYER LIABILITY FOR THIRD-PARTY SEXUAL HARASSMENT

Claiming employer liability for third-party harassment may offer female reporters a stronger legal option. The EEOC finds employer liability for third-party sexual harassment of employees “where the employer (or its agents or

150. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-32 (1971).

151. See Noah Zatz, *Managing the Macaw: Third-Party Harassers, Accommodation, and the Disaggregation of Discriminatory Intent*, 109 COLUM. L. REV. 1357, 1382-83 (2009).

152. See Emily Waldman, *The Preferred Preferences in Employment Discrimination Law*, 97 N.C. L. REV. 91, 109 (2018).

153. See Julie Goldscheid, *Disparate Impact's Impact: The Gender Violence Lens*, 90 OR. L. REV. 33, 36 (2011).

154. Zatz, *supra* note 151, at 1383.

155. See Goldscheid, *supra* note 153, at 45.

supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective actions.”¹⁵⁶ Third-party employer liability cases generally arise in two scenarios.¹⁵⁷ First, employees can show that an employer requirement that they dress or act sexually subjected them to customer harassment.¹⁵⁸ Second, employees can show that, independent of such dress or behavior requirements, they were subjected to customer harassment.¹⁵⁹ In the latter case—admittedly “seen by current law as more difficult to assess”—the key questions are what the employer knew and how he addressed the situation.¹⁶⁰

Employer liability for third-party sexual harassment is “grounded in negligence and ratification rather than intentional discrimination.”¹⁶¹ At least one circuit has opened the door to the concept that third-party harassment need not stem from a traditional “human” to be actionable.¹⁶² In *Dunn v. Wash. County Hosp.*, Judge Easterbrook compared an independent-contractor doctor to a macaw spewing offensive comments toward only a certain subset of hospital employees.¹⁶³ Provided the employer knew that an employee was being harassed and could address the situation “with modest effort,” doctor or bird as offender would make no difference.¹⁶⁴ “The genesis of inequality matters not,” Easterbrook wrote. “[W]hat does matter is how the employer handles the problem.”¹⁶⁵ This is a promising rationale for female reporters, who would be bringing claims involving humans potentially shielded by the anonymity of cyberspace.

The EEOC regulations consider the extent of the employer’s control over the third-party conduct, whether the employer has taken steps to address the issue, and the severity of the harassment itself.¹⁶⁶ Female reporters could argue that while control over external sources of online harassment is limited, the news organizations nevertheless invited such scenarios by pushing their employees onto the platforms with the goal of “building engagement.” Thus, they could show that the news organizations, without establishing firmer engagement protocol or responsive procedures to harassment, failed to take steps to address the issue. Finally, female reporters would need to establish the severity of the harassment. This would require consideration of which employees should bring such

156. 29 C.F.R. § 1604.11(e) (2019).

157. See Albin, *supra* note 13, at 178–79.

158. See *id.*

159. See *id.*

160. *Id.*

161. *Galdamez v. Potter*, 415 F.3d 1015, 1022 (9th Cir. 2005).

162. See *Zatz*, *supra* note 151, at 1360.

163. 429 F.3d 689, 691 (7th Cir. 2005) (“[I]t makes no difference whether the actor is human. Suppose a patient kept a macaw in his room, the bird bit and scratched women but not men, and that the Hospital did nothing. The Hospital would be responsible for the decision to expose women to the working conditions affected by the macaw.”).

164. See *Zatz*, *supra* note 151, at 1360.

165. 429 F.3d at 691.

166. See Albin, *supra* note 13, at 175–76.

claims. Those who had experienced the most sustained, vitriolic online attacks would probably fare best, as they would be able to demonstrate the extent of the harassment itself and the attendant harms.

C. LIMITATIONS TO LEGAL ACTION

Bringing claims under either of these theories is not an option for all female reporters. Independent contractors, for example, are not covered by most federal labor and employment statutes.¹⁶⁷ In the growing “gig” economy, independent contractors are becoming more common even though the actual work has often not changed from when an “employee” completed it.¹⁶⁸ Employers are increasingly turning to this “misclassification,” or categorizing workers that would be considered employees by the law as independent contractors, because it “has proven a profitable and relatively low-risk strategy for companies in an environment of vague legal standards and lax enforcement.”¹⁶⁹ The journalism industry is no stranger to the practice; news organizations looking to cut costs are also relying on freelancers more and more often.¹⁷⁰ Research shows that independent contractors experiencing discrimination often do not file suit due to their misclassification.¹⁷¹ One freelance reporter explained, “I have not reported harassment that I’ve experienced when working on stories, because I am afraid of not getting support from editors far away or losing the gig or the possibility of covering a topic.”¹⁷² For female reporters classified as employees, however, bringing legal actions may push news organizations to address online harassment—a response that could benefit all reporters when it comes to institutional support subsequently made available.

V. STEPS NEWS ORGANIZATIONS SHOULD TAKE TO SUPPORT FEMALE REPORTERS EXPERIENCING ONLINE HARASSMENT

Where news organizations do take steps—either voluntarily or as a result of legal pressure—to address online harassment—they should consider several strategies for doing so. In the most egregious cases of online harassment, legal remedies may be available.¹⁷³ Where the conduct rises to a legally actionable level, news organizations should be prepared to bring or support the journalist in a suit.

167. See Schultz, *Open Statement*, *supra* note 57, at 46; Charlotte Alexander, *Misclassification and Antidiscrimination: An Empirical Analysis*, 101 MINN. L. REV. 907, 907–08 (2017).

168. See Alexander, *supra* note 167, at 907–09.

169. *Id.* at 912.

170. See Alexia Fernandez Campbell, *Companies Often Mislabeled Employees As ‘Freelancers’ to Cut Costs. Workers Are Fighting Back*, VOX (Mar. 20, 2019, 4:30 PM), <https://www.vox.com/policy-and-politics/2019/3/20/18272918/conde-nast-epicurious-employee-freelancer-contractor>.

171. See Alexander, *supra* note 167, at 910–11.

172. See Ferrier, *supra* note 42, at 41.

173. See Alice Marwick & Ross Miller, *Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape*, FORDHAM CTR. ON L. INFO. POL’Y, 6 (Jun. 10, 2014), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1002&context=clip>.

However, most online harassment enjoys First Amendment protections.¹⁷⁴ News organizations will therefore also need to develop or refine anti-harassment training programs to encourage bystander intervention, especially and specifically in the online sphere.¹⁷⁵ Finally, news organizations are already collaborating on researching and reporting projects.¹⁷⁶ These same cooperative efforts should be applied to combatting online harassment against female reporters—potentially through access to legal advice or action, and pressure where necessary on the social-media platforms themselves. Even by implementing all of these recommendations, news organizations' female reporters will still experience online harassment. But when they do, they will be able to turn to their employers for assistance in addressing the attacks.

A. LEGAL ACTIONS IN EGREGIOUS CASES OF ONLINE HARASSMENT

News organizations may be able to assist female reporters who have experienced online harassment to bring legal actions against an offender—but most likely only in especially egregious cases. The First Amendment provides broad protection for speech, including much of that which would qualify as online harassment.¹⁷⁷ News organizations seeking legal remedies for female reporters would therefore first need to determine whether the particular attack or series of attacks utilized language that placed it in one of the “certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem.”¹⁷⁸ These “unprotected categories” of speech include “fighting words, defamation, obscenity, and true threats”—and the bar to bringing a successful action under each is high.¹⁷⁹

At least one report has found that “[t]he most successful legal tactic from a practical standpoint has been using a defamation or harassment lawsuit to reveal the identities of anonymous perpetrators by subpoenaing ISPs, then settling.”¹⁸⁰ For news organizations that choose to pursue this route, there are still a number of preliminary steps that must be taken to demonstrate that “unmasking” the

174. *Id.*

175. See Ordway, *supra* note 9 (“The women in our study . . . wanted their news organizations to take action—from deleting comments quickly to training journalists on how to deal with the abuse.”).

176. See, e.g., Joshua Benton, *With Vast Records of Police Misconduct Now Public, California News Outlets Are Collaborating Instead of Competing*, NIEMANLAB (March 20, 2019, 2:02 PM), <http://www.niemanlab.org/2019/03/with-vast-records-of-police-misconduct-now-public-california-news-outlets-are-collaborating-instead-of-competing/>.

177. Marwick & Miller, *supra* note 173, at 6.

178. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (holding that narrow classes of “lewd and obscene” speech are not protected under the First Amendment).

179. Marwick & Miller, *supra* note 173, at 7–11 (explaining that “[i]n practice, there is a high threshold for obscenity,” that “most online speech, even if it promotes violence against an individual” will not be found to constitute “fighting words,” and that “in practice, it can be quite difficult for internet speech to pass the ‘true threat’ test.”).

180. *Id.* at 7.

online harasser is warranted.¹⁸¹ Where successful, this strategy would be less focused on whatever settlement amount a news organization is able to eke out of an unmasked online harasser. Rather, the aim would be either shutting down an account especially committed to harassing behavior or demonstrating institutional support for a female reporter who had been severely harassed by a single, committed individual.

“True threats” likely present the strongest argument for criminal prosecution. It is a federal crime to transmit “in interstate or foreign commerce any communication containing . . . any threat to injure the person of another.”¹⁸² This is not necessarily limited to letters or other physical items, according to the Supreme Court’s holding in *Elonis v. United States*.¹⁸³ There, the defendant argued that because he posted his threats online, the public nature of the posts distinguished them from threats because they were not directed solely at the victim.¹⁸⁴ The Court nevertheless “recognized that the public nature of a threatening communication did not diminish the harm to the victim and that the context of a communication” could render it a threat.¹⁸⁵ The result in that case is especially promising for female journalists who receive “public” tweets or social media messages because they could argue that just like the victim in *Elonis*, the context of the communication—even if made on a public forum—still rendered it a threat directed at, and therefore harmful to, the specific female journalist.

Bringing an action based on either kind of online harassment would require an adjustment of news organizations’ underlying practices and policies. Outlets will either need to conduct better moderation of reporters’ feeds or advise female reporters to stop muting threatening accounts.¹⁸⁶ This is so that reporters and their news organizations can document the online harassment in the event that they need to work with law enforcement to either subpoena ISPs—to identify online harassers in defamation- or harassment-suit situations—or bring criminal charges where actionable threats are made.¹⁸⁷ Legal action by news organizations on behalf of or in concert with female reporters will therefore likely be reserved for especially sustained or extreme instances of online harassment. However, where the online harassment rises to a sufficiently egregious level, news organizations should be prepared to take such steps.

181. *Id.* at 12–14 (explaining how various courts consider the “well-documented First Amendment right to anonymous speech . . . before issuing a court order” to the ISP.).

182. 18 U.S.C. § 875(c) (2018).

183. 135 S. Ct. 2001, 2007 (2015).

184. *Id.*

185. Teresa Garvey, *Keep Calm and Understand Elonis v. United States*, 25 AEQUITAS: STRATEGIES IN BRIEF 1, 4 (2015).

186. *See* Petersen, *supra* note 56 (explaining that authorities advised a female reporter who used to block or mute online harassers to cease that practice, because otherwise she would not actually know when the harassment rose to an actionable level).

187. *See id.*; *see also Documenting Online Harassment*, PEN AMERICA, <https://onlineharassmentfieldmanual.pen.org/documenting-online-harassment/> (last visited Sept. 17, 2019).

B. REFORMING EXISTING HARASSMENT TRAININGS

Research shows that go-to harassment trainings currently used across industries are largely ineffective.¹⁸⁸ Employees may be expected to complete an online training, where they review anti-harassment material and then take a quiz on the information at the end of the interactive session.¹⁸⁹ Other companies utilize in-person trainings where a human resources specialist or even independent employment-law attorney will lead the session.¹⁹⁰ The problem with each option is that the material and message is one of liability avoidance—not of how to shift a workplace’s culture and its employees’ conduct.¹⁹¹ In fact, research shows current sexual-harassment training methods used may actually worsen men’s attitudes toward harassment “by amplifying pre-existing gender biases.”¹⁹²

News organizations could throw up their collective hands and stick to the status quo, since requiring trainings has proved largely sufficient to escape liability.¹⁹³ However, the research does not find all training doomed to fail.¹⁹⁴ Newsrooms can look to alternative methods such as bystander intervention training for lessons on how to increase buy-in and accountability from female reporters’ colleagues and supervisors alike.¹⁹⁵ “Bystander intervention training,” which has long been practiced by educators with positive results, focuses not just on teaching individuals to “recognize potentially problematic behavior,” but also to feel “a sense of collective responsibility” and “empowerment . . . to intervene as appropriate.”¹⁹⁶ In a news organization, employees could be taught to take a few minutes each day to check in with each other and with colleagues’ online feeds. Where those check-ins raised issues of online harassment, employees could encourage the target to speak with a supervisor, perhaps offering to accompany the target if she feels uncomfortable doing so on her own.¹⁹⁷ Research shows that targets of

188. See Claire Cain Miller, *Sexual Harassment Training Doesn't Work. But Some Things Do*, N.Y. TIMES (Dec. 11, 2017), <https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html>.

189. Rhana Natour, *Does Sexual Harassment Training Work?*, PBS NEWSHOUR (Jan. 8, 2018, 4:06 PM), <https://www.pbs.org/newshour/nation/does-sexual-harassment-training-work>.

190. *Id.*

191. See Josh Israel, *This Is Why Workplace Harassment Training is So Ineffective*, THINKPROGRESS, (Jul. 25, 2018, 8:00 AM), <https://thinkprogress.org/employers-do-ineffective-workplace-harassment-trainings-94719a49f911/> (Current methods “‘train you on the law and the employer’s policy. It does not and cannot at all train or educate you on what fosters or facilitates this type of conduct and/or what type of workplace doesn’t allow for this type of conduct.’”).

192. Rebecca Grant, *Why Do Employers Keep Providing the Same Ineffective Sexual Harassment Training?*, QUARTZ AT WORK (Jun. 19, 2019), <https://qz.com/work/1647165/why-is-sexual-harassment-training-so-ineffective/>.

193. See Dobbin & Kalev, *supra* note 115.

194. See Cain Miller, *supra* note 188.

195. *See id.*

196. Transcript, EQUAL EMP. OPPORTUNITY COMM’N (June 20, 2016), <https://perma.cc/B6UB-7D3S#vote>.

197. See Cain Miller, *supra* note 188.

harassment “often feel isolated,” so the simple step of speaking about the problem may provide significant support.¹⁹⁸

Even if female reporters feel heard and supported by colleagues, their first point-of-contact in an online harassment case will likely be a male supervisor. If that experience is a bad one, it will stunt efforts to address the instant complaint, and it could deter others from coming forward with their own online harassment reports. Accordingly, news organizations should ensure that male supervisors are included in bystander training. Initial steps supervisors could take are concisely laid out by one journalist: “Don’t try to fix the situation in the first conversation . . . Ask questions instead. Assure them that you’re there for them, validate their experience, practice nonverbal listening and then set up another time to talk to them soon.”¹⁹⁹ Developing male allies will be key, because there is not going to be an overnight gender-shift in leadership roles, and “[i]n order for an employer to remedy harassment, the victim of the harassment needs to report it.”²⁰⁰

C. COOPERATION BETWEEN NEWS ORGANIZATIONS

As many news organizations struggle financially,²⁰¹ legal action or revamped trainings are likely to be considered non-starters. Yet sexual harassment costs companies an average productivity loss per year of \$22,500 per harassed employee.²⁰² That figure should spur every news organization—financially struggling or not—to double down on reforms. One potential reform is cross-corporation collaboration. News organizations are already pooling financial and reporting resources to tackle complex, challenging stories and to expand the resulting reach of that work.²⁰³ Two recent examples—the Panama Papers and the Paradise Papers—resulted from newsroom collaborations that “crossed country boundaries as easily as the offshore money they covered.”²⁰⁴ At a more local level, a cohort of more than 30 California news outlets is working together to secure, review, and report on police misconduct in the state.²⁰⁵ These same strategies could be applied to address online harassment in several ways.

198. *Id.*

199. Grau, *supra* note 88.

200. Nicole Buonocore Porter, *Ending Harassment by Starting with Retaliation*, 71 STANFORD L. REV. ONLINE 49, 51 (2018), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/06/71-Stan.-L.-Rev.-Online-Porter-1.pdf>.

201. See David Bauder, *In Era of News Deserts, No Easy Fix for Local News Struggles*, ASSOCIATED PRESS (Jan. 16, 2019), <https://www.apnews.com/539c32056a3646019b36e886249f7b1b> (“U.S. weekday newspaper circulation is down from 122 million to 73 million in 15 years. The number of working newspaper journalists has been cut in half since 2004. Nearly 1,800 daily and weekly newspapers have been lost in the same period.”).

202. See Chelsea Willness et al., *A Meta-Analysis of the Antecedents and Consequences of Workplace Sexual Harassment*, 60 PERSONNEL PSYCHOL. 127, 151 (2007).

203. See Benton, *supra* note 176.

204. *Id.*

205. See Tom Jones, *Collaborative Effort Involves 33 Newsrooms*, POYNTER (Mar. 20, 2019), <https://www.poynter.org/newsletters/2019/collaborative-effort-involves-33-newsrooms-cleveland-com-files-suit-denver-wants-to-take-it-back/>.

First, news organizations could pool their financial resources to retain legal counsel that would be available to any reporter from the participating organizations experiencing online harassment. Such counsel might provide legal assistance in securing protective orders or taking other action where the harassment has risen to a significantly threatening level. Conversely, this legal counsel could focus on developing workable procedures and effective trainings for the participating organizations, taking considerations unique to the particular organizations into account.²⁰⁶ Second, news organizations could develop the same types of review-repositories for online harassment that they are using for collaborative reporting endeavors.²⁰⁷ Such repositories could allow reporters experiencing online harassment to submit the name of the offending account, content of the message, and other related information regarding the attack. Many online harassers are serial offenders, so a repository of this type would allow news organizations—and law enforcement if necessary—to track accounts carrying out sustained attacks.²⁰⁸ Once such accounts were identified, the news organizations would also be able to provide that information directly to the hosting social media platforms.

While social media platforms do have the ability to block accounts, they are neither consistent nor prompt in taking action.²⁰⁹ Further, Section 230 of the Communications Decency Act²¹⁰ gives ISPs—including social media platforms—sweeping immunity from liability when they choose not to “remove content, delete user accounts, or discipline harassers.”²¹¹ As a senior police officer told *TIME* in 2016, “[i]f they feel like someone’s life is in danger, Twitter and Snapchat are very receptive. But when it comes to someone harassing you online, getting the social-media companies to act can be very frustrating.”²¹² One reporter or even one news organization advocating for such a step might lack the standing to convince the platforms to act. However, a cooperative providing information on the sheer number of offending tweets, comments, or messages could provide corroboration for the complaints, draw the issue into the public consciousness, and underscore the seriousness of the matter.

206. See Cain Miller, *supra* note 188.

207. See Jones, *supra* note 205.

208. See Cale Guthrie Weissman, *Facebook’s New Tools Make It Harder to Be a Serial Harasser on the Platform*, FAST CO. (Dec. 19, 2017), <https://www.fastcompany.com/40509800/facebooks-new-tools-make-it-harder-to-be-a-serial-harasser-on-the-platform>; but see Charlie Warzel, *Twitter Is Still Dismissing Harassment Reports and Frustrating Victims*, BUZZFEED NEWS (Jul. 18, 2017, 4:39 PM), <https://www.buzzfeednews.com/article/charliewarzel/twitter-is-still-dismissing-harassment-reports-and>.

209. See Warzel, *supra* note 208.

210. 47 U.S.C. § 230.

211. Marwick & Miller, *supra* note 173, at 7, 14–15 (noting that the CDA does not protect ISPs from prosecution for violation of federal criminal laws).

212. Stein, *supra* note 39.

CONCLUSION

None of the recommendations proposed in this paper are assumed to be magic bullets. While online harassment shares many of the hallmarks of offline workplace sexual harassment, it does present new challenges, especially the fact that the perpetrators are more often external to the companies. Further, the frequency and focus of online harassment directed toward female reporters will make eradicating attacks nearly impossible. However, news organizations appear committed to requiring—either officially or unofficially—their reporters to engage online. If that remains the case, they must implement or improve proactive and responsive policies and procedures to deal with the inevitable online harassment that disproportionately affects female reporters. Because news organizations are unlikely to take these steps without external pressure, female reporters must be prepared to bring legal actions to force the issue. It is a tall order, but a necessary one. Otherwise, these news outlets may very well read about their own inaction in the next front-page story.