

THE HISTORY & FUTURE OF SEXUAL HARASSMENT PREVENTION

Panel Discussion with Mary Bennett, Randy Stephens & Marcia Narine Weldon

[00:00:06] Mary Bennett: Greetings to everyone listening in to this 60 minute panel discussion today. We will be talking about the important and really timely issue of sexual harassment in the workplace. My name is Mary Bennett and I'll be your panel moderator. I'm president of Right Compliance Consulting, and I'm a former vice president of Ethics and Compliance at Caremark Healthcare. In total, I've worked in the GRC space and doing consulting for over 20 years. Joining me today are two expert panelists.

Each with their own unique perspective on this truly valuable ethics issue. First, let me introduce Marcia Narine Weldon, lecturer in Compliance and Governance and Law at the University of Miami. Formerly, she was a writer aside president and deputy general counsel, as well as vice president of Global Compliance and Business Standard and Chief Privacy Officer. In 2012, she was appointed to the federal Whistleblower Protection Advisory Committee. Thanks for joining us today, Marcia.

[00:01:07] Marcia Narine Weldon: Thanks for having me.

[00:01:10] Mary: Our next panelist is Randy Stephens. He's an independent consultant and former vice president of Ethics and Compliance, and he's also a lawyer. He has worked worldwide in roles with legal and compliance responsibility for over 30 years. His in-house compliance experience includes home depot, family dollar and U.S. food. Thanks to you as well, Randy, for joining us.

[00:01:33] Randy Stephens: Glad to be here Mary, Marcia.

[00:01:36] Mary: To learn more about our panelists, you can read their full biographies posted in the instructor window of your screen. This session is much like a podcast and that we will not be advancing from the current slide on your screen. Feel free though to submit questions during this session, and we will try to get to them if we have time. Let's start our conversation by asking a question about the root cause of the current intense focus on sexual harassment in the workplace. Let me start with Marcia. Why has the issue of sexual harassment in the workplace erupted so dramatically now after so many decades of being ignored or marginalized? What do you think?

[00:02:18] Marcia: I think the issue is always been here. All of us on the phone have been doing this work for a while. I have been doing Employment Law, in the defense side for over 20 years. But what's new is the level of awareness and the willingness of people that come forward and the high level of terminations and resignations with which you often see in the newspaper as quote, improper conduct.

In **[unintelligible 00:02:39]** that allegedly happen years ago while I sided in the Statue of Limitations. I don't think that there's necessarily more incidents. There's more willingness to report. After the **[unintelligible 00:02:50]** movement and the high profile, exposes directors such as Hobby Weinstein. Then logos such as the **[unintelligible 00:03:01]** head of the humane society.

Yesterday, I think they all used five headlines from high-level executives that either resigned or were terminated because of allegations of improper conduct. We're staying a steady stream of it in the newspapers, not just here but around the world. In Brazil, they had their Me Too signs, obviously within Portuguese. So, you're seeing it coming around the world and so this is the time for companies to really evaluate what they're doing and what's worth and what's not.

[00:03:34] Randy: Yes, this is Randy. I want to say after that too. A lot of it is with the new opportunities for people to report outside of the surge traditional command that control environments too now with social networks. I know we're going to talk about some of those things later, but that also, I think, gives people a little more comfort and also opportunity to operate.

To add onto Marcia's point, I saw something. Yesterday, or day before, saying about, just the last couple years, over 68 CEOs, executives, elected officials and other people, mostly male, have resigned or have been asked to leave their company. Definitely a headline in the issue and I think that helps together some critical mass when you're saying things like that too.

[00:04:28] Mary: Well that's exciting to hear of it. It's such a ground flow support for addressing the issues now. Just to get a more perspective on the issue, what are the consequences to organizations if they have a level of sexual harassment going on? Marcia you want to start off?

[00:04:47] Marcia: Sure. I think we all are aware of the used legalities that you could have for lawsuit. But many of the things we've been seeing in the past few months haven't even been lawsuits. They've have been allegations or, possibly, demand letters from **[unintelligible 00:04:59]** council that you may not be receptive. What that means is companies will have considerable legalities for investigation. Especially, if it's a high profile executive and the senior management and boards will demand more of those before they let a high-level employee go. Companies also-- so we have reputational issues to address. Will workers want to work for a company that has a reputation for not caring about its employees?

Once these harassment allegations come forward, especially if there are multiple accusers, sometimes companies will learn about more allegations about cultural generally, pay and gender equity issues specifically. The lawsuit might be the listening issue because it looks like many of these companies are trying to resolve things before it happens. What that might mean is changing out people in the organization who are long **[unintelligible 00:05:50]** well regarded employees that may have to leave and that leads to all kinds of other questions about succession planning and other kind of things that we could talk about later on.

[00:06:02] Randy: Yes. I also think, keep in mind, some of these allegations can be criminal as well. While there are allegations as yet unproven, from a reputational standpoint very difficult to have a high ranking official on your organization under indictment or also being looked at outside of the workplace issues and trying to run the organization. Marcia, also, what about the sense of a lot of these allegations are people never coming forward from 30-40 years ago to-- What consequences do you see in a workplace there, with again the statute of limitations for most of these so I have to ask--

[00:06:46] Marcia: Sorry. You made a great point. The statute of limitations will have pass. Companies have to sit there and think about what do we do with the allegation if it's one allegation of something that may have happened 10 years ago, what action do you take? What if it was something that was not corroborated but now you're finding out that there were several allegations against the person from years ago that HR didn't take care of or could not corroborate?

How do you address those? The companies need to think of not only what are the legal consequences but how do you comport with your mission statement or your core values if you don't look at those issues. That's a conversation that HR, legal and senior management need to be having to figure out what do we do with these allegations. How does that affecting discourse and fitting model employee with no allegations or complaints for 10 years and now something comes up from 11 years ago, what do you do?

I can't say I really have the answer for that to the case by case basis. As we're seeing in the press, many of the allegations that have come in forward are allegations that were raised years ago. Or were not raised years ago but happened years ago. Then you're out of the legal realm and you're more to the ethical there. I know that in average have done some great work on not being able to delegate ethics. This was probably a very uncomfortable difficult conversation that company should be having.

[00:08:11] Mary: Then there's always consequences to the individuals that work there. It's not just the victims who suffers, they can be other people in the workplace. Do you have comments on that?

[00:08:24] Marcia: Yes, I think we have a number of people and we--

[00:08:30] Marcia: You have a number of people that can be affected because you have the accuser, you have the accused who may or may not actually be liable or jokey of their harassment. There may be some gray areas or misunderstandings or the allegation's not corroborated. Companies also have to think about do they repair the workplace when the accused stays on?

While the accused stays on because they are not terminated but they've been disciplined in some other way and the accused and accusers still work, the bystanders, the people that may see the harassment and may not know what to do about it. When those investigations going on, it leads to a lot of uncomfortable questions. There are a lot of things that the companies need to think about in terms with how to deal with things during the investigation and during the aftermath.

[00:09:23] Randy: Well, I think you may also see some taking of sides within the organization. I think Marry deck of-- that was reviewed earlier also talks about some of the impacts on the organization from the standpoint of, like Mary, you said productivity, some other issues. There are some real consequences, not just a bit sort of emotional and cultural elements of an organization but also the bottom line outside of the fined penalties, reputational type damage, but real impact to the workers who're still there on sight.

[00:10:01] Mary: It seems like this issue is very timely because it is impacting the bottom lines of many organizations. Randy, let me ask you this. The reaction of many organizational leaders that I had heard from has been paralysis because they fear saying or doing something wrong in response to the issue. How would you advise them to take action?

[00:10:25] Randy: Yes, a couple of things. I come at this from the standpoint more of a compliance officer than a former recovering attorney in the role I play in any organizations. I think, whether sexual harassment or anything else, one of the things that needs to happen is that people need to plan in advance.

As an organization, if there are no allegations or major issues confronting their organization now, the leadership and people in the organization should sit down and say, "What are we prepared to do if something comes up? Are we doing the right things to make sure that we're finding out what is happening in our organization?" Have a plan of action as to how to respond. Also, bring the issues out in the open and acknowledge current headlines with your employees.

As a leader in that organization, I would tell my leaders to explain the company's position and the survey activities and actions that they're taking to investigate, to make sure that's not the situation in that company. I encourage employees to be vigilant, ask questions, and report if they see anything. Let them know that you do want them to do the right thing and that you do want them to report.

Then put them on the, again, the compliance side from the standpoint of taking some specific actions. One of the things to do is update, if appropriate, company policies and practices that can deal with the realities of the day. Many

companies are finding out that they're dealing on this issue by applying policies and procedures which, in many cases, were drafted or last updated decades ago and don't necessarily address today's workforce and cultures.

Bring those back to life. Make sure they apply and/or tools that can be used and that those are then communicated to your employees as well and that they know how to use them. I recently saw a market watch report that was published by Dow Jones of a hiring firm called Challenger, Gray & Christmas. I may ask quite a large number of companies what they were doing. Only a third of the company said they felt compelled or had any interest in even reviewing and updating their policies.

Of this small one-third, only a quarter of this one-third ever even did anything and I suspect a lot of companies are sitting out there with old policies and procedures that really probably are not going to be able to be used and operationalized in the event something happens.

[00:13:07] Mary: Okay. Marcia, let me ask you this question. What about the role of the board of directors? Should they be doing something to prevent and address sexual harassment in their organizations or are they in a different role where management needs to take care of that, they don't have any responsibility in this area? What do you think?

[00:13:28] Marcia: In the past, I think a lot of boards used to think that and there may be many boards who would think that. A lot of companies are probably looking at what's going on in the newspapers and saying, "That could never happen here." I was actually speaking to an executive of a Fortune 500 company with over 200,000 employees in the world and they said, "That stuff doesn't happen here," which by definition is, could not be true.

Board members now need to demand updates on compliance with equal opportunity laws in the policy. In the same way that they get updates from the head of compliance out of legal on regulations such as the former care package plan, the money laundering, or other laws that regulate their industries. They should be asking for the kinds of reports that don't just go through hotline statistics because as we know, many hotline complaints are actually employee relations related, but also asking for specific examples of investigations that went on, what are the corroboration rates are.

They should be getting into the nuts and bolts. For a while, to at least, to show that they care about it. They should also ask about the candidates that are being brought before them when it comes to succession planning in terms of who's going to fill the next levels of executive leadership. They should find out whether those individuals have had past investigations into improper conduct that either were a corroborator or maybe not properly investigated because they want to ensure there's no skeleton.

They don't want to have situations where they promote somebody to a very high level and then find out that there are a trail of lingering doubts about that person's fitness for the job. They should also think about the bonus and incentive programs. What's the behavior that they're rewarding? Do their bonus and incentive and promotional programs properly reward good behavior and more importantly, penalize bad behavior because what gets measured, gets treasured.

[00:15:25] Randy: I think, just to add on there is a thought, talk to the HR compliance folks. One, make sure they have the resources that they need to do what is necessary in the organization around training, around investigations. Make sure that they're doing what really needs to be done. This doesn't necessarily mean to overreact and start running traps and things around everybody in the organization, but to make sure doing something reasonable and they're documenting that.

Also, depending on the organization, if there have been instances in the past where things came up and they were kind of brushed aside, you may want to look back at those who are gathering. It's not just a forward-looking proposition with the meeting movement and a lot of things were seen, people coming forward again from claims that have allegations from years ago as well. Don't get blindsided as a board with your executives or your leaders surrounding those issues.

[00:16:31] Mary: I'm going to ask you both one question, just that comes to mind at the moment and that is the issue of bans specifically in a lot of workplaces saying "Have I done harassment in the past? Have I harassed a woman? Have I done something where they're going to come after me later?" Do you want to respond to that? There's this free-floating anxiety that I'm hearing about where-- that I'm worried that maybe somebody's going to come and alleged something against them that they don't even remember anymore. Do you have any advice on that? Let me start with you Marcia.

[00:17:07] Marcia: That's one of the things that's really important. My old company used to do a training on a number of employment law issues but the issue they got the most discussions with the role play that we did on what might be perceived to be harassment, whether it's racial harassment or sexual harassment or other kinds of things. That's where the conversations often start up with. I was talking about certain things and giving you examples. Many of the women feeling empowered for the first time to chime in and say, "Yes, that's going to be a real problem. That's offensive."

The men having no idea, I think most men know what the clear lines are but there are some gray areas. I often would tell them, the men, "Here's how you know. If you don't want somebody to say or do it to your sister, your mother, your wife or your girlfriend, then don't do it to somebody else. That's how you can do your gut check to know that there's something wrong." That actually provides a lot of clarity for some people because they all know, whether it's something that would make them very angry if they heard about it.

The other thing is that, when it comes to possibly looking at training and redoing training, sometimes online training is excellent but doesn't expound the penalties of nuances across. I heard of an episode just this week where a company provided some trainings and an employee came forward and said, "I didn't realize that I had done something wrong." That employee reported themselves to HR and then went and talked to the person that they had actually caused the problem with who had not complained and said, "Hey, I just took this training. I now realized I may have been out of line and I'm sorry about it."

That's really the kind of story that you want. That's the success story that the training can say, "Hey, this is something that you may be doing that you may not admit to doing." In turn, that gets into some other gray areas, not necessarily the clear steep idea you'll be fired or the 25 comments that are clearly inappropriate and sexualized and offensive.

[00:19:04] Mary: Randy, do you have a comment?

[00:19:06] Randy: Yes. I would say in two other thoughts, one being-- One of the other things you're also starting to hear a lot now. I agree completely with what Marcia said. Also, a lot concerns from men around the backlash. Right or wrong, you're just going to see some pushback or people using this as an opportunity to do some more subtle things as well by saying, "I don't want to be alone with a woman in a meeting or travelling." You got to make sure that everyone in the organization knows that, that's not acceptable either because you might be harming the opportunities for members of the opposite sex.

Again, the point of this is if it's not purely while majority of reports are male-on-female harassments. There can be some reverse of this too. Not to completely lead that off the table. I think making sure that people recognize that there should not be unforeseen consequences of a reaction or an overreaction to this movement to which also can form opportunities for-- particularly for women.

[00:20:19] Marcia: Let me just add one thing to what Randy said

[00:20:22] Mary: Go ahead.

[00:20:23] Marcia: The backlash issue is really important. What I worry about is exactly what Randy said, the overreaction where women may actually be unintentionally denied certain opportunities because men are too afraid to go on the business trip with them, or have dinner with them, or be in the office alone with them because they're worried of how complaint may arise. Those women may be deprived of valuable opportunities for mentorship, promotional opportunities, stretch assignments etcetera. Some companies have to be very careful on how they navigate those waters.

[00:20:58] Mary: Good point. We talked a little bit just now about subtler types of harassments. Randy, we know that there are certainly some things out there that are clearly across the line, requests for sexual favors, sexting, that kind of thing. What other kind of behaviors might be more subtle and might not even be considered by employees to be harassment? For instance, negative behavior based on gender roles?

[00:21:27] Randy: I think that's one that in particular interest to me and it may not rise to the level of legal harassment under the EEOC definition, but certainly it can set the stage for other things that can go further and can be harassment under EEOC or ultimately legal criminal harassment. When I see an organization that I worked in is--. I go way back. Sometimes I've changed a bit but there are often things and you shouldn't be afraid to talk about institutional, or cultural speed bumps, or barriers.

I told organization, look at things with fresh eyes and in terms of how your organization is structured. Some of the more cultural things that occur internally are those sending signals about whose job is valued, or certain expected gender roles. Eliminating some of these what I call unconscious gender biases. Some people can't spot at these but I certainly think that they're important.

Things like the potlucks, or monthly birthday parties, thanksgiving celebrations, these things that happen at large and small companies. Many of those cases women are often assumed to be the organizer, they bring the dishes, they bake the monthly birthday cake and it's just an assumption there. While some people may enjoy that and may wholeheartedly embrace and volunteer for some of these things, again, if you're seeing that in the organizations, it may be sending an unconscious biased signal.

These are some of the subtler things. As Marcia said, if someone rejects your sexual advance and as a result of that they get fired or demoted, that's pretty obvious. I think most people are sophisticated enough now to realize that is a problem, but some of the smaller or more personal things that can go on, are a little more insidious and harder to always draw a bright line as ton. Look at some other things in your organization that may be triggering some unconscious biases as well.

[00:23:52] Mary: It sounds like Marcia does not have follow up, which is fine.

[00:24:03] Marcia: I have nothing new to add to that. Nothing new to add

[00:24:05] Mary: Okay, you said it all. Probably people on this call are going through their minds in terms of the workplace behaviors that might be based on gender roles that are unconscious behavior, so, there's a lot to chew on with that one Randy. These days especially among younger workers, there may be relationships between coworkers that spill over into personal time, and often times sexual banter jokes can be involved in that. Marcia, how do you draw the

line between being colleagues at work and friends outside of work, and should organizations think about implementing a zero tolerance policy for instance against patronization? What do you think?

[00:24:47] Marcia: I have some concerns about zero tolerance policies against patronization because I don't think people are going to be able to enforce them. A large number of people meet their spouse at work, if they don't meet them online. Many have office wives or office husbands, they spend 10 hours a day with that person. You also have a number of different generations in the workplace. That's where you might have some complication because where some people may say something that's appropriate, some may find them to be completely offensive.

This is another reason why companies need to retool their training and look at whether it is the same old train that came out years ago after **[unintelligible 00:25:28]** or whether it's something that really resonates with the five different generations in the workplace. The people that have grown up in the age of tender free online porn, social media, the employees that went to colleges were even before orientation they had training on no means no, and yes means yes, and those kinds of things.

You have those people also work with people that have been working in a workplace where it was no big deal to call somebody honey, baby, sweetheart, and etcetera. Those are the things that you need to look at. Again, if you put a No patronization policy in place, you can have a number of people that will say, "I spend 10 hours a day here, where else I'm I going to meet somebody?"

Obviously, you want to have the policies that betterment relationship between a supervisor and employee, and even people where they have the ability to influence promotional and pay decisions. In other kind of things, you may want to broaden those policies. I think a zero tolerance policy gets part of an organization, it's going to be difficult to enforce. I remember a few years ago, and I've seen some questions about why this should come back, the love contracts and people sign contracts at work, I think that's a bit ugly oddly as well.

[00:26:42] Mary: Using which gift, Randy?

[00:26:46] Randy: Again, you need to have as much clarity as you can. Policies can only go so far in this arena, because it's very difficult what's acceptable to one person, what may be comfortable for one person, may not be for someone else. It's very difficult to get to it at a policy level with respect to particular actions. So much of it goes back to personal responsibility. The whole thing we're talking about here is you can't delegate ethics, and this is an area that's a great example of that.

I agree with Marcia, zero tolerance policies are often just a failure waiting to happen. I'm seeing it not be very effective. People are going to interact, some of these relationships are going to happen. In many cases if people act properly and act as adults, they can have no effect on the workplace that's negative. They're always dangerous though because some people are always going to be concerned about whether someone is being promoted or moving up the chain based on their skills, or based on other factors.

The other thing about this policy matters too. It's also what's confusing for some people is, while people may have been perfectly comfortable with certain actions, consent can be withdrawn at any time too. This gets a lot of people in trouble. If someone was accepting or consenting to certain activities and then changes their mind, they get a new boyfriend, girlfriend, they get married, whatever the change, there's some change of some reason that they're no longer going to do that.

If the person who is pursuing the target, doesn't understand that or doesn't respect that promptly, then, that's going to cause some problems to you. You can also address some of those things. Again, make people understand what their responsibilities are, the things that give people an understanding of how to clearly say no if they're comfortable doing that and that often resolve the issue. You can talk about that in your presentation I think that's a good point to make. Zero tolerance policies are just tough to enforce.

[00:29:20] Mary: I think it's interesting to think about the ongoing relationship situation that you referenced Randy, where it was yes yesterday, and today I don't want the same behavior to continue, how is the other partner going to know that? There's a subtle interplay between human beings as we all know, but does somebody have to always say, "I want to tell you a joke, is it okay today?" I struggle with that in my head. How would that dynamic play out? Any advice, any perspective on that?

[00:30:00] Randy: I think the harder one is if you had a relationship. You clearly had some sort of relationship and that relationship is broken. I think it's smart for people at that point to have a conversation. It's going to be a little awkward with the office after this. Let's all agree this is how we're going to handle it. You use your words. If something is happening or someone saying something or doing something to you even though it was behind the porch. I think you can say, "I realize I may have sent some confusing signals or conflicting signals here. In the past I would have been fine with that but now I'm a little uncomfortable with it. Let's rebalance the lines."

To the extent you can, just say that to the person to her face and that she was going to resolve it. If not, if they continue or they ignore your words, then ultimately you have to take it further. Report to a supervisor or manager or someone else. I think you've got to make your wishes clear. You've got to remove consent from the situation if you had given consent in the past particularly if you had given clear consent and were participating. If you had just ignored things in the past and it got to the point now where you just can't ignore it anymore that's a little different but if you were going along with it, you've got to, at some point, make up, draw a line on the sand.

[00:31:31] Mary: Do you have any thoughts on that Marcia?

[00:31:33] Marcia: No. Once again, Randy had said it all.

[00:31:38] Mary: Randy's very thorough. Randy, what can be done to motivate and help victims of sexual harassment, feel more comfortable speaking up to an internal resource? We know that there's a lot going to the EEOC but what can we do to make them more comfortable reporting internally?

[00:32:03] Randy: I think reporting tends to show that most people when they do report something are more likely to go to a manager or supervisor so long as the manager or the supervisor's not the issue. One, is you've got a culture where there have been problems in the past that you've got to be working on changing that culture. This is hard, culture change is hard and it takes a little time but definitely some things you've got to work on to make it clear. I think training and awareness of what to look for, how to report it, make it meaningful, make it not just a check the box exercise.

Marcia's early point, there are some people particularly high ranking officials, people who could really put the company in a high risk of reputational damage. Making sure that maybe some of those trainings are conducted face to face where people have chance to ask questions but also then coupling that with online training, where a lot of people can get information, that's simple and can be communicated consistently across the organization. Most importantly, Marcia, you also referred to this earlier as well but non-retaliation is the most critical alibi.

If someone reports in good faith, an issue of harassment, and then they become further harassed or retaliated against in clear ways or more subtle ways like add assignments or just getting ostracized from groups they used to attend, that is going to shut down that reporting and that's the last thing that an organization wants. You want people to feel comfortable. One, knowing what is correct activity or prohibited activity and what is not and then being able to report that. Ultimately, and this is the one that can be a little controversial. I think it's helpful particularly from an internal prospect to let them see results. Put out reports of activities that took place.

An allegation came in, it was either-- it was investigated and this is what came out of it. That actions were taken against people who were found, after the investigation, to have been a harasser. A lot of labor employment attorneys push back on that sometimes being concerned about putting things out there that may be discoverable obligation or whatnot but I think that's one thing that really sends a signal to the internal people. That things happen as a result of a report. Again, in good faith and that-- Sometimes things don't because people misunderstood or really it could not be proved.

I think it's a great way to get information out there and show that there is an effect of misbehavior.

[00:34:55] Mary: What about the idea that designated resource for victims to utilize for reporting sexual harassment internally. For instance, someone within the HR group is the person to go to. Have you heard of that or do you think that would be a good thing to implement in organizations where there's a high level of fear reporting?

[00:35:19] Marcia: This is Marcia. I have some concerns about that for a number of reasons. First of all, there shouldn't be- everybody in HR should be the kind of person that their employees feel free to go to. To have a sexual harassment HR person, to me, is problematic because they should all be qualified, open, respected, trusted as being able to be accountable and being able to conduct an investigation. Second of all, in spite all of the attention on sexual harassment, and many employees, sexual harassment is not the biggest area of harassment. It could be racial harassment. It could be age discrimination. It could be retaliation.

I worry by saying that Marry is the sexual harassment HR person that is different. That makes sexual harassment at a different level when you could have more places with nuisance and there's not a race harassment person. That would be a concern to me. I do want to add one thing to what Randy said in his other answer, which is another thing to really get a **[unintelligible 00:36:30]** there's, to feel comfortable, the victims to comfortable is to fire early and fire often which is why I used to tell managers, "When you know that somebody's a problem. Fire them."

Fire people when you have to fire them. Assuming that you have the corroborated well done, thorough, not rush to judgment investigation because when people get fired, people see that as the way they see the superstar get fired. That brings a lot more creditor in a program, then you won't need necessarily a sexual harassment HR person.

[00:37:05] Mary: Okay. Thank you.

[00:37:06] Marcia: That works.

[00:37:11] Mary: Randy, do you have a comment?

[00:37:13] Randy: Yes. I was just going to say- I wasn't sure Marcia was finished. I had authority on the ombudsman too. One of the problems are designated person for sexual harassment. I agree completely that you don't want to set this up as a special tier of concern separate and apart. In an organization maybe if you've had a significant amount of issue for an intervening time or something, you certainly may want to raise the level of that awareness and resources that you're applying to addressing harassment. In general, I think you want to keep it on a level playing field.

If you have that one person, then there's always the risk of that person's out, they're on medical leave, they leave the company, they take with them a lot of that information. Let me also be a sense that that person may not be completely neutral in all situations. Part of what really makes all of this meaningful, again, and we talked about it a little bit in the beginning but I think so much of it is the leadership of the organization, being vocal about expectations, being vocal and regularly having a conversation about harassment as well as other things. I think Marcia makes a great point here is that don't just over-emphasize the sexual harassment issue.

When they are walking the law and talking the talk and they are serving as role models and that they're making it clear to Marcia's point that no one in the organization is above retribution or any other remedies if any of these happens. That's what's going to really ultimately send that signal. Everybody in the organization should be prepared to handle it.

[00:39:12] Mary: Thank you. Earlier in this panel, Marcia did mentioned the importance of training and making sure that training was appropriate. A majority of organizations have had sexual harassment policies and training in place for some time but unfortunately, the issue clearly has persisted. Marcia, let me ask you, how can policies and training be improved based on where they need to be from where they are today?

[00:39:42] Marcia: Both of us have alluded to this before, but really trying to figure out whether your training actually works and whether you've been very old training or training that leaves your employee base where they are, one of the things that you can do is have focus groups and employee surveys to say, "Does this training resonate with you? This training resonate with your experience?" I know we used to go out in the field when we trained managers of warehouse workers, the training was finally different than it was for our managers of our finance people, because we used examples that was specifically resonate with what they might see in the workplace. That's what made it particularly effective.

Think about also doing bystander training, making sure that people that see what's going on know that they can report and they should report. Many people that are going to see harassment is often than secret, but sometimes it's in plain view. People know and people see things but they may say, "If she is not going to report anything, or he's not going to report anything, why should I get involved? I don't want to get in trouble. I don't want to get retaliated against." Have some specific training for the rest of the workforce and say, "This is what we want you to do if you see it. We want to hear from you, you're not going to suffer from retaliation." I think you asked about training but I don't remember if you asked about policies as well or just the training.

[00:41:06] Mary: Policies as well. Policies and training.

[00:41:08] Marcia: Again, making sure that the policies are relevant and timely but also thinking about-- Let's say you look at all your policies and they're appropriate, think about how those policies are communicated. Is it just in the annual or every two year harassment training that's online, or can you have the operations managers and non HR personnel repeat and reinforce these messages? Randy mentioned something about this before.

I used to work in a company where no matter what department you were in, you started every single meeting with a safety message. There's something to be said for maybe HR or legal, put it together in some bullet points, that just in five minutes can say, "Hey, I just want to make sure you guys know that XYZ happened in another company, this is what you should do if you see that kind of thing." When people hear it from their line manager, it's very different than when they hear about it from the HR personally and the training, or those kinds of things.

[00:42:09] Randy: I think the bystander point Marcia brought up is great. Maybe we have a couple of minutes it may be interesting we talk about that. In almost every one of these situations, at least the high profile ones that we're all

hearing about and reading about in the paper, over the course of years, lots of women particularly-- and then when it finally came out-- Again, it's anecdotal to me, but in every case I saw it, it was always people like, "Well, we suspected that, or badly kept secret in the industry, or this and that".

In so many cases, there were people who saw things. They maybe didn't see that specific element that necessarily crossed a line and did something criminal, but they certainly saw something that led them to believe that there was something going on. This is one of those areas where you do have a lot of pushback from bystanders about, "I don't really want to be the one to raise this issue, because I don't know what's going on behind closed doors. I don't really know what the nature of their relationship. They've had this banter back and forth for years, seems fine, they both seem okay with it, why should I rock the boat?"

Going back to some of the things that you were talking about in your presentation Marry. It's easy for us to stand back and say, "Now, I don't want something comes out, well, those people should have come forward, or it would have kept a lot of other people from being harmed, and all these things." We all know in that moment it's not very easy to step forward. We all had positions of power in the organizations that we were in, a lot of people who observe things are not in positions of power. That's another thing you've got to really spend some time on.

Some of the examples that you had your presentation Marry, about having some discussions about how would you have reacted, what would you have expected of a manager or supervisor was in there. Part of it is having some of those live action things to get people more comfortable and letting people practice, being the things that are difficult to do. That's one of those things that we all can say, "You make sure you have places to report, and don't retaliate, and this and that." Still, most people are not going to step forward.

What you really do in your organization to change that culture and to make it clear to them that you not only expect it, you want it. It benefits the organization as a whole. It's not easy. I think we have to all agree with that, and to look for ways to be more effective than just recognize that in most cases it's not going to be a bystander who comes and report. It's a victim in a lot of cases who will come forward but bystanders then will still, nod there head and say, "Yes, we saw something happening." How do you get those people off the sidelines earlier?

[00:45:35] Mary: These are great points about making sure that bystanders understand what they can do or go through some role play, or preparation so that they feel that they actually can do it, have it be acculturated, so that people feel more powerful at stepping forward. I would go back to the issue of training. I know a lot of organizations out there are still doing one size fits all sexual harassment training, whether it's online or whether it's live. They may have a different program for managers with their unique responsibilities.

Now, we're getting deeper into this issue and there are different audiences, or different types of training, what do you both think about the idea of the cost or that the level of effort that organizations would have to put out there to really do a good job of educating bystanders to make sure awareness is consistent and ongoing. I know organizations always have a budget around this training concept, but how would somebody integrate this into an already tight budget around training? Marcia you have a thought?

[00:47:17] Randy: Go ahead Marcia.

[00:47:18] Marcia: I don't know that you necessarily separate bystander training, perhaps it's part of reconfiguring the training that you already have. The role of the bystander is even more important. Before the onus that I was in on the accuser and the company, and all the other employees were just left to the side. Perhaps taking some time out of the

existing training, especially if companies are looking at redesigning their current training. I don't know that you may hold separate two hour, three hour, five hour training, it's during the training that you get that message across.

Also, you could just messaging with posters, wallet cards etcetera. The expression if you see something, say something, that's been used for terrorism, has been very effective. Companies might consider doing poster contests on either harassment, or on saying something, or reporting things. Poster contests can be-- we've done this in the past, and I've worked with other companies that have done it, you offer a gift card or something like that for the employee that's got the best poster. It can be a poster that has messaging, then those posters can go up on the break room, or in the company calendar, or on the company website. That again reinforces that everybody is thinking about this issue.

[00:48:41] Randy: You want to do some engagement surveys and things in your organization, you ask questions where people can respond with the cloak of anonymity. Ask them, have you seen examples of these things in the workplace? If so, did you report it? If not, why? Get a sense of what is driving it in your organization, is it your retaliation, is it I feel it's not my job to police the whole organization that's what managers and supervisors are for. Find out why people aren't doing that.

I agree with Marcia that you don't need to have separate bystander training just for sexual harassment. I think it's a great idea to be constantly talking about the obligations, or the hope, the expectations, whatever term the organization wants to use, as to what you want your employees to do. This goes back again and ties them to the conversation we had a little while back about publicizing some of these issues. Some of that also gives people an understanding when they see a report sanitized and neutralized, you don't know who the parties are but when they see this happened and someone reported it or a bystander reported it or this is activity that is unacceptable and this is what happened as a result of that. Someone was terminated or retrained or moved to whatever it was. I think giving people an understanding that things do happen and that it's not just, we're expecting you to do our job for you but ultimately helping the employee's rank and file out as well to understand what the impact on the organization can be when these things go wrong.

I think it is more than just having your training after training, but really understanding what the root causes of the issue are. If you're an organization that really has a difficult culture in this regard or some other regards, you need to dig down into that and find out. Then that's where resources need to be spent, is fixing that. The key is fix that all the training in the world isn't going to-- or policy changes may not impact the outcomes until you really find something that is critical and you specifically address it.

[00:51:20] Mary: So far in this discussion, it's become clear that policies and training are important tools but they're not nearly enough probably because you can't delegate ethics by relying on these tools. What other workplace changes specifically and already you've mentioned culture, but what other workplace changes need to occur to really prevent, recognize, and stop sexual harassment besides policies, training and awareness? Randy, you want to start that conversation?

[00:51:53] Randy: Yes, we all agree it's true we just can't recreate policies and then consider your work done because that's not going to be enough. It's going to be a part of an element of an effective compliance program. We talk about there are a number of elements that you're trying to do to prevent detection and responded to those. I think break them out it in that way so prevention some of the things you can do is make sure that there is no cultural support in your organization for harassment or for looking the other way when some of these things get a little out of hand or if someone crosses the line that nothing happened.

Make sure that your culture is not accepting of that and if it is you need to be addressing of those issues. We talked about that, I won't go into more detail on that. Also starting from scratch making good hires. Making sure that people getting in the organization to the best that you can without running afoul of the law or you're not getting good talent in your organization, but get, make sure those people seem to understand the kinds of culture that you do have or that you want to have and that they think they'll be able to comport themselves in a way that is going to be conducive to a positive work environment.

Some of those can be handled with background checks as well, but some of that will also be at the policy and training. Get those good people and from the start and make sure the culture supports those good people. Protection, obviously we talked about people reporting internally and then helpline. Again, helplines are an important factor most companies in the US you have to have a helpline.

Make sure those are effective and that they're followed up. Issues that go there or two internal managers and supervisors are addressed. Then response, really help training managers and supervisors on how to handle those internal reports so that they're not ignoring them or they're not doing more harm by giving people a sense that it doesn't matter or that they are not themselves retaliating or allowing retaliation against people.

There are prompt internal investigations and as we mentioned over and over but we can't mention it enough. Once those investigations have been done and they're prompt and they're neutral and they're well done, then if there is an issue there needs to be an action to address that issue. Again, if you're in an organization that would support that, the additional step of recording some of those actions internally in a newsletter website or whatever, it really get people sense that they're being a bystander and saying something is worthwhile and making a difference in the organization.

[00:54:56] Mary: Thanks, Randy. Marcia, do have something to add?

[00:54:59] Marcia: Yeah, one thing in terms of having good investigation and making sure that your investigators are actually qualified and properly trained to do the investigation. Having the right investigation protocol, knowing when to hire outside counsel, when not to hire outside counsel but really making sure that the credibility of the investigators is unquestioned. A lot of time if the HR is doing the investigation people may think, "Well, HR is a tool of management, so I'm not going to try them."

Building up to be the effect, that's the problem in the organization and you'll know that culture survey in the focus groups. Building up the credibility of HR and then retooling them, arming them with the skills to deal with this new age of how will they respond to an employee who says this happened 10 years ago or it's the CEO of the company? Will they be armed and have the authority and the credibility to take action when necessary. Those are critical aspect they just know what Randy indicated to make sure that the company has the kind of culture where people will feel free to report and won't feel that they have to worry about retaliation.

[00:56:11] Mary: Great suggestion both of you. All right let's wind up with one more question. If organizations could do just one thing right now to start turning the tide of sexual harassment around in their workplaces, what would you each recommend would be that one thing? Randy, what would you recommend?

[00:56:30] Randy: Well, I think we can't say it enough but you can't delegate ethics. The other focus has to be on individuals taking personal responsibility for their actions and being reminded, trained that the workplace is a place for professional actions and you accomplish this with regular reminders of leadership about expectations and modeling of non-harassing behavior by leaders. I think those are some of the most critical things that an organization can do in addition what else were discussed.

[00:57:01] Mary: Right. Marcia, what would you recommend?

[00:57:04] Marcia: Companies need to react but don't overreact. There's lots of suggestions we can hear, there's lots of suggestions from the presentation in your PowerPoint, that will really help companies get on the right track, but there's a lot of resources out there. Don't get paralyzed. Don't rush to judgment but don't just sit still.

[00:57:26] Mary: Thank you so much.

[00:57:27] Randy: I think that point out, the point of just keeping your head down hoping nothing comes your way. Doing nothing is never a strategy in my mind. I hardly underlined that Marcia.

[00:57:42] Mary: All right. We're coming to the bottom of the hour here. I'd like to thank our panelist for this truly interesting and enlightening discussion today. If you have a question that we have not addressed today in this session or in the earlier webinar, please join me and Marcia back in the master class environment and navigate to the expert chatroom.

She and I will be there immediately after this session for about 30 minutes to answer any of the remaining questions you may have. If you would like a transcript of the master chat from the chatroom, please request one when you get a chance to send an email. Thanks you to all for attending our panel discussion today. I hope you enjoyed it.