

**“OH, THE REMNANTS OF SEXISM
ARE ALIVE AND WELL”¹:*THE FEAR
OF SEXUAL POWER***

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¹ Hillary Rodham Clinton’s response to a heckler chanting, “iron my shirt” during her first presidential campaign. Sarah Wheaton, ‘*Iron my Shirt*,’ THE NEW YORK TIMES (Jan. 7, 2008, 7:49 PM) https://thecaucus.blogs.nytimes.com/2008/01/07/iron-my-shirt/?_r=0.

* Juris Doctor Candidate 2018, St. Thomas University School of Law, Miami, Florida; B.S. 2008, Florida International University, Miami, Florida. The author would like to dedicate this article to her nieces, who are each charged with so much character and potential to lead and make tremendous strides. Principally, I dedicate this to Alyson T. Alfonso, who is a constant reminder of why we must continue to *fight* for respect and equality to allow for limitless possibilities. This is for girls like her, who carry a heart of gold, a mind full of infinite imagination, and an innate desire for much success and happiness. The author would also like to thank her parents, Julio E. and Alida T. Bracho, for their never-ending support of her ongoing quest to achieve all her goals regardless of their size; and for their daily inspiration and motivation. Especially her mother, who, as a woman much ahead of her times, incites her determination for change. The author would like to finally thank Damien K. Reynolds for supporting her “independent” ways and for understanding, caring, and respecting her ideas and choices. Finally, this is for Professor Amy Ronner, an impenetrable force beyond her time and a true catalyst of change, for this opportunity and for her undying support and assistance throughout this article. Without her, it would not have come to fruition.

I. INTRODUCTION

I was acting supervisor at a retail store when, one day, I asked my co-worker to move a ladder from the public area because it was a hazard.² I walked by the same area and the ladder was still there. I had seen him prior to the second passing and he was not occupied. I asked him again to move the ladder. Soon after, he paged me for assistance. When I arrived, he asked me if I could pick up a 50-pound bag of sand; I obliged, thinking, “O.K. let’s do this; where are we going and how many do we need to take with us?” When I asked where to, he just began analyzing me. He then crossed his arms and continued with his observance. I requested the details of our task to which he responded, “O.K., you could leave it. I just wanted to see how much you could carry because I keep getting asked to move things and I know people could handle it themselves.” I put the bag down and proceeded with

² Right after high school, in 2000, I began working at retail store in South Florida.

instructing him immediately to move that ladder.³ I was dumbfounded as I walked away, annoyed but not insulted. Why?

It was my first job. I had worked diligently to reach my position, and gain the trust of those in charge. This experience was new to me because I had not experienced anything like this prior to joining the workforce. So, I was disappointed to be tested in a condescending manner by someone who had just started and who barely knew my capabilities, and, least of all, me. Situations like mine have occurred to women all over the world; moreover, many have experienced them in a more severe manner.⁴ Although the treatment of women in the workplace has evolved and matured in most

³ Perhaps this was because of my tone or my new demeanor, but this time he got it done in what seemed to be in record-breaking time for him.

⁴ Women have experienced discrimination in their workplaces related, but not limited to pregnancy, equal pay, and promotions. Li Zhou, *Year In Review: The Biggest Stories About Gender Inequality At Work*, THE ATLANTIC (Dec. 31, 2015), <https://www.theatlantic.com/business/archive/2015/12/gender-equality-workplace-2015/422328/>; *See also* THE EVERY DAY SEXISM PROJECT (last visited Mar. 4, 2017), <https://everydaysexism.com>.

places, there is still an underlying bias that has not yet been completely abolished.⁵

In five parts, this Article will explore this precarious terrain. Section II of this Article is divided into two subsections, where it discusses conscious and unconscious gender bias, as it is still much in existence today.⁶ In fact, men *and* women are guilty of gender bias.⁷ Section III sets forth the landmark case of *Price Waterhouse v. Hopkins*, in which a woman was denied a promotion for not being sufficiently feminine.⁸ Particularly in a male-dominated field, respect and equality have proven to

⁵ See Zhou, THE ATLANTIC (Dec. 31, 2015).

⁶ Eight out of ten employed women polled believe that gender discrimination still exists in the workplace. *83% Of Women Think Gender Discrimination Exists In The Workplace*, INVESTORS IN PEOPLE (Mar. 8, 2016), <https://www.investorsinpeople.com/press/83-women-think-gender-discrimination-exists-workplace>. The 63% of women polled, compared to 41% of men polled, believe that major obstacles still exist for women in the workplace. Margie Warrell, *Unconscious Bias: Most Women Believe Sexism Still Exists But Most Men Disagree*, THE GUARDIAN (Sep. 1, 2016 8:31 PM), <https://www.theguardian.com/sustainable-business/2016/sep/02/unconscious-bias-most-women-believe-sexism-still-exists-but-most-men-disagree>.

⁷ See Warrell, THE GUARDIAN (2016). Studies show that both men and women tend to “penalize women for success.” S. Dingfelder, *Women Who Succeed In Male-Dominated Careers Are Often Seen Negatively, Suggests Study*, 35 AMERICAN PSYCHOLOGICAL ASSOCIATION 12 (July/Aug. 2014), <http://www.apa.org/monitor/julaug04/women.aspx>.

⁸ See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 231 (1989).

be difficult.⁹ Women tend to be treated and/or seen in a certain way that could be detrimental to their natural succession in the workplace.¹⁰

Section IV, venturing into recent history, is divided into two parts and discusses the undoubted correlation between the 2016 presidential election and *Hopkins*.¹¹ Is Hillary Clinton the new Ann Hopkins?¹² Have we witnessed the next generation of *Hopkins*? Arguably, the 2016 presidential election would have resulted differently had Clinton been a man.¹³ Section IV expands on how conscious and unconscious bias played a part in the outcome, from how Hillary Clinton carried herself to how

⁹ Women experience greater burdens and/or backlash, like sexual harassment, when entering a male-dominated field versus their counterpart, who would benefit if they entered a female-dominated field. Allison Nobles, “*There’s Research On That!*” *Women In Male Dominated Fields*, THE SOCIETY PAGES (Oct. 17, 2016), <https://thesocietypages.org/trot/2016/10/17/women-in-male-dominated-fields/>.

¹⁰ See *infra* Section III. Research shows that from the workplace to educational institutions unconscious gender bias affects how men treat women. Amy Reese Anderson, *No Man Is Above Unconscious Gender Bias In The Workplace – It’s “Unconscious,”* FORBES (Dec. 14, 2016, 2:26 AM), <http://www.forbes.com/sites/amyanderson/2016/12/14/no-man-is-above-unconscious-gender-bias-in-the-workplace-its-unconscious/#6e27950235b5>.

¹¹ *Hopkins*, 490 U.S. 228. See discussion *infra* Section IV.

¹² See discussion *infra* Section IV.

¹³ *Id.*

others perceived her, and also examines how this experience holds as a mirror of *Hopkins*. In 2015, the United States of America had its first female, major party presidential candidate.¹⁴ In 2016, the major parties consisted of non-traditional candidates, a female and a non-politician.¹⁵ Although the female candidate, Hillary Clinton, won the majority vote on November 8, 2016, the non-politician, Donald Trump, took the Electoral College.¹⁶ Many different theories have developed over how this outcome occurred.¹⁷ Theories varied:

¹⁴ See Michele Gorman, *Female U.S. Presidential Contenders Before Hillary Clinton in 2016*, NEWSWEEK (Aug. 5, 2016, 3:30 PM), <http://www.newsweek.com/american-female-presidential-contenders-487355>.

¹⁵ See Leah Sellers, *The Two Traditional, Non-traditional Candidates Running For the American Presidency*, DAILY KOS (Sep. 25, 2016, 6:23 PM), <http://www.dailykos.com/story/2016/9/25/1574230/-The-Two-Traditional-Non-Traditional-Candidates-Running-for-the-American-Presidency>.

¹⁶ See Matt Flegenheimer and Michael Barbaro, *Donald Trump Is Elected President in Stunning Repudiation of the Establishment*, THE NEW YORK TIMES (Nov. 9, 2016), https://www.nytimes.com/2016/11/09/us/politics/hillary-clinton-donald-trump-president.html?_r=0. *But see* Dan Merica, *Spokeswoman: Trump Thinks Election Hacking 'Probably Was Russia'*, CNN (June 22, 2017), <http://www.cnn.com/2017/06/22/politics/trump-hacking-election-russia/index.html>.

¹⁷ See Gregory Krieg, *How Did Trump Win? Here are 24 Theories*, CNN POLITICS (Nov. 10, 2016, 5:40 PM),

from the email controversy to the need for the party system to change and adapt to today's people and their needs;¹⁸ from economic dissatisfaction to lack of employment;¹⁹ from race—unfortunately it seems the progress of this nation hit a pendulum swing forcing its return to the other direction—to the Federal Bureau of Investigation letter and fake news;²⁰ and from low voter turn-out to overconfidence of a secure win.²¹ All the aforementioned theories are rational and can, individually, be discussed in depth. The theories seem to easily intermingle, making up what seemed

<http://www.cnn.com/2016/11/10/politics/why-donald-trump-won/>;

See also Dan Merica, CNN (2017).

¹⁸ See Krieg, CNN POLITICS (Nov. 10, 2016, 5:40 PM); See also Dan Merica, CNN (2017); Bobby Ilich, *Reasons Why Donald Trump Won The Election: 21 Factors That Contributed To One Of The Biggest Upsets In Political History*, INTERNATIONAL BUSINESS TIMES (Nov. 9, 2016, 10:24 PM), <http://www.ibtimes.com/reasons-donald-trump-won-election-21-factors-contributed-one-biggest-upsets-political-2444347>.

¹⁹ See Ilich, INTERNATIONAL BUSINESS TIMES (2016).

²⁰ See *Id.*; See also Adam Goldman, Eric Lichtblau, and Matt Apuzzo, *Comey Letter on Clinton Email Is Subject of Justice Dept. Inquiry*, THE NEW YORK TIMES (Jan. 12, 2017), <https://www.nytimes.com/2017/01/12/us/politics/james-comey-fbi-inspector-general-hillary-clinton.html>.

²¹ See Ilich, INTERNATIONAL BUSINESS TIMES (2016); See also Adam Goldman, Eric Lichtblau, and Matt Apuzzo, *Comey Letter on Clinton Email Is Subject of Justice Dept. Inquiry*, THE NEW YORK TIMES (Jan. 12, 2017), <https://www.nytimes.com/2017/01/12/us/politics/james-comey-fbi-inspector-general-hillary-clinton.html>.

to be the perfect storm.²² Yet, the ultimate determining factor of the outcome of the 2016 election was gender based.²³ Finally, Section V concludes by advocating change.

II. CONSCIOUS AND UNCONSCIOUS GENDER BIAS

A. Conscious Gender Bias

Bias is defined as “[a] mental inclination or tendency; prejudice; predilection.”²⁴ Conscious is defined as “perceiving, apprehending, or noticing with a degree of controlled thought or observation” or “done or acting with critical awareness.”²⁵ The two words that are heavily tied together are “sex”

²² Hillary Clinton, in her first interview after the election, acknowledged, “there were many contributing factors,” including things that could have been done differently on her end. Hot News, *4/6/2107 Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (Apr. 6, 2017), <https://www.youtube.com/watch?v=EkM8yHz6zmI>.

²³ “[A] thorny issue at the heart of th[e] election.” See Daniel Bush, *The Hidden Sexism that Could Sway the Election*, PBS (last visited Apr. 15, 2017), <http://www.pbs.org/newshour/features/hidden-sexism/>.

²⁴ See *Bias*, BLACK’S LAW DICTIONARY (10th ed. 2014).

²⁵ See *Conscious*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/conscious>, (last visited Mar. 4, 2017).

and “gender.”²⁶ “Sex” is the biological differences between a female and a male.²⁷ “Gender” refers to the “socially constructed expectations and roles” for a male and female. Therefore, when people discuss “sexism,” they are referring to the prejudicial treatment of a person simply based on whether they are perceived as being either biologically male or female.²⁸

Hillary Rodham Clinton was heckled during her first presidential campaign by a man yelling, “iron my shirt.”²⁹ She instructed the venue to turn up the lights and the heckler was then removed.³⁰ She reminded her audience that “the remnants of sexism are alive and well” while implicitly promising that they can be entirely abolished.³¹ Sexism is obviously “alive and well” in today’s world and it is an important subject that bleeds right into gender

²⁶ See Arthur S. Leonard & Patricia A. Cain, *Sexuality Law*, 3-4 (2005); See also Jennifer Rothchild, *Gender Bias*, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (Feb. 28, 2017), http://www.blackwellreference.com/subscriber/uid=644/tocnode?id=g9781405124331_chunk_g978140512433113_ss1-11_

²⁷ See Rothchild, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (2017).

²⁸ See *Gender*, BLACK’S LAW DICTIONARY (10th ed. 2014).

²⁹ See Wheaton, *The New York Times* (2008).

³⁰ *Id.*

³¹ *Id.*

bias. Gender Bias “is *behavior* that shows *favoritism* toward one gender over another.”³² Gender bias can occur both ways, but, unfortunately, it tends to occur most frequently in favor of males over females.³³ A prime example is the expected role of women in the household.³⁴ Breaking from this traditional gender role or having the “urge” to do something other than what is expected from the homemaker role can affect the woman’s personal relationship.³⁵ In some severe circumstances, breaking from the predetermined traditional role has resulted in a form of abuse for women.³⁶

Gender bias is not only prominent in places where there has been a longstanding, traditionally

³² See Rothchild, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (2017) (emphasis added).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* A study shows that men, who are economically dependent on their wives, are more likely to be unfaithful than others. Peter Beinart, *Fear of a Female President*, THE ATLANTIC (Oct. 2016), <http://www.theatlantic.com/magazine/archive/2016/10/fear-of-a-female-president/497564/>.

³⁶ See Rothchild, BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY (2017). Studies have shown that when women in the workforce violated a traditional gender role, they were “disproportionately targeted for sexual harassment. See Beinart, THE ATLANTIC (2016).

predetermined role for women, but also in places where it once was not foreseeable for women to be, such as the workforce, and, undeniably, politics.³⁷ In politics, for example, women around the world involved in this field, and those who are not, have been blatantly dealing with sexism and, in turn, been affected by gender bias.³⁸

In Italy, in hopes of furthering his country's business development, Prime Minister Silvio Berlusconi advertised "beautiful secretaries," who are "superb girls" as a reason for investing in his country.³⁹ In 2008, Berlusconi also commented on Spain's Prime Minister, José Luis Rodríguez

³⁷ Kareem Crayton, *Law And Democracy: A Symposium On The Law Governing Our Democratic Process: Essay: Gender Unbound?*, 81 GEO. WASH. L. REV. 1799 (2013).

³⁸ See Emine Saner, *The Top 10 Sexist Moments In Politics: Julia Gillard, Hillary Clinton, And More*, THE GUARDIAN (June 14, 2013, 1:14 PM), <https://www.theguardian.com/politics/2013/jun/14/top-10-sexist-moments-politics>; See also Stephanie Kirchaessner, *If Berlusconi Is Like Trump, What Can America Learn From Italy*, THE GUARDIAN (Nov. 21, 2016, 3:42 PM), <https://www.theguardian.com/world/2016/nov/21/if-berlusconi-is-like-trump-what-can-italy-teach-america>. Berlusconi was Prime Minister of Italy on three separate occasions. *Id.* He has been recently been compared to Donald J. Trump in a highly cautionary manner. *Id.* Many have noted that Berlusconi's idea of running the government was to do anything that would further his personal interests, and as a result, left Italy in a worst state. *Id.*

³⁹ See Saner, THE GUARDIAN (2013).

Zapatero, whose cabinet was predominantly female, by stating that the newly formed government was “too pink,” and he would have difficulty leading them.⁴⁰ Berlusconi is guilty of making multiple sexist comments, including, in 2009, when he said that the President of the Democratic party, Rosy Bindi, was “more beautiful than intelligent,” after attacking her appearance.⁴¹ In France, the Housing Minister, Cecile Duflot, experienced wolf whistling⁴² while delivering her speech in the national assembly.⁴³ In Australia, the first female Prime Minister, Julia Gillard, publicly admitted that she had decided not to have children.⁴⁴ This comment was taken and used as a strike against her by many men, arguing that without baring a child,

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² A wolf whistle is defined as “a distinctive 2-toned whistle sounded to express approval of another person’s appearance.” *Wolf Whistle*, MERRIAM-WEBER DICTIONARY, <https://www.merriam-webster.com/dictionary/wolf%20whistle>, (last visited Mar. 4, 2017). The wolf whistle was depicted in cartoons and used to express physical attraction. *See, e.g.*, Tex Avery, RED HOT RIDING HOOD (1943), <http://www.dailymotion.com/video/x262srt> (last visited Oct. 8, 2017); Tex Avery, SWING SHIFT CINDERELLA (1945), <http://www.dailymotion.com/video/x483916> (last visited Oct. 8, 2017); THE MASK (New Line Cinema 1994).

⁴³ *See* Saner, THE GUARDIAN (2013).

⁴⁴ *Id.*

she would be incapable of running other aspects of her life and/or career.⁴⁵ A woman's choice to have or not have children is also an example of Justice Brennan's Catch 22, discussed later in this Article.⁴⁶ Some men have belittled women with children and have thought women lack enough capacity to lead; yet, women who have no children are characterized as not being able to meet society's expectations.⁴⁷ It seems that many do not focus on the woman, herself, but on what her body serves to society.⁴⁸ The perception was and still tends to be that a woman's body is just a factory that is meant to do only one thing: reproduce.⁴⁹ Women are not looked at as individuals, who can choose to bare children or not. Consider the comment made in 2012 by Todd Akin, former U.S. Representative for Missouri that

⁴⁵ *Id.*

⁴⁶ *See infra* Section III.A.iv.

⁴⁷ *See* Claire Cain Miller, 'Nasty Woman': Why Men Insult Powerful Women, THE NEW YORK TIMES (Oct. 20, 2016), <https://www.nytimes.com/2016/10/21/upshot/history-of-insults-nasty-words-about-women-serve-a-purpose-for-men.html>.

⁴⁸ *See Why Did Almost All Societies Believe that Women Were Inferior to Men?*, SLATE (Aug. 23, 2013), http://www.slate.com/blogs/quora/2013/08/23/why_did_almost_all_societies_believe_that_women_were_inferior_to_men.html.

⁴⁹ *Id.*

a woman's body would know to abort if the pregnancy was the result of a "legitimate rape."⁵⁰ A woman is not defective if she chooses to break from her traditional role by deciding not to reproduce.⁵¹

In the United States of America, Clinton, during her first presidential campaign, was heckled by a man chanting, "iron my shirt" in one of her rallies.⁵² During this campaign, Marc Rudov, a television personality, said that, when men heard her speak, they did not hear a leader, like Barack Obama, but a woman telling them to take out the trash.⁵³ Glenn

⁵⁰ Charlotte Alter, *Todd Akin Still Doesn't Get What's Wrong With Saying 'Legitimate Rape'*, TIME (July 17, 2014), <http://time.com/3001785/todd-akin-legitimate-rape-msnbc-child-of-rape/>.

⁵¹ Caine Miller, THE NEW YORK TIMES (2016).

⁵² To which she responded so accurately, "[o]h the remnants of sexism are alive and well." Wheaton, THE NEW YORK TIMES (2008); See also Saner, THE GUARDIAN (2013); Hannah Groch-Begley, *A Comprehensive Guide To Sexist Attacks On Hillary Clinton From The 2008 Campaign*, MEDIA MATTERS FOR AMERICA (Feb. 5 2015, 12:05 AM), <https://mediamatters.org/research/2016/02/05/a-comprehensive-guide-to-sexist-attacks-on-hill/199700> (categorizing numerous sexist comments used towards Clinton, from name calling to attacks on her person and appearance).

⁵³ In Marc Rudov's words: "[w]hen Barack Obama speaks, men hear: 'Take off for the future.' And when Hillary Clinton speaks, men hear, 'Take out the garbage.'" See Saner, THE GUARDIAN (2013). On a side note, Rudov is the author of a book titled THE MAN'S NO NONSENSE GUIDE TO WOMEN: HOW TO SUCCEED IN ROMANCE ON PLANET EARTH and has produced videos on YouTube entitled 'How to Handle Women.' See <https://www.amazon.com/Mans-No-Nonsense-Guide->

Beck, a radio talk show host, called her a “stereotypical bitch,” and stated that every man in America would go insane after four years of her presidency.⁵⁴ Rush Limbaugh, a radio talk show host, asked whether “this country want[ed] to watch a woman get older before their eyes on a daily basis?”⁵⁵ When Clinton ran again in the 2016 election, Mitch McConnell, a Senator from Kentucky, stated that the 2016 presidential ticket was starting to “shape up to look like a rerun of The Golden Girls⁵⁶.”⁵⁷ Has a male presidential candidate

Women-Succeed/dp/0974501719, AMAZON (last visited July 19, 2017). *Also see* BlazingShade, *How to Handle Women*, YOUTUBE (July 14, 2012), <https://www.youtube.com/watch?v=U3MEwVtMCu8>.

⁵⁴ See Saner, THE GUARDIAN (2013).

⁵⁵ *Id.*

⁵⁶ Not much of an insult. The Golden Girls was an NBC 1980’s sitcom that ran for over seven years. Megan Garber, *When The Fifth Golden Girl Was A Man Named Coco*, THE ATLANTIC (Sep. 14, 2015), <https://www.theatlantic.com/entertainment/archive/2015/09/the-golden-girl-who-was-a-man-named-coco/405091/>. It revolved around four women, a cast of *only* women, who were over the age of fifty. *Id.* Even before the show aired the executives were concerned about whether the audience was ready for an all-women cast. *Id.* So much so that they wrote in a fifth character, a gay *man*, to work as a “buffer” to “defeminize the whole thing just a little bit.” *Id.* As soon as the second episode aired, the male character was gone, as he was deemed unnecessary. *Id.* The show showcased the under- and unrepresented Americans and addressed issues “that involved the coming-out of gay characters, crime, abortion, sexual harassment,

(i.e., Barack Obama, George W. Bush, Bill Clinton, George H. W. Bush, etc.) been demeaned or taken less seriously because of his looks, or his decision to not bare children, or for the thought of seeing him age through the years? The answer is obviously no.

B. Unconscious Gender Bias

Today, society is not just dealing with blatant gender bias. While society has seen progress in areas such as the workplace, internal and external enforcement of antidiscrimination and sexual harassment laws continues to be difficult. Gender bias, amongst other problems, still exists.⁵⁸ It is, at times, not so obvious. In contrast to conscious bias, it is unconscious.⁵⁹ “Unconscious” is defined as

AIDS, otherness, and other hot-button issues, many of which remain hot-button today.” *Id.* The Golden Girls reruns are stilling running to this day. *Id.*

⁵⁷ See Saner, THE GUARDIAN (2013).

⁵⁸ See Crayton, 81 GEO. WASH. L. REV. 1799 (2013).

⁵⁹The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (Nov. 17, 2015), <https://www.youtube.com/watch?v=dVp9Z5k0dEE>.

“not possessing mind or consciousness.”⁶⁰ It works in milliseconds and makes quick judgments on people; therefore, it causes incorrect bias most of the time.⁶¹ The unconscious mind uses instinct not analysis.⁶² This instinct is influenced by one’s background, personal experiences, and cultural environment.⁶³ Upon meeting someone, if he or she is like the biased individual, then they are considered to be part of their “in-group.”⁶⁴ In doing so, groups decipher whether they like other people.⁶⁵ One is part of the in-group based on similarities (i.e., gender); for example, men favor men, and women favor women.⁶⁶ However, people

⁶⁰ See *Unconscious*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/unconscious>, (last visited Mar. 4, 2017).

⁶¹ See Shire Professional, *Unconscious Bias Basics*, YOUTUBE (Sep. 15, 2015), <https://www.youtube.com/watch?v=PGupqNaUTnQ>; See also The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015).

⁶² See Shire Professional, *Unconscious Bias Basics*, YOUTUBE (Sep. 15, 2015); See also The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015).

⁶³ The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See *Id.*; See also Nicholas Kristof, *Hillary Clinton, Free to Speak Her Mind*, THE NEW YORK TIMES (Apr. 8, 2017), <https://www.nytimes.com/2017/04/08/opinion/sunday/hillary-clinton->

could also be part of different in-groups (e.g., a wealthy, selective, or powerful group).⁶⁷ For example, a woman may find a powerful male more favorable than another woman because he is part of her powerful in-group.⁶⁸ This favoritism is, at times, showcased for promotions, explaining why men occupy most of the C-suite⁶⁹ positions (e.g., Chief Executive Officer and Chief Information Officer), even though, six out of ten bachelor degrees are earned by women.⁷⁰ People unconsciously prefer those who are most similar to one's self.⁷¹ In turn,

free-to-speak-her-mind.html (Clinton characterizing the mind-set of some voters, that although they did not approve of Trump they voted for him due to categorizing familiarity, "he looks like somebody who's been president before.").

⁶⁷ See The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015); See also Nicholas Kristof, *Hillary Clinton, Free to Speak Her Mind*, THE NEW YORK TIMES (Apr. 8, 2017).

⁶⁸ See The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015); See also Nicholas Kristof, *Hillary Clinton, Free to Speak Her Mind*, THE NEW YORK TIMES (Apr. 8, 2017).

⁶⁹ C-suite is widely used to represent executive positions such as Chief Executive Officer ("CEO"), Chief Operating Officer ("COO"), and Chief Information Officer ("CIO"). *C-Suite*, INVESTOPEDIA, <http://www.investopedia.com/terms/c/c-suite.asp>, (last visited Mar. 5, 2017).

⁷⁰ See Shire Professional, *Unconscious Bias Basics*, YOUTUBE (2015); See also Mahmood, *Gender Discrimination at the Workplace* (2015). In a 2015 study, about 30% more women than men had a college degree. *Id.*

⁷¹ See Shire Professional, *Unconscious Bias Basics*, YOUTUBE (2015). Those who share one's "background, culture, and interests."

we “unconsciously trust people we unintentionally wired positive connections to,” affecting, *inter alia*, those we hire and promote.⁷²

Unconscious bias impedes women from rising to power.⁷³ After examining human resources data from 132 companies employing more than 4.5 million people and more than 30,000 surveys from workers, a study reflected that women are at a

Id.; See also Mahmood, *Gender Discrimination at the Workplace* (2015).

⁷² See Shire Professional, *Unconscious Bias Basics*, YOUTUBE (2015); See also Mahmood, *Gender Discrimination at the Workplace* (2015). For example, in 1995 Publix agreed to an \$81.5 million settlement for a class-action lawsuit brought by 150,000 women alleging bias. *Publix Market Settles Bias Suit for \$81.5 Million*, Los Angeles Times (Jan. 25, 1997), http://articles.latimes.com/1997-01-25/business/fi-22037_1_publix-markets-settles-bias-suit. Publix was accused “of passing [women] over for raises and repeatedly denying them management jobs. They . . . watched as men with less experience and seniority got promotions. Some said their requests were met with unwanted sexual advances from managers.” *Id.* More recently, Carmen M. Cusack, Editor of the Law and Social Deviance, has researched a certain discrepancy with Publix’s listed approved degrees for reimbursement, making note that, unconsciously, pink collar degrees, like culinary, are excluded from their website; and, additionally, has analyzed the unconscious tendency of sex-segregated departments. See E-mail from Carmen M. Cusack, Editor of JOURNAL OF LAW AND SOCIAL DEVIANCE, (Jun. 28, 2017, 11:10a.m.) (on file with author) (providing research remarks and comments, on the subject of unconscious bias, derived from Carmen M. Cusack, *Discrimination on Its Face and in Effect at Publix Supermarket* (June 2017) (unpublished research on file with Dr. Cusack).

⁷³ See Martha S. West, *Gender Bias In Academic Robes: The Law's Failure To Protect Women Faculty*, 67 TEMP. L. REV. 68 (1994).

disadvantage for rising to power.⁷⁴ For starters, women in the same position as their male counterparts are not receiving equal pay.⁷⁵ Additionally, women are less likely to be promoted than men.⁷⁶ At the entry level, women and men are, for the most part, even in numbers.⁷⁷ Per a 2016 study, the entry level was divided as 54% men and 46% women.⁷⁸ Yet, men are 30% more likely to be promoted from an entry level to a managerial position.⁷⁹

In 2015, 8.6 million men were enrolled in college, compared to 11.5 million women.⁸⁰ Yet, fewer women are in managerial positions compared

⁷⁴ See Nathan Bomey, *Sexism In The Workplace is Worse Than You Think*, USA TODAY (last updated Sept. 27, 2016, 6:10 PM), <http://www.usatoday.com/story/money/2016/09/27/lean-in-study-women-in-the-workplace/91157026/>.

⁷⁵ *Id.* As of 2016, women made seventy-six cents for every dollar a man made in the same position. Jessica Dickler, *Men Still Earn More Than Women With The Same Jobs*, CNBC (Dec. 6, 2016, 8:30 AM), <http://www.cnbc.com/2016/12/05/men-still-earn-more-than-women-with-the-same-jobs.html>.

⁷⁶ See Bomey, USA TODAY (2016).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Hajirah Mahmood, *Gender Discrimination at the Workplace*, YOUTUBE (Nov. 17, 2015), <https://www.youtube.com/watch?v=PvmnhCQ1XXg>.

to men.⁸¹ The disparity between men and women in the workplace increases as the ranks get higher; for example, at the managerial level, 63% are men, and 37% women; and at the vice-presidential level, 71% are men, and only 29% women.⁸² In C-suite positions, men lead by representing 81%.⁸³ According to the study, some of the reasons seem to be because women are less likely to be consulted in major discussions, are most likely to be ignored at meetings, and, therefore, are less likely to challenge tasks.⁸⁴ There is clearly an uneven playing field between men and women.⁸⁵ Because of this, women pursue promotions less than men and are less

⁸¹ *Id.*; See also McKinsey & Company, *Women in the Workplace 2015*, YOUTUBE (Apr. 11, 2016), <https://www.youtube.com/watch?v=Y7jCagRWZyA>.

⁸² See Bomey, USA TODAY (2016).

⁸³ *Id.*

⁸⁴ 74% of men are considered to be able to partake meaningfully; 68% of men have “taken on the toughest tasks;” and 63% of men are asked to share their thoughts. *Id.* Researchers have also found that people are prone to pay more attention to a male voice than a woman’s voice. See The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015).

⁸⁵ See Bomey, USA TODAY (2016). Additionally, a 2015 survey showed that out of 74% of businesses claiming gender equality “is a priority for their CEO,” less than half of their employees believe it and 33% believe it is a priority of their direct supervisor. See McKinsey & Company, *Women in the Workplace 2015*, YOUTUBE (2016).

inspired to become a top executive as compared to their male counterparts.⁸⁶ Clearly, the difficulty of reaching success affects women in the workforce.⁸⁷

Women in Biglaw⁸⁸ are unrepresented in higher level positions.⁸⁹ In a 2008 report, women made up half of the associate-level positions.⁹⁰ Only 18% were at the partner level and 16% were at the equity level—numbers that did not get better the following year.⁹¹

⁸⁶ According to a study, 74% of women desire a promotion compared 80% of men. Additionally, only 40% of women aspire to be top executive, compared to 56% of men. *See Bomey, USA TODAY* (2016).

⁸⁷ *Id.* Additionally, the woman's role at home is a subtle but yet impacting factor for inspiration. As a study showed that inequality at home affects a woman's desire to achieve more at the workplace. Women who shared the house responsibilities equally with their partner were more likely to aspire for a top executive position versus one that does the majority of the work at home, 43% versus 34%. *Id.*

⁸⁸ "Biglaw" is a term generally used to refer to a career in a large law firm. *An Introduction to "Biglaw"*, Top-Law-Schools.com (last updated Sep. 2010), <http://www.top-law-schools.com/introduction-to-biglaw.html>.

⁸⁹ Steven A. Butcher and Carole Silver, *Women in Legal Practice: Global and Local Perspectives: Guest Editors: Carole Silver, Steven A. Butcher, and Gabriele Plickert: Annual Meeting of the Law & Society Association: June 5-8, 2012: PART II: GLOBAL PERSPECTIVES: Gender and Global Lawyering: Where are the Women?*, 20 IND. J. GLOBAL LEG. STUD. 1139, 1147 (2013).

⁹⁰ Butcher and Silver, 20 IND. J. GLOBAL LEG. STUD. 1139, 1147 (2013).

⁹¹ *Id.*

The workforce is innately biased as its institutionalized schedules were “built for an independent worker without care responsibilities.”⁹² If these full-time workers were to have children, it was assumed that their partners were the full-time caretakers.⁹³ Work was organized in a fashion that would allow for uninterrupted labor.⁹⁴ Although changes were implemented since women joined the workforce, workingwomen are not all necessarily on an equal foot at home.⁹⁵ That said, many women have been unjustly penalized for matters that are only prone to women.⁹⁶

⁹² See Catherine Albiston, *Institutional Inequality*, 2009 WIS. L. REV. 1093, 1107 (2009).

⁹³ Women were seen to be the caretakers of the children, home, and/or the elderly and/or ailing relative(s). *Id.*

⁹⁴ *Id.*

⁹⁵ In a 2015 survey, 41% of the women polled reported doing more childcare and 30% more chores than their male counterparts. See McKinsey & Company, *Women in the Workplace 2015*, YOUTUBE (2016).

⁹⁶ For example, many cases have dealt with pregnancy. In one particular case, *EEOC v. Warshawsky & Co.*, the employer’s policy did not provide sick leave for employees during their first year even if a woman were to become pregnant. 768 F. Supp. 647 (N.D. Ill. 1991). The court could not justify the policy because no one knew the reason for the policy, “the policy just existed.” *Id.* at 654. In another case, *Abraham v. Graphic Arts Int’l Union*, a pregnant woman was fired for taking more than her allotted ten days of leave. 660 F.2d 811 (D.C. Cir. 1981). And in *Geduldig v. Aiello*, the United State Supreme Court addressed how disability insurance coverage

Unfortunately, men are not the only ones who see the departure of traditional gender roles negatively.⁹⁷ “Because stereotyped notions about women are so much a part of our society, women as well as men harbor subconscious assumptions about women's lack of ability or professional competence.”⁹⁸ One study presented a fictional male state senator to both men and women.⁹⁹ Both groups did not change their view of the male senator once they were told that he was ambitious.¹⁰⁰ However, when the senator was an ambitious female “men and women alike ‘experienced feelings of moral outrage,’ such as contempt, anger, and disgust.”¹⁰¹ In another

pertained to certain injuries but not ones attributable to pregnancy. 417 U.S. 484 (1974). The Court found that it was not discriminatory to exclude pregnancy from its coverage because two classes were distinguished: pregnant and non-pregnant (and the non-pregnant class consisted of both men *and* women). *Id.* Eventually, this case, together with *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976), where the Court similarly found that the exclusion of pregnancy coverage did not violate Title VII, led to the passage of the Pregnancy Discrimination Act; *See also* Saru M. Matambanadzo, *Reconstructing Pregnancy*, 69 SMU L. REV. 187, 201-06 (2016).

⁹⁷ *See* Beinart, *THE ATLANTIC* (2016).

⁹⁸ *See* Martha S. West, 67 TEMP. L. REV. 68, 143-44 (1994).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

experiment, groups of males and females were shown an interview of two individuals.¹⁰² Both had identical credentials and answers to questions; the only difference was their gender.¹⁰³ After watching the interviews on videotape, both men *and* women found the female candidate to be “more aggressive” “less likable,” and “less likely to be hired.”¹⁰⁴ All in all, powerful women provoke apprehensions in both men and women.

III. HOPKINS: SEXUAL DISCRIMINATION AT THE WORKPLACE NO MORE

Sex discrimination in the workplace specifically based on sex stereotyping is a violation under Title VII¹⁰⁵ of the Civil Rights Act of 1964.¹⁰⁶ In 1989,

¹⁰²*Women Endure Surprising Bias in the Workplace*, ABC NEWS (Dec. 11, 2013), <https://www.youtube.com/watch?v=7nJq6des4jg>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Even the addition of “sex” to Title VII was a struggle on its own. Stories are told and retold of how the inclusion of sex was a fluke. Yet, regardless of how it got there, the fact is that it took much consistent effort by many to get to that point. See Jo Freeman, *How “Sex” Got into Title VII: Persistent Opportunism as a Maker of Public Policy*, 9 LAW & INEQUALITY 163 (1991); See also Vicki Schultz, *Denver University Law Review 2014 Symposium: Revisiting Sex: Gender and Sex Discrimination Fifty Years after the Civil Rights*

the United States Supreme Court came to this holding after addressing Ann Hopkins's case where sex stereotyping prevented her promotion.¹⁰⁷ The Supreme Court made it blatantly clear that an employer cannot make a decision where its motivation is based on sex.¹⁰⁸

A. Price Waterhouse v. Hopkins¹⁰⁹

Ann Hopkins filed her suit under Title VII of the Civil Rights Act of 1964 alleging gender discrimination.¹¹⁰ In 1982, Hopkins was proposed for partnership in the accounting firm of Price

Act Taking Sex Discrimination Seriously, 91 DENV. U.L. REV. 995 (2015).

¹⁰⁶ See *Hopkins*, 490 U.S. 228; See also 42 U.S.C.S. § 2000e et seq.

¹⁰⁷ *Id.* at 232.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; See also *Linda G. Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1234 (11th Cir. 2016) (dealing with a school board election where a female board member voted against Quigg (a female) and stated it was “because Quigg ‘needed a strong male to work under her to handle problems, someone who could get tough.’”).

¹¹⁰ *Hopkins*, 490 U.S. 228. The lower court ruled in favor of Hopkins as to the liability issue and the court of appeals affirmed the decision. *Id.* The United State Supreme Court granted certiorari to determine defendant's and plaintiff's, respective, burdens of proof that must be shown when “an employment discussion resulted from a mixture of legitimate and illegitimate motives.” *Id.* at 232.

Waterhouse where she was a Senior Manager.¹¹¹ Her candidacy was to be revisited a year later, but the office refused to re-propose the partnership.¹¹² Price Waterhouse had a system for considering individuals for partnership, but the year Hopkins was initially proposed as a candidate, out of 662 partners, only seven were women.¹¹³ Out of 88 candidates proposed for partnership, only one was a woman: Hopkins.¹¹⁴

Of the 32 partners, who submitted comments on Hopkins, thirteen supported her candidacy.¹¹⁵ Of the remaining partners, eight recommended that her partnership be denied; three recommended that her candidacy be placed on hold; and eight stated they did not have enough information to form an

¹¹¹ *Id.* at 231.

¹¹² *Id.* at 231-32.

¹¹³ *Id.* at 233. In Price Waterhouse, upon a submission of a candidate, partners are invited to submit comments on each candidate. *Hopkins*, 490 U.S. at 233. Thereafter, the Admissions Committee reviews these comments and submits a report to the Policy Board recommending the board to accept, hold, or reject the candidate. *Id.* The Policy Board then decides if the candidate is submitted for a vote among all partners of the firm. *Id.*

¹¹⁴ *Id.* at 233. Out of eighty-eight, twenty-one were admitted to the partnership, twenty were held for reconsideration on the next year and the remainder were rejected. *Id.*

¹¹⁵ *Id.*

opinion.¹¹⁶ Prior to her candidacy, Hopkins was able to successfully secure a multi-million dollar contract with the Department of State within two years.¹¹⁷ At which time, no other partner had a comparable record in securing major contracts.¹¹⁸

1. Ann Hopkins, An Exceptional Employee

Those who supported her candidacy acclaimed her for the accomplishment and described her performance as “outstanding” and being of “partner level.”¹¹⁹ From the comments made in Hopkins’s favor, she was described as “‘an outstanding professional’ who had a ‘deft touch,’ a ‘strong character, independence and integrity.’”¹²⁰ Additionally, it was commented that Hopkins “‘had no difficulty dealing with clients and her clients appear to have been very pleased with her work’ and that she ‘was generally viewed as a highly

¹¹⁶ *Id.*

¹¹⁷ Additionally, no other partner had accomplished the deal she had. *Hopkins*, 490 U.S. at 233-34.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 234.

competent project leader who worked long hours, pushed vigorously to meet deadlines and demanded much from the multidisciplinary staffs with which she worked.”¹²¹

Her client rapport was further supported by the officials of the Department of State, who testified that Hopkins was “‘extremely competent, intelligent,’ ‘strong and forthright, very productive, energetic and creative.’”¹²² One official further praised her “decisiveness, broadmindedness, and ‘intellectual clarity’” concluding that she was ‘a stimulating conversationalist.’”¹²³ Hopkins was clearly revered by her colleagues as well her clients.

2. Ann Hopkins, A Difficult Employee?

Opponents, as well as supporters, of her candidacy suggested that Hopkins could be “overly aggressive, unduly harsh, difficult to work with and

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

impatient with staff.”¹²⁴ In past evaluations, her interpersonal skills were commented on; however, thereafter, her evaluations showed an improvement.¹²⁵ Yet, those who recommended that her candidacy be denied were the minority.¹²⁶ Few partners commented that she was “consistently annoying and irritating.”¹²⁷ Within these, Hopkins was described as “macho” and “overcompensat[ing] for being a women.”¹²⁸ A few partners brought up objections to her swearing, “only ‘because it’s a lady using foul language.’”¹²⁹ Another partner suggested she “take a course at charm school.”¹³⁰ Ultimately, when Hopkins was told that her candidacy was to be placed on hold, she was provided with advice on how to improve her chances for partnership.¹³¹ A male partner advised

¹²⁴ *Id.* at 235. The Supreme Court made it clear that even if the comments were made by supporters it still plays a part in sex stereotyping. *Id.* at 257.

¹²⁵ *Hopkins*, 490 U.S. at 228.

¹²⁶ Thirteen supported Hopkins’s candidacy while eight denied it. *Id.*

¹²⁷ Partners, who were intensely critical of Hopkins and only slightly knew her made gender-neutral remarks. *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Hopkins*, 490 U.S. at 228.

Hopkins that she “should walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”¹³²

3. Price Waterhouse’s Decision-Making Process

Price Waterhouse had a discriminatory decision-making process in place based on sex.¹³³ Female candidates were viewed more favorably the more feminine they were.¹³⁴ In the past, a partner had repeatedly stated, “he could not consider any woman seriously as a partnership candidate and believed that women were not even capable of functioning as senior managers.”¹³⁵ The firm included this partner’s vote, and neither discouraged such comments, nor acted to avoid reliance on comments like these.¹³⁶ Furthermore, Price

¹³² *Id.* at 235. Hopkins in a presentation stated she is allergic to make-up, wears minimal jewelry, and in addition to being an attorney, had three children; therefore, she did not have a lot of time to style her hair. Alvittorio, *Ann Hopkins*, YOUTUBE (June 18, 2011), https://www.youtube.com/watch?v=uX0uvR7_SWw.

¹³³ *Hopkins*, 490 U.S. at 235.

¹³⁴ *Id.*

¹³⁵ *Id.* at 236.

¹³⁶ *Id.*

Waterhouse heavily relied on these evaluations in its decision-making.¹³⁷ The sexist comments incorporated in the evaluations were accounted for and, in fact, motivated the decision on who made partner.¹³⁸ To that extent, the Supreme Court concluded that gender played a role in Price Waterhouse's employment decision for Hopkins.¹³⁹

4. The Infamous Catch 22

Price Waterhouse reasoned that Hopkins's interpersonal skills were of issue.¹⁴⁰ Prior evaluations reflected this, even though evaluations that followed showed she had improved.¹⁴¹ Placing her improvement aside, there were male candidates, who lacked the same skills as Hopkins, but were admitted to partnership.¹⁴² Although, these candidates possessed other positive traits, the

¹³⁷ *Id.* at 257.

¹³⁸ *Id.* at 257.

¹³⁹ *Hopkins*, 490 U.S. at 258.

¹⁴⁰ *Id.* at 258.

¹⁴¹ *Id.* at 258.

¹⁴² *Id.* at 258.

remarks for Hopkins were based on the closed minded “view of the proper behavior of women.”¹⁴³

The Supreme Court noted that there were clear signs of negative reaction towards Hopkins because she was a woman.¹⁴⁴ Justice Brennan, who wrote the opinion, acknowledged the dilemma that women face when they are placed in positions that require a strong-willed employer.¹⁴⁵ A woman could be out of a job if she acts aggressively or out of a job if she does not.¹⁴⁶ Because Hopkins was deemed aggressive, some of the partners suggested charm school.¹⁴⁷ Additionally, partners suggested that her interpersonal skills could be corrected with a “new shade of lipstick.”¹⁴⁸ Furthermore, Justice Brennan stated it best when he said, “even if we knew Hopkins had ‘personality problems,’ this would not tell us that the partners who cast their evaluations of Hopkins in sex-based terms would have criticized

¹⁴³ *Id.* at 237.

¹⁴⁴ *Id.* at 235.

¹⁴⁵ *Hopkins*, 490 U.S. at 235.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 257.

¹⁴⁸ *Id.* at 257.

her as sharply (or criticized her at all) if she had been a man.”¹⁴⁹

IV. HILLARY CLINTON: THE NEW ANN HOPKINS?

The fear of sexual power dominated this election, as a female candidate seemed to be too much in a prestigious male dominated role.¹⁵⁰ This reaction stems from what social psychologists call the “precarious manhood” theory.¹⁵¹ Under this theory, becoming a woman is natural, yet men must earn their manhood.¹⁵² Therefore, one’s manhood can be lost after it is won, but a woman’s status is seen as permanent.¹⁵³ The fear of losing their manhood is what leads men to react negatively toward women who threaten their male-dominated roles.¹⁵⁴ Men fear subordination to women.¹⁵⁵

¹⁴⁹ *Id.* at 258.

¹⁵⁰ *See* Beinart, THE ATLANTIC (2016).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* Women and men see losing their respective “hood” differently. *Id.* A study showed that men saw their loss based on social failures (i.e., losing a job) unlike women, who saw their loss as a physical change (i.e., hysterectomy or sex surgery). *Id.*

¹⁵⁴ *See* Beinart, THE ATLANTIC (2016).

Studies have shown that men under the supervision of women do not experience the same privileges (e.g., lesser pay and prestige) as men under the supervision of a male counterpart.¹⁵⁶ Although both men and women are critical of powerful women, “men are more likely to react aggressively.”¹⁵⁷

A. The *Hopkins* Catch 22 at Play in 2016

The 2016 presidential election immensely resembles *Hopkins* and embodies the main concern of Justice Brennan’s *Catch 22*. *Hopkins* expanded and migrated into the political world.¹⁵⁸ Unfortunately, for Clinton, unlike in *Hopkins*, discrimination appears to have won the round. Like *Hopkins*, Clinton broke from the traditional gender role.¹⁵⁹ She exerted her ambition, and, therefore,

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ See Amy Ronner, *Let’s Get the “Trans” and “Sex” Out of It and Free Us All*, 16 J. GENDER RACE & JUST. 859, 868 (2013) (analyzing *Hopkins* and foreseeing its projection to “expand and migrate into other areas of the law.”).

¹⁵⁹ See discussion *supra* Sec. III; See also discussion *infra* Sec. IV.c.

was unfavorably looked upon and judged.¹⁶⁰ Women tend to experience most backlash when they are in male-dominated roles.¹⁶¹ Besides the sexist comments and outcries, any and every issue is enhanced.¹⁶² Women tend to suffer from more criticisms for topics than males in similar positions and with similar situations.¹⁶³ An example is Trump's false allegations that Clinton dealt with Russia by giving them uranium.¹⁶⁴ Yet, Trump has acknowledged contact with Russian President

¹⁶⁰ See Beinart, THE ATLANTIC (2016). Take Clinton and Mike Pence's email scandals. Although there were differences, clearly a double standard existed. Tony Cook, *Pence Used Personal Email for State Business – and Was Hacked*, USA TODAY (last updated Mar. 3, 2017, 2:49 PM), <http://www.usatoday.com/story/news/politics/2017/03/02/mike-pence-private-email/98637782/>.

¹⁶¹ See Beinart, THE ATLANTIC (2016).

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See Tom DiChristopher, *Donald Trump claims – falsely – that Hillary Gave Russia 20% of US Uranium*, CNBC (Feb. 16, 2017, 3:17 PM), <http://www.cnbc.com/2017/02/16/trump-claims--falsely--that-clinton-gave-russia-20-of-us-uranium.html>. Matthew Nussbaum, *The Definitive Trump-Russia Timeline of Events*, POLITICO (last updated Mar. 11, 2017, 12:54 PM), <http://www.politico.com/trump-russia-ties-scandal-guide/timeline-of-events>. See also Tony Cook, *Pence Used Personal Email for State Business – and Was Hacked*, USA TODAY (last updated Mar. 3, 2017, 2:49 PM), <http://www.usatoday.com/story/news/politics/2017/03/02/mike-pence-private-email/98637782/> (discussing Clinton and Mike Pence's email scandals. Although, differences, clearly a double standard existed.).

Vladimir Putin and ties have been made between him and Russia.¹⁶⁵ Another example is Trump's consistent insults. Trump and his supporters slammed Clinton after she referred to half of his supporters as a "basket of deplorables."¹⁶⁶ However, Trump referred to Mexicans as rapists, criminals, and "bad hombres," called the citizens of a state "stupid," insulted a POW, and consistently degraded women by attacking their looks and their physiological make up.¹⁶⁷

¹⁶⁵ See DiChristopher, CNBC (2017); See also Nussbaum, POLITICO (2017).

¹⁶⁶ See Angie Drobnic Holan, *In Context: Hillary Clinton and the 'Basket of Deplorables'*, POLITIFACT (Sept. 11, 2016), <http://www.politifact.com/truth-o-meter/article/2016/sep/11/context-hillary-clinton-basket-deplorables/>. To which was taken out of context and Clinton further clarified was referring to those who practice hate and violence.

It's deplorable that Trump has built his campaign largely on prejudice and paranoia and given a national platform to hateful views and voices, including by retweeting fringe bigots with a few dozen followers and spreading their message to 11 million people. It's deplorable that he's attacked a federal judge for his 'Mexican heritage,' bullied a Gold Star family because of their Muslim faith, and promoted the lie that our first black president is not a true American. So I won't stop calling out bigotry and racist rhetoric in this campaign.

Id.

¹⁶⁷ See *The 155 Craziest Things Trump Said This Election*, POLITICO MAGAZINE (Nov. 5, 2016), <http://www.politico.com/magazine/story/2016/11/the-155-craziest-things-trump-said-this-cycle-214420> (listing many of Trump's statements including "[h]ow stupid are the people from Iowa?"; as to

In her first interview since the election, Clinton acknowledged the Catch 22, the inverse correlation between men and women.¹⁶⁸ “Men and success are correlated with likability . . . for a woman it is the exact opposite.”¹⁶⁹ A woman can either be “likable or a competent leader not both.”¹⁷⁰ Clinton further recognizes that social science research shows this phenomenon to be an unconscious result from both men *and* women.¹⁷¹

B. Conscious and Unconscious Manifestation

The choice was simple, either “a former first lady, senator[,] and secretary of state” or “a real

John McCain, “[h]e’s a hero because he was captured”; to Carly Fiorina, “[I]ook at that face[.] Would anyone vote for that? Can you imagine that, the face of our next president”; and as to Megan Kelly, “[y]ou could see there was blood coming out of her eyes, blood coming out of her wherever.”).

¹⁶⁸ As misogyny played a role in the loss of the election. *See* Hot News, 4/6/2107 *Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (2017); *See also* Kristof, THE NEW YORK TIMES (2017).

¹⁶⁹ *See* Hot News, 4/6/2107 *Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (2017).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* “The more successful or ambitious a woman is, the less likable she becomes.” *See* Kristof, THE NEW YORK TIMES (2017).

estate developer-turned-reality T.V. star.”¹⁷² Clinton, a world-renowned politician, attorney, and law professor, was a conventional candidate, except for her gender; however, the reaction to her was all but conventional.¹⁷³ In a research study conducted by the Public Religious Research Institute, 52% of white males had a “‘very unfavorable’ view of Clinton.”¹⁷⁴ This percentage was higher than the view of Barack Obama in 2008 and 2012, and the view of John Kerry in 2004.¹⁷⁵ “[S]ocial science evidence, primary exit polls . . . interviews with researchers and dozens of voters indicate that white men’s attitudes toward Clinton are driven by a complex mix of conscious and subconscious sexism.”¹⁷⁶ Another study claimed that 42% of Americans stated they believed the country had become “too soft and feminine.”¹⁷⁷ Coincidentally,

¹⁷² See Bush, PBS (2017).

¹⁷³ See Beinart, THE ATLANTIC (2016).

¹⁷⁴ Id. See Bush, PBS (2017).

¹⁷⁵ Twenty points higher than the view of Barack Obama in 2012 and thirty-two points higher in 2008; and twenty-eight points higher than the view of John Kerry in 2004. See Beinart, THE ATLANTIC (2016).

¹⁷⁶ See Bush, PBS (2017).

¹⁷⁷ Ewen MacAskill, *Jimmy Carter: Animosity Towards Barack Obama Is Due To Racism*, THE GUARDIAN (Sep. 16, 2009),

Donald Trump had the most supporters who believed the country was “too” “feminine.”¹⁷⁸

Darts of sexist terms, comments, and insults were thrown at Clinton because she is a woman.¹⁷⁹ For example, paraphernalia sold at the Republican National Convention evidenced the sexism: “Black pin reading ‘Don’t Be A Pussy. Vote For Trump in 2016.’ Black-and-red pin reading ‘Trump 2016: Finally Someone with Balls.’ White T- shirt reading ‘Trump that Bitch.’”¹⁸⁰ Other promotional paraphernalia included the following:

White T-shirt reading ‘Hillary Sucks But Not Like Monica.’ Red pin reading ‘Life’s a Bitch: Don’t Vote For One.’ White pin depicting a boy urinating on the word Hillary. Black T-shirt depicting Trump as a biker and Clinton falling off the motorcycle’s back alongside the words ‘If You Can Read This, The Bitch Fell Off.’ Black T- shirt depicting Trump as a boxer having

<https://www.theguardian.com/world/2009/sep/16/jimmy-carter-racism-barack-obama>.

¹⁷⁸ *Id.*

¹⁷⁹ See Beinart, THE ATLANTIC (2016).

¹⁸⁰ *Id.*

just knocked Clinton to the floor of the ring, where she lies face[]up in a clingy tank top. White pin advertising 'KFC Hillary Special. 2 Fat Thighs. 2 Small Breasts ... Left Wing.'¹⁸¹

The average objections to Clinton (i.e., the email or Benghazi scandals) were intensified as a response to a woman attempting to “take” a male dominated role.¹⁸² Those who fear emasculation were the ones who disliked Clinton the most.¹⁸³

Women in the political field receive less support and face greater resistance than their male counterparts.¹⁸⁴ For example, in the primaries,

¹⁸¹ *Id.*

¹⁸² *Id.* See Bush, PBS (2017).

¹⁸³ MacAskill, THE GUARDIAN (2009). In 2009, former President Jimmy Carter stated that a reason for the opposition against then President Barack Obama was due to racism. *Id.* “I think an overwhelming portion of the intensely demonstrated animosity toward President Barack Obama is based on the fact that he is a black man, that he’s African American.” *Id.* Although, many argued against it, a study shows that President Barack Obama’s presidency “may have given some whites ‘the perceived moral license to express more critical attitudes about minorities.’” *Id.* This thought process bled into Clinton’s campaign and, in turn, lead to a sexist backlash against Clinton. *Id.*

¹⁸⁴ See Bush, PBS (2017). Take the Benghazi scandal where Kevin McCarthy, the House majority leader, stated in an interview that the investigation was “politically motivated.” *Id.* During the hearing, Republicans had a hard time with providing evidence of a cover up. *Id.* Additionally, during a question, Clinton was “called out” for

voting was affected by the usual policy disagreements *and* gender bias.¹⁸⁵ For example, in the 2016 Iowa Democratic caucuses, Clinton experienced a longer wait than President Obama did in 2008 to confirm victory.¹⁸⁶ Clinton's win was due to women and non-white voters because the white male voters felt more comfortable with Bernie Sanders.¹⁸⁷ "There is strong evidence that subconscious bias shaped the way white men viewed Clinton in the primaries. So just imagine how much sexism [] impact[ed] the general election."¹⁸⁸ In one interview, a group of five older gentlemen were asked for whom they were voting.¹⁸⁹ Out of the five, a Republican and Democrat stated they were going to vote for

looking at her briefing book; which is routine in these situations. *Id.* Representative Peter Roskam of Illinois, interrupted his question and said, "I can pause while you're reading your notes from your staff." Clinton looked up and answered, "I can do more than one thing at a time, Congressman. Thanks." *Id.* The press eventually named Clinton the "real 'winner.'" *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *See* Bush, PBS (2017).

Trump.¹⁹⁰ They claimed there was a possibility they would vote for a woman, but not Clinton.¹⁹¹ They did not trust Clinton because she had been caught in so many lies.¹⁹² One even said he was scared of Trump, but was going to vote for him anyway; and the other stated that “discrimination was no longer an issue . . . if it had ever been to begin with” in his local area.¹⁹³

Social psychology research demonstrates that many people believe they are not prejudiced when, in fact, they are.¹⁹⁴ “Men have ambivalent attitudes toward women. . . . [W]e can say we like women and really mean it while also harboring a combination of conflicting biases that we don’t even realize exist.”¹⁹⁵ Bias is automatic.¹⁹⁶ In a separate interview, men said they were not sexist, yet, “many said they were uncomfortable with the

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *See* Bush, PBS (2017).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

thought of a female president.”¹⁹⁷ Not only are elder men showing bias, but the younger ones are as well.

A Sanders supporter said his decision was not based on gender, but he knew “plenty of Sanders supporters who did.”¹⁹⁸ Another expressed concern that Clinton’s gender was going to be an obstacle.¹⁹⁹ One young man stated that he did not agree with Trump’s proposals and immigration bans, and he would like to see a female president.²⁰⁰ However, he was going to vote for Trump because he did not “like or trust Clinton.”²⁰¹ When asked “if he viewed male and female roles in society any differently,” he responded, “[w]ith a man you look for leadership and guidance.²⁰² With a woman you look for companionship and nurturing. A motherly role.”²⁰³ This is a double standard. “The more female politicians are seen as striving for power, the less they’re trusted and the more moral outrage gets

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See Bush, PBS (2017).

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

directed at them.”²⁰⁴ Because Clinton broke from the traditional role, many “are wired to judge her differently, and more negatively, than her male competition.”²⁰⁵

In addition to men, irrespective of age, women also chose to vote for Trump over Clinton. Women who display assertiveness and self-promotion and are competitive encounter resistance from both men *and* women.²⁰⁶ One of the women interviewed related to Clinton and commented that an ongoing issue was the thought that women could not do the same job as a man.²⁰⁷ However, she planned on voting for Trump.²⁰⁸ Clinton obtained votes from the majority of all women, however, 53% of white women voted for Trump.²⁰⁹

²⁰⁴ Bush, PBS (2017) (citing Pennsylvania State University Psychology Professor Terri Vescio).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Claire Zillman, *Hillary Clinton Had The Biggest Voter Gender Gap On Record*, FORTUNE (Nov. 9, 2016), <http://fortune.com/2016/11/09/hillary-clinton-election-gender-gap/>; See also Suzanne Moore, *Why Did Women Vote For Trump? Because Misogyny Is Not A Male-Only Attribute*, THE GUARDIAN (Nov. 16, 2016, 1:30 PM), <https://www.theguardian.com/lifeandstyle/commentisfree/2016/nov/1>

C. Breaking Away from the Traditional Role

Clinton was viewed most popularly when she adhered to the traditional gender roles, and was viewed least popularly when she broke from those roles, exercised her abilities, and demonstrated her ambition.²¹⁰

6/why-did-women-vote-for-trump-because-misogyny-is-not-a-male-only-attribute.

²¹⁰ Beinart, *THE ATLANTIC* (2016). Traditional roles being, “working on women’s issues as first lady, sticking by her husband during the Monica Lewinsky scandal, loyally serving Barack Obama as secretary of state.” Non-traditional roles: “heading the health-care task force, serving in the Senate, running for president” and becoming a female President. *Id.*; See also Richard L. Berke, *Favorite For High Court Failed to Pay Maid’s Taxes*, *THE NEW YORK TIMES* (June 13, 1993), <http://www.nytimes.com/1993/06/13/us/favorite-for-high-court-failed-to-pay-maid-s-taxes.html>; *Trump’s Pick For Budget Chief Has A Nannygate Problem*, *CHICAGO TRIBUNE* (Jan. 30, 2017, 2:23 PM), <http://www.chicagotribune.com/news/opinion/editorials/ct-nannygate-mulvaney-trump-cabinet-edit-0131-jm-20170130-story.html>; Stephanie Hanes, *Janet Reno, Former U.S. Attorney General, Dies At 78*, *THE WASHINGTON POST* (Nov. 7, 2016), https://www.washingtonpost.com/politics/janet-reno-former-us-attorney-general-dies-at-78/2016/11/07/50fe8810-a4cc-11e6-8042-f4d111c862d1_story.html?utm_term=.925ba2b2e80f; Shana Lebowitz, *A New Study From Lean In And Mckinsey Finds Exactly How Much More Likely Men Are To Get Promoted Than Women*, *BUSINESS INSIDER* (Oct. 1, 2015, 1:40 PM), <http://www.businessinsider.com/women-are-less-likely-to-get-promoted-2015-10>. Compare Bill Clinton’s nominations for attorney general, Zoe Baird or Kimba Wood (both women), nomination for Supreme Court Justice, Stephen Breyer, and Trump’s nomination for the Office of Management and Budget, Mick Mulvaney. Berke, *TIMES* (1993) All four had children, all four paid nannies, who were illegal, and all four did not pay taxes associated with their household

1. Hillary Rodham v. Hillary Clinton

Clinton, like Hopkins, was well qualified for her promotion to the presidency.²¹¹ Additionally, like Hopkins, she too had a remarkable career prior to the 2016 election and outperformed the other presidential candidate.²¹²

Whereas in 2008 she had a fairly standard resume for a presidential candidate (minus her time as First Lady), in 2016 she [was] *one of the most qualified presidential candidates of recent memory* by any objective measure, with four years as the nation's top diplomat under [her]

employee. *Id.* The difference between all four, Breyer and Mulvaney (both men) were the only ones to be confirmed. *Id.* Nonetheless after Baird and Wood, Americans had the first female Attorney General, Janet Reno, appointed; but was it because they felt less threatened by her? *Id.* Unlike Baird and Wood, Reno was not married and had no children. *Id.* One survey debunked the misconception that women were perceived to be less ambitious if they started a family. *Id.* The survey showed that working mothers were fifteen percent more interested than women without children. *Id.*

²¹¹ Alex Seitz-Wald, *How 2016 Is Not Like 2008 For Hillary Clinton: It's Worse*, MSNBC (Jan. 16, 2016, 2:43 PM), <http://www.msnbc.com/msnbc/how-2016-not-2008-hillary-clinton-its-worse>.

²¹² *Id.* The last elected president prior to Trump, who did not previously hold an elected office, was Dwight Eisenhower. His name recognition was due to "his role as supreme commander of the Allied Forces during World War II." Bush, PBS (2017). Unlike President Eisenhower or Clinton, Trump's name recognition is due to starring on *The Apprentice*. Bush, PBS (2017).

belt. ...[I]n 2016[,] her opponents were initially considered so weak that the most pressing concern was whether the process would look to[o] much like a coronation.²¹³

Upon departing from her position as the United States Secretary of State, she had a 64% approval rating “and was one of the most popular public officials in America.”²¹⁴ Unlike Hopkins, Clinton had the entire country as her Price Waterhouse review. Clinton had to be careful of what she said and how she spoke because, right or wrong, it would be perceived unfavorably because of her gender.²¹⁵ Yet, the prevailing candidate effortlessly resorted to name-calling, lawsuit and confinement threats, sexism, and inaccurate statements.²¹⁶ As far

²¹³ See Seitz-Wald, MSNBC (2016).

²¹⁴ See Kristof, THE NEW YORK TIMES (2017).

²¹⁵ See James Fallows, *When Donald Meets Hillary*, THE ATLANTIC (Oct. 2016), <https://www.theatlantic.com/magazine/archive/2016/10/who-will-win/497561/>. Unlike Trump, who “insulted virtually every demographic group in the country.” Bush, PBS (2017); See also Kristof, THE NEW YORK TIMES (2017). (noticing Clinton’s careful use of language).

²¹⁶ See Flegenheimer and Barbaro, THE NEW YORK TIMES (2016). To name just two instances regarding other professional women, Trump insulted Carly Fiorina, his only female primary candidate, by saying such things as “look at that face? Would anyone vote for that?” and

back as 1980, Arkansas voters were “uncomfortable” with Clinton’s “feminism” and the fact that she did not carry her husband’s name. In order to help her husband’s political career she added his surname: Hillary Rodham Clinton.²¹⁷ When she ran for United States Senate in New York, she ran as Rodham Clinton, but to avoid the sexist backlash, in 2016, she ran as Clinton.²¹⁸ Because of concerns like these, Clinton was also walking on eggshells when it came to issues concerning women and children.²¹⁹ Although they were her lifelong passions, she did not push the topics in either the 2008 or the 2016 campaigns because of her “fear of antagonizing men.”²²⁰ Even in her capacity as Secretary of State, during her travels, she would visit “women’s shelters or organizations fighting human trafficking” and sometimes bring foreign officials or diplomats.²²¹

attacked Megyn Kelly, a news host, by saying “[s]he had blood coming out of her wherever.” *See* Bush, PBS (2017).

²¹⁷ *See* Kristof, THE NEW YORK TIMES (2017).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

On the contrary, male candidates have not been chastised for their surnames or deemed to be pushing feminist buttons when they discuss women issues.

Like Hopkins, Clinton “was forced to ‘strike an [Archimedean] mean²²² between the poles of being too masculine and being too feminine.’”²²³ Additionally, besides the judicial reasoning and result in *Hopkins*, gender discrimination was and is still insufficiently recognized in our society.²²⁴ Women public speakers need to operate with caution since they tend to be perceived by some as “too weak and submissive” and by others as “too scolding or tedious.”²²⁵ “The only way [to] survive was by having ‘the correctly titrated balance of

²²² The Archimedean point is “a reliably certain position or starting point that serves as the basis for argument or reasoning.” *Archimedean point*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/Archimedean%20point>, (last visited Apr. 19, 2017).

²²³ See Ronner, 16 J. GENDER RACE & JUST. (2013) (quoting Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 910 (2002)).

²²⁴ See West, 67 Temp. L. Rev. 68, 69 (1994) (“Progress in one area has not translated into progress in another.”)

²²⁵ See Fallows, THE ATLANTIC (2016).

masculine and feminine traits.”²²⁶ Although Clinton was expected to stand up to Trump, if she had done so in a familiar political manner, she would have been perceived as “vituperative” and/or “angry” which carries a heavier meaning for a woman than a man.²²⁷

When men listen to strong women, they tend to find them to be abrasive perhaps because “[f]or many people, in particular straight white males and many black males, the most frightening sound is their mother’s voice in a certain tone.”²²⁸ A similar correlation was made of Clinton, who has been accused of being too “strident” or “shrill.”²²⁹ In one instance, “Republican pollster Frank Luntz told . . . *The Washington Post* that Clinton ‘reminds most men of their first wife—or mother-in-law.’”²³⁰ A woman stepping out of her traditional motherly, homemaker role is, therefore, found to provoke fear

²²⁶ See Ronner, 16 J. GENDER RACE & JUST. (2013).

²²⁷ See Fallows, THE ATLANTIC (2016).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

in men.²³¹ They relate powerful women to women in their lives when they show authority.²³² Again, this authority is deemed appropriate in traditional female roles, but not in one that threatens a male traditional role. Adjectives such as “emotional” and “angry” used toward women are negative gender stereotypes inferring a woman is “hysterical” and “irrational.”²³³ Both “emotional” and “angry” have been used towards Clinton.²³⁴ Therefore, if a woman acts “too soft,” then she is incapable of leading and should stick to her traditional role, but, if she acts too “strong,” then she should stick to her traditional role because she obviously is too “angry” or “emotional” to lead a nation.²³⁵ Unfortunately, when the shoe is on the other foot, the person is perceived completely different. For men, the story

²³¹ See Kimberly Key, *The Fear Behind Women in Power*, PSYCHOLOGY TODAY (Aug. 19, 2016), <https://www.psychologytoday.com/blog/counseling-keys/201608/the-fear-behind-women-in-power>.

²³² See Fallows, THE ATLANTIC (2016).

²³³ See Caine Miller, THE NEW YORK TIMES (2016).

²³⁴ *Id.*

²³⁵ *Id.*

is flipped.²³⁶ While power-seeking women are received with moral outrage, power-seeking men are viewed as “as having greater agency (i.e., being more assertive, stronger, and tougher) and greater competence.”²³⁷

2. “Never Flashy, Just Appropriate”²³⁸

Similarly to Hopkins, Clinton was judged on her physical appearance. “Regardless of where you stand politically, take just a moment to ponder the type of characterizations thrown at [Clinton] The discussion is no longer on legitimate policy initiatives.”²³⁹ Unlike other politicians, Clinton has been the topic of many style conversations.²⁴⁰

²³⁶ Tyler G. Okimoto and Victoria L. Brescoll, *The Price of Power: Power Seeking and Backlash Against Female Politicians*, HARVARD KENNEDY SCHOOL (June 2, 2010), <http://gap.hks.harvard.edu/price-power-seeking-and-backlash-against-female-politicians>.

²³⁷ *Id.*

²³⁸ Margaret Thatcher’s reflection as to her attire choices. See Megan Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016), <https://www.theatlantic.com/entertainment/archive/2016/08/youre-fashionable-enough-hillary/493877/>.

²³⁹ Kimberly Key, *The Fear Behind Women in Power*, PSYCHOLOGY TODAY (Aug. 19, 2016).

²⁴⁰ See Kara Brown, *Anna Wintour Has Reportedly Been Consulting on Hillary Clinton’s Clothing*, THE SLOT (July 18, 2016, 6:05 PM), <http://theslot.jezebel.com/anna-wintour-has-reportedly-been->

Ongoing criticism, from before she was First Lady until now, formed her persona.²⁴¹ Her overall appearance has been mocked, from her makeup to showing cleavage, to even using a scrunchie.²⁴² Unlike other politicians, Clinton has been observed and criticized in a celebrity-like manner.²⁴³ Her appearance reflects her growth in the political field in order to exercise her ambition and be taken seriously.²⁴⁴ Thus, she has maintained gender-

consulting-on-hillary-1784480669 (discussing what Clinton has worn and what she will wear next). Even after the election, Clinton was criticized for her hairstyle and lack of make-up during a public speech. Holly Baxter, *Yes I Do Think Hillary Clinton Staged Her 'No Make-Up' Appearance – And I'm Glad She Did*, INDEPENDENT (Nov. 18, 2016, 6:15 PM), <http://www.independent.co.uk/voices/hillary-clinton-speech-donald-trump-us-president-no-make-up-speech-im-glad-she-did-a7425546.html>.

²⁴¹ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016).

²⁴² *Id.*

²⁴³ *Id.* See also Raquel Laneri, *The Message Behind Hillary's Neutral Pantsuit*, NEW YORK POST (July 26, 2016, 1:32 AM), <http://nypost.com/2016/07/29/the-message-behind-hillarys-neutral-pantsuit/> (analyzing Clinton's attire unlike other male candidates).

²⁴⁴ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016); See also Lauren Le Vine, *Was Marcia Clark's Haircut Really Such A Big Deal In 1995?*, YAHOO (Mar. 10, 2016),

<https://www.yahoo.com/style/was-marcia-clarks-haircut-really-such-a-big-deal-001903473.html>. On a different scale, Marcia Clark, the chief prosecutor of the O.J. Simpson trial, was subjected to the same scrutiny. *Id.* Unlike her male counterparts during trial, she was the target of sexist comments and the only one with a consistent spotlight on her appearance. *Id.* From how she spoke in court to what she wore and carried her hair. *Id.*

neutral attire.²⁴⁵ When a woman's appearance is attacked, it implies that she "is valuable for her looks more than her brains."²⁴⁶ Her attempt to enter into a coveted traditional male role has led to the frequented pantsuit.²⁴⁷ A strategic, gender-neutral, confirming outfit is "the ultimate totem[] of cheerful corporate conformity."²⁴⁸ Since what she wears is not brought up in conversation as a side note, some believe the pantsuit is an option to relieve such conversation and bring focus back to other more important things.²⁴⁹ The chosen outfit "says both 'I am a woman' and 'I am so much more than just a woman,'" but does not lend itself to any

²⁴⁵ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016).

²⁴⁶ This thought processes applies to sexual remarks as well. See Caine Miller, THE NEW YORK TIMES (2016).

²⁴⁷ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016).

²⁴⁸ *Id.* The suits that Clinton wore were in addition consistent with a certain in-between look. The bottoms were pants but the jackets, for the most part, were longer than usual. Giving the illusion of a dress, seemingly to achieve the goal of meeting in the middle. This form of attire closely resembles the "rational dress" credited to Amelia Jenks Bloomer. Bloomer advocated for a comfortable pants and tunic ensemble when women were not allowed to wear pants. Her outfit, like Clinton's, was a mesh of pants and on the upper portion a dress that did not go all the way to the floor. Katy Steinmetz, *From Horse People to Hillary Clinton: A History of Women Wearing Pants*, TIME (June 14, 2016), <http://time.com/4363815/history-women-pants-hillary-clinton/>.

²⁴⁹ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016).

further attention.²⁵⁰ The pantsuit is now considered Clinton's "uniform."²⁵¹ But why refer to it as a uniform? For men in the same field, it is simply an insignificant suit.²⁵² For Clinton's sake, and others in a similar position, it is a way to have others avoid the topic of attire when the focus should be on the issues.²⁵³ Clinton's physical appearance choices

²⁵⁰ *Id.* Carmen M. Cusack found in her research that "law schools also coax female students into wearing skirt suits because law firms allegedly prefer associates to demonstrate a traditional appearance." See E-mail from Carmen M. Cusack, Editor of JOURNAL OF LAW AND SOCIAL DEVIANCE comments, on the subject of professional appearance, derived from Carmen M. Cusack, *Discrimination in Higher Education* (2016) (unpublished research on file with Ms. Cusack). "Therefore, Clinton also defies her private professions (i.e., attorney and law professor)." *Id.*

²⁵¹ See Garber, *Why The Pantsuit*, THE ATLANTIC (Aug. 2, 2016).

²⁵² Take London's Victoria and Albert Museum, which rejected an exhibition that would showcase Margaret Thatcher's outfits from when she was Prime Minister because it did not fit their definition of "fashionable dress." *Id.*

²⁵³ *Id.* Once upon a time though, women wearing pants in Congress and in the Senate was more than a topic of conversation it was a rule. Women in the Senate were not allowed to wear pants until after 1993 when former Maryland Senator, Barbara Mikulski, and former Illinois Senator Carol Moseley Braun broke the rule and wore pants on the Senate floor. Ali Elkin, *Barbara Mikulski Helped Lead the Pantsuit Rebellion of 1993*, BLOOMBERG (Mar. 2, 2015, 11:34 AM), <https://www.bloomberg.com/politics/articles/2015-03-02/barbara-mikulski-helped-lead-the-pantsuit-rebellion-of-1993>. As to Congress, the first woman to wear "trousers" in chambers was, by Charlotte Reid (Illinois), in 1969. Although it caused a ripple Ms. Reid stated she would not do it again because she was serious about her service and did not "want to do anything that seemed facetious." She added that she did not "want to do anything to take away from the femininity [sic] of the women in the House" but did make it a point

seem to have been torn from a page from Margaret Thatcher's experience, that in order to adhere, one must avoid being flashy and dress appropriately, whichever the traditional role determines that to be.²⁵⁴

V. CONCLUSION - MAKING THE UNCONSCIOUS CONSCIOUS

Section I of this Article shared a personal experience of sexism in the workplace.²⁵⁵ The young man, who asked me to carry the sandbag, was perhaps my height, if not shorter and very slender. He was not the physical type for lifting assistance. I simply asked him to do his job and well. However, this was the first time that he had challenged me. I asked the other supervisors if they had experienced the same consistent pushbacks

to state that she thought pants “are feminine-looking.” *Update: First woman to wear pants on House floor, Rep. Charlotte Reid*, THE WASHINGTON POST (Dec. 21, 2011), https://www.washingtonpost.com/blogs/reliable-source/post/update-first-woman-to-wear-pants-on-house-floor-rep-charlotte-reid/2011/12/21/gIQAVLD99O_blog.html?utm_term=.ba6f25718e63 (including the 1969 story from Nancy L. Ross, *Rep. Reid In A Pantsuit*, THE WASHINGTON POST (Dec. 24, 1969).

²⁵⁴ See Beinart, THE ATLANTIC (2016).

²⁵⁵ See *supra* Sec. I.

from him and they had not. The only difference between me and the other supervisors: I was the only female. This is neither the only time a situation of this nature has occurred to me, nor will it be the last. But it was her first blatant encounter with gender discrimination in the workplace. Sadly, to this day “the remnants of sexism are [still] alive and well.”²⁵⁶

Gender discrimination is still a daily occurrence, and both men *and* women are guilty.²⁵⁷ For example, consider Clinton and the 2016 electoral results discussed in Section IV.²⁵⁸ Many reasons could have led to Clinton’s loss in the 2016 presidential election, but the underlying cause was her gender. If any other male had been in her shoes, would the public have picked apart his outfit, questioned his emotions, or worried about his inability to lead because of a labeled display of anger?²⁵⁹ Would some have heard a nagging man giving a lecture or a passionate leader addressing

²⁵⁶ See Wheaton, THE NEW YORK TIMES (2008).

²⁵⁷ See discussion *supra* Sec. IV.

²⁵⁸ See *supra* Sec. IV.

²⁵⁹ See *supra* Sec. IV.C.

the nation?²⁶⁰ Would his looks, clothes, make-up, and hair; and baring or not baring children have mattered?²⁶¹ What happened to *Pricewaterhouse v. Hopkins*?²⁶² What happened to the end of discrimination in the workplace?

In Section III, we saw how the Supreme Court in *Hopkins* expressed its concern on the consistent disadvantage women face: if one is too soft, she is not strong enough, and, if one is too assertive, she is deemed too aggressive.²⁶³ Nonetheless, the Court held that gender discrimination in the workplace was prohibited.²⁶⁴ However, Section II revealed how gender discrimination still exists as a conscious and unconscious manifestation from both men *and* women against women.²⁶⁵ Gender biases are tied to people's backgrounds, cultures, and experiences.²⁶⁶ Therefore, what society needs to do, as a whole, is

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Hopkins*, 490 U.S. 228.

²⁶³ *See supra* Sec. IV; *See also* Caine Miller, THE NEW YORK TIMES (2016).

²⁶⁴ *Hopkins*, 490 U.S. 228.

²⁶⁵ *See supra* Sec. II.

²⁶⁶ *See* The Royal Society, *Understanding Unconscious Bias*, YOUTUBE (2015).

focus on education and familiarity: to make our unconscious conscious.²⁶⁷

We need more people to wake up and see that sexism is still a barrier for women and that each of us has a role to play in removing it. Simply agreeing that women make strong leaders, that gender diverse teams produce stronger results and make better decisions – in business, science, politics, education and beyond – or that gender equality is morally right is not enough. For change to occur, we need an army of men and women committed to confronting sexism where it lives. In our conversations around the coffee machine at work, around the dinner table at home or at the pub on a Friday night.²⁶⁸

To confront sexism, we must focus education on biases, both conscious and unconscious, as it is essential to convey change. Men *and* women need to uncover their own fears and/or biases about

²⁶⁷ See Kimberly Key, *The Fear Behind Women in Power*, PSYCHOLOGY TODAY (Aug. 19, 2016).

²⁶⁸ See Warrell, THE GUARDIAN (2016).

women.²⁶⁹ We need to practice taking a pause when interacting with others, and analyze what our reasons are for our actions. We need “to talk to each other and discuss how we see things differently and genuinely explore and try to understand the other person.”²⁷⁰ Unlike different gender issues, we are all in constant contact with women. Then, it only requires taking the time to familiarize oneself with the lifestyle and experiences of others. Through education, contact, and familiarity people can overcome bias. Seun Kuti, a Nigerian musician, stated in an interview referring to his daughter, the U.S. presidential election of 2016, and the future: “I have to intensify my studying . . . I have to double my efforts to ensure it is a better place for her to grow up in.”²⁷¹ We all need to deepen our education to ensure a better place for all of us. Clinton once stated that for “[e]very moment wasted looking

²⁶⁹ See Kimberly Key, *The Fear Behind Women in Power*, PSYCHOLOGY TODAY (Aug. 19, 2016).

²⁷⁰ Kimberly Key, *The Fear Behind Women in Power*, PSYCHOLOGY TODAY (Aug. 19, 2016).

²⁷¹ April Peavey, *Seun Kuti, Son Of Nigerian Music Icon Fela, Has A Message For The World's Elites*, PUBLIC RADIO INTERNATIONAL (Nov. 17, 2016), <https://www.pri.org/stories/2016-11-17/seun-kuti-son-nigerian-music-icon-fela-has-message-worlds-elites>.

back keeps us from moving forward.”²⁷² But it is time we take a glance back, learn, grow, and proceed with a leap forward.

We act within milliseconds in determining if we accept a person or not, but we can take a few more seconds to analyze that instinctive reaction and retrain our brains. In doing so, we confirm legitimate reasons for our actions, or if the action is based on the fear of sexual power, primarily when it comes to women. Women have always been involved in politics, but it was only until recently when they could partake.²⁷³ Even then, some of that allowed partaking stemmed from ulterior motives.²⁷⁴ Regardless, today, women have a true

²⁷² *Hilary Clinton Endorses Barack Obama*, THE NEW YORK TIMES (June 7, 2008), <http://www.nytimes.com/2008/06/07/us/politics/07text-clinton.html> (providing Clinton’s 2008 concession speech).

²⁷³ Take Rebecca Latimer Felton, the first woman in the Senate in 1922. *First Women Senator*, U.S. STATE SENATE, https://www.senate.gov/artandhistory/history/minute/First_Woman_Senator_Appointed.htm.

²⁷⁴ In Rebecca Latimer Felton’s case, a governor wanted to run for the U.S. Senate but knew he had lost support from his constituents. Therefore, he appointed Felton. Not only was she a woman but she was also eighty-seven—to avoid a possible rivalry at the next election. *Id.*

place in politics, and Clinton encourages young women to take part in it.²⁷⁵

Hopkins once stated, “[o]ne doesn’t get big things done without a few ripple effects.”²⁷⁶ Hopkins caused a ripple, an immense ripple, which has carried itself past a quarter of a century.²⁷⁷ Now, Clinton has fortified that ripple. She has paved and continues to pave the way for women and their quest for the White House. She is not the first to do so, but was the first reasonably to foresee its possible result.²⁷⁸ She has modernly shocked the

²⁷⁵ For those entering the field she guides to take “criticism seriously but not personally.” As these techniques are used to “crush” one’s “spirit, to make you feel inadequate, to make you doubt yourself.” She added that she refused to allow it to affect her, which in turn then “infuriated them even more.” See Hot News, 4/6/2107 *Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (2017).

²⁷⁶ See Alvittorio, *Ann Hopkins*, YOUTUBE (2011).

²⁷⁷ See Hopkins, 490 U.S. 228.

²⁷⁸ See Gorman, NEWSWEEK (2016); See also Carol Fensenthal, *The Strange Tale of the First Woman to Run for President*, POLITICO (Apr. 9, 2015), <http://www.politico.com/magazine/story/2015/04/victoria-woodhull-first-woman-presidential-candidate-116828>. There have been many female candidates, but their candidacies were simply symbolic, as even the candidates did not expect a victorious result. Gorman, NEWSWEEK (2016). That said, the first woman to run for the presidency was Victoria Woodhull in 1872; almost fifty years before women were *allowed* to vote and 136 before Clinton became the first woman presidential candidate. *Id.* She, like Clinton, was received with much objection. *Id.* In a political cartoon Woodhull was

system and that shock may have been the last crack the glass ceiling needed in order to finally shatter.²⁷⁹ As Clinton said to her supporters after her run in 2008: “Although we weren’t able to shatter that highest, hardest glass ceiling this time, thanks to you, it’s got about 18 million cracks in it.”²⁸⁰ After the 2016 election, Clinton expressed her plans to continue to stay involved and be a mentor to the younger generation.²⁸¹ Thanks to Clinton, the possibility of breaking the presidential glass ceiling is in realistic sight. Clinton advises to “toughen up your skin” because the “nastiness often directed at prominent women” is “not a new phenomenon, but it feels new and painful every time it happens to

depicted as “Mrs. Satan” seemingly advertising “free love” to a woman struggling with the weight of a drunken man and children on her journey over a rough mountainous terrain. *Id.* The mainstream began to take female candidates seriously with Margaret Chase Smith, in 1964, and Shirley Chisholm, in 1972. *Id.*

²⁷⁹ See Linda Lowen, *Who’s More Likely To Vote: Women or Men?*, THOUGHTCO. (Updated Jan. 29, 2017), <https://www.thoughtco.com/more-likely-vote-women-or-men-3534271> (displaying a steady growth with women voters over men); See also Hot News, *4/6/2107 Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (2017). (Clinton stating “the more we support women the more we support democracy.”)

²⁸⁰ See Gorman, NEWSWEEK (2016).

²⁸¹ See Hot News, *4/6/2107 Hillary Clinton Interview Tina Brown’s Women In the World*, YOUTUBE (2017).

you.”²⁸² It still will not be easy, but if we are educated and we practice conquering these biases, our nation will know what to expect, how to properly act in these situations, and how to do so without unequal bias.²⁸³

As psychiatrist and psychoanalyst Carl Jung stated, “[u]ntil you make the unconscious conscious, it will direct your life and you will call it fate.”²⁸⁴ Therefore, by each of us being a small ripple, together we can cause a great wave. That way, the next time Clinton or another qualified woman runs for president, there will be no more shock, no more judgment on factors that do not pertain or influence the duties of the position, no more *fear* of sexual power, no more inequality, and no more remnants of sexism.

²⁸² See Kristof, THE NEW YORK TIMES (2017).

²⁸³ *Id.*

²⁸⁴ Joe Martino, *20 Profound Quotes By Carl Jung That Will Help You To Better Understand Yourself*, COLLECTIVE EVOLUTION (Jan. 25, 2016), <http://www.collective-evolution.com/2016/01/25/20-profound-quotes-by-carl-jung-that-will-help-you-to-better-understand-yourself/>.