

# Sexual Harassment: Insights into Driving Better Compliance, Training, and Governance

## EXPERTS

**Stephanie Douglas**, Senior Managing Director of Guidepost Solutions LLC

**Kathy Leodler**, Owner and CEO, Rampart Group LLC

**Carmen Middleton**, Founder of Common Table Consulting

**Katherin Nukk**, Co-Founding Partner, Nukk-Freeman & Cerra, P.C.

**Serina Vash**, Executive Director, GRC and General Counsel, RANE Corp.

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*Recent headlines leave little doubt that this is a watershed moment in the US, as the tsunami of sexual harassment allegations swells and the list of powerful men brought down by their own bad behavior grows. For many companies, the paradigm shift feels more like shifting sand, and mounting concerns have businesses scrambling for dependable guidance. The unfortunate paradigm for many organizations has been to do the bare minimum of compliance training to keep lawsuits at bay. In light of today's scandals, the inescapable conclusion is that checking a box saying employees have watched the sexual harassment video or read the employee handbook are inadequate responses to a systemic, deep-rooted cultural problem. Practices and policies can make a difference, however. Despite serious concerns, these are not the worst of times but a moment rich with possibility. For any situation to change, there first has to be an awareness the problem exists. Empowered people have called out this behavior, and effective leaders are seizing the moment as an opportunity to strengthen their enterprise's professionalism and ensure equity, safety and trust in the workplace. Employees are watching, and how their employers respond now will determine whether it's business as usual, or a transformed workplace. RANE recently spoke to a group of subject matter experts, who offered their insights on approaches companies can take to not only cope with the issue, but take their business culture to a whole new level. Highlights of those conversations are excerpted below.*

## WHY IT MATTERS: THE HIGH COST OF LOOKING THE OTHER WAY

The negative impacts of harassment on any business can be enormous — though not always obvious. In addition to the impact on the business reputation and profitability of an organization due to loss of consumer confidence, stock value decline, and legal liabilities related to lawsuits and settlements, the toxicity of sexual harassment takes a toll on the productivity of everyone involved. “We want employees who are engaged,” **Carmen Middleton** says. “You want dedication to the job, creativity, innovation, and when someone's energy is tied up in just protecting what they have, you aren't going to get that. Organizationally, if people don't trust and depend on each other they're going to do their job the best they can, but that's all. So, there's a great loss of the intellectual capital of

your employees.” **Serina Vash** adds, “On the other hand, employees who feel valued and supported are more innovative, more productive, happier and more loyal to the company.” Another subtle and sometimes devastating cost is what researchers call the “Al Capone effect,” according to **Katherin Nukk**. “A sense of entitlement where people harass and get away with it,” she says, “creates a slippery slope that leads to other crimes. If enforcement is lax, people will be tempted to cross the line because they just don’t take management seriously. Those organizations tend to be more at risk for embezzlement and other ‘entitlements,’ such as an organization’s intellectual property.”

## CREATING A CULTURAL SHIFT

Altering the behavior of harassment and discrimination is not a matter of doubling down on the number of training videos employees are required to watch. If the workplace culture itself doesn’t transform, **Nukk** says, all the training in the world won’t fundamentally change anything. “One of my big focuses now,” she says, “is teaming with companies to create an ‘upstander’ culture, where employees are empowered to stand up when they see something that’s wrong and not just be bystanders. You need a culture so strong and so confident that, across the board, there is no room left where harassment and discrimination can take place without it surfacing. The EEOC’s recent guidance encourages employers to go above and beyond just compliance training to address issues of unconscious bias in the workplace, to proactively build ‘upstander’ cultures.” **Vash** agreed. “Bystander actions and reactions are informed by, reflect, elevate and perpetuate a company’s good ethical culture,” she says. “Whether you act or do not act in the face of bad behavior can either support good culture or contribute to a hostile culture.”

“Training is important,” says **Kathy Leodler**, “but culture is essential. For training to be effective, it has to exist in an open, supportive, harassment-free environment, and that is a cascade-down approach where change is driven from the top. You can’t just tell your HR people to make it stop and expect that to be effective. It is critically important that everyone owns the issue — and that ownership starts at the top.”

## BE A BETTER BOARD

Ensuring compliance begins with board accountability and filters down through the C-suite to management and their direct reports, so boards must demand transparency and clear expectations for all leadership. Executive boards must do a better job of being sensitized to harassment in the workplace. “One easy way for executive boards to get on top of this issue,” **Middleton** says, “is by asking the CEO to report annually on the harassment metrics, the harassment program in place and any relevant workforce observations about management’s competency in this arena. If executive boards gave the same amount of attention to these metrics as they do P&L, they’d have a much richer insight into what’s going on and whether the CEO has a handle on this topic.” Organizations that lack honest leadership often suffer from a host of integrity problems, **Stephanie Douglas** says. “Having a disciplined and high-integrity organization must start at the top. If the board is living by separate rules, it’s not going to work.”

Boards must ensure the organization has an unambiguous written policy or code of conduct. Benchmarking is a great way to keep from reinventing the wheel, so companies should consider benchmarking with best-in-class organizations, **Leodler** says, and inviting outside consultants to evaluate existing culture and offer guidance for improvement. Boards must strive to become more diverse to make sure a broad range of viewpoints are being represented and considered at the very top, **Douglas** says. “Having a disciplined and high-integrity organization must start at the top. If the board is living by separate rules, it’s not going to work.”

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## SIGNS TO WATCH FOR

Noteworthy among the outpouring of stories about workplace mistreatment are the accounts of being ignored, belittled or retaliated against for speaking up. But people who harass are not invisible. Often the behavior is widely known, yet those around them let it slide because they don't want to be a snitch, they fear they won't be taken seriously or that they will face retaliation. "I call it the 'That's Just Mike' syndrome," **Leodler** says, "where we become conditioned to accept the unacceptable by dismissing repetitive behavior because 'That's just the way Mike is.'" What that often means is that the person accountable just doesn't want to deal with the behavior — and doesn't have to. For management that does want to know when bad behavior is taking place, a variety of tools exist, from surveys to third-party investigations of serious allegations. "Given the prominence of this topic lately," **Middleton** says, "a straightforward [anonymous] 'climate' survey can be pulled together to get a sense of what the workforce perceives as a worrisome issue." Tracing the metrics of formal complaints and persistent rumors can provide important clues to the trouble spots. Are all the complaints coming from one unit? What kind of harassment is being alleged — sexual, racial, anti-LGBTQ? Are there an unusual number of requests for transfers or significant attrition in one department? Where there's smoke, there is usually fire.

"You don't want to wait for a full-fledged investigation to take place before you make changes," **Douglas** says. "Start by addressing your reporting and adjudication system. Does it allow for anonymous reporting? Do employees know how the reporting process works and what controls are in place to protect individual privacy when possible? Walking employees through how the system works is respectful of both the complainant and the alleged offender and will encourage confidence that any report will be handled appropriately."

## THE SPECIAL CHALLENGES OF STARTUPS

Invention requires risk, risk requires confidence, and startup-level confidence sometimes begets arrogance and a cocky attitude that normal rules of behavior don't apply. If a company is energized, growing quickly and has a totally undisciplined workforce right out of the gate, a culture clash may be just around the corner as the second and third round of funding requires that the renegade workforce becomes a disciplined business environment of more than a handful of employees. "There comes a reckoning," **Douglas** says, when funders start asking the entrepreneurs about issues like compliance, training and governance, and reality sets in. "It's easier to start out building a disciplined environment and treat people correctly, even if you don't have a fully fleshed-out and perfect process. Early stage companies should work to insert some business discipline along with high integrity into the developmental stages of a business. It takes less energy at that time than it does to try to change the culture midstream."

## WHAT TRAINING WORKS (AND WHAT DOESN'T)?

If your training doesn't mention potential scenarios involving tweets, Snapchats and Facebook posts, it is out of date, not relatable and won't engage the learner. If your organization's training involves having employees read an opaque training manual once and checking off that box on the HR form, it might as well not have happened. Training has to apply to today's workforce and should involve scenarios that employees recognize. Training must be provided to the entire workforce — including executives and managers. The CEO should open the training course, **Middleton** says, in person or via video to provide a personal message about what a priority this is for the organization. Articulate clear boundaries and communicate the consequences, and revisit the issue periodically to reinforce the organization's values. Training is about education, and anti-harassment

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training has to equip each and every employee with the tools to speak up and ask that the unwelcome behavior stop. The organization must protect the integrity of reporting and adjudicating allegations, or cynicism and resignation set in and the process will break down as employees become convinced that no one cares and nothing will ever change. **Vash** says it is critical that training emphasizes what employees can do, rather than merely lecture them about what is prohibited behavior. “Training needs to: Impact, Influence, and Empower employees to act and to speak up,” she adds. “Framing these conversations in terms of what the company stands for and upholding the vision and values of the company enables employees and leadership to stand behind the organization in doing the right thing and standing up for civility in the workplace.”

## BRIDGING THE ‘UNCOMFORTABLE CONVERSATION’ GAP

The experts agree that a supportive culture is the key to diminishing discomfort around reporting, investigating and adjudicating harassment allegations. When employees are properly trained and management has clearly communicated its support and buy-in for a harassment-free workplace — and have made it crystal clear that retaliation will not be tolerated — people at all levels of the organization find it easier to talk about these issues. Some companies have an ombudsman or a neutral party or trusted manager to whom complaints can be made in a safe environment. What constitutes harassment can be different for different people, **Douglas** says, and employees have to be empowered to be able to say, “I feel really uncomfortable with what you just did,” and to feel confident that they will be heard. “Just because it’s an uncomfortable conversation doesn’t mean it has reached the level of sexual harassment,” she says. “We need people to speak up for themselves and make the other party aware, if possible. If the situation is more egregious than a one off comment and affects your ability to do your job, that’s when you need to report your concern.

## ABOUT THOSE ROTTEN APPLES

Everyone makes mistakes from time to time and says the occasional dumb thing. Part of the ongoing challenge is educating each other on what works and what crosses the line. “Most of us are human and fallible and we all could benefit from more education and greater awareness,” **Middleton** says. “But at the end of the day, some people have been getting away with bad behavior for years. Others see that example and say, ‘Well, I worked for Bob and he did this. Why can’t it work for me?’ Some people need an opportunity to change their behavior; others who cannot or will not change their behavior need to move — be moved — on.”

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## ABOUT THE EXPERTS

### **Stephanie Douglas, Senior Managing Director of Guidepost Solutions LLC**

*Stephanie Douglas is senior managing director in the San Francisco office of Guidepost Solutions who focuses on sensitive internal, intellectual property and white collar crime investigations, as well as proactively educating executives about crisis management and insider threats*

### **Kathy Leodler, Owner and CEO, Rampart Group LLC**

*Kathy Leodler is founder and CEO of Rampart Group LLC, a security consulting and private investigations company whose clients include Fortune 500 companies, law firms and financial institutions, among other small to mid-sized businesses. She had a distinguished federal law enforcement career as an FBI Special Agent and executive leader. She served as an FBI SWAT commander and Inspector in Place.*

### **Carmen Middleton, Founder of Common Table Consulting**

*Carmen Landa Middleton is an executive leader with broad global management experience, formerly the Deputy COO at the Central Intelligence Agency (CIA), the No. 4 position at the agency. When she retired from the CIA in May 2017, she was the highest-ranking Latina in the intelligence community. She founded Common Table Consulting in June 2017 to focus on strengthening competencies of corporate board members and senior leadership teams.*

### **Katherin Nukk, Co-Founding Partner, Nukk-Freeman & Cerra, P.C.**

*Katherin Nukk-Freeman is an employment practices training specialist and co-founder of SHIFT HR Compliance Training and Nukk-Freeman & Cerra, PC, one of the most highly ranked labor and employment law firms with offices in New York and New Jersey.*

### **Serina Vash, Executive Director GRC and General Counsel, RANE Corp.**

*Serina Vash is a seasoned former federal prosecutor and litigator who has served for over two decades in the public, private and academic sectors. Serina joined RANE as the Executive Director of GRC and the firm's General Counsel in September 2017. An influential voice in the GRC and enforcement spaces, Vash lectures across the country on risk management, crime prevention, law enforcement policy, compliance, behavioral ethics, and anti-harassment/civility training.*

## ABOUT RANE

*RANE (Risk Assistance Network + Exchange) is an information and advisory services company that connects business leaders to critical risk insights and expertise, enabling risk and security professionals to more efficiently address their most pressing challenges and drive better risk management outcomes. RANE clients receive access to a global network of credentialed risk experts, curated network intelligence, risk news monitoring, in-house analysts and subject matter experts, and collaborative knowledge-sharing events.*