

#MeToo Innovators: Disrupting the Race and Gender Code by Asian Americans in the Tech Industry

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This Article focuses on how Asian American women innovators of the #MeToo generation are disrupting the code of conduct in the tech industry. The code is hard-wired into the tech bro culture of mirrortocracy, resulting in hiring practices that perpetuate existing company demographics and statistics that show that Asian American women face 2.91 times the disadvantage compared to white women. In addition, of all gender and racial groups, Asian American female innovators are the least likely to become executives. This Article identifies and explains how these innovators are the disruptors on several fronts. Utilizing everything from judicial means to traditional and social media platforms, the disruptors expose the other elephant in the valley—the intersectionality of discrimination on the basis of race and gender. The innovators’ disruption paves a new path for a solution rooted in both legal and business. The future of competition depends on women in the United States, which includes Asian American women. Therefore, now is the time for the tech industry to commit to eliminating the tech bro culture of mirrortocracy and actively increase the number of Asian American women innovators and leaders in the industry.

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INTRODUCTION

The tech industry presents many problems traced to its *code*, an ecosystem of conduct, culture, and values held together by power.¹ Deep in

1. A tech company's code or code of conduct is in the company's formal or informal mission statement. See Jennifer S. Fan, *Woke Capital: The Role of Corporations in Social Movements*, 9 HARV. BUS. L. REV. 441, 462 (2019) (observing Google's code of conduct changes from "Don't be evil" to "Do the right thing"); see also Mike Isaac, *Inside Uber's Aggressive, Unrestrained Workplace Culture*, N.Y. TIMES, Feb. 22, 2017, at A2 (describing Uber's core company values, including making bold bets, being "obsessed" with the customer, "always be hustling," and meritocracy, among others). Tech companies in today's economy, not financial companies, hold the political and cultural power. See Oliva Solon & Sabrina Siddiqui, *Forget Wall Street—Silicon Valley Is the New Political Power in Washington*, THE GUARDIAN (Sept. 3, 2017), <https://www.theguardian.com/technology/2017/sep/03/silicon-valley-politics-lobbying-washington> [<https://perma.cc/N2N3-LF9Z>] ("Beyond the direct lobbying spend, which is publicly reported, Silicon Valley exerts influence on policymakers and citizens through opaque 'soft power' techniques."); Cecilia Kang & Kenneth P. Vogel, *Tech Giants Amass a Lobbying Army for an Epic Washington Battle*, N.Y. TIMES (June 5, 2019), <https://www>

the *code*, bro culture flourishes as does mirrortocracy.² The bro culture allows men to sexually harass women in the workplace and at tech camps.³ Further, women are afraid to speak out for fear of their own personal safety and employment-related retaliation.⁴ The bro culture instead protects perpetrators.⁵

Mirrortocracy is a term used to describe the phenomenon in which entrepreneurs and tech professionals who share similar characteristics or backgrounds—alma mater, race, gender, or upbringing—as those who wield power in the tech industry are more likely to be hired and to advance.⁶ Although tech aptitude and genius are evenly distributed across

.nytimes.com/2019/06/05/us/politics/amazon-apple-facebook-google-lobbying.html [https://perma.cc/9ABQ-Z76S].

2. See Kristin N. Johnson, *Automating the Risk of Bias*, 87 GEO. WASH. L. REV. 1214, 1226 (2019) (stating that a bro culture “permeates” the tech industry and “fosters exclusivity and masculinity”); Deborah L. Rhode, *#MeToo: Why Now? What Next?* 69 DUKE L. J. 377, 398 n. 119 (noting that in the tech sector, the #MeToo movement has exposed the bro culture responsible for sexual harassment); see also Olufunmilayo B. Arewa, *Investment Funds, Inequality, and Scarcity of Opportunity*, 99 B. U. L. REV. 1023, 1054 (2019) (observing how Silicon Valley maintains inequality and insularity as a disproportionate number of venture capitalists in the Valley are males who graduate from the same two academic institutions). For the definition of mirrortocracy, see Carlos Bueno, *Inside the Mirrortocracy*, <http://carlos.bueno.org/2014/06/mirrortocracy.html> [https://perma.cc/7RJD-T6XF] (last visited Dec. 29, 2020).

3. See Erik Sherman, *5 Reasons the Tech Industry Has Got to Stop Being So Bro*, INC (Mar. 22, 2019), <https://www.inc.com/erik-sherman/5-reasons-tech-industry-has-got-to-stop-being-so-bro.html> [https://perma.cc/JB5R-D3V7] (discussing the tech bro culture and its numerous problems).

4. See Sara O’Brien & Laurie Segall, *Sexual Harassment In Tech: Women Tell Their Stories*, CNN MONEY, <https://money.cnn.com/technology/sexual-harassment-tech/> [https://perma.cc/D9NF-A2XB] (last visited Mar. 21, 2021) (investigating and documenting the pervasive sexual harassment conduct against women in tech and explaining why women are afraid to report the misconduct); Laura Colby, *Why So Few Women Break Through Tech’s Bro Culture*, BLOOMBERG (June 2, 2017), <https://www.bloomberg.com/news/articles/2017-06-02/why-so-few-women-break-through-tech-s-bro-culture-quicktake-q-a> [https://perma.cc/JF25-KLUH] (explaining survey results on women in the tech industry and reporting on widespread bias at tech companies); Susan Fowler, Opinion, *Susan Fowler: Why I Wrote the Uber Memo*, N.Y. TIMES (Feb. 14, 2020), <https://www.nytimes.com/2020/02/14/opinion/sunday/uber-susan-fowler-harassment.html> [https://perma.cc/2YMC-DGXX] (“I was terrified of being labeled ‘that woman who was sexually harassed.’ But I had to speak out.”).

5. See, e.g., Susan Fowler, *Reflecting on One Very, Very Strange Year at Uber* (Feb. 19, 2017), <https://www.susanfowler.com/blog/2017/2/19/reflecting-on-one-very-strange-year-at-uber> [https://perma.cc/A6MB-JA4L] (documenting the systemic sexual harassment and discrimination at Uber and how the company protects perpetrators); Daisuke Wakabayashi, et al., *Google Walkout: Employees Stage Protest over Handling of Sexual Harassment*, N.Y. TIMES (Nov. 1, 2018) <https://www.nytimes.com/2018/11/01/technology/google-walkout-sexual-harassment.html> [https://perma.cc/6JVN-A35Z] (focusing on how Google employees organized the global walkout against Google’s protection of sexual harassment perpetrators); Daisuke Wakabayashi & Katie Benner, *How Google Protected Andy Rubin, the ‘Father of Android’*, N.Y. TIMES (Oct. 25, 2018) <https://www.nytimes.com/2018/10/25/technology/google-sexual-harassment-andy-rubin.html> [https://perma.cc/XY9V-UWRD] (reporting how much Google paid Andy Rubin and how Google praised him while the company kept silent about sexual harassment allegations claimed against him).

6. See, e.g., KAPOR CAPITAL, KAPOR CAPITAL IMPACT REPORT 6 (May 8, 2019), <https://impact.kaporcapital.com/wp-content/uploads/2019/05/2019-Kapor-Impact.pdf> [https://perma.cc/K5S4-XZHW] (discussing the tech and venture capital worlds’ mirrortocracy system); Joe Nocera, *Silicon Valley’s Mirror Effect*, N.Y. TIMES (Dec. 26, 2014), <https://www.nytimes.com/2014/12/27/opinion>

society regardless of race, gender, or location, mirrortocracy paints a vastly different picture within the tech industry.⁷

Asian American women in tech face the onslaught of bro culture and mirrortocracy differently from any other racial groups. They are the least likely group to be promoted to executive or manager among all racial groups.⁸ Asian American women face 2.91 times the disadvantage compared to white women.⁹ Asian Americans endure racialized sexual harassment and discrimination.¹⁰ As #MeToo innovators, Asian American women actively wage their battles for equity and inclusion.¹¹ Asian American women are speaking out in the #MeToo movement about the tech industry. They disrupt the tech code.

The #MeToo movement was founded in 2006 by Black survivor and activist Tarana Burke.¹² However, it wasn't until about 2017 that the movement went viral, exposing the magnitude of sexual violence.¹³ Defined as a public health crisis, one in four women have experienced rape or attempted rape in their lifetime.¹⁴ As many as “55% of Asian women report experiencing sexual violence in their lifetime.”¹⁵

This Article is the first to identify and examine how #MeToo Asian American innovators disrupt the code in the tech industry. Joining the disruption, this Article proposes a legal and a business solution to ensure equity and inclusion in the tech industry and to enable the tech industry in the United States to compete on a global scale.

Part I identifies the tech code within corporate mission statements and the mirrortocracy system and explains the Asian American disadvantage. Part II exposes the bro culture, sexual discrimination, and harassment against #MeToo Asian American innovators. Part III examines how Asian American women innovators *lead* the #MeToo movement in tech by utilizing judicial means and tech tools. Part IV contrasts gender-based studies of discrimination, epitomized in “The Elephant in the Valley”

/joe-nocera-silicon-valleys-mirror-effect.html [https://perma.cc/HYE4-2ENE] (describing David Sacks's email relating to tech's alleged meritocracy).

7. See KAPOR CAPITAL, *supra*, note 6, at 7.

8. BUCK GEE & DENISE PECK, ASCEND, THE ILLUSION OF ASIAN SUCCESS: SCANT PROGRESS FOR MINORITIES IN CRACKING THE GLASS CEILING FROM 2007 – 2015 at 4, <https://cdn.ymaws.com/www.ascendleadership.org/resource/resmgr/research/theillusionofasiansuccess.pdf> [https://perma.cc/6JP4-5DTL] (hereinafter “ASCEND REPORT”).

9. See *id.* at 16,

10. See *infra* Part I.

11. See *infra* Part V.

12. Tarana Burke, *History & Inception*, ME TOO., [https://metoomvmt.org/get-to-know-us/history-inception/](https://metoomvmt.org/get-to-know-us/history-inception) [https://perma.cc/MNC6-W3LG] (last visited Jan. 2, 2020).

13. *Id.*

14. *Statistics*, ME TOO., <https://metoomvmt.org/learn-more/statistics> [https://perma.cc/2SLX-YPGF] (last visited Jan. 2, 2020).

15. *Id.*

survey, with a focus on the intersectionality of gender and race, or the “Other Elephant in the Valley.” Part V proposes a new theory in harassment law that accounts for the intersectionality and multi-dimensional experience of Asian American women, along with business solutions to ensure permanent changes.

The Article concludes that the tech industry cannot continue to ignore its bro culture and mirrortocracy problems if the industry wants to be competitive and meet the visions of global ubiquity described in many corporate mission statements.

I. TECH CODE AND THE ASIAN AMERICAN DISADVANTAGE

A new generation of tech companies—Google, Facebook, Netflix, Uber and Tesla—is leading the tech industry today with an evangelical view of tech as saviors and dominators of the world as part of their mission or *tech code*, as observed in their corporate mission statements. To execute the *tech code*, companies attract talented workforce for disruption based on an alleged meritocracy. Instead, of meritocracy, mirrortocracy exists in tech companies’ recruiting process, disadvantaging Asian American innovators.

A. *The Tech Code and Corporate Mission Statements*

Even though veteran tech companies have issues with continued unsatisfactory mission statements and tech bro code, their mission statements lack the evangelical vision that newer companies bring to their corporate missions. IBM, one of the oldest tech companies, was incorporated in 1911.¹⁶ IBMers share a set of corporate values, including “dedication to every client’s success,” “innovation that matters,” and “trust and personal responsibility in all relationships.”¹⁷ Microsoft echoes IBM, valuing “integrity, honesty, openness, personal excellence, constructive self-criticism, continual self-improvement, and mutual respect,” promising to be “accountable” to its “customers, shareholders, partners, and employees,” and having “a passion for technology.”¹⁸ Nothing in these legacy tech companies’ mission statements espouses the view of tech saving the world.

16. Alexis C. Madrigal, *IBM’s First 100 Years: A Heavily Illustrated Timeline*, THE ATLANTIC (June 16, 2011), <https://www.theatlantic.com/technology/archive/2011/06/ibms-first-100-years-a-heavily-illustrated-timeline/240502> [<https://perma.cc/GA5J-NTGB>].

17. IBM, *Our Values at Work*, <https://www.ibm.com/ibm/responsibility/report/2009/company.shtml> [<https://perma.cc/6TSC-6ZW5>] (last visited Mar. 9, 2020).

18. Barbara Farfan, *Mission Statements of Technology Companies*, THE BALANCE (Nov. 20, 2019), <https://www.thebalancesmb.com/tech-companies-mission-statements-4068549> [<https://perma.cc/M9SS-E5PU>] (complaining that Microsoft’s “biggest failures are at least partially a result of leaders who didn’t value the company’s values”).

New tech employees today prefer to work at the newer companies like Facebook and Google, instead of at IBM or Microsoft.¹⁹ The median income at Facebook and Google is \$228,651 and \$246,004, respectively, while the median income at IBM hovers around \$55,000.²⁰ Not surprisingly, the corporate values of tech companies like IBM and Microsoft are no longer shared by the tech industry broadly.²¹ What reigns today is the tech code exemplified in the corporate missions, codes of conduct, behaviors, norms, values, and cultures of newer companies in Silicon Valley.²²

The tech code is an industry belief rooted in an evangelical vision of technological advances and disruption as integral to global transformation.²³ Tech giants, such as Google, Facebook, Tesla, Uber, and smaller tech companies alike embrace the tech evangelicalism, believing that their technology proves transformative and disruptive.²⁴ A study of the

19. New hires are willing to take a pay cut to work at Facebook. Scott Thurm, *What Tech Companies Pay Employees in 2019*, WIRED (May 21, 2019, 12:36 PM), <https://www.wired.com/story/what-tech-companies-pay-employees-2019/> [<https://perma.cc/JJ4N-WD9P>]. But others prefer to join new startups over established tech companies. See Julie Bort, *Ex-Googler: College Grads Should Join a Startup Instead of Working at Google*, BUS. INSIDER (Apr. 14, 2014), <https://www.businessinsider.com/ex-googler-startup-first-google-second-2014-4> [<https://perma.cc/JJ9A-MX23>]; Áine Cain, *4 Questions to Help Decide Between Working at a Startup and a Tech Giant, from a Former Google Engineer*, BUS. INSIDER (Mar. 31, 2017), <https://www.businessinsider.com/should-i-take-job-at-google-facebook-microsoft-2017-3> [<https://perma.cc/FZ6T-MWBW>].

20. Thurm, *supra* note 19.

21. Despite being a US company, IBM employs more people in India than in the United States. *Id.* In today's tech world, IBM represents the old, not cool companies. See Rob Thubron, *IBM Accused of Trying to Look as Cool as Amazon and Google by Firing Older Employees*, TECHSPOT (Aug. 1, 2019), <https://www.techspot.com/news/81249-ibm-accused-trying-look-cool-amazon-google-firing.html> [<https://perma.cc/7SHR-HEPH>].

22. Under the *tech code*, companies employ Chief Evangelists to connect tech to human because tech “evangelism . . . [is] a way of life.” Theo Priestley, *Why Every Tech Company Needs a Chief Evangelist*, FORBES (Aug 28, 2015), <https://www.forbes.com/sites/theopriestley/2015/08/28/why-every-tech-company-needs-a-chief-evangelist/#1d96c4d43422> [<https://perma.cc/6LCP-84R5>] (“Evangelism creates a human connection with buyers and consumers to technology way beyond typical content marketing means because there’s a face and a name relaying the story, expressing the opinion, and ultimately influencing a decision. And in a world of data driven, and automated marketing technologies, evangelism is something you just can’t hand over to a robot.”); Sharon Florentine, *IT Career Roadmap: Technology Evangelist*, CIO (May 26, 2016), <https://www.cio.com/article/3075440/it-career-roadmap-technology-evangelist.html> [<https://perma.cc/PYK6-TU9V>].

23. Jeff Bertolucci, *The road to Tech Evangelism*, IBM: WATSON BLOG (April 11, 2016), <https://www.ibm.com/blogs/watson/2016/04/road-tech-evangelism/> [<https://perma.cc/J64E-XNX7>] (“When you think about it, the tech world has a lot in common with old-time religion. There are impassioned camps — think Android vs. iOS or Mac vs. Windows — devoted to a particular software or hardware platform. And tech conferences that attract the faithful often embrace the fevered intensity of a tent revival.”); Guy Kawasaki, *The Art of Evangelism*, HARV. BUS. REV., May 2015, at 108–111 (Evangelism is “‘to proclaim good news,’ . . . explaining to the world how your product or service can improve people’s lives. My job at Apple was to proclaim the good news that Macintosh would make everyone more creative and productive . . . [A]s the chief evangelist of Canva, my job is to share a platform that democratizes design. Evangelists truly have the best interests of others at heart.”).

24. See Joel Aguero, *What I Learned Launching Two Political Tech Startups in 2018*, MEDIUM (Oct. 1, 2018), <https://medium.com/@joelaguero/what-i-learned-launching-two-political-tech-startups>

mission statements of tech companies reveals the tech evangelical vision of using technology for world domination.²⁵

For example, Facebook is only seventeen years old, founded in 2004.²⁶ Yet, the company's mission statement displays naked arrogance and audacious ambition.²⁷ According to its 2009 mission statement, Facebook seeks to “give people the power to share and make the world more open and connected.”²⁸ This mission statement implies that Facebook possesses the power, technology, and knowhow “to give” all people the power to share worldwide.²⁹ In 2006, within two years of its inception, Facebook became accessible to the world's population, and the company garnered 12 million users.³⁰ Today, there are more than 2.5 billion active users on Facebook.³¹ The number of Facebook users is almost twice the number of Catholics worldwide.³²

-in-2018-f10450bcaa32 [https://perma.cc/824G-FY8A] (“Tech savior complex is real — and real annoying . . . Sure, there are big opportunities for improvement — but it's supremely annoying when tech folk from [insert reputable tech company] show up feelin' like the second coming of Christ, telling everyone they've figured it out.”); The Editors, *Ten Big Global Challenges Technology Could Solve*, MIT TECH. REV. (Feb. 27, 2019) <https://www.technologyreview.com/s/612951/ten-big-global-challenges-technology-could-solve> [https://perma.cc/RJ5M-9TSM]; Lori Melton, *TechMatters: 3 More Global Issues Technology Should Tackle*, THE BURN-IN (June 13, 2019), <https://www.theburnin.com/thought-leadership/tech-matters-global-problems-pt-2> [https://perma.cc/JU6F-RE3D].

25. See Matt Weinberger, *These 13 Tech Giants Have the Best Mottoes to Explain Their Plans for World Domination*, BUS. INSIDER (Jan. 20, 2016, 8:06 AM), <https://www.businessinsider.com/tech-company-mission-statements-2016-1> [https://perma.cc/7UPC-4WT8].

26. Nicholas Carlson, *At Last — The Full Story of How Facebook Was Founded*, BUS. INSIDER (Mar. 5, 2010), <https://www.businessinsider.com/how-facebook-was-founded-2010-3> [https://perma.cc/A9EZ-V927].

27. See *The Guardian View on Facebook: The Arrogance of Power*, THE GUARDIAN (Feb. 18, 2019), <https://www.theguardian.com/commentisfree/2019/feb/18/the-guardian-view-on-facebook-the-arrogance-of-power> [https://perma.cc/47GC-6FN7]; Renae Merle, ‘Arrogance,’ ‘A Ploy,’ ‘Bold’: Here's What Officials Are Saying About Facebook's Libra, WASH. POST (July 19, 2019), <https://www.washingtonpost.com/technology/2019/07/19/arrogance-ploy-bold-heres-what-officials-are-saying-about-facebooks-libra> [https://perma.cc/U7WD-A542]; Philip G. Baker, *Facebook's Arrogance*, HUFFINGTON POST (May 18, 2010), https://www.huffpost.com/entry/facebooks-arrogance_b_580997 [https://perma.cc/XFR7-NDEE].

28. Gillian Reagan, *The Evolution of Facebook's Mission Statement*, OBSERVER (July. 13, 2009), <https://observer.com/2009/07/the-evolution-of-facebooks-mission-statement/> [https://perma.cc/QVY3-WHSK].

29. See *id.*

30. Farfan, *supra* note 18.

31. J. Clement, *Number of Monthly Active Facebook Users Worldwide as of 4th Quarter 2019*, STATISTA (Jan. 30, 2020), <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide> [https://perma.cc/5M6Q-ZW28].

32. See *Catholic Church*, WIKIPEDIA, https://en.wikipedia.org/wiki/Catholic_Church [https://perma.cc/P45Q-XRDF] (last visited Mar. 2, 2020). In addition to comparisons to the Catholic church, others have compared Facebook to great empires:

Not since the era of imperial Rome has the ‘thumbs-up’ sign been such a potent and public symbol of power. A mere 12 years after it was founded, Facebook is a great empire with a vast population, immense wealth, a charismatic leader, and mind-boggling reach and influence. The world's largest social network has 1.6 billion users, a billion of whom use it every day for an average of over 20 minutes each. In the Western world, Facebook accounts for the largest share of the most popular activity (social networking) on the most widely used

Likewise, Netflix co-founder and CEO Reed Hastings in 2011 articulated Netflix's vision of "becoming the best global entertainment distribution service" and "[h]elping content creators around the world to find a global audience."³³ Like Facebook, Netflix's expansion of its streaming services, available in 190 countries, are due to its prowess in leveraging its technology for world content domination.³⁴

Google displays two faces to the world. Google's first face is its mission around information. In 1997, founders Larry Page and Sergey Brin adopted the mathematical term "googol," the number one followed by 100 zeroes, to represent their search engine that would organize infinite information.³⁵ The official mission statement espouses Google's ambition "to organize the world's information and make it universally accessible and useful";³⁶ Google's vision is "to provide access to the world's information in one click."³⁷ The second face is its aspiration of world domination through its ubiquitous software. However, Google colors this mission with its former unofficial motto, "Don't be evil," which it recently changed to "Do the right thing."³⁸ The code of conduct, "Don't be evil," speaks to the tech evangelicals' belief that tech possesses the power both to transform and to do good deeds.

Tesla's mission is "accelerat[ing] the world's transition to sustainable energy."³⁹ To achieve the mission worldwide, Tesla touts a vision of creating the "most compelling car company of the 21st Century by driving

computing devices (smartphones); its various apps account for 30% of mobile internet use by Americans. And it is the sixth-most-valuable public company on Earth, worth some \$325 billion.

Imperial Ambitions, THE ECONOMIST (Apr. 9, 2016), <https://www.economist.com/leaders/2016/04/09/imperial-ambitions> [<https://perma.cc/Y8S9-J59P>].

33. *Communicating Your Organization's Mission and Vision*, CLEARCOMPANY <https://bestpractices.clearcompany.com/company-mission/index.html> [<https://perma.cc/77V8-PFC5>]. (last visited Mar. 9, 2020) (stating that Netflix vision includes "[b]ecoming the best global entertainment distribution service, [l]icensing entertainment content around the world, [c]reating markets that are accessible to filmmakers, [and] [h]elping content creators around the world to find a global audience").

34. Louis Brennan, *How Netflix Expanded to 190 Countries in 7 Years*, HARV. BUS. REV. (Oct. 12, 2018), <https://hbr.org/2018/10/how-netflix-expanded-to-190-countries-in-7-years> [<https://perma.cc/C2CG-FV4E>]; Janko Roettgers, *How Netflix Wants to Take on Its Competition in 2019 and Beyond, a Look Behind the Curtain at the Technology That Makes the Streaming Service Tick*, VARIETY (Mar. 21, 2019), <https://variety.com/2019/digital/news/netflix-look-behind-curtain-1203169528> [<https://perma.cc/D2LC-J5NK>].

35. Ryan Goodrich, *Googol, Googolplex - & Google*, LIVE SCIENCE (May 13, 2013), <https://www.livescience.com/31981-googol.html> [<https://perma.cc/G665-GWJE>].

36. *Our Approach to Search*, GOOGLE, <https://www.google.com/search/howsearchworks/mission> [<https://perma.cc/D8FD-YSF4>] (last visited Mar. 9, 2020).

37. Britt Skrabanek, *Difference Between Vision and Mission Statements: 25 Examples*, CLEARVOICE (Feb. 14, 2020), <https://www.clearvoice.com/blog/difference-between-mission-vision-statement-examples> [<https://perma.cc/A6EM-XYT2>].

38. Kate Conger, *Google Removes 'Don't Be Evil' Clause from Its Code of Conduct*, GIZMODO (May 18, 2018), <https://gizmodo.com/google-removes-nearly-all-mentions-of-dont-be-evil-from-1826153393> [<https://perma.cc/K985-AP2L>].

39. Skrabanek, *supra* note 37.

the world's transition to electric vehicles.”⁴⁰ Like other tech companies, Tesla charges towards the future of world domination with its tech prowess to disrupt the automobile industry.⁴¹

Uber destroys traditional car ownership with ride-hailing.⁴² Uber's mission claims “to bring transportation—for everyone, everywhere.”⁴³ The app seeks to penetrate every corner of the world.

In a short time, tech companies like Google, Facebook, Netflix, Uber and Tesla are on their way to achieving their missions. They are reaching their dreams of world domination with many believers.⁴⁴

B. Talent for Tech Disruption: From Meritocracy to Mirrortocracy

To achieve world domination, tech companies must interrupt traditions of worldwide businesses and industries. Accordingly, tech companies need talent and believers to design and execute disruption. Tech companies hire and retain talent in pursuit of their corporate missions.

In tech, the passion for technology often means working long hours to survive the valley of death, meet milestones, and scale for growth.⁴⁵ The competition is fierce.⁴⁶ The failure is real.⁴⁷ Money is here today but burns tomorrow.⁴⁸ To be the next big thing, tech companies work toward either

40. *Id.*

41. See *Tesla Disrupting the Automobile Industry*, THE DUKE PERSPECTIVE (Dec. 20, 2018), <https://sites.duke.edu/perspective/2018/12/20/tesla-disrupting-the-automobile-industry/> [<https://perma.cc/6X9Q-XXDR>].

42. Ayoub Aquad, *The Automaker Transformation Report: Inside Automakers' Scramble to Keep Uber and Lyft from Snatching Billions from Their Pockets*, BUS. INSIDER (Feb. 22, 2020), <https://www.businessinsider.com/the-automaker-transformation-report-2019-8> [<https://perma.cc/MD9S-RCNC>].

43. Skrabanek, *supra* note 37.

44. Peter Eavis & Steve Lohr, *Big Tech's Domination of Business Reaches New Heights*, N.Y. TIMES (Aug. 19, 2020), <https://www.nytimes.com/2020/08/19/technology/big-tech-business-domination.html> [<https://perma.cc/UX7S-2PYT>].

45. Rachel Thomas, *Tech's Long Hours Are Discriminatory and Counterproductive*, MEDIUM (Feb. 11, 2019), <https://medium.com/s/story/techs-long-hours-are-discriminatory-counter-productive-17dc61071ed5> [<https://perma.cc/ABJ4-73H4>]; see generally Xuan-Thao Nguyen, *Lending Innovations*, 86 BROOKLYN L. REV. 135 (2020) (describing different stages of startups and what they must achieve to obtain funding).

46. Biz Carson, *The 8 Fiercest Rivalries in Tech Today*, BUS. INSIDER (Mar. 1, 2016), <https://www.businessinsider.com/the-8-intense-rivalries-in-tech-today-2016-2> [<https://perma.cc/8XDH-LXUJ>].

47. Nitin Seth, *Seven Tips to Increase the Odds of Tech Startup Success*, FORBES (May 30, 2018), <https://www.forbes.com/sites/forbestechcouncil/2018/05/30/seven-tips-to-increase-the-odds-of-tech-startup-success/#bcf1a5a1b752> [<https://perma.cc/A9XF-FRVH>] (reporting that 75% of venture-backed startups fail and the failure rate of all US companies “after five years was over 50% and over 70% after 10 years”).

48. Neil Patel, *90% of Startups Fail: Here's What You Need to Know About the 10%*, FORBES (Jan. 16, 2015), <https://www.forbes.com/sites/neilpatel/2015/01/16/90-of-startups-will-fail-heres-what-you-need-to-know-about-the-10/#4e9307cf6679> [<https://perma.cc/R9FS-GC4B>] (noting that startups fail because they don't grow fast enough, but they also failed because they “‘ran out of cash’. Why did they run out of cash? Because they didn't grow fast enough”); 368 *Startup Failure Post-Mortems*, CB INSIGHTS (Feb. 03, 2021), <https://www.cbinsights.com/research/startup-failure-post-mortem> [<https://perma.cc/8XDH-LXUJ>].

acquisition by other companies or an initial public offering.⁴⁹ Tech companies must have talent to ensure growth, and they insist on hiring and retaining talent based on meritocracy.⁵⁰ Tech companies do not hire just anyone because resources are scarce and are saved for the most “deserving.”⁵¹ They fiercely compete against each other for the most talented individuals.⁵² Ideally, companies hire purely through meritocracy, based on IQ, effort, merit, and diversity.⁵³

The idea of meritocracy is nothing new;⁵⁴ American businesses have long believed in meritocracy but never practiced it in reality.⁵⁵ Nepotism is

perma.cc/Y6TC-SLDF] (finding that “70% of upstart tech companies fail — usually around 20 months after first raising financing (with around \$1.3M in total funding closed),” as they could not obtain funding).

49. Christina Tamer, *9 Steps to Formulating a Successful Exit Strategy*, VENTUREWELL (Nov. 27, 2018), <https://venturewell.org/exit-strategy/> [<https://perma.cc/FUR7-RL7N>] (observing that there are three traditional exits: acquisition, merger, and IPO); Benjamin Joffe & Cyril Ebersweiler, *What Every Startup Founder Should Know About Exits*, TECHCRUNCH (July 31, 2018), <https://techcrunch.com/2018/07/31/what-every-startup-founder-should-know-about-exits> [<https://perma.cc/X9W6-GZ8J>].

50. See Colleen Ammerman, *When Meritocracy Is a Myth*, HARV. BUS. SCH. DIG. INITIATIVE (Feb. 11, 2019), <https://digital.hbs.edu/managing-in-the-digital-economy/when-meritocracy-is-a-myth> [<https://perma.cc/GA8N-9JBT>] (“One innovative approach lies in challenging a powerful assumption, what we might call the tech sector’s claim to meritocracy. When companies describe themselves as meritocratic, or declare that its people-management processes are merit-driven, it’s actually more likely that male employees are being paid more than women who receive the same performance ratings.”).

51. Tech companies draw on ingrained ideas about how meritocracies work. “The conventional understanding of meritocracy is that it is a system for awarding or allocating scarce resources to those who most deserve them. The idea behind meritocracy is that people should achieve status or realize the promise of upward mobility based on their individual talent or individual effort. It is conceived as a repudiation of systems like aristocracy where individuals inherit their social status.” Kenneth Oldfield, *Social Class-Based Affirmative Action in High Places*, J. LEGAL PROF. 307, 321 (2010).

52. Tech companies, however, have colluded with each other in hiring practices. They have agreed to not poach each other’s employees and have suppressed wages. Associated Press, *Judge Approves Settlement in Apple, Google Wage Case*, L.A. TIMES (Sept. 3, 2015), <https://www.latimes.com/business/technology/la-fi-tn-tech-jobs-settlement-20150903-story.html#:~:text=A%20federal%20judge%20has%20signed,from%20getting%20better%20job%20offers> [<https://perma.cc/5PTN-MTWH>]; Jeff John Roberts, *Tech Workers Will Get Average of \$5,770 Under Final Anti-Poaching Settlement*, FORTUNE (Sept. 3, 2015), <https://fortune.com/2015/09/03/koh-anti-poach-order> [<https://perma.cc/AN3G-8JPR>].

53. See Sean Crosslind, *How Big Tech Meritocracy Excludes Women and People of Colour*, MEDIUM (Jul. 14, 2020), <https://uxdesign.cc/big-tech-meritocracy-excludes-woman-and-people-of-colour-c15c74b335b> [<https://perma.cc/DLT2-FCAA>].

54. See Anna Spain Bradley, *Cognitive Competence in Executive-Branch Decision Making*, 49 CONN. L. REV. 713, 757 (2017) (“Faith in meritocracy prevails in America. Federal Reserve Chairman Ben Bernanke describes meritocracy as a ‘bedrock American principle . . . the idea that all individuals should have the opportunity to succeed on the basis of their own effort, skill, and ingenuity.’ In a Pew Poll, 69% of Americans agreed that ‘people are rewarded for intelligence and skill.’ Most Americans believe this notion to be true for themselves.”).

55. See Mona Chalabi, *Measuring Nepotism: Is It More Prevalent in the US Than in Other Countries?* THE GUARDIAN (March, 24, 2017) <https://www.theguardian.com/us-news/2017/mar/24/nepotism-data-ivanka-trump> [<https://perma.cc/9XFY-3RDC>]; Jorden Burt, *Nepotism and Its Dangers in the Workplace*, CONN. EMP. L. LETTER 7 (Nov. 11, 2008), <https://www.hrlaws.com/node/1074192> [<https://perma.cc/2EU8-UAAY>] (“American business has long been built on the fundamental idea of meritocracy and egalitarianism. . . . In reality, the practice of favoring and promoting relatives or

one of the norms of corporate America.⁵⁶ Tech companies, with their world domination view, believe they are different because they truly champion meritocracy.⁵⁷ For instance, Google revealed that the company receives more than two million job applications each year, and that obtaining a job offer from Google is ten times more difficult than securing an acceptance from Harvard.⁵⁸ To pass the initial “six-second test,” for example, the applicant should have an appealing resume, professional experiences similar to the prospective position, and solid education credentials.⁵⁹

David Sacks, co-founder of PayPal, proclaimed, “[i]f meritocracy exists anywhere on earth, it is in Silicon Valley.”⁶⁰ Tech companies boast that meritocracy embodies one of their core values.⁶¹ Under meritocracy, an individual who demonstrates the best qualifications for a particular employment position will get the job.⁶² Likewise, an individual who possesses visionary leadership will inevitably propel up the echelons of the corporate structure.⁶³

paramours, more commonly known as nepotism, is widely practiced in companies large and small across the country.”).

56. See Chalabi, *supra* note 55; see also Mike Leonard, *VirnetX Investor Seeks Records to Probe Nepotism, Insider Trades*, BLOOMBERG L. (Dec. 4, 2019), <https://news.bloomberglaw.com/esg/virnetx-investor-seeks-records-to-probe-nepotism-insider-trades?context=article-related> [<https://perma.cc/6HGA-BWQE>] (reporting that the software company VirnetX Holding Corp. faced a “Delaware lawsuit seeking internal records that will allegedly show nepotism, self-dealing, insider trading,” among other issues); Sharon Florentine, *Uber Scandal Highlights What’s Wrong with Silicon Valley*, CIO (Mar. 2, 2017), <https://www.cio.com/article/3176430/uber-scandal-highlights-whats-wrong-with-silicon-valley.html> [<https://perma.cc/8K3J-5YBH>] (identifying “sexual harassment, discrimination, favoritism, nepotism” and commenting “and you wonder why women, people of color and members of the LGBTQ community don’t want to work in tech”).

57. Tech companies’ meritocracy champion is misguided. See Greg Bensinger, *Meritocracy ‘Myth’ Can Hold Companies Back, Experts Say*, WALL ST. J. (Oct. 18, 2017), <https://www.wsj.com/articles/meritocracy-myth-can-hold-companies-back-experts-say-1508353320> [<https://perma.cc/932X-8QX4>]; Tracey Ross, *The Unsettling Truth About the Tech Sector’s Meritocracy Myth*, WASH. POST (Apr. 13, 2016), <https://www.washingtonpost.com/news/in-theory/wp/2016/04/13/the-unsettling-truth-about-the-tech-sectors-meritocracy-myth> [<https://perma.cc/G6BF-EM9X>].

58. Michael Schneider, *Google Gets 2 Million Applications a Year. To Have a Shot, Your Resume Must Pass the ‘6-Second Test’*, INC. (July 26, 2017), <https://www.inc.com/michael-schneider/its-harder-to-get-into-google-than-harvard.html> [<https://perma.cc/K73N-JHF5>].

59. *Id.*

60. Nocera, *supra* note 6.

61. *Id.* (reporting that David Sacks, Peter Thiel, and other power members of the PayPal Mafia seeded and funded many companies, and Sacks emphasized meritocracy in hiring talent for his companies).

62. See *id.* (reporting that David Sacks asserted, “I chose the best person for the job, I needed the best talent to win, and I wanted to foster a culture of excellence”).

63. Tech companies quickly point to leadership meritocracy for examples, such as Sundar Pichai, CEO, Google, Satya Nadella, CEO, Microsoft, Sanjay Mehrotra, President & CEO, Micron Technology, and Shantanu Narayan, Chairman & CEO, Adobe. These men climbed to the top because their qualifications and talents positioned them there. See Jim Whitehurst, *Meritocracy: The Workplace Culture That Breeds Success*, WIRED, <https://www.wired.com/insights/2014/10/meritocracy/> [<https://perma.cc/ZH84-ZFKW>] (last visited Feb. 23, 2021).

However, meritocracy, as noted by other scholars, “ignores social factors such as wealth or formal education as playing a role” in a person’s talent.⁶⁴ Further, meritocracy is a social construct, not an objective assessment.⁶⁵ In recent years, some critics have challenged the idea of meritocracy in Silicon Valley because of its exclusion of women.⁶⁶ Instead of meritocracy, tech companies are practicing “mirrortocracy.”⁶⁷ Mirrortocracy describes the pattern of tech companies hiring and retaining workers who share similar backgrounds, attended same schools, and grew up with the same privileges.⁶⁸ Mirrortocracy in tech extends to entrepreneurs, founders, and investors.⁶⁹

64. M. Neil Browne & Jennifer Coon, *The Impact of Market Ideology on Transnational Contract Law*, 30 LOY. L.A. INT’L & COMP. L. REV. 91, 105 n. 101 (2008) (“[M]eritocracy is the idea that if one has talent and tries hard, he or she gets what she deserves. Meritocracy ignores social factors such as wealth or formal education as playing a role in desserts. As an interesting language note, in English we say we earn money. In French, however, they do not earn money; they win money (Ils gagnent d’argent). This suggests that meritocracy is perhaps an idea arising from social construction, rather than human nature.”). The authors traced the term “meritocracy” to Michael Young who coined it in his book *The Rise of the Meritocracy* (1958). See *id.*

65. See *id.*; see also Louis Menand, *Is Meritocracy Making Everyone Miserable?* THE NEW YORKER (Sept. 23, 2019), <https://www.newyorker.com/magazine/2019/09/30/is-meritocracy-making-everyone-miserable> [<https://perma.cc/8NPF-ZSFM>] (“[M]erit is a self-justification in the same way that the divine right of kings was a self-justification. In a meritocracy, the winners, the people who benefit from the system, tend to believe that their success is due entirely to brains and hard work, not to the accident of birth.”).

66. For discussions on the exclusion of women, see Jodi Kantor, *A Brand New World in Which Men Ruled*, N.Y. TIMES (Dec. 23, 2014), <https://www.nytimes.com/interactive/2014/12/23/us/gender-gaps-stanford-94.html> [<https://perma.cc/6F52-WUKQ>]; see also Jo Littler, *Meritocracy: The Great Delusion That Ingrains Inequality*, THE GUARDIAN (Mar. 20, 2017), <https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump> [<https://www.theguardian.com/commentisfree/2017/mar/20/meritocracy-inequality-theresa-may-donald-trump>]; Roge Karma, *“The Meritocracy Trap,” Explained*, VOX (Oct. 24, 2019, 8:40 AM), <https://www.vox.com/policy-and-politics/2019/10/24/20919030/meritocracy-book-daniel-markovits-inequality-rich> [<https://perma.cc/SSU4-8VBS>] (“[M]eritocracy itself is the problem: It produces radical inequality, stifles social mobility, and makes everyone — including the apparent winners — miserable.”).

67. Mitch Kapor, a prominent engineer who designed the seminal Lotus 1-2-3 during early tech years, voiced his concern over Silicon Valley’s hiring practices being a “mirror-tocracy.” Nocera, *supra* note 6.

68. KAPOR CAPITAL, *supra* note 6 (“The sector that fancies itself a meritocracy is, in fact, a mirror-tocracy, made up largely of entrepreneurs who far too often came from the same backgrounds, attended the same schools, and were largely born with a set of privileges that are left unchallenged by a culture that lacks self-awareness.”); see also Carlos Bueno, *Inside the Mirrortocracy*, <http://carlos.bueno.org/2014/06/mirrortocracy.html> [<https://perma.cc/W38W-F74W>] (last visited Mar. 10, 2020) (“The problem is that Silicon Valley has gone completely to the other extreme. We’ve created a make-believe cult of objective meritocracy, a pseudo-scientific mythos to obscure and reinforce the belief that only people who look and talk like us are worth noticing.”); Sanjay Anandaram, *Diversity in Hiring – Mirrortocracy or Meritocracy?*, NEXTBIGWHAT <https://nextbigwhat.com/hiring-strategy-for-startups-mirrortocracy-or-meritocracy/> [<https://perma.cc/2VWJ-465T>] (last visited Mar. 10, 2020).

69. KAPOR CAPITAL, *supra* note 6; Richard Kirby, *Where Did You Go to School?*, MEDIUM: NOTEWORTHY – J. BLOG (July 30, 2018), <https://blog.usejournal.com/where-did-you-go-to-school-bde54d846188> [<https://perma.cc/7HQX-DMND>] (“With 82% of the industry being male, nearly 60% of the industry being white male, and 40% of the industry coming from just two academic institutions, it is no wonder that this industry feels so insular and less of a meritocracy but more of a mirrortocracy.”).

C. *Mirrortocracy and the Asian American Disadvantage*

The tech code and mirrortocracy disadvantage minority groups, specifically Asian Americans. Tech companies hire Asian Americans as low-level workers and then exclude them from management and leadership positions. Being an Asian American woman in tech comes with 2.91 times the disadvantage of being a white woman.⁷⁰ Not only are Asian American women more likely to get passed up for senior-level positions, but some Asian American ethnic groups also get paid much less than white men.⁷¹ Additionally, women of color, including Asian American women, are subjected to workplace sexual harassment and bullying more frequently than white women.⁷² This Asian American disadvantage came to light in a study conducted by the Ascend Foundation.⁷³

Utilizing EEOC data on the tech workforce in Silicon Valley, the Ascend Foundation paints a stark picture of the Asian American disadvantage.⁷⁴ Tech companies in Silicon Valley typically hire Asian Americans for entry-level professional work.⁷⁵ The data reveal that between 2007 and 2015, tech companies hired more Asian Americans to work at the entry-level than any other groups, including Whites, Black, and Latinx candidates.⁷⁶ Asian Americans, however, do not receive opportunities to move up to management and executive levels while they toil away at tech companies.⁷⁷ By 2015, “white men and women were ‘twice as likely’ as Asian Americans to become executives and held ‘almost 3x’ the number of executive jobs.”⁷⁸

Tech companies in Silicon Valley hired Asian Americans in large numbers to fill entry-level positions to exploit their hard work ethic, reinforcing a problematic stereotype.⁷⁹ By treating Asian Americans as tech

70. ASCEND REPORT, *supra* note 8.

71. Allana Akhtar, *Lower Pay, More Harassment: How Work in America Failed Women of Color in the 2010s*, BUS. INSIDER (Dec. 18, 2019), <https://www.businessinsider.com/how-work-is-failing-women-of-color-2019-10> [<https://perma.cc/NQB9-RN2M>].

72. *Id.*

73. ASCEND REPORT, *supra* note 8, at 3–4.

74. *Id.*

75. The longitudinal study tracks Asian Americans and other racial groups movements up on corporate ladders. “Entry-level professional work” includes non-management jobs requiring “bachelor and graduate degrees, and/or professional certification.” *Id.*

76. *Id.*

77. *See id.*

78. *Id.* at 3.

79. *See* Adeel Hassan, *Confronting Asian-American Stereotypes*, N.Y. TIMES (June 23, 2018), <https://www.nytimes.com/2018/06/23/us/confronting-asian-american-stereotypes.html> [<https://perma.cc/65W3-CSCN>] (noting that “the current stereotype of Asian-Americans is that they are smart, competent and hard-working,” but “a century ago, Asian-Americans were perceived as illiterate, undesirable, full of “filth and disease” and unassimilable”). Moreover, in the tech industry, Asian male workers face stereotypes that they are competent at computers but asexual beings. *See* Leah Askarinam and Nat. J., *Asian Americans Feel Held Back at Work by Stereotypes*, THE ATLANTIC (Jan. 26, 2016), <https://www.theatlantic.com/politics/archive/2016/01/asian-americans-feel-held-back-at-work-by>

worker bees, tech companies excluded Asian Americans from promotions to management and executive levels.⁸⁰ As white men and white women held almost three times the number of executive jobs compared to Asian Americans, these executives then practice mirrortocracy by seeking to promote new executives who are their mirror images.⁸¹ The new mirror image executives are white men and white women who are twice as likely as Asian Americans to become executives in San Francisco Bay Area tech companies, even though the total number of white men and white women in the pool for executive mobility is smaller than the number of Asian Americans.⁸²

In summary, the mirrortocracy that tech companies practice against Asian Americans suggests that meritocracy as the core value of the tech code is a delusion.⁸³ The data confirm that meritocracy exemplifies the tool weaponized by tech companies to craft insular, in-group leadership based on race at the expense of the Asian Americans who make up the largest pool of workers at the entry level.

-stereotypes/458874 [https://perma.cc/79FF-8Y9R] (reporting that a “new survey reveals just how much racial misconceptions can impact people at work”). The survey of 350 Asian-American men, showing “88 percent reported experiencing a racial stereotype. The most common stereotypes were being good at math, followed by having a small penis and being good with computers.” *Id.*

80. ASCEND REPORT, *supra* note 8, at 5 (concluding that “EEOC data . . . show that despite the increase in their numbers as executives, *Asians are still the least upwardly mobile demographic* to reach leadership positions in Bay Area technology companies. The widely-held notion of Asian executive success is largely an illusion”).

81. Buck Gee & Denise Peck, *Asian Americans Are the Least Likely Group in the U.S. to Be Promoted to Management*, HARV. BUS. REV. (May 31, 2018), <https://hbr.org/2018/05/asian-americans-are-the-least-likely-group-in-the-u-s-to-be-promoted-to-management> [https://perma.cc/P9ZG-HVWD] (observing that the “large numbers of Asian Americans in the professional workforce confirm that businesses are finding qualified Asian Americans to hire; however, the disparity between the lower ranks and the executive levels suggests either that leadership potential is disproportionately lacking in Asian Americans or — much more likely — that companies have not done an adequate job of identifying and developing Asian American talent.”); *see also* ASCEND REPORT, *supra* note 8, at 3.

82. *See* ASCEND REPORT, *supra* note 8, at 3; *see also* Matt Schiavenza, *Silicon Valley’s Forgotten Minority, Why Asians Remain Absent From the Tech Industry’s Highest Echelons*, THE NEW REPUBLIC (Jan. 11, 2018), <https://newrepublic.com/article/146587/silicon-valleys-forgotten-minority> [https://perma.cc/S757-YJ47] (“Equal Employment Opportunity data taken from 2007 to 2015 shows that white men and women were two times as likely as Asians to become executives and held three times the number of executive jobs.”).

83. *See, e.g.,* Nocera, *supra* note 6; Matt Asay, *The Silicon Valley Mirror-tocracy*, THE REGISTER (Nov. 1, 2011), https://www.theregister.co.uk/2011/11/01/silicon_valley_navel_gazing [https://perma.cc/8L4V-QNJ3]; Allyson Kapin & Craig Newmark, *Tech Aspires to Be a Meritocracy. But It’s Only a ‘Mirror-tocracy.’* AM. BANKER (Oct. 17, 2017), <https://www.americanbanker.com/opinion/tech-aspires-to-be-a-meritocracy-but-its-only-a-mirror-tocracy> [https://perma.cc/ZL36-422L].

II. BRO CULTURE, SEXUAL HARASSMENT, AND MISCONDUCT

Deeply embedded in tech code and mirrortocracy is tech bro culture.⁸⁴ Beyond their tech uniforms and power vests, tech bros value power, finance, marketing, and business, in addition to tech.⁸⁵ For example, Caleb Williams, a former venture development specialist, wrote in Quora that the “tech bro is the latest cultural evolution of the Alpha Male super breed.”⁸⁶ Tech bros today include both workers in “VC and Tech, manifesting in the form of VC’s, Product Managers, and family-funded startup founders, almost entirely localized to the Bay Area.”⁸⁷ Williams distinguishes the “tech bro” from the “tech nerd” based on physical appearance, “because the nerd is far too interested in technology to waste time making himself look good.”⁸⁸ Unlike tech nerds, tech bros possess more power, finance, marketing, and business backgrounds.⁸⁹ Outsiders of the tech industry offer similar observations about tech bros.⁹⁰ For example, explicit definitions of common tech bro expressions help society understand their “language.”⁹¹

As tech bros ascend in power in tech firms and companies that fund tech entrepreneurs, the bro culture allows men to abuse women in tech systematically.⁹² The #MeToo movement reveals the ugly side of tech bros.⁹³ Over forty percent of women in the tech industry have been harassed by a boss or an investor.⁹⁴

84. See Jennifer S. Fan, *Innovating Inclusion: The Impact of Women on Private Company Boards*, 46 FLA. ST. U. L. REV. 345, 385 (2019) (noting how the bro culture has led to the rampant sexual harassment and sexist conduct in the tech industry).

85. For critiques of tech bro culture, see EMILY CHANG, BROTOPIA: BREAKING UP THE BOYS’ CLUB OF SILICON VALLEY 117 (Stephanie Frerich ed., 2018) and Alua Jumabayeva, *Why Does Tech Bro Culture Matter?*, MEDIUM (Apr. 29, 2019), <https://medium.com/silicon-valley-uncovered/why-does-tech-bro-culture-matter-bde00cfc8b8e> [<https://perma.cc/AU82-WFAV>].

86. Caleb Williams, *What Is a Tech Bro?*, QUORA (Jan. 17, 2020), <https://www.quora.com/What-is-a-tech-bro> [<https://perma.cc/Z6BH-KHC7>].

87. *Id.* “VC” is shorthand for both “venture capital” and “venture capitalists.”

88. *Id.*

89. *Id.*

90. See, e.g., Julia Carrie Wong & Matthew Cantor, *How to Speak Silicon Valley: 53 Essential Tech-Bro Terms Explained*, THE GUARDIAN (June 27, 2019), <https://www.theguardian.com/us-news/2019/jun/26/how-to-speak-silicon-valley-decoding-tech-bros-from-microdosing-to-privacy> [<https://perma.cc/84B8-GWVC>] (caricaturizing the culture of tech bros). *The Guardian* defines “tech bro” as a “US-born, college-educated, Patagonia-clad male whose entry level salary at one of the FAANG companies was at least \$125,000 and who frequently insists that his female co-workers give him high-fives. Typically works in product management or marketing. Had he been born 10 years earlier, he would have been a finance bro instead.” *Id.*; see also Ginny Hogan, *11 Tips for Dating a Tech Bro*, MEDIUM: THE BOLD ITALIC (Aug. 19, 2019), <https://thebolditalic.com/eleven-tips-for-dating-a-tech-bro-4e9fba6552bf> [<https://perma.cc/X4TT-7TSD>]; Kyler Sumter, *What We Mean When We Say “Bro Culture”*, USA TODAY (June 7, 2017), <https://www.usatoday.com/story/college/2017/06/07/what-we-mean-when-we-say-bro-culture/37432805> [<https://perma.cc/42AX-VPTT>] (discussing the bro culture in the tech industry).

91. See Wong & Cantor, *supra* note 90.

92. See Chang, *supra* note 85.

93. See, e.g., Ian Sherr, *Uber’s Fall from Grace, Equifax Hack, #MeToo: Tech Scandals, 2017-18*, CNET (Nov. 20, 2019), <https://www.cnet.com/news/facebook-twitter-and-uber-fall-from-grace>

For example, in the tech venture area, Justin Caldbeck, co-founder of venture capital [VC] fund Binary Capital, was accused of using his position of power in exchange for sexual gain.⁹⁵ Caldbeck targeted female tech entrepreneurs, and six women came forward with allegations against him.⁹⁶ Likewise, Chris Sacca, a well-known venture capitalist, early investor in startups like Twitter, Uber, and Instagram,⁹⁷ and a *Shark Tank* judge, was accused of sexually harassing a female entrepreneur at a tech gathering and admitted to “helping make tech hostile to women.”⁹⁸ Tom Frangione, COO at Greylock Partners, one of the oldest venture firms with \$3.5 billion under management, stepped down after accusations he engaged in an inappropriate relationship with an employee.⁹⁹ Dave McClure of venture fund 500 Startups admitted making “inappropriate advances” on “multiple women” and a job candidate.¹⁰⁰

Tech evangelists with enormous influence like Robert Scoble faced allegations from a number of women for groping them at tech conferences.¹⁰¹ Roy Price, Head of Amazon Studios, allegedly made

-equifax-hacked-metoo-tech-scandals-2017-18 [https://perma.cc/J2M8-KKLP] (reviewing how tech companies and their executives are falling from grace).

94. Courtney Connley, *Over 40% of Women in Tech Say They've Been Harassed by a Boss or Investor, According to a New Report*, CNBC (Dec. 17, 2020, 4:00 PM), <https://www.cnbc.com/2020/12/16/40percent-of-women-in-tech-say-theyve-been-harassed-by-boss-or-investor.html> [https://perma.cc/8MAC-BBEP].

95. See Nathan Vardi, *Founders of Silicon Valley Firm That Imploded amid Sex Harassment Allegations Are Now Fighting Each Other*, FORBES (Feb. 28, 2019), <https://www.forbes.com/sites/nathanvardi/2019/02/28/founders-of-silicon-valley-firm-that-imploded-amid-sex-harassment-allegations-are-now-fighting-each-other/#475f336a357f> [https://perma.cc/3U4W-RQBC] (reporting that Caldbeck faced allegations he had sexually harassed female tech entrepreneurs who sought funding and that six women came forward to accuse Caldbeck of sexual wrongdoing).

96. See *id.*

97. Alex Konrad, *How Super Angel Chris Sacca Made Billions, Burned Bridges and Crafted the Best Seed Portfolio Ever*, FORBES (Apr. 12, 2015), <https://www.forbes.com/sites/alexkonrad/2015/03/25/how-venture-cowboy-chris-sacca-made-billions/?sh=6cd0ffcf6597> [https://perma.cc/NG94-DQHK].

98. Becky Peterson, *'Shark Tank' Judge Chris Sacca Apologizes for Helping Make Tech Hostile to Women — After Being Accused of Inappropriately Touching a Female Investor*, BUS. INSIDER (June 30, 2017, 3:38 PM), <https://www.businessinsider.com/chris-sacca-apologizes-after-accusation-of-inappropriate-touching-2017-6> [https://perma.cc/L65Q-JXDV] (reporting on Sacca's apology for “behaving in ways that made women feel uncomfortable” and the *New York Times*' report that he had inappropriately touched a female entrepreneur).

99. Cromwell Schubarth, *Greylock Partners COO Left Firm After 'Lapse of Judgment'*, SILICON VALLEY BUS. J. (Aug. 3, 2017, 7:04 AM), <https://www.bizjournals.com/sanjose/news/2017/08/02/greylock-partners-coo-left-firm-after-lapse.html> [https://perma.cc/WG5Z-23NH].

100. Jonathan Shieber, *500 Startups' Dave McClure Apologizes for 'Multiple' Advances Toward Women and Being a 'Creep'*, TECHCRUNCH (July 1, 2017), <https://techcrunch.com/2017/07/01/500-startups-dave-mcclure-apologizes-for-multiple-advances-toward-women-and-being-a-creep> [https://perma.cc/Z378-B6T4].

101. Doree Shafir, *Another Woman Has Accused Robert Scoble of Sexual Harassment*, BUZZFEED NEWS (Oct. 19, 2017, 11:56 PM), <https://www.buzzfeednews.com/article/doree/woman-accuses-robert-scoble-of-sexual-harassment> [https://perma.cc/VKD9-68B4] (reporting Robert Scoble's sexual harassment at O'Reilly Media's Foo Camp event).

unwanted sexual remarks to a female employee and others.¹⁰² Price “lewdly and repeatedly propositioned” an executive producer of one of Amazon’s popular shows.¹⁰³

From tech workplaces and camps to official VC firm parties, tech bro culture parades power and domination through sex and objectification of women. For instance, Steve Jurvetson, a founder of a top-tier VC firm, hosted an alleged “sex party” with “rampant sex and drug use” following the firm’s annual conference in 2017.¹⁰⁴ In an ongoing lawsuit, a former WeWork employee alleged that she was fired in retaliation for reporting sexual assault and that the company spent more on parties than on sexual harassment training.¹⁰⁵ Another woman sent a fifty-page document to the company laying out claims of the illegal drug use, sexual harassment, and pay discrimination at WeWork.¹⁰⁶ A subsequent investigation discovered instances of managers sleeping with subordinates.¹⁰⁷

At Uber, a toxic culture of sexual harassment and ineffective HR responses allegedly existed for years.¹⁰⁸ Under the helm of CEO Travis Kalanick, Uber ignored allegations of rampant sexual harassment and misconduct.¹⁰⁹ Kalanick’s “reputation for ruthlessness and machismo”

102. Laura Bradley, *Roy Price Stands Accused of Sexual Harassment, Nepotism, and Bad TV Taste*, VANITY FAIR, (Oct. 18, 2017), <https://www.vanityfair.com/hollywood/2017/10/roy-price-amazon-sexual-harassment-allegations-big-little-lies> [<https://perma.cc/LCT2-2FA6>].

103. John Koblin, *Roy Price Quits Amazon Studios After Sexual Harassment Claim*, N.Y. TIMES (Oct. 17, 2017), <https://www.nytimes.com/2017/10/17/business/media/roy-price-amazon-studios.html> [<https://perma.cc/2XLR-XQBX>] (reporting on Price’s resignation days after the producer publicly accused him of sexual harassment).

104. Theodore Schleifer, *DFJ Has Apologized for the Reported ‘Sex Party’ Event at Steve Jurvetson’s Home*, VOX (Jan. 11, 2018, 5:55 PM), <https://www.vox.com/2018/1/11/16880806/dfj-steve-jurvetson-sex-party-apology> [<https://perma.cc/S3UF-U6ZC>]; see generally Emily Chang, “*Oh My God, This So F—Ed Up*”: *Inside Silicon Valley’s Secretive, Orgiastic Dark Side*, VANITY FAIR (Jan. 2, 2018), <https://www.vanityfair.com/news/2018/01/brotopia-silicon-valley-secretive-orgiastic-inner-sanctum> [<https://perma.cc/M9S2-Y5HE>] (reporting on the prevalence of secretive sex parties hosted throughout Silicon Valley and describing Juvertson’s party specifically, but anonymously); Erin Griffith, “*Sex Party’ or ‘Nerds on a Couch’? A Night in Silicon Valley*”, WIRED (Jan. 11, 2018, 5:31 PM), <https://www.wired.com/story/sex-party-or-nerds-on-a-couch-a-night-in-silicon-valley> [<https://perma.cc/E2BA-2CZN>] (confirming that one of the parties described in Chang’s *Vanity Fair* piece was Juvertson’s).

105. See Gaby Del Valle, *A WeWork Employee Says She Was Fired After Reporting Sexual Assault. The Company Says Her Claims Are Meritless*, VOX (Oct. 12, 2018, 6:05 PM), <https://www.vox.com/the-goods/2018/10/12/17969190/wework-lawsuit-sexual-assault-harassment-retaliation> [<https://perma.cc/3P38-3D55>] (describing the claims alleged in former WeWork employee’s lawsuit).

106. Meghan Morris, *Bosses Frequently Slept with Subordinates at WeWork*, BUS. INSIDER (Feb. 22, 2020), <https://www.businessinsider.com/office-relationships-and-sex-abounded-at-wework-under-adam-neumann-2020-2> [<https://perma.cc/QM9D-ACJK>].

107. *Del Valle, supra* note 105.

108. See Johana Bhuiyan, *How Uber Got into This Human Resources Mess*, VOX (Feb. 21, 2017, 3:25 PM), <https://www.vox.com/2017/2/21/14673658/uber-travis-kalanick-susan-fowler-diversity-sexual-harassment> [<https://perma.cc/8AGK-K8CW>] (chronicling Uber’s human resources team’s slow and delayed development).

109. See *id.*; see also Zoe Kleinman, *Uber: The Scandals That Drove Travis Kalanick Out*, BBC (June 21, 2017), <https://www.bbc.com/news/technology-40352868> [<https://perma.cc/K2GY-G8Y6>].

fostered Uber's insider culture, filled "with persistent stories about organisational sexism."¹¹⁰ Amit Singhal, Uber's Vice President of Engineering, and Ed Baker, Uber's Vice President of Product, resigned over allegations of sexual harassment.¹¹¹ Emil Michael, Uber's Senior Vice President, was implicated in an escort-karaoke scandal.¹¹² The toxic culture drove women innovators away from Uber.¹¹³

The tech bros seem to share the same superiority belief as billionaire Michael Moritz. As the Sequoia Capital chair and partner, Moritz once said that women simply are not as superior as men and that the firm would not "lower our standards" to hire a woman.¹¹⁴ Other premier VC firms like Accel Partners and Redpoint Ventures have only recently started hiring women to join their investment teams.¹¹⁵ In fact, as recently as 2019, less than a third of VC firms employed even a single woman in their business and investment practice.¹¹⁶

(noting Kalanick's resignation came after a series of scandals about sexual harassment, macho culture, and the departure of senior executives).

110. Kleinman, *supra* note 109; see also Katie Reilly, *Every Event That Led to Uber CEO Travis Kalanick's Resignation*, FORTUNE (June 21, 2017, 6:01 AM), <https://fortune.com/2017/06/21/uber-controversy-timeline-travis-kalanick> [<https://perma.cc/9SHA-YYKB>].

111. Vincent Lanaria, *Uber Loses Product and Growth VP Ed Baker amid Company Issues: The Odd Timing of His Resignation*, TECH TIMES (Mar. 3, 2017, 11:03 PM), <https://www.techtimes.com/articles/200181/20170303/uber-loses-product-and-growth-vp-ed-baker-amid-company-issues-the-odd-timing-of-his-resignation.htm> [<https://perma.cc/7AQM-X75B>]; Carl Velsco, *Uber Executive Told to Resign over Undisclosed Sexual Harassment Allegations During Stint at Google*, TECH TIMES (Feb. 28, 2017, 02:02 AM) <https://www.techtimes.com/articles/199535/20170228/uber-executive-told-to-resign-over-undisclosed-sexual-harassment-allegations-during-stint-at-google.htm> [<https://perma.cc/7KTZ-8TNU>].

112. Michael J. Coren, *Sexual Harassers in Silicon Valley Have No Idea How to Redeem Themselves*, QUARTZ (Jan. 13, 2018), <https://qz.com/1166153/silicon-valley-sexual-harassers-are-trying-to-redeem-their-reputations-at-the-expense-of-their-victims> [<https://perma.cc/WE84-R7C2>].

113. Christina Cauterucci, *The Sexism Described in Uber Employee's Report Is Why Women Leave Tech—Or Don't Enter at All*, SLATE (Feb. 21, 2017, 2:03 PM), <https://slate.com/human-interest/2017/02/the-sexism-in-uber-employees-report-is-why-women-leave-tech-or-dont-enter-at-all.html> [<https://perma.cc/7MZE-ZS7L>].

114. Noah Kulwin, *One of Silicon Valley's Top VC Firms Finally Hired a Woman Investor*, VICE (Oct. 20, 2016, 11:00 PM), https://www.vice.com/en_us/article/43qg9p/one-of-silicon-valleys-top-vc-firms-finally-hired-a-woman [<https://perma.cc/X9CM-7U92>]; see also Liza Mundy, *Why Is Silicon Valley So Awful to Women?* THE ATLANTIC (Apr. 2017), <https://www.theatlantic.com/magazine/archive/2017/04/why-is-silicon-valley-so-awful-to-women/517788> [<https://perma.cc/2LW8-LZFM>] (reporting on Moritz's statement about not lowering standards at Sequoia Capital to hire more women). Moritz is an influential venture capitalist who was ranked 49th on Forbes's list of most top tech investors in 2021. #49 Michael Moritz, FORBES, <https://www.forbes.com/profile/michael-moritz/?sh=63ab8af96439> [<https://perma.cc/8LVK-FRFK>] (last visited August 7, 2021).

115. See Kulwin, *supra* note 114.

116. See Pam Kostka, *More Women Became VC Partners Than Ever Before in 2019 But 65% of Venture Firms Still Have Zero Female Partners*, MEDIUM (Feb. 7, 2020), <https://medium.com/allraise/more-women-became-vc-partners-than-ever-before-in-2019-39cc6cb86955> [<https://perma.cc/GFD7-LZW2>].

Some male engineers in the Valley enforce Moritz's belief using biological essentialism and determinism.¹¹⁷ For example, James Damore, a former senior software engineer at Google with a master's degree in Systems Biology from Harvard, penned a manifesto explaining why women are the minority in the tech industry.¹¹⁸ He asserted that women have more neuroticism and lower "stress tolerance" than men and that men maintain a "higher drive for status" than women.¹¹⁹ He posted the manifesto on the company's forum for employees to read.¹²⁰

Overall, the tech bro culture is backed by a strong desire for powerful, ambitious world domination and flawed beliefs about women that allow men to sexually harass and discriminate against women.

III. THE #MeToo ASIAN AMERICAN INNOVATORS AND THEIR METHODS IN DISRUPTING TECH CODE

In the #MeToo movement, Asian American women in the tech industry dare to disrupt the tech code. They utilize judicial tools to seek redress for their claims against titans of the tech industry. They use their tech skills and precise engineering mindsets to organize, collaborate, and wage their battles in public.

A. *The Judicial Tool by Ellen Pao*

The first sexual harassment in the workplace case was decided in 1974.¹²¹ A woman who was working in the Equal Opportunities Division at the EPA sued after she was fired for rejecting her supervisor's sexual advances.¹²² The District Court for the District of Columbia ruled that there was no discrimination on the basis that her supervisor found her attractive and that he felt rejected.¹²³

In 1991, the United States received its first national exposure to sexual harassment when Anita Hill testified during the Supreme Court

117. Aja Romano, *Google Has Fired the Engineer Whose Anti-Diversity Memo Reflects a Divided Tech Culture*, VOX (Aug. 8, 2017, 8:50 AM), <https://www.vox.com/identities/2017/8/8/16106728/google-fired-engineer-anti-diversity-memo> [<https://perma.cc/LD2U-ANX8>] (explaining how biological essentialism and determinism have long been discredited).

118. *Id.*

119. James Damore, *Google's Ideological Echo Chamber 4-5* (July 2017) (unpublished memo) (available at <https://s3.documentcloud.org/documents/3914586/Googles-Ideological-Echo-Chamber.pdf> [<https://perma.cc/F7RW-JUCM>]).

120. Elizabeth Chuck, *James Damore, Google Engineer Fired for Writing Manifesto on Women's 'Neuroticism,' Sues Company*, NBC NEWS (Jan. 8, 2018), <https://www.nbcnews.com/news/us-news/google-engineer-fired-writing-manifesto-women-s-neuroticism-sues-company-n835836> [<https://perma.cc/QZ2E-3JJW>].

121. Matthew K. Fenton, *A History of Sexual Harassment Laws in the United States*, WENZEL FENTON CABASSA P.A. (Jan. 1, 2018), <https://www.wenzelfenton.com/blog/2018/01/01/history-sexual-harassment-laws-united-states> [<https://perma.cc/JFF4-ZV62>].

122. *Id.*

123. *Id.*

confirmation hearing of her former supervisor Clarence Thomas.¹²⁴ Almost a quarter of a century later, in 2015, the tech industry experienced its own national moment with sex discrimination and sexual harassment when the case *Ellen Pao v. Kleiner Perkins Caufield & Byers* went to trial.¹²⁵ The trial became the first time in history an Asian American woman asserted her rights against a powerful VC firm before a jury.¹²⁶

Kleiner Perkins is one of the oldest VC firms in the United States.¹²⁷ The VC firm backs more than 900 ventures with \$9 billion,¹²⁸ including household names like Amazon, Citrix, DocuSign, Genentech, Google, Square, Spotify, Twitter, and Uber.¹²⁹ In the tech world, Kleiner Perkins potently dominates.

Ellen Pao, a Chinese American woman from New Jersey, graduated from Princeton University in Electrical Engineering and earned a certificate from the Woodrow Wilson School of Public and International Affairs.¹³⁰ Pao then obtained her Juris Doctor with honors from Harvard Law School and sharpened her legal acumen at Cravath, Swaine & Moore.¹³¹ A few

124. Linda S. Greene, *Feminism, Law, and Social Change: Some Reflections on Unrealized Possibilities*, 87 NW. U. L. REV. 1260, 1263–64 (1993) (discussing the impact of the Anita Hill/Clarence Thomas hearing); Roger Clegg, *Introduction: A Brief Legislative History of the Civil Rights Act of 1991*, 54 LA. L. REV. 1459, 1469 (1994) (recognizing the visibility of sexual harassment in the workplace as “the nation sat riveted before its television sets, watching the Clarence Thomas-Anita Hill hearings”); Major Charles B. Hernicz, *The Civil Rights Act of 1991: From Conciliation to Litigation—How Congress Delegates Lawmaking to the Courts*, 141 MIL. L. REV. 1, 5 (1993) (discussing the impact of Anita Hill/Clarence Thomas hearings on the public); Christine A. Littleton, *Dispelling Myths About Sexual Harassment: How the Senate Failed Twice*, 65 S. CAL. L. REV. 1419, 1419 (1992) (recounting the unfolding of Anita Hill’s allegations against Clarence Thomas).

125. See Farhad Manjoo, *Ellen Pao Disrupts How Silicon Valley Does Business*, N.Y. TIMES (Mar. 28, 2015), <http://www.nytimes.com/2015/03/28/technology/ellen-pao-disrupts-how-silicon-valley-does-business.html> [https://perma.cc/4PKA-NMSZ]; David Streitfeld & Conor Dougherty, *After Kleiner Trial, Expect Less Shooting from the Hip in Silicon Valley*, N.Y. TIMES (Mar. 28, 2015), <http://www.nytimes.com/2015/03/29/technology/after-kleiner-trial-expect-less-shooting-from-the-hip-in-silicon-valley.html> [https://perma.cc/manage/create/?folder=25464].

126. A search conducted in Westlaw yields no trials against VC firms; see also Rupert Neate, *Ellen Pao Gender Discrimination Trial Grips Silicon Valley*, THE GUARDIAN (Mar. 13, 2015), <https://www.theguardian.com/technology/2015/mar/13/ellen-pao-gender-lawsuit-silicon-valley> [https://perma.cc/28TC-ELVD] (reporting that “no one in the Valley can remember a senior woman ever taking a tech company or venture capital firm to court over sex discrimination”).

127. Dan Primack, *Kleiner Perkins Raises \$600 Million for New Fund*, AXIOS (Jan. 31, 2019), <https://www.axios.com/kleiner-perkins-raises-600-million-for-new-fund-1548969948-82f98cd9-b20d-4f89-a234-271a4c7e34dc.html> [https://perma.cc/X6MT-8DM4] (“Kleiner Perkins is one of the oldest and most successful venture capital firms in Silicon Valley but has undergone significant change, including its growth capital team recently spinning out into an independent firm.”).

128. *Brand Assets*, KLEINER PERKINS, <https://www.kleinerperkins.com/assets> [https://perma.cc/A67P-V66M] (last visited Mar. 10, 2020).

129. *Our History*, KLEINER PERKINS, <https://www.kleinerperkins.com/our-history> [https://perma.cc/AQ89-G8WH] (last visited Mar. 10, 2020).

130. Complaint ¶ 5, *Ellen Pao v. Kleiner Perkins Caufield & Beyers LLC*, No. CGC-12-520719, 2012 WL 1873346 (Cal. Super. May 10, 2012).

131. *Id.*

years later, Pao returned to Harvard for her MBA.¹³² Combining her business degree and legal mind, Pao worked for seven years at tech companies, including the tech giant, Microsoft.¹³³ Later in 2005, Kleiner Perkins hired Pao as Chief of Staff for John Doerr, one of the managing partners.¹³⁴

When she started her job at Kleiner Perkins, Pao held the title of Junior Partner.¹³⁵ According to Pao, the sexual harassment by a junior partner began in 2006, a year after she started at the firm.¹³⁶ In 2007, Pao alleged that she experienced more unwanted sexual advances from a senior partner and became a victim of retaliation when she rejected one of her abusers.¹³⁷ She reported the sexual harassment and retaliatory behavior to managing and senior partners but received a negative response, including pressure to drop the allegations and even a suggestion that she marry one of her harassers.¹³⁸ The pattern continued: sexual harassment, retaliation, report, and no response.¹³⁹

As Pao's complaint details, in early 2008, Kleiner Perkins further retaliated against Pao, first by moving Pao's office to be across the hall from her repeated abuser's office.¹⁴⁰ Subsequently, Kleiner Perkins partners at all levels continued to retaliate against Pao through her performance reviews.¹⁴¹ Particularly, Pao's 2009 performance review focused on the negative feedback of partners who did not work closely with her; John Doerr, her direct supervisor, was not assigned to be one of her reviewers. Pao received no sponsors at the firm for her investments.¹⁴²

Pao alleged that in 2010 and 2011, the pattern of discriminatory retaliation in performance reviews continued.¹⁴³ In addition, Kleiner Perkins began to exclude Pao from the firm's semiannual CIO meetings and sponsored ski trips in which all male employees and business associates participated.¹⁴⁴ One of the senior partners allegedly told Pao that women with a "quiet" personality would not succeed at Kleiner Perkins.¹⁴⁵ In early 2012, Kleiner Perkins promoted three junior men to general partner. Kleiner Perkins did not promote Pao.¹⁴⁶

132. *Id.*

133. *See id.*

134. *Id.* ¶ 7.

135. *Id.*

136. *Id.* ¶ 8.

137. *Id.* ¶ 10–15.

138. *Id.* ¶ 13.

139. *See id.* ¶ 15–17.

140. *Id.* ¶ 16.

141. *Id.* ¶ 17.

142. *Id.* ¶ 19–26.

143. *Id.* ¶ 27–33.

144. *Id.* ¶ 33.

145. *Id.*

146. *Id.* ¶ 34.

Overall, in those years at Kleiner Perkins, Pao allegedly received less compensation, obtained no promotion, experienced unwanted sexual advances, faced repeated sexual harassment, endured exclusion and isolation, and was subjected to repeated discriminatory retaliations. Though Pao reported these instances to human resources and the firm's external human resources consultant, she witnessed the firm's failure to address the misconduct.¹⁴⁷

Pao decided to fight back and take on the most venerable institution in the venture capital world.¹⁴⁸ Pao believed in the judiciary and looked to the court for redress.¹⁴⁹

On May 10, 2012, three months after the firm failed to promote her, Pao sued Kleiner Perkins for gender discrimination, retaliation, and failure to prevent discrimination under state law.¹⁵⁰ The fight proved long and arduous.

Pao wanted the public to hear her claims but the firm aimed to shut her down through arbitration.¹⁵¹ Pao refused to settle the case and won the arbitration battle in 2013, keeping the case in court.¹⁵² The case finally went to trial in February 2015, almost three years after Pao filed her initial complaint. At trial, Pao faced cross-examination from a well-known "formidable adversary" Lynne Hermle who asked "pointed," "excruciating," and "cutting" questions.¹⁵³ In addition, Kleiner Perkins employed a powerful public relations machine, including public relations firm Brunswick Group and the firm's marketing partner, to shape trial coverage. Meanwhile, Pao's attorney lacked the financial resources to even pay for daily trial transcripts.¹⁵⁴

In the end, the jury did not find for Pao.¹⁵⁵ Pao spent three years litigating the case and, after losing the trial, paid Kleiner Perkins

147. *Id.* ¶ 22, 35

148. *See id.* ¶ 36–37.

149. *See id.* ¶ 37.

150. Pao v. Kleiner Perkins Caufield & Byer, No. A136090, 2013 WL 3224589, at *1 (Cal. Ct. of App. June 26, 2013).

151. *See id.*

152. *Id.* (affirming the lower court's decision of arbitration denial).

153. Elizabeth Weise, *Ellen Pao Cross-Examination Leads to Visible Cringing*, USA TODAY (Mar. 10, 2015), <https://www.usatoday.com/story/tech/2015/03/10/ellen-pao-kleiner-perkins-discrimination-bias-gender-trial/24697491> [<https://perma.cc/G5JP-P2DS>].

154. *See* Nitasha Tiku, *Five Uncomfortable Truths About the Ellen Pao Verdict*, THE VERGE (Apr. 2, 2015, 11:51 AM), <https://www.theverge.com/2015/4/2/8328115/ellen-pao-kleiner-perkins-venture-capital-verdict> [<https://perma.cc/YC8E-HHFW>].

155. David Streitfeld, *Ellen Pao Loses Silicon Valley Bias Case Against Kleiner Perkins*, N.Y. TIMES (Mar. 27, 2015), <https://www.nytimes.com/2015/03/28/technology/ellen-pao-kleiner-perkins-case-decision.html> [<https://perma.cc/9577-YMRK>].

\$275,966.63,¹⁵⁶ and incurred her own expenses, both financial and personal.¹⁵⁷

Though she lost the case, Pao had laid bare the discrimination that takes place at the intersection of gender and race in the Valley.¹⁵⁸ The month-long trial had placed Pao in public view, but she did not shrink from the public scrutiny or cross-examination.¹⁵⁹ Instead, she fought to right the wrongs she had experienced for years.¹⁶⁰ She was the first woman in Kleiner Perkins's forty-nine year history to sue for sexual harassment.¹⁶¹

Pao's case against Kleiner Perkins inspired many women after her. She had successfully turned to both the courts of law and public opinion to confront the two "elephants in the Valley": gender and race discrimination.

B. *The Tech Tools, Media, and Collaborative Efforts by Founders, Entrepreneurs, and Engineers*

Witnessing how Pao lost her case, Asian American women founders, entrepreneurs, and engineers fought back. Three Asian American female innovators collaboratively strategized and executed a plan to expose a powerful venture capitalist's sexism and continued sexual harassment in

156. Pao v. Kleiner Perkins Caufield & Byers, No. CGC-12-520719, 2015 WL 3923912, at *1 (June 18, 2015) (awarding Kleiner Perkins for "post-offer" costs as required by California statute).

157. See Maria Aspan, *The "Bright Side" of the Ellen Pao Trial Isn't Very Bright*, SLATE (Mar. 30, 2015, 2:37 PM), <https://slate.com/business/2015/03/ellen-pao-trial-the-lawsuit-brought-awareness-to-workplace-sexism-but-the-setbacks-are-gripping.html> ("Whatever the merits of her lawsuit, Pao let her name, her personality, and her dirty laundry be dragged through the press, the Valley, the Twittersphere, the Reddit threads that she oversees—and came up with a big fat pat on the head and a 'You're imagining things, dear.'").

158. See Claire Cain Miller, *What Silicon Valley Learned from the Kleiner Perkins Case*, N.Y. TIMES (Mar. 27, 2015), <https://www.nytimes.com/2015/03/28/upshot/what-silicon-valley-learned-from-the-kleiner-perkins-case.html> [<https://perma.cc/HBD2-NH95>] ("The broad themes of the trial extended far beyond Silicon Valley's casual workplaces. Just as Anita Hill once helped shine a light on overt sexual harassment, Ms. Pao, in suing Kleiner Perkins Caufield & Byers, might have done the same for subtle sexism."); see also Davey Alba, *After Loss, Pao Hopes Case Helped Level the Playing Field*, WIRED (Mar. 27, 2015, 5:10 PM), <https://www.wired.com/2015/03/ellen-pao-kleiner-verdict/> [<https://perma.cc/MJ4Y-3F97>] (recounting that Pao said after the jury verdict outside the courtroom, "I have told my story and thousands of people heard it, . . . If I've helped to level the playing field for women and minorities in VC, it was worth it").

159. See, e.g., David Streitfeld, *Kleiner Perkins Portrays Ellen Pao as Combative and Resentful in Sex Bias Trial*, N.Y. TIMES (Mar. 11, 2015), <https://www.nytimes.com/2015/03/12/technology/kleiner-perkins-portrays-ellen-pao-as-combative-and-resentful-in-sex-bias-trial.html> [<https://perma.cc/9L9D-BVW9>]; Weise, *supra* note 153; Nitasha Tiku, *The Assassination of Ellen Pao's Character by the Venture Capital Firm Kleiner Perkins*, THE VERGE (Mar. 13, 2015), <https://www.theverge.com/2015/3/13/8200145/ellen-pao-lynn-hermle-reddit-kleiner-perkins> [<https://perma.cc/54UR-WX9U>].

160. See Ellen Pao, *Ellen Pao on How to Make Tech More Diverse*, BBC (Apr. 12, 2019), <https://www.bbc.com/worklife/article/20190321-how-to-make-the-tech-industry-more-diverse> [<https://perma.cc/YU26-WVTF>] ("In 2012, I sued my venture capital firm Kleiner Perkins for gender discrimination and retaliation against me as an employee. The firm claimed its decisions were performance-based. I lost the suit in 2015, but it changed how people talked about tech and, in some cases, how people viewed the field of tech. Hundreds of people have shared their stories of discrimination since then, and these stories are changing perspectives and behaviour.").

161. For the discussion on the study "The Elephant in the Valley," see *infra* Part IV.

Silicon Valley. They used their engineering minds and tech tools while turning to social media platforms to fight their battle in the court of public opinion.

Niniane Wang, Susan Ho, and Leiti Hsu built a successful public case that brought down venture capitalist Justin Caldbeck for his sexual harassment against them.¹⁶²

According to Forbes, Niniane Wang was one of America's top fifty women in technology in 2018.¹⁶³ Wang founded the social video app, Evertoon,¹⁶⁴ which Google bought.¹⁶⁵ She then spent five years at Google and founded Google Desktop and increased ad revenue from Gmail by enhancing machine learning and text processing.¹⁶⁶ Wang is also a co-inventor listed on twenty-nine patents.¹⁶⁷ Currently, she is the Vice President of Engineering at Niantic where she oversees Pokémon GO and the Harry Potter augmented reality game and leads a team of ninety-five.¹⁶⁸

Wang used her engineering precision to expose Caldbeck.¹⁶⁹ She spent 100 hours of work to lay her case out.¹⁷⁰ Like others in tech watching how Pao fought and lost her case in court, Wang was emboldened. For several years, Wang tried to expose Caldbeck without results.¹⁷¹ Wang decided to embrace a different approach.¹⁷²

As Wang relates, she became a victim of Caldbeck's sexual harassment when her young startup needed investors. Caldbeck pressured her for sex for several weeks.¹⁷³ She felt trapped and did not dare to go

162. Natasha Lomas, *Female Founders Accuse VC Justin Caldbeck of Making Unwanted Advances*, TECHCRUNCH (June 23, 2017), <https://techcrunch.com/2017/06/23/female-founders-accuse-vc-justin-caldbeck-of-making-unwanted-advances> [https://perma.cc/9KMG-VNES].

163. *Niniane Wang*, FORBES, <https://www.forbes.com/profile/niniane-wang/#2c530d1c5d26> [https://perma.cc/Y9PC-U57R] (last visited Mar. 10, 2020).

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*; see also Monica Melton, *Two Years After Tech's #MeToo Moment, Niniane Wang Says, 'In 2019 Silence Speaks Very Loudly, Too'*, FORBES (Apr. 8, 2019), <https://www.forbes.com/sites/monicamelton/2019/04/08/two-years-after-techs-metoo-moment-niniane-wang-says-in-2019-silence-speaks-very-loudly-too/#3a66592c33d4> [https://perma.cc/4NUE-D6LF].

169. See Laura Syndell, *How a Female Engineer Built a Public Case Against a Sexual Harasser in Silicon Valley*, NPR (Dec. 13, 2017, 1:17 PM) <https://www.npr.org/sections/alltechconsidered/2017/12/13/568455103/how-a-woman-engineer-built-a-public-case-against-a-sexual-harasser-in-silicon-valley> [https://perma.cc/L7B8-3MG3].

170. Laura Entis, *Niniane Wang: Exposing VC Justin Caldbeck Took '100 Hours of Work'*, FORTUNE (July 18, 2017, 12:44 PM), <https://fortune.com/2017/07/18/niniane-wang-justin-caldbeck-binary> [https://perma.cc/225C-Z73C].

171. Niniane Wang, Comment to *Everything I Hate About Justin Caldbeck's Statement*, MEDIUM (June 24, 2017) <https://medium.com/@niniane/im-one-of-the-3-women-who-went-on-the-record-to-expose-justin-s-sexual-harassment-d1dca4554e60> [https://perma.cc/SN3J-T8CP].

172. See Sydell, *supra* note 169.

173. *Id.*

public for fear that other investors might shun her.¹⁷⁴ She decided to strategically build a public case against Caldbeck by enlisting other women, rather than going alone.¹⁷⁵ Specifically, she sought to stop Caldbeck from harassing women in tech.¹⁷⁶ With that goal in mind, she collected evidence from texts, emails, and phone records.¹⁷⁷ Believing that she was not the only victim of Caldbeck's conduct, she utilized the whisper network, an informal chain of information passed privately between women, to identify and invite two other women who were Caldbeck's victims to join her case against Caldbeck.¹⁷⁸

Susan Ho and Leiti Hsu, co-founders of Journy, a travel planning and booking service, joined forces with Wang.¹⁷⁹ They strategized and planned what to publish to the public, where to publish, and what to do.¹⁸⁰ The women selected The Information, an online news site read and respected by the tech elite.¹⁸¹ They told their stories of being the target of sexual harassment in a "dispassionate way" with "evidence describing the details of what happened without extraneous, irrelevant content."¹⁸²

After the article was published, Wang reached out to her social media network to amplify the article. She made sure people retweeted and reposted the piece.¹⁸³ After some social media users asked for more information, she provided the information they requested.¹⁸⁴ For the next few days after publication, Wang spent twelve hours a day to ensure her story would be seen, heard, and amplified.¹⁸⁵

According to Wang, Caldbeck resisted by "threatening reporters" and attempting to block Wang and her collaborators from publishing their

174. *See id.*

175. *See id.*

176. *See id.*

177. *See id.*

178. *See id.*

179. *See* Susan Ho, *Speaking and Reporting on Justin Caldbeck's Sexual Harassment*, MEDIUM (June 26, 2017), <https://medium.com/@susanho/my-cofounder-leiti-hsu-and-i-are-two-of-three-women-who-went-on-the-record-to-report-justin-36fe0f50c87d> [<https://perma.cc/KN6T-7XQC>].

180. *See* Sydell, *supra* note 169.

181. *See* Reed Albergotti, *Silicon Valley Women Tell of VC's Unwanted Advances*, THE INFO. (June 22, 2017), <https://www.theinformation.com/articles/silicon-valley-women-tell-of-vcs-unwanted-advances> [<https://perma.cc/KM8E-G57Z>]; Edmund Lee, *Maybe Information Actually Doesn't Want to Be Free*, N.Y. TIMES (Feb. 7, 2020), <https://www.nytimes.com/2020/02/07/business/media/the-information-jessica-lessin.html> [<https://perma.cc/4TWF-RW53>] (praising The Information as "an influential Silicon Valley publication").

182. Sydell, *supra* note 169. Susan Ho and Leiti Hsu also wrote the full description of the events that occurred and published it in Medium. *See* Ho, *supra* note 179.

183. Sydell, *supra* note 169.

184. *Id.*

185. *Id.* Influencers in the Valley amplified the article, applauded the three founders for their courage, and urged the creation of an "industry-wide HR function" in VCs. *See* Reid Hoffman, *The Human Rights of Women Entrepreneurs*, MEDIUM (June 23, 2017), <https://medium.com/@reidhoffman/the-human-rights-of-women-entrepreneurs-c6da801de9db> [<https://perma.cc/VSA5-FUAA>].

article.¹⁸⁶ Wang recalled, “it was incredibly difficult to get this article out.”¹⁸⁷ Caldbeck fought “tooth and nail.”¹⁸⁸ But the women’s strategizing had worked. Within four days of the article’s publication, Caldbeck resigned from his firm, Binary Capital, though not without denying the allegations at first.¹⁸⁹ He apologized to the women.¹⁹⁰ Three months after the article’s publication, Caldbeck threatened legal action against Niniane Wang to prevent her from speaking about his attempt to silence reporters.¹⁹¹

Wang continues to apply her strategy by helping other women who want to go public with sexual harassment experience.¹⁹² She identifies the most effective outlets to speak out, proposes solutions, and provides assessments of the tech industry’s reaction to sexual harassment.¹⁹³

186. See Wang, *supra* note 171.

187. *Id.* Wang described the process of deciding to reveal her name in the article:

Originally, we were told that all of us could be anonymous and the reporter went to Binary Capital and told them of all the allegations. Binary said that it was character assassination and that they were all false, that people were lying and extorting and many other things. Then they told their LPs that women and The Information were trying to extort them. So at that point the article would have been killed if no one agreed to go on the record. And I thought about it and I spoke to a friend who was a director at Google who previously went on the record for her sexual harassment when she was in private school. Her high school teacher. And she told me that, for her, it sometimes feels thankless, but that she has backbone and for her, at night, when she puts her head down on the pillow she wants to know that she did the right thing.

And so then, I felt after hearing her story, that this is important to do for other people. And I knew that Justin was continuing to harass more and more women and it was still ongoing. So I felt that if I didn’t do it and the article didn’t come out, more people would be harassed.

I think that in my particular case, I know many VCs, so when they saw that it was me, someone they’ve actually known for years, it also helped make it seem more credible. And in addition, I realized after the fact that because I’d used my name, I was then able . . . during the real work, which was after the article, of convincing LPs to take this seriously, there was a lot that I did in reaching out to the LPs. Getting other accusers to reach out to the LPs, finding common contacts who could convince the LPs, presenting more evidence of coverup. All those things that I had to do publicly with my name.

Recode Staff, *Full Transcript: Niniane Wang and Joelle Emerson Talk Solutions to Harassment on Too Embarrassed to Ask*, VOX (Aug. 9, 2017, 12:34 PM), <https://www.vox.com/2017/8/9/16118570/transcript-evertoon-ceo-niniane-wang-paradigm-founder-joelle-emerson-too-embarrassed-to-ask> [<https://perma.cc/Z8JE-R2FD>].

188. Johana Bhuiyan, *One of the Women Who Accused VC Justin Caldbeck of Sexual Harassment Doesn’t Believe His Apology*, VOX (June 24, 2017), <https://www.vox.com/2017/6/24/15868538/justin-caldbeck-sexual-harassment-niniane-wang-female-founder-binary-capital> [<https://perma.cc/6JSU-PQ62>].

189. Sydell, *supra* note 169.

190. Caldbeck said: “I’m sorry to any women that I’ve ever put in a bad position or made uncomfortable through my actions.” *Id.*

191. Ryan Mac, *Disgraced Venture Capitalist Justin Caldbeck Threatened Legal Action Against One of His Accusers*, BUZZFEED (Sept. 6, 2017), <https://www.buzzfeednews.com/article/ryanmac/this-venture-capitalist-was-accused-of-sexual-harassment> [<https://perma.cc/73NH-BWEM>].

192. Sydell, *supra* note 169 (reporting how Wang assisted Kater Gordon: “Then, just as she had done, Wang told Gordon to develop a sort of chart with ways to achieve her goal. That involved finding other people to verify her account of what happened and telling her story in a way that was dispassionate and clear. Then, finding the best publication for her target audience. And if needed, Gordon should think of social media contacts that could help.”).

193. See *id.*; Melton, *supra* note 168.

In addition to Wang, Ho, and Hsu, is Brianna Wu, a software engineer and developer of game studio Giant Spacekat. Although she is not Asian, her recognizably Asian last name makes a difference in a space with a lot of online interactions. Wu stood up to intense sexual harassment, including threats of rape and death, in what became known as Gamergate.¹⁹⁴ Internet trolls promoted a harassment campaign by using the hashtag #GamerGate to attack women game developers.¹⁹⁵ The Gamergate trolls harassed women with numerous death and rape threats, violating their privacy and driving women out of the game industry.¹⁹⁶ With an engineer's mind and execution strategy, Wu "meticulously documented" all threats and identity thefts.¹⁹⁷ With the evidence gathered, she reported all incidents to the FBI.¹⁹⁸ She took her case to the White House and spoke to members of Congress.¹⁹⁹ She worked with other women who were in the same situation.²⁰⁰ She spoke to reporters, trying to get the public's attention on the issue.²⁰¹ Although the government did not bring any case against any person, Wu refuses to give up her fight. She ran for Congress twice, most recently suspending her campaign due to the coronavirus pandemic.²⁰²

In summary, Asian American female innovators are fighting back. They wage their battles in public. They use tech tools, social media, and traditional media outlets to reach their peers, decision makers, and the public. They exemplify neither dutiful, obedient daughters nor dragon ladies. They are entrepreneurs and engineers who demand equality and insist on a truly diverse workplace in the tech industry.

IV. THE ELEPHANT IN THE VALLEY AND THE OTHER ELEPHANT

The Ellen Pao case inspired a group of women in technology to survey and document their experience in a report titled "The Elephant in the Valley."²⁰³ For Asian American women in technology, however, there is another elephant in the Valley: the intersection of gender and race.

194. Brianna Wu, *I Wish I Could Tell You It's Gotten Better. It Hasn't.*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/interactive/2019/08/15/opinion/brianna-wu-gamergate.html> [https://perma.cc/L5ZW-EAT6].

195. *Gamergate Controversy*, WIKIPEDIA, https://en.wikipedia.org/wiki/Gamergate_controversy [https://perma.cc/5WR6-WZQ4] (last visited Mar. 10, 2020).

196. Wu, *supra* note 194.

197. *See id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Jeremy C. Fox, *Brianna Wu Ends Bid to Unseat Rep. Stephen Lynch, Citing Coronavirus*, THE BOSTON GLOBE (April 28, 2020 6:25 PM) <https://www.bostonglobe.com/2020/04/28/nation/brianna-wu-ends-bid-unseat-rep-stephen-lynch-citing-coronavirus/> [https://perma.cc/7VJJ-C9VT].

203. TAE VASSALLO ET AL., THE ELEPHANT IN THE VALLEY (2017) (available at <https://www.elephantinthevalley.com/> [https://perma.cc/R64L-7KUH]).

A. *The Elephant – Gender*

To address sexism and sexual harassment, women in technology leveraged their expertise to investigate and gather relevant data in a study called “The Elephant in the Valley.”²⁰⁴ The inspiration for the study emerged from Ellen Pao’s sexual harassment and discrimination case against Kleiner Perkins.²⁰⁵ The study documents sexist behaviors, practices, and sexual harassments women innovators face daily in the tech industry.²⁰⁶

In the study, an all-women research team surveyed more than 200 women in and around Silicon Valley.²⁰⁷ The respondents ranged from CXOs, founders, and venture capitalists to technology workers in startups, midsize companies, and tech giants.²⁰⁸

The study reveals that being a woman in tech means feeling excluded from key social and network opportunities. 66% of participants felt exclusion based on their gender. And 59% indicated they were not granted the same opportunities as their male counterparts.²⁰⁹ Essentially, there are more limitations for women looking for a seat at the table.²¹⁰

The study reports that 84% of participants state that their coworkers complained they are too aggressive.²¹¹ And 47% stated they are asked to do lower-level tasks, like note-taking and ordering food, that male colleagues are not asked to do.²¹² 88% of participants have experienced colleagues or clients directing questions to male peers on topics that should be directed to them.²¹³

The report reinforces that sexist behaviors are rampant in the tech industry. 90% of participants witnessed sexist behavior at company offsites and industry conferences.²¹⁴ 87% of participants received “demeaning

204. *Id.*; see also Xuan-Thao Nguyen, *Disrupting Adhesion Contracts with #MeToo Innovators*, 26 VA. J. SOC. POL’Y & L. 165, 187 (2019).

205. VASSALLO ET AL., *supra* note 203.

206. *See generally id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *See id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.* The participants provided their stories to the researchers for the report. Below are their words describing their lack of a seat at the table.

“It’s often easier to exclude women from social/networking opportunities (e.g., a golf buddy weekend) as these omissions are typically less overt (than, e.g., an established business conference) and thus more difficult to identify.”

“Egregious example: Getting taken to Hooters for lunch. ‘Death by a thousand cuts’: male manager orders pitchers of beer but no other drinks at offsite. Offsites are all very physical activities, but I’m pregnant.”

“Honestly, in two decades the list is just too long. This is an industry that has Cougar Night practically next door to my office and thinks it’s perfectly appropriate to meet there for business conversations. (Why do we put up with that, BTW?)”

comments from male colleagues.”²¹⁵ During job interviews, 75% of the participants were asked about their family life, marital status, and children.²¹⁶

On sexual harassment, 60% of the participants reported unwanted sexual advances, and 65% of these women had received them from superiors.²¹⁷ Of these instances, the survivors often faced repeated unwanted sexual advances.²¹⁸ Also, 1 in 3 victims felt afraid for their own personal safety when the unwanted sexual advances occurred at work.²¹⁹ With respect to reporting sexual harassment, 69% of the victims did not

“At annual sales conference once, all the men gathered in the suite of the head of sales, drinking late into the night and then all shaved their heads as a bonding exercise. (The boss had a shaven head).”

“I don’t know that I have been consciously excluded so much as some of the times that business is taking place on the golf course or late night at the bar just are not places I want to be.”

“I was once invited to a networking event, only to have the invite rescinded when I RSVP’d and they realized I was a woman—they told me ‘this is just for the guys’. There is a VC networking group called ‘alpha’ as in male, of which I am the only female member and was ‘invited’ only after specifically asking. VCs have fly-ins, fly-fishing trips etc to which only guys are invited”

“Once I led an offsite for my all male team at a go kart racing place even though I knew I’d get really motion sick to show I was ‘one of the boys’ ”

215. *Id.*

216. *Id.* Questions asked during interviews included:

“It’s a good thing you don’t have children yet as that would work well in venture/start up world.”

“Would I really have the time needed for the job and could I work as hard as the other two partners I’d be joining “given that you are a mom with a young child.”

“I was asked during fundraising meetings, ‘How do we know you’re not going to run off and have a baby?’

“Once I was asked about my religion and my views on abortion. On another occasion I was asked about how I would take care of my child while working.”

217. *Id.* The participants recounted the sexual harassment:

“Once a client asked me to sit on his lap if he wanted to buy my products. My company didn’t do anything about it when I told my boss so unfortunately I asked to be taken off that client but it’s not like they can fire the client.”

“I had a fellow VC sending me flowers, gifts, even a mix-tape, over the course of several months. Another portfolio CEO asked me to go through a door first so he could “watch me walk” and my superiors at the firm told me to laugh it off. I also had another VC tell me likes married women and put his hand on mine. (I’m married)”

“Example: I was propositioned by a hiring manager early in my career when I was a job candidate. He clearly indicated that if I slept with him, he would make sure I was promoted as his ‘second in command’ as he moved up the ladder in the company. I was lucky to have the option to reject the offer.”

“Unwanted sexual advances were far more common when I was in my 20s and early 30s than today.”

“Experiences included being groped by my boss while in public at a company event. After learning this had happened to other women in my department, and then reporting the event to HR, I was retaliated against and had to leave the company.”

“The first time I travelled with a new CEO he made an advance. I turned him down. After that, I was never asked to travel with him again. This impacted my ability to do my job.”

218. *Id.*

219. *Id.*

report because they feared negative consequences to their career or they wanted to forget.²²⁰ Furthermore, there were victims who could not talk to anyone because they signed non-disparagement agreements.²²¹

In sum, “The Elephant in the Valley” defines the ugly side of the tech industry. Women innovators in the tech industry experience discrimination and mistreatment based on their gender. After five decades of tech transformation in Silicon Valley, the women finally came together to identify, discuss, and document the elephant with data and narrative stories.²²²

220. *Id.*

221. *Id.*

222. *Id.* Here are some of the stories “The Elephant in the Valley” collected:

“Once a client asked me to sit on his lap if he wanted to buy my products. My company didn’t do anything about it when i told my boss so unfortunately I asked to be taken off that client but it’s not like they can fire the client.”

“I had a fellow VC sending me flowers, gifts, even a mix-tape, over the course of several months. Another portfolio CEO asked me to go through a door first so he could “watch me walk” and my superiors at the firm told me to laugh it off. I also had another VC tell me likes married women and put his hand on mine. (I’m married)”

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“The first time I travelled with a new CEO he made an advance. I turned him down. After that, I was never asked to travel with him again. This impacted my ability to do my job.”

“So many. . .recently, I attended a VC firm’s conference where they required one group of people to strip to their underwear and swim in a lake. The men all got naked and jumped right in. But the women? So devastating.”

“So many! E.g., at CES a VC who told me how committed he is to NVCA diversity task force in the next moment discusses what strip club he’s going to with another VC. CEOs call the females in their companies “girls.” All the analogies made about business relationships to “dating”. All the assumptions that the next new hire is a “guy who will. . .” Booth babes at trade shows, tacky ads and commercials.”

“Have you ever been to Computex? the women don’t wear much.”

“Company off-sites and industry conferences are hot beds of sexist activity, from excluding female colleagues from guy outings (e.g., golf, skiing) to drunken sexually charged conversations to late night searches for hook ups. For example, during an investors/CEO meeting in Jackson Hole, the men at the meeting were planning the ski day and they projected an assumption I was not going to be able to keep up. I kicked their asses on the slope the next day. Suddenly, my brand equity improved.”

“At a work party for a conference, the hosting company had women acrobats that were wearing very few clothes - mostly paint.”

*B. The Other Elephant: Intersectionality of Gender and Race
Discrimination Against Asian American Innovators*

Another elephant exists in plain sight in the tech industry: intersectionality of gender and race discrimination. Asian Americans from Ellen Pao to Sysamone Phaphon experienced how gender and race intersect against them. Seemingly often, the debates and programs addressing gender and sexual harassment ignore how both gender and race affect Asian American women. In reality, the intersectionality of race and gender subjects Asian American women to racialized sexual harassment and discrimination.

Asian American female entrepreneurs, who must seek funding for their startups, encounter predatory investors who sexually harass them because of both their gender and race. Sysamone Phaphon, the founder of FilmHero, an app for independent filmmakers, recounted an investor at a pitch competition who targeted her for sex because she was Asian.²²³ She found out his true intention after he lured her to go on a business trip to New York.²²⁴ Phaphon shared her observation that “it’s an all too common experience for Asian women to get sexually harassed in the tech industry.”²²⁵

Bo Ren, a product manager at Facebook and Tumblr, echoed Phaphon’s observation, saying that “Asian women face a double whammy of racial and gender discrimination.”²²⁶ Chia Hong, a product manager at Facebook, was told that “she looked different and talked differently than other team members.”²²⁷ Hong’s race and gender were how her team members saw her, as they belittled her at team meetings.²²⁸ Perceived as a subservient Asian woman, Hong’s boss ordered her to “organize parties and serve drinks to male colleagues.”²²⁹

Tina Lee, founder and CEO of MotherCoders.org, understood the stereotype of Asian Americans as being hardworking, industrious, meek, and conforming.²³⁰ That stereotype brands Asian Americans as worker bees, not leaders. Lee noted that although her plain-spoken manner appears “no more extroverted and loud than many white women,” still others imposed the stereotype of the meek Asian woman on her.²³¹

223. See Jessica Guynn, *It’s Called the “Pao Effect”—Asian Women in Tech Are Fighting Deep-Rooted Discrimination*, USA TODAY (Sept. 19, 2017, 5:00 AM), <https://www.usatoday.com/story/tech/news/2017/09/19/ellen-pao-asian-women-tech-glass-ceiling-bamboo-ceiling/665822001/> [https://perma.cc/ENL9-48E4].

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *See id.*

229. *See id.*

230. *Id.*

231. *See id.*

On the opposite spectrum, if an Asian American woman behaves outside the stereotype, her peers in the workplace would then label her as being “unconventional.”²³² If an Asian American woman is not the meek typecast, then she must be the “tiger mom” or “cold dragon lady.”²³³ Susan Wu, an entrepreneur and investor, stated, “as an Asian American woman, I’m either a caricature object of sexual interest, a nerdy engineer, a newly arrived immigrant, a tiger mom or an aggressive dragon lady.”²³⁴ Wu stated that her sexual harassment experience in tech is too common.²³⁵

As Ellen Pao recalled, John Doerr of Kleiner Perkins selected her as his chief of staff because “he liked the idea of a ‘Tiger Mom-raised’ woman.”²³⁶ The typecast worked to Pao’s detriment. Indeed, while Doerr’s other chief of staff, a male, focused on investing, Doerr asked Pao to “help with email, speeches, even babysitting his daughter.”²³⁷

Without having meaningful assignments, Asian American women faced “more bias on performance reviews,” leading to being “overlooked for promotions and pay raises.”²³⁸

Asian American women, if they dare to complain, encounter retaliation. When they complain, they no longer operate within the expected norms of being Asian American women—industrial, meek, and quiet. Consequently, they face penalty, as Pao did. Tina Huang, a former software engineer at Twitter complained about the promotion process and was subsequently placed on administrative leave.²³⁹ She later sued Twitter for discrimination in job promotion.²⁴⁰

Few Asian American women have taken their cases public.²⁴¹ Asian American women, outnumber other women of color in tech, and many of them are staying in the shadow of the intersectionality of race and gender bias and discrimination. The intersectionality of race and gender constitutes

232. *Id.*

233. *See id.*

234. *Id.*

235. Wu published an article on Medium. Susan Wu, *I Am One of Many: Fixing the Systemic Issues in the Tech Industry*, MEDIUM (June 30, 2017), <https://medium.com/@sw/i-am-one-of-many-fixing-the-systemic-issues-in-the-tech-industry-8ec74177f725> [<https://perma.cc/WRZ7-HJCW>]. She noted that as “a female or underrepresented minority founder, startup employee, or investor, you endure many layers of challenges that work in concert to thwart your well being and success.” *Id.*

236. Guynn, *supra* note 223.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *See, e.g.*, Maya Dangerfield et al., *Entrepreneur: I Was Sexually Assaulted by My Investor*, CNN MONEY (July 7, 2017), <https://money.cnn.com/2017/07/08/technology/culture/sexism-silicon-valley-code-of-conduct/index.html> [<https://perma.cc/45FD-DFH7>] (interviewing CEO Cheryl Yeoh, who explains why she was reluctant to publicly bring allegations of sexual assault against investor Dave McClure).

the “layers of challenges that work in concert to thwart [one’s] well being and success,” Susan Wu dryly observes, “I am one of many.”²⁴²

In summary, Asian American women experience the intersectionality of race and gender; they are on the receiving end of racialized sexual harassment and discrimination. From corporate diversity policy to the #MeToo movement, the focus on gender alone ignores the intersectionality of gender and race, excluding the real experience endured by Asian American innovators in tech.

V. EQUITY AND INCLUSIVITY FOR A COMPETITIVE TECH INDUSTRY

The tech industry cannot be competitive without having diverse talent in the workforce and leadership.²⁴³ Confronting the intersectional racism and sexism women of color face necessitates a new legal framework and new business approaches.

A. *Toward a Theory for Recognizing Differences in Harassment Law for Asian American Women*

Professor Angela Onwuachi-Willig explained how the #MeToo movement ignored the role that a Black woman, Tarana Burke, played in founding the movement ten years earlier and the unique experience Black women face in sexual harassment in the workplace.²⁴⁴ Specifically, Onwuachi-Willig argued that “the persistent racial biases” reflected in the #MeToo movement justify why sexual harassment law must adopt a reasonable person standard that accounts for “different intersectional and multidimensional identities,” moving away from the objective reasonable person standard.²⁴⁵ Onwuachi-Willig acknowledged that other scholars advocated for a “reasonable woman standard” in harassment law but notes none proceeded further in rooting that standard “in an intersectional and multidimensional lens . . . to capture the different ways that women across intersectional categories may experience any particular event.”²⁴⁶ Moreover, intersectionality theory in antidiscrimination law and robust scholarship in this area have existed since 1989.²⁴⁷

242. Wu, *supra* note 235.

243. See Brian Nordli, *Without Diverse Leadership, Tech Will Be Slow to Change*, BUILTIN (last modified July 9, 2020), <https://builtin.com/diversity-inclusion/diversity-representation-senior-leadership> [<https://perma.cc/L4RZ-KRQ9>].

244. Angela Onwuachi-Willig, *What About #UsToo? The Invisibility of Race in the #MeToo Movement*, 128 YALE L. J. F. 105, 106–07 (2018).

245. *Id.* at 109.

246. *Id.* at 109–10.

247. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989). Building on Crenshaw’s seminal work, intersectionality is now “a sophisticated subfield” in anti-discrimination law. Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre-) History*, 95 B.U. L. REV. 713, 731 (2015); see also generally Melvin J. Kelley IV, *Testing One, Two, Three:*

Adopting Onwuachi-Willig's arguments for the reasonable person standard in harassment law is appropriate for Asian American women, particularly the Asian American women in the tech sector. Under the reasonable person standard, Asian American women's intersectional and multidimensional identities as both Asian *and* women should be included when courts evaluate their sexual harassment claims.²⁴⁸

As *Asians*, Asian American women experience *Asian* exclusion. For instance, although Asians and Asian Americans hold 27% of all tech jobs, only 12% of founders are Asian Americans.²⁴⁹ On the funder VC side, only 10% of all VCs identify as Asian.²⁵⁰ The entrepreneurs and the VCs are explicitly linked. The shortage of Asian American VCs "means a more difficult time for Asian American entrepreneurs."²⁵¹ Nevertheless, only successful startup founders often hold the "necessary skill set to be successful VCs," and consequently, for Asian Americans attempting to become VCs, the numbers are abysmal.²⁵² Likewise, at the tech executive level, Asian Americans do not occupy the top ranks Whites are "twice as likely as Asians to hold executive positions" in tech companies.²⁵³ Even with a mundane task such as leading a meeting at work, Asian Americans are excluded, with 51% acquiring the opportunity compared with 68% of white employees.²⁵⁴

Coupled with the statistics, the narrative experience illustrating what Asian Americans encounter in tech is troubling. Tim Hwang, the founder of FiscalNote, a legal analytics platform, described how a "venture capitalist brushed [him] aside brusquely" at a private gathering, "but engaged in an

Detecting and Proving Intersectional Discrimination in Housing Transactions, 42 HARV. J. L. & GENDER 301 (2019); Alexander M. Nourafshan, *The New Employment Discrimination: Intra-LGBT Intersectional Invisibility and the Marginalization of Minority Subclasses in Antidiscrimination Law*, 24 DUKE J. GENDER L. & POL'Y 107 (2017); Laura M. Padilla, *Intersectionality and Positionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 FORDHAM L. REV. 843, 930 (1997).

248. The intersectional experience of Asian American women is not new to scholars though antidiscrimination law ignores its existence. See Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates over Implicit Bias and Intersectionality*, 37 HARV. J. L. & GENDER 185, 186 (2014) (noting the study conducted by National Science Foundation reveals the intersectionality of race and gender experienced by Asian American women).

249. Eva Shang, *CEOs in the Making: The Youngest Asian-Americans in Tech*, NBC NEWS (Feb. 22, 2016), <https://www.nbcnews.com/news/asian-america/ceos-making-youngest-asian-americans-tech-n516691> [<https://perma.cc/Y3RA-UWDG>]; see also Schiavenza, *supra* note 82 (noting that "in 2013, Asians and Asian Americans comprised 27 percent of the workforce at Google, Intel, Yahoo, Hewlett Packard, and LinkedIn, but held just 13 percent of executive jobs").

250. Shang, *supra* note 249.

251. *Id.*

252. See *id.* ("Just as executives at large tech companies affect the pipeline of startup founders, successful startup founders are more likely to have the necessary skill set to be successful VCs.")

253. Karthick Ramakrishnan & Jennifer Lee, Opinion, *Despite What You Might Have Heard, Asian American CEOs Are the Exception, Not the Norm*, L.A. TIMES (Oct. 19, 2017, 4:00 AM), <https://www.latimes.com/opinion/op-ed/la-oe-ramakrishnan-lee-asian-american-executives-20171019-story.html> [<https://perma.cc/5D9K-L8YU>].

254. *Id.*

hour-long conversation with” his friend.²⁵⁵ Hwang observed that “these instances of discrimination are subtly rankling,” and over time they “erode” one’s self-confidence.²⁵⁶

As women, Asian American women face a unique set of experiences that are not encountered by Asian American men, white women, nor any other racial groups. Specifically, among all the racial groups in the tech sector, Asian American women are the least likely group to be promoted into management positions.²⁵⁷ Often, they are hired for entry-level positions and remain there, as they are the least likely to be promoted.²⁵⁸ A study conducted by Ascend found that 1 in 285 Asian American women working in the tech sector is an executive.²⁵⁹ As reported elsewhere, in the past decade, the problem of underrepresentation of Asian American women in the tech industry has worsened.²⁶⁰

In other words, Asian American women’s experience is not the glass ceiling faced by white women; it is the compressing bamboo ceiling.²⁶¹ In the tech sector, the compressing bamboo ceiling means that tech employers ignore Asian American women because they allegedly do not possess the characteristics necessary for corporate leaders. Tech companies suggest that Asian American women “tend to rank high in hard skills such as technical competence.”²⁶² What is missing among Asian American women, as racialized sexism insists, is that they are “low in soft skills such as the ability to communicate and work well with others.”²⁶³

For example, in the Pao case, her employer portrayed her as “quiet” and unable to “hold a room.”²⁶⁴ Asian American women are more likely than other women to receive tasks in the categories of the “dutiful daughter” or “office mother.”²⁶⁵ Again, in the Pao case, although Pao is an accomplished professional with years of working experience at tech giants

255. Shang, *supra* note 249.

256. *Id.*

257. See Allana Akhtar, *supra* note 71 (“Asian-American women are passed up for senior-level roles more often than other ethnic groups.”).

258. *See id.*

259. *Id.*

260. See Ramakrishnan & Lee, *supra* note 253.

261. See Valentina Cullmann, *Breaking the ‘Bamboo Ceiling’? Asian Women in Business Defy Stereotypes*, THE SOCIABLE (Sept. 20, 2018), <https://sociable.co/business/asian-women-in-business/> [<https://perma.cc/R7GT-3MAK>].

262. Ramakrishnan & Lee, *supra* note 253.

263. *See id.*; see also Cullmann, *supra* note 261.

264. Sharon H. Chang, *How Asian American Women Are Forgotten in The Tech Diversity Debate*, THINKPROGRESS (Mar. 25, 2015), <https://archive.thinkprogress.org/how-asian-american-women-are-forgotten-in-the-tech-diversity-debate-fe6a9ee14635/> [<https://perma.cc/Y3SE-3JU6>].

265. *Id.* (quoting Prof. Joan C. Williams’s statement that “Asian American women are more likely than other women to report pressures to play traditionally feminine roles, such as office mother or dutiful daughter”).

and possesses impressive JD and MBA degrees from Harvard, her immediate supervisor asked her to babysit his children.

As discussed in prior Sections, if Asian American women dare to behave outside the racialized sexism of the “quiet” or the “dutiful” daughter, she would be branded as a “dragon lady,”²⁶⁶ another racialized sexist label. The Pao case nakedly displayed the racialized sexism when her employer depicted Pao at trial as an Asian who was “too combative and competitive,” acting outside of the norms expected of a “dutiful” and obedient Asian woman.²⁶⁷ That meant Pao should be punished at work: she was not to be promoted to general partner. The racialized sexism occurred at the firm and continued in the courtroom, and Pao received the ultimate punishment of losing the case.

The harassment law failed Pao because the law does not embrace the reasonable person standard as advocated by Onwuachi-Willig. Pao’s sexual harassment experience was racialized. Pao’s lived experience of intersectional and multidimensional identities as *both* an Asian and a woman who repeatedly endured the racialized sexual harassment, was ignored. The court and the jury seemed to accept that asking Pao to do “dutiful” tasks from babysitting her boss’s children, to helping with emails and speeches, connoted normality. Pao’s resistance by reporting instances of sexual harassment and questioning her opportunities for promotion was considered an act of betrayal of the norms. This racialized harassment was formed along a chain of patterned misconduct, but the court and the jury did not recognize it when they evaluated Pao’s claims against Kleiner Perkin.²⁶⁸

Harassment law, such as Title VII, can rectify the wrongs by adjusting the reasonable person standard to account for intersectional and multidimensional identities. Courts can look through the new lens and recognize the real experience of Asian American women in the tech sector who strive to achieve equality and inclusion for both themselves and others.²⁶⁹

266. Cullmann, *supra* note 261.

267. Chang, *supra* note 264.

268. Beyond the courtroom, some scholars continue to ignore intersectionality of race and gender in antidiscrimination legal scholarship. See, e.g., Zachary A. Kramer, *The New Sex Discrimination*, 63 DUKE L. J. 891, 892 (2014) (advocating that “the central task of sex discrimination law should be to better recognize—and, in turn, protect—the distinctive ways in which employees express their maleness and femaleness”).

269. See, e.g., *Lam v. Univ. of Hawai’i*, 40 F.3d 1551, 1562 (9th Cir. 1994) (“Like other subclasses under Title VII, Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women. In consequence, they may be targeted for discrimination ‘even in the absence of discrimination against [Asian] men or white women.’”); see also Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origins*, 37 B.C. L. REV. 771, 783 (1996); see generally Christine J. Black & Wilson C. Freeman, *Sexual Harassment and Title VII: Selected Legal Issues*, CONG. RES. SERV. (Apr. 9, 2018), <https://fas.org/sgp/crs/misc/R45155.pdf>

B. Business Approach

Outside the courtroom, the tech diversity debate has ignored Asian American women's experiences of discrimination based on both gender and race.²⁷⁰ Often the debate focuses on either gender²⁷¹ or race,²⁷² rarely discussed as one. Additionally, tech company leaders propose solutions that are acceptable to the general public, such as, training more girls how to code.²⁷³ Overall, companies embrace diversity policies that mirror the debate around diversity in tech by excluding Asian Americans.²⁷⁴ If Asian Americans are ever included in diversity programs, the inclusion is geared toward "cultural inclusion," which is the promotion of cultural participation, access, and the right to express and interpret a culture. They are not included in management diversity, or the effort made by organizational leaders to hire diverse talent and support an inclusive workplace.²⁷⁵

Take the McKinsey & Company's recent report on closing the "tech gender gap."²⁷⁶ McKinsey & Company, a foremost influential consulting

[<https://perma.cc/LYD2-AK7M>] (reviewing general background information about harassment law and Title VII).

270. Chang, *supra* note 264.

271. See, e.g., Heidi Lynne Kurter, *Women in Tech: 3 Ways Companies Can Bridge the Gender Gap*, FORBES (June 16, 2019, 02:18 PM), <https://www.forbes.com/sites/heidilynnekurter/2019/06/16/women-in-tech-3-simple-but-effective-tactics-on-how-companies-can-bridge-the-gap/#36a074238c0a> [<https://perma.cc/SZA3-7MA7>]; Jennifer Moss, *Disrupting the Tech Profession's Gender Gap*, SHRM (May 11, 2019), <https://www.shrm.org/hr-today/news/all-things-work/pages/disrupting-the-tech-profession-gender-gap.aspx> [<https://perma.cc/3QV5-3Z9W>]; Jo Piazza, *The Quiet Efforts to Battle Silicon Valley's Bro Culture*, WALL ST. J. (Nov. 11, 2018, 8:45 AM), <https://www.wsj.com/articles/the-quiet-efforts-to-battle-silicon-valleys-bro-culture-1541943938> [<https://perma.cc/9Z5Z-G9XX>] (reporting on a quiet effort where the wives of tech founders met to get their husbands to take a substantial paternity leave in the hope that they would understand work/life balance).

272. See, e.g., Nitasha Tiku, *Why Tech Leadership Has a Bigger Race Than Gender Problem*, WIRED (Oct. 3, 2017, 3:00 AM), <https://www.wired.com/story/tech-leadership-race-problem/> [<https://perma.cc/6U3P-BE45>]; Meggin Thwing Eastman, *Is the US Tech Sector Ignoring Minority Talent?*, MSCI (Oct. 1, 2019), <https://www.msci.com/www/blog-posts/is-the-us-tech-sector-ignoring/01602313461> [<https://perma.cc/4ZB8-5SET>]; Sara Harrison, *Five Years of Tech Diversity Reports—and Little Progress*, WIRED (Oct. 1, 2019, 7:00 AM), <https://www.wired.com/story/five-years-tech-diversity-reports-little-progress/> [<https://perma.cc/S6HV-5CNS>].

273. See Reshma Saujani & Ayah Bdeir, *Opinion: You Can't Solve the Gender Gap in Tech If You Don't Understand Why It Exists*, BUZZFEED (Mar. 6, 2019), <https://www.buzzfeednews.com/article/reshmasaujani/tech-gender-gap-pipeline-myth> [<https://perma.cc/4EAE-YWC6>] ("You have to root out the bias, discrimination, and harassment that are still widespread at every stage in the pipeline, but particularly in the business and technology industries. Companies would rather point to a silver bullet than acknowledge and fix the many factors at play in their own workplaces — and they frequently chose to cite the pipeline problem instead of investing in the hard and costly work of making their workplaces more equitable.").

274. See ASCEND REPORT, *supra* note 8 ("[B]ecause Asian Americans are not considered an underrepresented minority, they are given little priority or attention in diversity programs.").

275. See *id.*

276. Michael Conway, et al., *Closing the Tech Gender Gap Through Philanthropy and Corporate Social Responsibility*, MCKINSEY & CO. (Sept. 12 2018), <https://www.mckinsey.com/industries>

firm, advises sectors and companies on a wide range of topics. On advising how the tech industry can close the “tech gender gap,” the McKinsey team collaborated with Pivotal Ventures, an investment and incubation company created by Melinda Gates, to issue the team’s report.²⁷⁷ The report posits that “[d]iverse teams, including ones with greater gender diversity, are on average more creative, innovative, and ultimately more profitable.”²⁷⁸ With confidence, the report boasts actionable recommendations for companies to adopt. Specifically, the report urges companies to use corporate social responsibility and philanthropy to reboot representation of women in tech.²⁷⁹ Throughout the report, “women” refers to white women while “women of color” refers to Black, Latina, and Native American women.²⁸⁰ The report does point out that Asian American women “face significant headwinds” in terms of promotion to leadership positions.²⁸¹

The glaring omission visible in the McKinsey & Company’s report and collaboration with Melinda Gates, one of the most influential women in tech, necessitates a new approach in tech for equity and inclusion. Asian American women must be part of the debate and included in diversity policies. One of the main flaws is that the identified problems and proposed solutions miss an obvious opportunity presented by the *presence* of Asian American women in tech. Asian American women are already in tech and want to stay in tech. The actionable recommendations should include how to *keep* Asian American women innovators in tech through meaningful opportunities, promotion, sponsorship, and advancements.

Additionally, as the study by the Ascend Foundation demonstrates, Asian American women appear the least likely group of all racial groups in the San Francisco Bay Area Technology Sector to receive promotion to management and leadership;²⁸² hence, tech leaders must begin to tailor solutions to address this problem. Implicit bias training sessions and mentorship alone cannot continue to be the sole solutions to address the

/technology-media-and-telecommunications/our-insights/closing-the-tech-gender-gap-through-philanthropy-and-corporate-social-responsibility [https://perma.cc/D24F-TW2E].

277. *Id.*; see Michael Conway, et al., *Rebooting Representation: Using CSR and Philanthropy to Close the Gender Gap in Tech*, REBOOT REPRESENTATION (2018), <https://127j5241bcgw285yu54bgh7m-wpengine.netdna-ssl.com/wp-content/uploads/Rebooting-Representation-Report.pdf> [https://perma.cc/CE2G-U4PE].

278. Conway, *supra* note 277, at 8.

279. *Id.* at 2.

280. *Id.* at 2, 7, 20, 21, 22, 46.

281. *Id.* at 20.

282. ASCEND REPORT, *supra* note 8 at 3–4. A 2011 study about Asian American women in science and tech fields found similar issues with Asian women advancing in a variety of STEM careers; see Lillian Wu & Wei Jing, *Asian Women in STEM Careers: An Invisible Minority in a Double Bind*, 28 ISSUES IN SCI. & TECH. (Fall 2011), <https://issues.org/realnumbers-29/> [https://perma.cc/CK65-MQP6] (collecting data on Asian American women in STEM, identifying problems, and concluding that the “scarcity of Asian women in upper management and leadership positions” merits “greater attention, more targeted programmatic efforts, and inclusion in national discussions of the STEM workforce”).

problems faced by Asian American women in tech.²⁸³ Concretely, tech companies must provide Asian American women opportunities to scale the management and leadership ladders, starting with mundane tasks such as leading team meetings. Tech companies should also focus on new recruitment strategies, transparency, and objectivity in performance evaluations to keep women on the leadership track.²⁸⁴ If tech companies believe that some Asian American women require “soft skills,” then those companies should provide them with meaningful training to acquire these “soft skills.”²⁸⁵ In other words, tech companies should not just provide training solely for the purpose of checking off its own list of things to do. Most importantly, tech companies must articulate specific, measurable, transparent evaluation criteria and procedures needed for assignments, promotions, and pay raises so Asian American women know from the beginning what is expected of them and of others for advancement.²⁸⁶ Consequently, companies must change their existing policies and structures, and be held accountable for their own practices.²⁸⁷

As the Pao case shows, Asian American women are hired at the entry level, but they do not acquire sponsors to trust them with investments or business decisions. The mirrortocracy perpetuates an investment practice where sponsors invest in people similar to themselves. The tech investment sector must be willing to crack the mirror and sponsor Asian American women to be in their ranks.

In entrepreneurship, Asian American women founders do not fit the image of the founders in the mirrortocracy ecosystem. If funding companies and influencers continue to embrace the flawed meritocracy assumption, Asian American women founders will continue to be severely

283. See Alison Wynn, *Why Tech's Approach to Fixing Its Gender Inequality Isn't Working*, HARV. BUS. REV. (Oct. 15, 2019), <https://hbr.org/2019/10/why-techs-approach-to-fixing-its-gender-inequality-isnt-working> [<https://perma.cc/M7W4-XLYR>] (“Two ways tech companies often try to improve their cultures for women are through unconscious bias training and mentorship programs. But these programs often fall short of their goals. Unconscious bias training attempts to combat bias in the workplace, but existing research demonstrates that such training can, at best, be ineffective, and at worst, exacerbate bias. Mentorship and development programs aim to increase women’s skills and confidence to help them advance, yet women continue to be under-represented in leadership.”).

284. See *id.* (suggesting that companies should have “specific and measurable performance evaluation criteria, and transparent procedures for assigning compensation”).

285. See Askarinam & Nat’l J., *supra* note 79 (reporting that some experts have recommended that “Asian Americans need to learn the leadership skills that corporate America values, such as adapting public speaking skills to fit their company, while the executives themselves need to learn how to best retain and promote Asian-American talent”).

286. See *id.* (“If tech companies want to attract and retain women, they can’t place the blame on individuals — they need to recognize the role their policies and culture play in causing inequality, and they need to pursue organizational change. Implementing broader recruiting strategies, specific and measurable performance evaluation criteria, and transparent procedures for assigning compensation will go a long way toward reducing gender inequality in tech.”).

287. See *id.*

underrepresented.²⁸⁸ Although some angel funds and very early-stage funds do exist to assist women, including Asian American women entrepreneurs,²⁸⁹ those funds are much too small.²⁹⁰ True disruption requires meaningful funding opportunities for Asian American women entrepreneurs.

CONCLUSION

Looking beyond Silicon Valley, where the US tech industry is concentrated, there exists new competition. Nearly two-thirds of startups in China position women in executive roles.²⁹¹ In the Silicon Valley mirrortocracy, where men rule, 57% of US startups do not have any women in executive positions.²⁹² Jack Ma, the founder and former Chairman of Alibaba Group, advised Chinese companies to “hire as many women as possible.”²⁹³ Asian women in Asian tech are rising visibly in management and power, including the emergence of a group of five self-made female billionaires in Asian tech.²⁹⁴ The future of competition depends on women in the United States, and this includes Asian American women. Now is the time for the US tech industry to disrupt itself in order to truly become a global competitor.

288. In 2017, startups received \$85 billion in VC funding, and women acquired 2.2% of the funding amount. Adrien Book, *5 Ways We Can Work to Close the Gender Gap in Tech*, HACKERNOON (June 13, 2019), <https://hackernoon.com/5-ways-we-can-work-to-close-the-gender-gap-in-tech-7d2c59f0a212> [<https://perma.cc/H39V-EW2J>] (identifying the gender discrepancies in awards of Venture Capital funding and attributing this, in part, to a need for more formal and informal support networks for women). The 2.2% number is not broken down further into racial groups. *Id.* Regardless, 2.2% for all women is an extremely small number. *See id.*

289. *See* Nikki Sun & Coco Liu, *Women to Watch in Asian Tech, Is China Eclipsing Silicon Valley in Promoting Women?* NIKKEI ASIAN REV. (Aug. 8, 2018), <https://asia.nikkei.com/Spotlight/Cover-Story/Women-to-watch-in-Asian-tech> [<https://perma.cc/89ET-32BA>].

290. For a list of angel investing firms, see *Female Founders*, 37 ANGELS, <http://www.37angels.com/female> [<https://perma.cc/9B45-BJAQ>] (last visited Mar. 10, 2020). One of the main differences between angel and VC investing is the amount of money. S. Somasegar, *Commentary: From Angel to VC – Five Things I Learned in the First 100 Days*, <https://www.madrona.com/commentary-5-things-learned-first-100-days-venture-capitalist/> [<https://perma.cc/T2B5-XXQQ>] (last visited Mar. 10, 2020) (“[A] \$50M exit as an angel investor is exciting whereas that may not move the dial much for a venture fund that needs to return hundreds of millions of dollars to its investors.”).

291. Nikki Sun & Coco Liu, *supra* note 289.

292. *Id.*

293. *See id.*

294. *See id.* *Cf.* Angel Au-Yeung, *A Rare Find in Silicon Valley: A New Woman Billionaire in Tech*, FORBES (Mar. 5, 2019), <https://www.forbes.com/sites/angelauyeung/2019/03/05/a-rare-find-in-silicon-valley-a-new-woman-billionaire-in-tech/?sh=5e706596557b> [<https://perma.cc/DE3T-8ZVT>] (identifying Safra Catz, CEO, Oracle, as one of the few self-made woman billionaires in Silicon Valley).