

#MeToo and the Corporation in Popular Culture

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INTRODUCTION

#MeToo's initial virtual explosion in the fall of 2017 was very much about Hollywood, with famous actresses speaking out against famous producers, media moguls and celebrities, exposing the ubiquity of sexual harassment and sexual violence in and around the entertainment industry. Since then, #MeToo has made its way into Hollywood representations without much irony. Films and television shows have explicitly taken up the #MeToo themes, exploring issues of sexual harassment and violence and its afterlives. Many television shows, from the relaunched version of

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Murphy Brown to *Brooklyn Nine-Nine* to *The Good Fight* have incorporated #MeToo themes into episodes exploring the prevalence of sexual violence in women's lives, and the enduring trauma of survivors.¹ Other shows have taken #MeToo and sexual violence as their central theme, from the impact of sexual violence on survivors like *I May Destroy You*; with others like *Unbelievable* on the criminal justice system or like *Promising Young Woman* on revenge.

Feminist scholars have begun to explore the representations of gender, violence, power and believability in these films and television shows.² In this Article, I take a slightly different angle, focusing on the #MeToo films and television shows that take place within corporations. I explore the way in which the corporation is represented. *Bombshell* (2019),³ *The Morning Show* (2020),⁴ *The Loudest Voice* (2019)⁵ and *The Assistant* (2019)⁶ each explore the issue of sexual harassment and sexual assault within the corporation, loosely based on real stories.⁷ I consider the ways in which these films/shows focus on the corporation as the site of #MeToo events: sexual harassment and assault of female employees by powerful men. The representations are paradoxical. The corporate officers and directors are represented as culpable, as at best turning a blind eye, at worst covering up the violence in the interest of their financial bottom line.

1. For additional discussion of episodes referencing the #MeToo movement, see Emily Nussbaum, *TV's Reckoning with #MeToo*, NEW YORKER (May 27, 2019), <https://www.newyorker.com/magazine/2019/06/03/tvs-reckoning-with-metoo> [<https://perma.cc/8NC3-XE5L>]; see also Eliana Dockterman, *Pop Culture Reckoned With #MeToo in Radical New Ways in 2020—Even as It Receded from Headlines*, TIME (Dec. 22, 2020), https://time.com/5924015/sexual-misconduct-movies-tv-me-too/?utm_source=twitter&utm_medium=social&utm_campaign=editorial&utm_term=entertainment_television&linkId=107758236 [<https://perma.cc/V65X-EHSL>]. See generally Sarah Kornfield & Hannah Jones, *#MeToo on TV: Popular Feminism and Episodic Sexual Violence*, 22 FEMINIST MEDIA STUD. 1657 (2021); Jill Serjeant, *After Weinstein, #MeToo Themes in Film, TV Reflect Wider Cultural Reckoning*, REUTERS (Mar. 12, 2020), <https://www.reuters.com/article/us-people-harvey-weinstein-culture/after-weinstein-metoo-themes-in-film-tv-reflect-wider-cultural-reckoning-idUSKBN20Z1AG> [<https://perma.cc/6EGZ-FMTU>].

2. See, e.g., Sarah Banet-Weiser & Kathryn Claire Higgins, *Television and the "Honest" Woman: Mediating the Labor of Believability*, 23 TELEVISION & NEW MEDIA 127 (2021); BONNIE HONIG, SHELL SHOCKED: FEMINIST CRITICISM AFTER TRUMP (2021).

3. BOMBSHELL (Bron Studios, Annapurna Pictures, Denver + Delilah Productions, Gramsci, Lighthouse Management & Media, & Creative Wealth Media 2019).

4. *The Morning Show* (Echo Films, Media Responsibility, Kerry Ehrin Productions, & Hello Sunshine 2020).

5. *The Loudest Voice* (3dot Productions, Slow Pony, Blumhouse Television, 2019) (based on GABRIEL SHERMAN, *THE LOUDEST VOICE IN THE ROOM: HOW THE BRILLIANT, BOMBASTIC ROGER AILES BUILT FOX NEWS—AND DIVIDED A COUNTRY* (2014)).

6. *THE ASSISTANT* (Symbolic Exchange, 3311 Productions, Level Forward, Cinereach, Forensic Films, Bellmer Pictures, & JJ Homeward Productions 2019).

7. See also SHE SAID (Annapurna Pictures & Plan B Entertainment forthcoming Nov. 2022) (based on JODI KANTOR & MEGAN TWOHEY, *SHE SAID* (2019)). The film depicts two journalists whose *New York Times* exposé about Weinstein igniting the #MeToo movement and the subsequent journalistic exposure of sexual violence, assault, and harassment across the entertainment industry.

Yet in most, the leadership of the corporation is ultimately called to action, if not account; powerful men are fired, the old boy network toppling (yet not). While initially part of the problem, they become part of the solution. Problems of sexual harassment and corporate governance are individualized, and the image of the corporation sanitized through the outcome.

The first section briefly considers the negative representation of corporations in film. The second section turns to a detailed analysis of the #MeToo films and television shows, highlighting the way in which corporate actors are represented. The third section considers the real-life events which inspired the films and television shows. I do so not to point out factual inaccuracies, but rather as a way to think further about how the corporation is represented: What was and wasn't deemed to be story-worthy can further highlight the narratives of corporate responsibility for sexual harassment and sexual violence. The story that emerges is a more complex one of corporate boards negotiating demands of multiple stakeholders, shareholder lawsuits, and reputational damage. Indeed, the more complex legal structure of the corporation is largely glossed over in the films and television shows. While they do narrate individual power struggles between corporate executives, and between those executives and the board, the multiple stakeholders of the corporate structure remains largely invisible. Shareholder actions and the fiduciary duties of directors of corporations are, not surprisingly, not the stuff of Hollywood dramas.

Yet, a close reading of the films and shows does reveal a vision of corporate responsibility that resonates with real-world developments. In the final section, I examine some of the changes to corporate governance and its approach to sexual misconduct in the aftermath of #MeToo. I argue that despite glossing over the complexities of corporate governance, the films and television shows do, in fact, track the real-life changes. Sexual misconduct moves from margin to center, not because of any change to the corporate mission, but because of a recognition of its costs to the pursuit of shareholder values. While the films/shows at times suggest that taking sexual misconduct seriously requires a deviation from the classic corporate vision of maximizing profit for shareholders, I argue that they do not do so unambiguously; they can equally be read as reflecting the increasing risk of corporate liability in the face of sexual harassment. Sexual misconduct comes to be taken seriously because it is bad for business. And changing corporate culture, in particular putting more women in more positions of power, is in turn offered as the solution, in both real and imagined corporate governance.

I. CORPORATE CAPERS IN THE MOVIES

The corporation has not fared particularly well at the movies.⁸ As Ralph Clare observes, “corporations are often cast as the bad guys, coldly calculating in their pursuit of profits, unsympathetic to the human cost of their business (trans)actions.”⁹ From *The China Syndrome* (1979) and *Silkwood* (1983), which expose dangerous practices at nuclear power plants,¹⁰ to *The Insider* (1999) revealing the evils of a tobacco company, and *The Constant Gardener* (2005) focusing on a corrupt pharmaceutical company,¹¹ films frequently depict corporations as evil. In the context of law and social justice films, the corporation is often cast as the antagonist in the protagonist lawyer’s pursuit of justice. There is a well-worn story arc in law films in particular, where the often anti-hero lawyer (an ambulance chaser, someone down on their luck, or an otherwise not very attractive character) goes head-to-head with the lawyers representing the evil corporation.¹² Sometimes the lawyers are the problem, but often the real evil lurks in the client corporation.

The story arc of the contemporary lawyer film was established in *The Verdict* (1982), where Paul Newman as Frank Galvin, plays a down-on-his-luck alcoholic lawyer who comes to represent a comatose young woman in a medical malpractice suit against a Catholic hospital.¹³ The case was expected to settle for a substantial amount, but Frank is deeply affected by his visit to the young woman’s bedside.¹⁴ Instead of settling, Frank takes on the Catholic Archdiocese, represented by the high-priced and utterly unethical Ed Concannon.¹⁵ Frank is thoroughly out lawyered, with Concannon playing every unethical trick in the book, and some that were not even in the book (like the hiring of Laura Fischer as a sexual spy).¹⁶ Yet, justice ultimately—and improbably—wins, and Frank is vindicated.¹⁷

8. For a discussion of the negative representation of corporations in film, see RALPH CLARE, *FICTIONS INC.: THE CORPORATION IN POSTMODERN FICTION, FILM, AND POPULAR CULTURE* (2014); SANTIAGO SANCHEZ-PAGES, *THE REPRESENTATION OF ECONOMICS IN CINEMA: SCARCITY, GREED AND UTOPIA* (2021); Larry E. Ribstein, *Wall Street and Vine: Hollywood’s View of Business*, 33 *MANAGERIAL & DECISION ECON.* 211, 211–48 (2012); Gray Cavender & Nancy C. Jurik, *Risky Business: Visual Representations in Corporate Crime Films*, in *ROUTLEDGE INTERNATIONAL HANDBOOK OF VISUAL CRIMINOLOGY* (Michelle Brown & Eamonn Carrabine eds., 2017)

9. CLARE, *supra* note 8, at 74.

10. *THE CHINA SYNDROME* (IPC Films & Major Studio Partners 1979); *SILKWOOD* (ABC Motion Pictures 1983).

11. *THE INSIDER* (Touchstone Pictures, Spyglass Entertainment, & Forward Pass 1999).

12. *See generally* Ribstein, *supra* note 8.

13. *THE VERDICT* (20th Century Fox 1982).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

While *The Verdict* set the lawyer-as-anti-hero melodramatic story arc, subsequent films would shift the villain away from the unethical lawyer to the corporate client.¹⁸ *A Civil Action* (1998), a film about a book about a case, pits personal injury lawyer Jan Schlichtmann against the lawyers representing two corporations—Beatrice Foods and W.R. Grace—in a case of an environmental toxic tort involving ground water contamination linked to the deaths of local children.¹⁹ The film is all about the civil justice system and its inability to deliver justice, particularly in relation to complex toxic torts.²⁰ But along the way, it becomes clear that the true villains are the corporations themselves, hiding their responsibility for the ground water contamination.²¹ Their deep pockets, which is what made them initially attractive as a defendant to Schlichtmann, is also what made them untouchable; they bankrupted Schlichtmann (who himself made a series of unwise choices in refusing generous settlement offers).²² A similar story is told two years later in *Erin Brockovich* (2000).²³ Brockovich, working as a legal assistant, discovers medical records in a client's real estate file where the Pacific Gas and Electric Company (PG&E) offers to purchase the home of a resident of Hinkley, California.²⁴ She investigates only to find that Hinkley's groundwater has been contaminated with a known carcinogen, that many in the community have cancer, but that PG&E has told them that they only use the "safe chromium."²⁵ She convinces her lawyer and employer Ed Masry to bring a class action lawsuit.²⁶ Legal wranglings ensue.²⁷ Brockovich meets Charles Embry, a former PG&E employee, whose cousin had just died from exposure to the chemicals he was exposed to when he had also worked at PG&E.²⁸ Embry tells her that he had been told to destroy documents by PG&E, but, "as it turns out, I wasn't a very good employee."²⁹ He gives her the documents, which include a 1966 memo proving corporate headquarters knew the water was contaminated with hexavalent chromium.³⁰ With the smoking gun now in hand, the court

18. *See id.*

19. *A CIVIL ACTION* (Touchstone Productions, Paramount Pictures, & Wildwood Enterprises, Inc. 1998).

20. *See id.*

21. *See id.*

22. *See id.*

23. *ERIN BROCKOVICH* (Universal Pictures, Columbia Pictures, & Jersey Films 2000).

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.*

28. *Id.*

29. *Id.*

30. *Id.*

orders PG&E to pay a settlement amount of \$333 million to be distributed among the plaintiffs.³¹ Once again, the David and Goliath narrative (Brockovich describes her battle as “kinda like David and what’s his name”) is one of passionate and unrelenting individuals pursuing a corporation that knowingly poisoned the groundwater and denied their responsibility.³²

The case against the corporation gets worse. If the corporation lawyers engage in questionable ethical conduct, it is nothing in comparison to the profit-driven corporation. George Clooney in *Michael Clayton* (2007) plays a fixer in a high-priced New York law firm.³³ Clayton ends up involved with a multibillion-dollar lawsuit against U-North, an agricultural products mega corporation, who allegedly knew that their weedkiller was a carcinogen.³⁴ Karen Crowder, U-North’s in house counsel, discovers that the lawyer for the plaintiffs had an incriminating memo, showing that the company was well aware that their weed killer was carcinogenic, and that it resulted in hundreds of deaths.³⁵ She does what any reasonable in-house counsel would do under the circumstances: hires hit men to kill him.³⁶ The hit men then turn their sights on Clayton, try to kill him, and when they fail, Crowder tries to bribe him.³⁷ It all goes bad, Crowder is arrested and the company’s evil ways exposed.³⁸ The corporation now is not only responsible for the deaths caused by its products; it now also directs murder.³⁹ In-house counsel emerges as the new villain, acting on behalf of and at the behest of the murderous corporation.⁴⁰ Not a pretty picture of the corporation, nor its leadership.

As Ralph Clare observes, the film follows the model of blaming “corporate malfeasance on particular executives (here, the CEO and Karen Crowder).”⁴¹ While the most damning evidence of U-North’s responsibility is a document signed by CEO Jeffries, and it is “Jeffries and other executives who have caused the sickness and potential deaths of many more people, as well as the destruction of the environment,” Crowder personifies the corporation and emerges as the main villain.⁴²

31. *Id.*

32. *Id.*

33. MICHAEL CLAYTON (Samuels Media, Castle Rock Entertainment, Mirage Enterprises, Section Eight Production 2007).

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. CLARE, *supra* note 8, at 109 (discussing MICHAEL CLAYTON, *supra* note 33).

42. *Id.* at 110.

“[T]he ‘vulgar’ murder and selfish scheming of Crowder is somehow supposed to put the more massive crimes of the corporation and its CEO out of our minds.”⁴³

In a marginally less outlandish or at least a more realistic plot, Mark Ruffalo stars as real-life lawyer Robert Bilott in *Dark Waters* (2019) who goes after the chemical manufacturing corporate giant, Dupont, for contaminating a town with unregulated chemicals.⁴⁴ Bilott was a corporate defense lawyer at a large law firm when he was asked by his grandmother to talk to a local farmer about a large number of animal deaths.⁴⁵ Bilott brings a small lawsuit to get discovery from Dupont and discovers that perfluorooctanoic acid—a forever chemical used to manufacture Teflon—was known to the company to cause cancer and birth defects, but Dupont never made the finds public.⁴⁶ Instead, they seemed to prefer dumping the chemicals in local landfills. One thing leads to another: The EPA fines Dupont, a multimillion-dollar settlement is reached and withdrawn, Robert’s life goes to shambles, more people die of cancer.⁴⁷ But eventually, the tireless crusade by Robert brings Dupont to its knees, with a bigger multimillion-dollar settlement.⁴⁸ While Dupont was eventually made to pay, the story of corporate greed, coverup and criminality is a pretty common story in the Hollywood cache.⁴⁹

None of these films engaged in any significant way with questions of corporate governance or divergent stakeholders; rather, the corporation is represented as beholden to profit-driven owners and shareholders, and its corporate executives apparently willing to stop at nothing in its pursuit.⁵⁰ Yet, in each, the corporation is made to pay; corporate executives are punished and/or multimillion dollar settlements are reached.⁵¹

The message underlying the films is one of corporate greed driving executives to harm. Yet there is rarely a critique of capitalism. Rather the evil of corporate greed is individualized onto its agents; it is individual bad apples blinded by greed and profit, and it is likewise individuals who call

43. *Id.*

44. *DARK WATERS* (Participant & Killer Films 2019).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. See e.g., *THE CHINA SYNDROME*, *supra* note 10; *SILKWOOD*, *supra* note 10; *THE INSIDER*, *supra* note 11; *THE CONSTANT GARDENER*, *supra* note 11; *THE VERDICT*, *supra* note 13; *A CIVIL ACTION*, *supra* note 19; *ERIN BROCKOVICH*, *supra* note 23; *MICHAEL CLAYTON*, *supra* note 33.

51. See e.g., *THE CHINA SYNDROME*, *supra* note 10; *SILKWOOD*, *supra* note 10; *THE INSIDER*, *supra* note 11; *THE CONSTANT GARDENER*, *supra* note 11; *THE VERDICT*, *supra* note 13; *A CIVIL ACTION*, *supra* note 19; *ERIN BROCKOVICH*, *supra* note 23; *MICHAEL CLAYTON*, *supra* note 33.

them to account.⁵² The system simply is not working properly, and it requires righteous heroes and heroines, inside and outside the corporation, to bring the wrongdoers to justice. Given this legacy, it is not surprising going into the representation of #MeToo that the implicated corporate entities might not fare well. Admittedly, the #MeToo films are not law films in the traditional sense of the lawyer as protagonist, though they are legally laden with NDAs, employment contracts, and lawsuits. Yet, as I argue, their representation of the corporation follows a familiar yet distinctive story arc. There are indeed stories of corporate coverups, but it is often a story of willful blindness or negligence rather than intentional involvement. The wrongdoing is individualized. And ultimately, the corporate leadership is involved in calling the harassers to account, albeit begrudgingly.

II. A BOMBSHELL AT FOX

Bombshell (2019) tells the real-life story of the sexual harassment allegations against, and the eventual downfall of Roger Ailes, CEO of The Fox News Channel and the chairman of Fox Television Stations in 2016.⁵³ The scandal at Fox was a precursor to the emergence of #MeToo in 2017,⁵⁴ but the film was made in its aftermath, and very much reflects Hollywood's post #MeToo sensibilities.⁵⁵ The film depicts the sexual harassment lawsuit brought against Ailes (played by John Lithgow) first by Gretchen Carlson (Nicole Kidman), and then by more than a dozen employees who came forward with allegations of their own against Ailes.⁵⁶ Eventually, those accusers would include Megyn Kelly (Charlize Theron).⁵⁷

The opening scenes of the film are a commentary on the division of power within the corporate structure: Kelly is speaking directly to her viewers as she takes them on a tour of the Fox building.⁵⁸ Roger Ailes, rules from the Second Floor, where Kelly describes him as “always watching.”⁵⁹ And we see him watching not only the news room, but also James Murdoch (James) from one of his many surveillance cameras, who is subject to Ailes homophobic derision, (“Tell me those lips haven’t

52. See e.g., *THE CHINA SYNDROME*, *supra* note 10; *SILKWOOD*, *supra* note 10; *THE INSIDER*, *supra* note 11; *THE CONSTANT GARDENER*, *supra* note 11; *THE VERDICT*, *supra* note 13; *A CIVIL ACTION*, *supra* note 19; *ERIN BROCKOVICH*, *supra* note 23; *MICHAEL CLAYTON*, *supra* note 33.

53. *BOMBSHELL*, *supra* note 3.

54. *Id.*

55. See generally *id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

sucked cock This is what nepotism gets you”).⁶⁰ But Kelly then tells us that “everyone in the building, including Roger, answers to the Eight,” the eighth floor being home to CEO-of-everything Rupert Murdoch and his sons, James and Lachlan, described as “the power behind the power.”⁶¹ These opening scenes foreshadow the conflict in corporate governance to come.⁶² As one commentator observed, through these establishing scenes, “Institutional forces become embodied in particular power players whom we are meant to understand aren’t always in alignment. Yet what forces are represented as causing the misalignments are telling.”⁶³

The narrative turns to Megyn Kelly, co-moderating the 2016 Republican debate, who goes after presidential candidate Donald Trump by asking tough questions about his sexist insults towards women.⁶⁴ Trump, in his inimical fashion, started a Twitter war (with more sexist insults towards a woman),⁶⁵ Kelly came under (Fox) public criticism,⁶⁶ pressure from Ailes and was eventually forced to make up with him⁶⁷. Kelly is thereby positioned, from the start, as a protector of women’s rights, albeit one that was muzzled by her CEO, who cared more about his connections with Trump.⁶⁸

Meanwhile, Gretchen Carlson is demoted to an afternoon Fox show and eventually, her contract is not renewed.⁶⁹ She then brings a sexual harassment lawsuit against Roger,⁷⁰ claiming that she was fired because she refused his sexual advances for years.⁷¹ She tells her lawyers that Roger had repeatedly made comments like “to get ahead you have to give a little head.”⁷² Her non-disclosure agreement (NDA) prohibited her from suing the network, but her lawyers did a work around by suing him individually.⁷³ Roger denies the allegations, through his lawyer, one-time feminist legal scholar Susan Estrich (played by Alison Janney).⁷⁴ But

60. *Id.*

61. *Id.*

62. *Id.*

63. Alessa Dominguez, “Bombshell” Wants Us to See The Women Of Fox News As Heroes, BUZZFEED NEWS (Dec. 9, 2019), <https://www.buzzfeednews.com/article/alessadominguez/bombshell-megyn-kelly-charlize-theron-white-women> [https://perma.cc/2UAF-3GYF].

64. BOMBSHELL, *supra* note 3.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. For additional information on Susan Estrich, see Paul Farhi, *What Is Feminist Hero Susan Estrich Doing Representing Roger Ailes?*, WASH. POST (Aug. 4, 2016),

within days, more women came forward with allegations of sexual harassment by Ailes.⁷⁵

While Carlson and her lawsuit animate much of the story and the eventually downfall of Ailes, the narrative focuses more on Megyn Kelly and the fictional character, Kayla Pospisil (played by Margot Robbie).⁷⁶ Pospisil—young, ambitious, beautiful—is Roger’s most recent target, and the film depicts Roger sexually harassing her.⁷⁷ Kayla is fictional, but director Jay Roach explained that she was a composite character, based on a number of women who were harassed by Roger.⁷⁸ Some of the women that Roach and screenwriter Randolph interviewed had violated their NDAs by speaking with them.⁷⁹ “We’re not revealing the people we talk to. We’re trying to protect them.”⁸⁰ Kayla’s character was created to reflect these experiences; a composite character produced in part through real life NDAs.⁸¹

And while the focus is on the women, the corporate governance machinations get interesting once the lawsuit is brought.⁸² The film shows the Murdoch brothers finding out about the suit, and observers sense that they see it as, finally, their opportunity to do something about Ailes; there was no love lost between them.⁸³ As they wait for a call from News Corp’s⁸⁴ lawyer, Gerson Zweckfach, James is seen setting up a game of dominos.⁸⁵ The lawyer recommends that they “conduct an internal investigation into Roger’s behavior. I know you two have had issues with him.”⁸⁶ There is a flashback to a scene where Lachlan steps in to calm

https://www.washingtonpost.com/lifestyle/style/feminist-hero-susan-estrich-fought-sexual-harassment-but-now-represents-roger-ailes-is-she-selling-out-or-standing-up/2016/08/04/904c22ce-5810-11e6-9aee-8075993d73a2_story.html [https://perma.cc/DX72-KA5K].

75. BOMBSHELL, *supra* note 3.

76. *Id.*

77. *Id.*

78. Chris Lindahl, “Bombshell”: For Sexual Misconduct Drama, Subjects Violated NDAs to Speak With Filmmakers, INDIEWIRE (Oct. 14, 2019), <https://www.indiewire.com/2019/10/bombshell-fox-news-roger-ailes-research-1202181254/> [https://perma.cc/Z3QQ-L98V].

79. *Id.*

80. *Id.* During a 2019 interview, Theron went into detail about the thought behind this: “We used a lot of source material in finding the story and *also* spoke to a lot of women who were part of the story . . . some of them really didn’t want their names out there . . . as a team, we’ve just decided to protect our sources.” *The Ellen DeGeneres Show: Nicole Kidman, Charlize Theron, Margot Robbie, Midland* (Warner Bros. Television Oct. 15, 2019).

81. BOMBSHELL, *supra* note 3.

82. *Id.*

83. *Id.*

84. “News Corp” is the parent company of Fox News. See *Leadership*, NEWSCORP, <https://newscorp.com/news-corp-leadership/> [https://perma.cc/3PBJ-Q9HB]. Rupert Murdoch is its CEO, and his sons, Lachlan and James, have had varying executive roles in it and its subdivisions. *Id.*

85. BOMBSHELL, *supra* note 3.

86. *Id.*

Roger down in the newsroom, following a suspected anthrax attack.⁸⁷ Roger tells Lachlin not to tell him what to do in his newsrooms, to which Lachlan pointedly responds, “It if was yours, you’d own it.”⁸⁸ Moving back to the present, James and Lachlin tell the lawyer to look into her claims; James then knocks over one of the dominos.⁸⁹ It is the first step towards Roger’s fall.

The news breaks of the lawsuit and much of the film focuses on what Kelly does.⁹⁰ Eventually, she calls Lachlan and with one line, reveals her plan: “We need to get Gerson Zweifach on the phone.”⁹¹ The next scene cuts to Rudy Giuliani (close friend and advisor to Roger) calling Gerson and insisting that he be part of the investigation.⁹² Gerson tells him that they have decided to go with an outside firm, Paul Weiss.⁹³ Giuliani insists on being allowed to participate, but Gerson refuses, explaining that Giuliani was too closely associated with Roger, and that his participation would remove the attorney-client privilege, making any woman who came forward subject to discovery.⁹⁴ The exchange makes clear that the investigation launched by the Eighth floor will be independent from the Second.⁹⁵

Megyn talks to the Paul Weiss investigators, but upon discovering that she is the twenty-third witness (Witness W), she decided to go public with her allegations.⁹⁶ While Roger goes into full on attack mode, his time is almost up.⁹⁷ Gretchen Gretchen’s lawyers contact Estrich, who initially thinks that the phone call is a sign that they want to settle.⁹⁸ Instead, the lawyers reveal that all of Gretchen’s allegations came from taped conversations, not initially revealed so that he would issue complete denials, destroying his credibility.⁹⁹

In quick succession comes the breaking news during the GOP National Convention: Roger is out.¹⁰⁰ After being locked out of the Fox building, Roger goes to a meeting with all three Murdochs and pleads his case.¹⁰¹ Rupert responds that there is “no audience for that side of the

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

story” and offers Roger an undisclosed settlement.¹⁰² Rupert is calm and detached; James is rather more impassioned, saying to Roger: “Consider yourself lucky. I’d have fired you for cause.”¹⁰³ Roger asks to be part of the announcement to Fox news staff, and in the final assertion of power, Rupert says “no.”¹⁰⁴ After Roger leaves, the sons watching Roger leave have the last word.¹⁰⁵ “The end of the leg man,” says James; “I won’t miss him,” says Lachlan. On the way up in the elevator back at the Fox building, Rupert expresses his equivocation to his sons: “Hope you two know what you are doing,” making clear that it was the sons rather than the father that pushed Roger out.¹⁰⁶

The film ends as it started, with Kelly’s voice over, telling us that. “Gretchen Carlson got the Murdochs to put the rights of women over profit, if only temporarily.”¹⁰⁷ But, did she? Such is the message of *Bombshell*, with Kelly and Carlson as unlikely feminist heroines. The transformation of Carlson and Kelly into feminist heroines in the lead-up to #MeToo and the exposure of sexual harassment at the highest level of corporate America takes a number of not very well-hidden sleight of hands. The history of racist, homophobic, and conspiracy theory baiting that defined both of them was conveniently ignored. As one commentator aptly described, “The Megyn Kelly we meet here is decidedly not the one who deployed her prosecutorial skills on her show . . . to stoke racist conspiracy theories or lecture viewers about the whiteness of Jesus and Santa.”¹⁰⁸ The film fails to capture Carlson as a “habitual peddler of racist conspiracy theories and anti-gay and anti-trans talking points,” but instead portrays her as “an ideological maverick who faces pushback from Ailes for advocating for (some) gun control, and for appearing makeup-less on an episode about empowering young women.”¹⁰⁹ They both represent a sort of lean-in corporate feminism: a highly individualized how-to-get-to-succeed-in-business feminism; a feminism without any broader analysis of structural inequalities, or axes of power beyond gender.¹¹⁰ Carlson and

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Dominguez, *supra* note 63.

109. *Id.* For more information on Kelly’s history of racist remarks, see James Poniewozik, *On NBC, Megyn Kelly Does as Megyn Kelly Has Always Done*, N.Y. TIMES: CRITIC’S NOTEBOOK (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/arts/television/megyn-kelly-blackface-nbc.html> [<https://perma.cc/R44B-677E>].

110. See bell hooks, *Dig Deep: Beyond Lean In*, FEMINIST WIRE (Oct. 28, 2013), <https://www.thefeministwire.com/2013/10/17973/> [<https://perma.cc/Y2D2-752G>] (critiquing SHERYL SANDBERG & NELL SCOVELL, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013)) (“Sandberg’s definition of feminism begins and ends with the notion that it’s all about gender equality

Kelly both leaned in hard and in so doing, took down Roger Ailes, making them the perfect corporate feminism heroines.

But did the Murdochs really put the rights of women before profit? Did they really deviate from the core corporate mission of maximizing profit for shareholders? Well, as a story of corporate governance and infighting, it is as much a story of the Murdoch sons finding a way to finally rid themselves of the stain that was Roger. We do not see them expressing concern about sexual harassment per se; we see them more in a game of cat and mouse where they are finally given the opportunity to do what their father would not. Rupert was right that the narrative was changing about sexual harassment and women in the workplace. A closer reading suggests that the question of whether they put women's rights before profit, or as a longer-term calculation of profit is more than a little ambiguous. But the narrative of *Bombshell* is one of corporate willful blindness in the face of Roger's years of sexual harassment, but of eventually doing the right thing: of putting the rights of women ahead of profit. The corporation is not evil; it just takes a while to catch up with the times.

III. LOUD MOUTHS AT FOX

Bombshell is inevitably compared to the television show *The Loudest Voice*, the Showtimes series that also tells the story of the rise and fall of Roger Ailes at Fox Network.¹¹¹ The limited follows Roger (Russell Crowe) and follows him from when Rupert Murdoch first hired him to create Fox News to when he was eventually fired by Murdoch in the aftermath of the sexual harassment lawsuit.¹¹² The sexual misconduct elements are woven into the episodes, alongside Roger's unorthodox approach to news and politics ("We need to drive the news, not just cover it").¹¹³ Different characters and storylines are prioritized. We meet Laurie Luhn, who has a

within the existing social system. From this perspective, the structures of imperialist white supremacist capitalist patriarchy need not be challenged. And she makes it seem that privileged white men will eagerly choose to extend the benefits of corporate capitalism to white women who have the courage to 'lean in.' It almost seems as if Sandberg sees women's lack of perseverance as more the problem than systemic inequality."). For additional works critiquing Sandberg's definition of feminism, see DAWN FOSTER, *LEAN OUT* (2016); Nellie Bowles, *Lean In's Sheryl Sandberg Problem*, N.Y. TIMES (Dec. 7, 2018), <https://www.nytimes.com/2018/12/07/technology/lean-in-sheryl-sandberg-problem.html> [<https://perma.cc/58AW-5WJC>]; Alissa Quart, *The Last Big Lean In: Corporate-Feminist Self-Help Was Always a Scam*, BITCHMEDIA (Nov. 27, 2018), <https://www.bitchmedia.org/article/the-last-big-lean-in/Sheryl-Sandberg/Amy-Chua-and-corporate-feminism> [<https://perma.cc/PBL8-CFS9>]; Arwa Mahdawi, *Sheryl Sandberg Saga Shows It's Time to Lean Out of Corporate Feminism*, GUARDIAN (Dec. 1, 2018), <https://www.theguardian.com/commentisfree/2018/dec/01/sheryl-sandberg-lean-out-corporate-feminism> [<https://perma.cc/N6VQ-ACKZ>].

111. *The Loudest Voice*, *supra* note 5.

112. *Id.*

113. *Id.*

long-term sexual affair of dubious consensuality with Roger; a sexual relationship that was clearly in exchange for her job.¹¹⁴ As she tries to end the affair, she is told by Ailes to find her replacement.¹¹⁵ Her mental health deteriorates, and she is finally let go with an NDA and a cash settlement.¹¹⁶ Bill O'Reilly's ongoing sexual harassment comes in and out of view, as lawyers tell Roger how much it will cost him to settle with individual women.¹¹⁷ Carlson's sexual harassment only becomes a focus in later episodes.¹¹⁸ Megyn Kelly barely makes an appearance except for her infamous encounter with Trump, and only in the final episode, also speaking out against Roger's sexual harassment.¹¹⁹ Roger's fiercely loyal executive assistant, Judy Laterza, plays a central role in *The Loudest Voice*, obviously complicit in the sexual misconduct.¹²⁰

Roger's complicated relationship with the Murdochs is also given more direct airtime than in *Bombshell*.¹²¹ Rupert hires Roger to create Fox News, and Roger convinces him that it should be a conservative mouthpiece to counter the liberal bias of American media and become the loudest voice in the room.¹²² The tension with Roger's sons, particularly Lachlan, is evident from the beginning, with the conflicts and power struggles come in and out of view.¹²³ The same testy exchange in *Bombshell* between Roger and Lachlan following the alleged anthrax attack is shown, although in *The Loudest Voice*, it is rather less clear who comes out on top.¹²⁴ Roger and Rupert's relationship deteriorates in the Obama years, as Rupert's political realism of getting along with the administration conflicts with Roger's increasing paranoia.¹²⁵ Roger threatens to walk, but ultimately gains complete editorial control over Fox News.¹²⁶ By 2015, Lachlan and James Murdoch assume more control over News Corp and attempt to make Roger reportable directly to them, while also keeping him out of the loop.¹²⁷ Rupert, taking more of a backseat in

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* Judy Laterza's character is not included by name in *Bombshell*, which instead features Holland Taylor as Faye Orselli, Roger's assistant, also obviously complicit in the sexual misconduct. BOMBSHELL, *supra* note 3.

121. *The Loudest Voice*, *supra* note 5.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

News Corporation, tries to mediate by telling Roger that while he officially reports to his sons, he will in fact report to Rupert.¹²⁸

On the heels of Gretchen Carlson's lawsuit, Lachlan makes his move.¹²⁹ Roger asks Rupert to issue a statement in his support.¹³⁰ Lachlan interrupts: "This is a \$60 billion public company. We have shareholders, SEC compliance. The Board will want to weigh in."¹³¹ He continues that any statement in support "comes from you, not corporate. And legal suggests we bring in outside counsel to investigate," insisting that he is protecting the company.¹³² After some bickering, Rupert steps in and says "no lawyers."¹³³

But, unbeknownst to Roger, Lachlan (presumably with James but Rupert's involvement is unclear) hires Paul Weiss lawyers to conduct an investigation and ultimately report to the Board recommending that Roger be terminated.¹³⁴ Rupert asks Gerson, their general counsel, about their exposure, who tells him: "[C]lass action. Shareholder suits. Settlement claims into the hundreds of millions. Not to mention Roger used corporate funds for his payoffs. SEC is going to kill us on that."¹³⁵ Rupert, obviously frustrated, scolds Lachlan, reminding him that he had said no lawyers, and he had "put the entire firm at risk."¹³⁶

Lachlan fires back: "Roger's been a ticking time bomb for years. But everyone in this room looked the other way because profits were good."¹³⁷ Father and sons disagree on whether to fire him or force him to resign.¹³⁸ Rupert tells his sons that he will not do anything to jeopardize Fox News and reminds his sons of the economic bottom line: "And if you won't think of the shareholders, at least think of your inheritance."¹³⁹ Lachlan agrees: "We let Roger go, we save Fox news. Cut off the limb to save the body."¹⁴⁰

The three Murdochs, alongside Gersen, meet with Roger and inform him that the Board has voted that he is no longer the CEO of Fox News.¹⁴¹ They offer him a \$40 million settlement for his resignation.¹⁴² Unlike in *Bombshell*, Roger's lawyer is not present; Roger loses his temper, ranting

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

and raving until his wife tells them it is time to leave.¹⁴³ The text epilogue tells us, among other things, that Roger died; Gretchen got her settlement, NDA, and an apology; that Judy Laterza was paid \$2 million a year; that Laurie broke her NDA; that Bill Shine took over as co-president of Fox News but was subsequently forced to resign because of his handling of the sexual harassment crisis; and that Suzanne Scott is the current CEO of Fox News.¹⁴⁴

While *Bombshell* tries to tell the story of putting the rights of women before profit, *The Loudest Voice* does not. The firing of Roger is very explicitly about the economic bottom line for the Murdochs. But the film is also more about the rise and fall of Roger Ailes than it is a story about #MeToo. The sexual misconduct is only part of the narrative. The image of the corporation that emerges is one of complex power struggles, driven by profit but clouded by politics, personal vendettas, and ego. The lawyers do the work of the coverups, plastering sexual and other forms of misconduct with lucrative settlements and NDAs at the behest of the corporate executives. It is a vision of complicity in sexual misconduct, until that misconduct simply becomes too expensive to cover up.

As in *Bombshell*, the Murdoch sons dislike Roger, but it is unclear whether much of the antipathy is about Roger's treatment of women in particular. Lachlan ultimately wins, but only when it becomes clear to his father that the ticking time bomb had finally gone off, and the cost to the company was too great. Some kind of change is signaled by the fact that a woman—Suzanne Scott—is now the CEO. However, she worked for Roger, so the extent of the corporate housecleaning that Lachlan had called for is questionable.¹⁴⁵ As Lachlan had said, the Murdochs and the board all had one objective: “protect the company.”¹⁴⁶

IV. A WAKE-UP CALL FOR *THE MORNING SHOW*

*The Morning Show*¹⁴⁷ is a television drama from Apple TV+ (Apple) starring Jennifer Aniston, Reese Witherspoon, and Steve Carell, inspired by Brian Stelter's *Top of the Morning: Inside the Cutthroat World of Morning TV*.¹⁴⁸ While the book was published in 2014, Apple announced the show in November 2017, as #MeToo was in full-blown momentum and very much took its inspiration from the unfolding events and

143. See BOMBHELL, *supra* note 3.

144. *The Loudest Voice*, *supra* note 5.

145. *Id.*

146. *Id.*

147. *The Morning Show*, *supra* note 4.

148. *Id.*

headlines.¹⁴⁹ And the similarities to Matt Lauer’s dismissal from NBC’s Today show are striking,¹⁵⁰ though purely coincidental.¹⁵¹ The show tells the story of The Morning Show on the fictional UBA network, which is thrown into chaos when co-host Mitch (played by Steve Carell) is fired for sexual misconduct.¹⁵² Co-host Alex (Jennifer Aniston) must fight to keep her job, and a not so friendly competition is set up between Alex and Bradley (Reese Witherspoon), the newly hired co-host.¹⁵³

Amidst the many trials and tribulations of the series is the central question of who knew what about Mitch: what did Alex know, what did the show’s staff know, what did the management know, and what did the CEO know. The newly arrived President of the UBA News division, Cory (played by Billy Crudup), is not implicated.¹⁵⁴ By contrast, Fred Micklen was the long-time CEO of UBA, and around during Mitch’s misconduct.¹⁵⁵ Fred is concerned first and foremost with the economic bottom line of the network; with ratings and advertisers, particularly on the network’s flagship *The Morning Show*.¹⁵⁶ But, in the aftermath of the Mitch disclosure, the economic bottom line includes whether the network

149. *Apple Celebrates “The Morning Show” Coming to Apple TV+ November 1*, APPLE (Oct. 28, 2019), <https://www.apple.com/ca/newsroom/2019/10/apple-celebrates-the-morning-show-coming-to-apple-tv-november-1/> [<https://perma.cc/NTW3-JQ7K>].

150. Matt Lauer, the co-host of *Today*, was fired by NBC after multiple allegations of sexual harassment and sexual abuse by co-workers. Ellen Gabler, Jim Rutenberg, Michael M. Grynbaum & Rachel Abrams, *NBC Fires Matt Lauer, Face of “Today”*, N.Y. TIMES, (Nov. 29, 2017), <https://www.nytimes.com/2017/11/29/business/media/nbc-matt-lauer.html> [<https://perma.cc/6483-D8MN>].

151. Lesley Goldberg, “TV’s Top 5”: “The Morning Show” Boss on Matt Lauer Comparisons, Pressure to Launch Apple TV+, HOLLYWOOD REP. (Nov. 1, 2019), <https://www.hollywoodreporter.com/tv/tv-news/apples-morning-show-boss-matt-lauer-comparisons-game-thrones-insanity-tvs-top-5-podcast-1251570/> [<https://perma.cc/X79R-3BJH>]. The show’s creators insist that it was never intended to be based on Matt Lauer in particular, but that Mitch emerged as a composite character as #MeToo stories continue to appear. According to showrunner and scriptwriter Karry Ehrin,

[Mitch is] not Matt Lauer. . . . It wasn’t designed to be about him; I didn’t study him. It was about a guy who works in morning news who gets fired for sexual misconduct. That did happen to Matt Lauer. It also happened to Charlie Rose and someone on Fox—it isn’t exclusively Matt Lauer.

Jackie Strause, *Why Matt Lauer Looms Large Over Apple’s “Morning Show”*, HOLLYWOOD REP. (Nov. 2, 2019), <https://www.hollywoodreporter.com/tv/tv-news/apples-morning-show-matt-lauer-weinstein-metoo-parallels-1251782/> [<https://perma.cc/9LHR-3BUW>] (the executive producer similarly told the Hollywood Reporter: “[Lauer] feels like a reference point . . . [f]or us, unfortunately and sadly, there were so many reference points. So, it’s not just a composite of morning shows, it’s really a composite of this moment.”).

152. *The Morning Show*, *supra* note 4.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

was going to be found responsible; did the network know what Mitch was doing and look away?¹⁵⁷

Fred initiates an investigation, which is presented to staff as “creating a safe working environment for everyone.”¹⁵⁸ It quickly becomes apparent that Fred knew a lot, everything in fact, and that the investigation is really intended to absolve the network of any responsibility, exonerate Fred in particular, and create a fall guy, Chip, the executive producer of *The Morning Show*.¹⁵⁹

The power struggles and conspiracies come to a head in the explosive season finale.¹⁶⁰ Alex and Bradley expose the network live on *The Morning Show* in an unscripted hijacking, with Cory taking control of the newsroom, literally locking Fred out, until the network can shut the whole thing down.¹⁶¹

The narrative sets up a power struggle between the old and new guard, between Alex and Bradley, and in terms of governance, between Fred and Cory. At the end of season one, it looks like the new guard has won, rooting out the corporate rot and coverup through the sensationalistic on-air exposure.¹⁶² The Board of UBA, although alluded to, does not appear in Season One.

It is only after Alex exposes the network’s complicity in Mitch’s sexual misconduct in an explosive Season One finale¹⁶³ that the Board comes into view in the first episode of Season Two.¹⁶⁴ Holland Taylor stars as Cybil, the UBA Board chair who is now shown as ultimately calling the governance shots.¹⁶⁵ The season opens with Cory appearing before the Board and being fired. We are told that Fred has been put on administrative leave, pending an investigation into his conduct.¹⁶⁶ It looks like the Board is aligning with the old guard, protecting Fred, and pushing out Cory. The narrative is one of the continuities of corporative coverup at the highest level.

But we subsequently learn that the Board changed its mind.¹⁶⁷ Cory is rehired and made CEO of UBA.¹⁶⁸ Fred is sent packing, with an

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

astounding landing package of \$119.2 million.¹⁶⁹ Power struggles continue, now between the Chair of the Board and Cory, as well as the new president of the news division.¹⁷⁰ But the shift from old to new guard, in the light of the sexual misconduct of Mitch and the explicit coverup by the CEO, to the new power holders committed to cleaning up the sexist corporate culture, is not subtle.¹⁷¹ The new CEO of UBA and the President of the News Division continue to wrestle with the Board in the former's effort to change the network and the latter's singular focus on the economic bottom line.¹⁷² As far as sexual misconduct goes, however, while the corporate structure of UBA was initially responsible as part of the problem, it emerges as part of the solution. Just as with *Bombshell*, corporate willful blindness and totally complicity is eventually vanquished by a corporate vision that recognizes that sexual misconduct will, in fact, affect the economic bottom line.

V. NO ASSISTANCE FOR *THE ASSISTANT*.

The Assistant, a 2019 drama by filmmaker Kitty Green, starring Julia Garner as Jane, a junior assistant at a major New York film production company, tells a rather less sanguine story about corporate responsibility in the age of #MeToo.¹⁷³ The film takes place over a single day in the life of Jane. Her boss is an unnamed movie mogul, never seen on screen, who is not only verbally abusive to her, but a sexual predator, having sex with woman after woman in his office.¹⁷⁴ While the name "Harvey Weinstein" is never explicitly mentioned, the inference to him is pretty clear.¹⁷⁵ Alongside mundane jobs of photocopying and washing dishes, Jane is called upon to lie to her unnamed boss's wife about his whereabouts, to pick up items of jewelry left behind in her boss's office, clean stains from his office couch, and otherwise help hide what is happening in plain sight, albeit off screen.¹⁷⁶

In the afternoon, a young, beautiful, and inexperienced woman named Siena arrives, saying she has been offered a job as a junior

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *THE ASSISTANT*, *supra* note 6.

174. *Id.*

175. "The specter of Harvey Weinstein looms over every frame of 'The Assistant,' though we never see the face of the anonymous New York film-company executive whose toxic behavior drives the story." Jeannette Catsoulis, *'The Assistant' Review: Screaming on the Inside*, N.Y. TIMES (Jan. 30, 2020), <https://www.nytimes.com/2020/01/30/movies/the-assistant-review.html> [<https://perma.cc/22GM-E6AX>].

176. *THE ASSISTANT*, *supra* note 6.

assistant.¹⁷⁷ Jane is told to escort her to a high-end downtown hotel, where her boss often takes “meetings.”¹⁷⁸ This directive apparently is too much for Jane, who goes to the HR representative Wilcock, played by Matthew Macfadyen, upon her return to the office.¹⁷⁹ He is attentive at first, as Jane tries to express her concern indirectly, including the fact that her boss subsequently went to the hotel.¹⁸⁰ However, Jane’s lack of directness leads to Wilcock asking her whether Siena has done harm to the company, whether Jane has actually spoken to her, and what the problem actually is.¹⁸¹ He eventually stops and asks Jane where she wants to be in five years. She says a producer, to which he responds enthusiastically, followed abruptly by “So, why are you in here trying to throw it all away over this bullshit?”¹⁸² He “assures” her that she is not his boss’s type.¹⁸³ She is both intimidated into silence, and subtly accused of jealousy.¹⁸⁴ As if this is not bad enough, when she returns to her desk, she receives a call from her boss, who was informed about the unfiled report, and demands an email apology, which she then provides.¹⁸⁵

The film is not about the Weinstein-like predator, but a culture of enabling abuse, explicit and implicit bullying, and how an entire staff participates in what is hiding in plain sight. It is about how Jane negotiates this toxic environment, trying to step up, but immediately recognizing that it is simply not possible.¹⁸⁶

The Assistant does not preach to the audience,¹⁸⁷ nor engage in quick, anguished dialogue,¹⁸⁸ but is slow and claustrophobic, with long takes with no dialogue. Director Kitty Green explained: “The cultural silence is something we were exploring That quiet was really important to me.”¹⁸⁹ Unlike the other cultural productions, there is no moment of corporate comeuppance. Weinstein’s eventual downfall is not part of the story; we do not see how the board of The Weinstein Company eventually had to take action against their founder, CEO, and namesake. *The Assistant*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. See BOMBSHELL, *supra* note 3.

188. See *The Morning Show*, *supra* note 4.

189. Sonia Rao, “*The Assistant*” Isn’t About Harvey Weinstein. It’s About the Culture that Enabled Him, WASH. POST (Feb. 8, 2020), <https://www.washingtonpost.com/arts-entertainment/2020/02/08/assistant-isnt-about-harvey-weinstein-its-about-culture-that-enabled-him/> [https://perma.cc/3742-TGMR].

is not a story of corporate redemption, but of corporate corruption before the fall.

VI. WHAT ACTUALLY HAPPENED, ISH

It is worth exploring the actual fallout from the sexual misconduct scandals at each of the corporate entities, real and alluded. This is not to point out factual inaccuracies; while films based on real-life events are often critiqued for their failure to be faithful to historic events, they are always fictionalized narratives, with varying degrees of artistic license taken by the creators. Moreover, in the case of the films and television shows under discussion, two are at best inspired by real life events, but do not in any way purport to be realistic depictions. UBA is a fictional network. The Weinstein corporation is never mentioned. Yet, a consideration of the corporate fallout from the stories that animated these films and television shows may nonetheless tell us something about the way in which the corporation was represented in them; what was and was not deemed to be story-worthy, and how the narratives about each corporation were framed.

A. Fox News and 21st Century Fox

Gretchen Carlson's lawsuit and the firing of Roger Ailes was the most sensationalistic of the events at Fox, but they were not the only ones in the aftermath of the sexual harassment scandal. *Bombshell* ends noting that Fox paid \$50 million to the victims of sexual harassment, only \$20 million of which went to Carlson. Additionally, Fox paid \$65 million in severance to Ailes and O'Reilly.¹⁹⁰ But that does not tell the full story of the legal actions.

Lawsuits in relation to Ailes' sexual harassment continued.¹⁹¹ In 2019, shareholders of News Corporation, led by the City of Monroe Employees Retirement system, brought a derivative action against the Murdochs, the other directors and officers of 20th Century Fox, and the

190. BOMBSHELL, *supra* note 3.

191. See, e.g., Luhn v. Scott, No. 19-cv-1180 (DLF), 2019 WL 5810309, at *2 (D.D.C. Nov. 7, 2019), *aff'd*, 843 Fed. Appx. 326 (D.C. Cir. 2021) ("This lawsuit relates not to the extensive sexual abuse allegations against Ailes but to the details of a *Los Angeles Times* article . . . in which [Suzanne] Scott denies knowledge of Ailes's acts of sexual harassment.") (referencing Stephen Battaglio, *Fox News Chief Executive Suzanne Scott Keeps Her Focus On Winning*, L.A. TIMES (Apr. 4, 2019), <https://workingwomanreport.com/fox-news-chief-executive-suzanne-scott-keeps-focus-winning/>, [https://perma.cc/EP2Z-PG8M]); Tantaros v. Fox News Network, No. 17 Civ. 2958 (GBD), 2018 WL 2731268, at *1–2, (S.D.N.Y. May 18, 2018) (former employee at Fox News brought a claim alleging that senior Fox News executives "targeted her for electronic and physical surveillance after she lodged complaints of sexual harassment against Ailes and other Fox News executives").

Ailes estate.¹⁹² Fox settled the action for \$90 million.¹⁹³ Under the non-monetary terms of the settlement, Fox was also required to establish a “workplace professionalism and inclusion council,” the majority of whom would be independent experts outside of the company.¹⁹⁴ The Council would advise Fox News on promoting compliance with its new Commitment statement on anti-discrimination and anti-harassment, and further recruitment and advancement of women and minorities.¹⁹⁵ Shareholder derivative actions are not the stuff of Hollywood drama, so it is perhaps not surprising that we do not hear about it in either production. In *The Loudest Voice*, we are told at the end that Suzanne Scott was made the CEO of Fox News, but nothing about the broader legal context that led to the promotion of a woman, admittedly a woman who had been one of Ailes’ top lieutenants.¹⁹⁶

In addition to sexual harassment lawsuits and shareholder derivative actions, racial discrimination lawsuits were also brought against Fox and 21st Century. In March 2017, two black women filed a racial discrimination lawsuit against the network.¹⁹⁷ In April, eleven current and former Fox News employees filed a class action lawsuit against the network, accusing it of “abhorrent, intolerable, unlawful[,] and hostile racial discrimination.”¹⁹⁸ Fox and 21st Century Fox eventually settled

192. *City of Monroe Emp. Ret. Sys. v. Rupert Murdoch*, No. 2017-0833, 2017 WL 5569467 ¶ 1 (Del. Ch. Nov. 20, 2017). This derivative shareholder action emerged as an important tool to hold corporate executives accountable in the corporate #MeToo world; see also Scott Carlton, *The #MeToo Movement and the Shareholder Derivative Action*, AM BAR ASSOC. J. (Apr. 24, 2019), <https://www.americanbar.org/groups/litigation/committees/class-actions/practice/2019/me-too-movement-lawsuits-shareholder-derivative-action/> [<https://perma.cc/MM2N-Y55B>].

193. Jonathan Stempel, *21st Century Fox in \$90 million Settlement Tied to Sexual Harassment Scandal*, REUTERS (Nov. 20, 2017), <https://www.reuters.com/article/us-fox-settlement/21st-century-fox-in-90-million-settlement-tied-to-sexual-harassment-scandal-idUSKBN1DK2NI> [<https://perma.cc/WEM2-5KPG>].

194. *City of Monroe*, No. 2017-0833 (Del. Ch.).

195. *Id.*

196. *The Loudest Voice*, *supra* note 5. Scott’s promotion did not go unnoticed in the media. Paul Farhi, *A New CEO at Fox News, Suzanne Scott, Comes with Baggage from the Ailes Years*, WASH. POST (May 17, 2018), https://www.washingtonpost.com/lifestyle/style/a-new-ceo-at-fox-news-suzanne-scott-comes-with-baggage-from-the-ailes-years/2018/05/17/d30f6cc8-59ef-11e8-858f-12becb4d6067_story.html [<https://perma.cc/N9ND-DZ4H>]. While Lachlin Murdoch announced Scott “has now made history as [Fox’s] first female CEO,” others were more critical. *Id.* Nancy Erika Smith, Gretchen Carlson’s lawyer said that Scott’s appointment “shows that Fox News has no intention of changing its culture.” *Id.* Although Scott was never named as a defendant, she was mentioned in several of the sexual harassment lawsuits as a protector of Ailes. *Id.*

197. Niraj Chokshi, *2 Black Women Sue Fox News, Claiming Racial Discrimination*, N.Y. TIMES (Mar. 28, 2017), https://www.nytimes.com/2017/03/28/business/media/fox-news-racial-discrimination-lawsuit-slater.html?_r=0 [<https://perma.cc/G3ZQ-8SDX>].

198. Sydney Ember, *11 Sue Fox News, Citing “Intolerable” Racial Bias*, N.Y. TIMES (Apr. 25, 2017), <https://www.nytimes.com/2017/04/25/business/media/fox-news-racial-discrimination-lawsuit.html> [<https://perma.cc/RD2D-FHFX>].

these lawsuits for \$10 million.¹⁹⁹ The U.S Attorney General launched an investigation into whether Fox News failed to inform shareholders of the sexual harassment settlements.²⁰⁰ According to CNN, the investigation was expanded to include potential mail and wire fraud.²⁰¹ The New York City Commission on Human Rights launched an investigation into Fox News in July 2016, filed a complaint in December 2018, and would ultimately reach a settlement in June 2021 for \$1 million for repeated violations of the New York City human rights law.²⁰² While it represents the largest civil penalty in the Commission's history, it pales in comparison to the many other settlements reached by Fox News and 21st Century Fox. The non-financial terms of the settlement included mandatory compliance training, a waiver of forced arbitration agreements, and the implementation of new reporting procedures.²⁰³

Nor was Roger Ailes the only problem at Fox. In April 2017, *The New York Times* reported that Fox News and Bill O'Reilly had settled five lawsuits with women who had accused O'Reilly of harassment and misconduct for \$13 million.²⁰⁴ Another firestorm erupted, with more than half of the advertisers withdrawing from the *O'Reilly Factor*;²⁰⁵ even those who did not immediately pull their ads because they were locked in planned to do so.²⁰⁶ The Murdochs again hired Paul Weiss to conduct an

199. Emily Steel, *Fox Settles Discrimination Lawsuits for Roughly \$10 Million*, N.Y. TIMES (May 15, 2018), <https://www.nytimes.com/2018/05/15/business/media/fox-news-discrimination-lawsuits.html> [https://perma.cc/2GGX-BZ2T].

200. Dylan Byers, *Fox News Under Federal Investigation over Ailes Settlement Payments*, CNN BUS. (Feb. 16, 2017), <https://money.cnn.com/2017/02/15/media/fox-news-u-s-attorney-investigation/?iid=EL> [https://perma.cc/Y48N-74WW].

201. Brian Stelter, *Exclusive: Federal Probe of Fox News Expands*, CNN BUS. (Apr. 27, 2017), <https://money.cnn.com/2017/04/27/media/fox-news-federal-investigation/index.html> [https://perma.cc/Y9UH-MY8M].

202. Dylan Byers, *Fox News Agrees to \$1 Million Fine as Part of Human Rights Investigation Settlement*, NBC NEWS (June 30, 2021), <https://www.nbcnews.com/media/fox-news-agrees-1-million-fine-part-human-rights-investigation-settle-rcna1301> [https://perma.cc/N8CD-G5MU]; Press Release, NYC Comm'n on Hum. Rts., NYC Commission on Human Rights Announces Landmark \$1,000,000 Sexual Harassment Settlement Against Fox News Network (June 29, 2021).

203. Byers, *supra* note 202

204. Emily Steel & Michael S. Schmidt, *Bill O'Reilly Thrives at Fox News, Even as Harassment Settlements Add Up*, N.Y. TIMES (Apr. 1, 2017), <https://www.nytimes.com/2017/04/01/business/media/bill-oreilly-sexual-harassment-fox-news.html> [https://perma.cc/GQ8D-27HS].

205. Karl Russell, *Bill O'Reilly's Show Lost More Than Half Its Advertisers in a Week*, N.Y. TIMES (Apr. 11, 2017), <https://www.nytimes.com/interactive/2017/04/11/business/oreilly-advertisers.html> [https://perma.cc/9HEJ-896K].

206. Callum Borchers, *Bill O'Reilly's Advertiser Exodus Is Even Worse than It Looks*, WASH. POST (Apr. 7, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/04/07/bill-oreillys-advertiser-exodus-is-even-worse-than-it-looks/> [https://perma.cc/E5GD-JSXH].

internal investigation.²⁰⁷ O'Reilly announced he would be taking a vacation; a week later, Fox announced he would not be returning to the network.²⁰⁸ 21st Century Fox released a brief statement: "After a thorough and careful review of the allegations, the company and Bill O'Reilly have agreed that Bill O'Reilly will not be returning to the Fox News Channel."²⁰⁹ In an interview, James Murdoch simply said "We did a thorough investigation, a thorough review, and we reached a conclusion. Everything that we said in our statement is all you need to know."²¹⁰ It turned out that the \$13 million of settlements was not the whole story; subsequent reports revealed that earlier the same year, O'Reilly had reached a \$32 million agreement with Lis Wiehl, a longtime network analyst at Fox to settle new sexual harassment allegations.²¹¹ The *New York Times* reported that the Murdochs "made a business calculation to stand by Mr. O'Reilly," even as "the company was trying to convince its employees, its board and the public that it had cleaned up the network's workplace culture."²¹² Eventually, it would cost too much, and the network cut ties with O'Reilly too.

The story at Fox was far more complicated than the individualized representations of either *Bombshell* or *The Loudest Voice*. It was not simply the story of Ailes versus the Murdochs, the Murdochs standing up against sexual misconduct, or the brave women who spoke out against Ailes. It was also a complex story of corporate governance; of the Board being accountable to multiple stakeholders, regulators, and reputational pressures, most of which are missing from the shows. There is a moment in *The Loudest Voice* where the Murdochs' lawyer gestures to the broader stakeholders and regulatory network when he warns the Murdochs about "class action. Shareholder suits. Settlement claims into the hundreds of millions. Not to mention Roger used corporate funds for his payoffs. SEC is going to kill us on that."²¹³ But Hollywood story arcs necessarily generate a simplified story. Indeed, *Bombshell* follows it to a tee. In the first act, we get the explanation, establishing the main characters, their

207. Emily Steel, *Fox Asks Law Firm to Investigate Bill O'Reilly Harassment Claim*, N.Y. TIMES (Apr. 9, 2017), <https://www.nytimes.com/2017/04/09/business/media/fox-bill-oreilly-harassment-claim.html> [https://perma.cc/UH6X-FT43].

208. Emily Steel & Michael S. Schmidt, *Bill O'Reilly Is Forced Out at Fox News*, N.Y. TIMES (Apr. 19, 2017), <https://www.nytimes.com/2017/04/19/business/media/bill-oreilly-fox-news-allegations.html> [https://perma.cc/7PTX-5W6A].

209. *Id.*

210. *Id.*

211. Emily Steel & Michael S. Schmidt, *Bill O'Reilly Settled New Harassment Claim, then Fox Renewed His Contract*, N.Y. TIMES (Oct. 21, 2017), <https://www.nytimes.com/2017/10/21/business/media/bill-oreilly-sexual-harassment.html> [https://perma.cc/LE8N-FY2H].

212. *Id.*

213. *The Loudest Voice*, *supra* note 5.

relationship to one another, and the world of Fox News that they live in (Megyn Kelly literally voices it).²¹⁴ Then comes the inciting incidents—Gretchen’s firing and Kayla’s sexual harassment.²¹⁵ Act Two sees the rising action, as Gretchen’s lawsuit, the Paul Weiss investigation, divisions at Fox, and Megyn’s turmoil and character development present challenges.²¹⁶ And finally, in Act Three, the resolution. Megyn testifies, Gretchen’s recordings are revealed, Roger is fired, and Fox settles.²¹⁷ These things *did* happen. But much of what also happened is not part of the film’s story. The derivative shareholder action, the settlement of which was a crucial dimension of the “diversification” of Fox, does not make an appearance. Instead, with artistic license, the narrative is individualized and tropes of the corporation are trotted out, this time, with a twist of redemption.

B. NBC and Matt Lauer, or CBS and Les Moonves, or

The story at NBC is a short one; admittedly, *The Morning Show* creators have said that the show was not based on what happened at NBC and Matt Lauer.²¹⁸ Matt Lauer was fired from the network after an NBC employee disclosed that he had sexually harassed her at the Sochi Olympics.²¹⁹ NBC management claimed to have no knowledge of Lauer’s sexual misconduct, but the denial is contested.²²⁰ Variety reported that three women had come forward with allegations against Lauer.²²¹ The story reported that several women had complained to executives at the network, “which fell on deaf ears.”²²² NBC News head Andrew Lack has consistently denied that NBC had any knowledge of Lauer’s behavior.²²³

214. BOMBSHELL, *supra* note 3.

215. *Id.*

216. *Id.*

217. *Id.*

218. See generally Goldberg, *supra* note 150; Strause, *supra* note 150 and accompanying text.

219. Gabler, Reutenberg, Grynbaum & Abrams, *supra* note 150.

220. See generally RONAN FARROW, CATCH AND KILL: LIES, SPIES, AND A CONSPIRACY TO PROTECT PREDATORS (2019) (citing multiple sources who stated that NBC News was not only aware of Lauer’s misconduct beforehand, but that Harvey Weinstein used this knowledge to pressure the network to kill a story about his own sexual misconduct).

221. Ramin Setoodeh & Elizabeth Wagmeister, *Matt Lauer Accused of Sexual Harassment by Multiple Women (EXCLUSIVE)*, VARIETY (Nov. 29, 2017), <https://variety.com/2017/biz/news/matt-lauer-accused-sexual-harassment-multiple-women-1202625959/> [<https://perma.cc/WM7Y-ZYKD>].

222. *Id.*

223. Lynette Rice, *NBC News Boss Denies that Network Tried to Cover Up Matt Lauer’s Conduct: “Absolutely False”*, ENTERTAINMENT WKLY. (Oct. 9, 2019), <https://ew.com/tv/2019/10/09/nbc-news-andrew-lack-matt-lauer-ronan-farrow/> [<https://perma.cc/JG8E-9Q7G>] (NBC did an internal investigation that absolved the corporate executives); see also Camila Domonoske, *NBC Investigation Finds Matt Lauer’s Accusers Credible, Executives Unaware*, NPR (May 9, 2018), <https://www.npr.org/sections/thetwo-way/2018/05/09/609734430/nbc-investigation-finds-matt-lauers-accusers-credible-executives-unaware> [<https://perma.cc/S8TM-Z72K>].

But maybe it was also about CBS and Charlie Rose. He was fired from CBS, and PBS dropped his show.²²⁴ Maybe part of the composite was Les Moonves, Chairman of CBS, who stepped down in September 2018 after multiple women brought forth sexual assault allegations against him.²²⁵ In July 2018, the *New Yorker* published an article by Ronan Farrow saying that six women accused Moonves of harassment and intimidation, and dozens more had described abuse at CBS.²²⁶ CBS shares immediately fell by more than six percent, resulting in a loss of hundreds of millions in market value to shareholders.²²⁷ Moonves was placed under investigation by the CBS board.²²⁸ After his resignation, the CBS board announced that they would not pay his \$120 million severance because their investigation concluded he has violated his contract.²²⁹ They would eventually settle with Moonves. Additionally, a pension fund brought a putative class action claim on behalf of the shareholders against Moonves and CBS parent company ViacomCBS (renamed Paramount).²³⁰ The action alleged fraud in violation of federal securities laws, arguing that the company's failure to disclose sexual misconduct allegations against Moonves artificially inflated the value of its shares.²³¹ In January 2020, a federal court allowed the action to survive. In April 2022, Paramount settled, agreeing to pay \$14.75 million to shareholders.²³²

224. John Koblin & Michael M. Grynbaum, *Charlie Rose Fired by CBS and PBS After Harassment Allegations*, N.Y. TIMES (Nov. 21, 2017), <https://www.nytimes.com/2017/11/21/business/media/charlie-rose-fired-cbs.html>.

225. Edmund Lee, *CBS Chief Executive Les Moonves Steps Down After Sexual Harassment Allegations*, N.Y. TIMES (Sept. 9, 2018), <https://www.nytimes.com/2018/09/09/business/les-moonves-longtime-cbs-chief-may-be-gone-by-monday.html>.

226. Ronan Farrow, *Les Moonves and CBS Face Allegations of Sexual Misconduct*, NEW YORKER (July 27, 2018), <https://www.newyorker.com/magazine/2018/08/06/les-moonves-and-cbs-face-allegations-of-sexual-misconduct> [<https://perma.cc/Q7Y6-XXK65>].

227. See Edmund Lee, *Les Moonves, CBS Chief, Faces Inquiry over Misconduct Allegations*, N.Y. TIMES (July 27, 2018), <https://www.nytimes.com/2018/07/27/business/media/les-moonves-cbs-new-yorker.html>.

228. *Id.*

229. Edmund Lee & Rachel Abrams, *CBS Says Les Moonves Will Not Receive \$120 Million Severance*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/business/media/les-moonves-cbs-severance.html>.

230. Lead Plaintiff's Memorandum of L. in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of the Settlement Class, and Approval of Notice to the Settlement Class, Constr. Laborers Pension Tr. for S. Cal. v. CBS Corp., 433 F. Supp. 3d 515 (S.D.N.Y. 2020) (No. 1:18-cv-07796-VEC) 2022 WL 1137259 [hereinafter Lead Plaintiff's Memorandum].

231. See *id.* (the shareholder claim alleged, "[M]aterially false and misleading statements and/or omissions regarding the Company's policies and corporate governance, the importance of key personnel, including Moonves, and other statements made to news media, which caused the price of the Company's common stock to trade at artificially inflated prices, until the market learned of the false and misleading nature of the statements, and the Company's stock prices significantly declined").

232. Jennifer Maas, *CBS Shareholders Reach \$14.75 Million Settlement in Les Moonves #MeToo Comments Lawsuit*, VARIETY (Jan. 21, 2020), <https://variety.com/2022/tv/news/les->

C. The Weinstein Company's Implosion

The corporate fallout at The Weinstein Company (TWC) was extensive, yet perhaps also not the stuff of movies and television series. On October 5, 2017, the *New York Times* reported that Weinstein had sexually assaulted and harassed dozens of women.²³³ The next day, three of the company's nine members of the board of directors resigned, and Weinstein announced he would take a leave of absence.²³⁴ On October 7, a fourth director resigned.²³⁵ The next day, October 8, the board announced that Weinstein had been fired.²³⁶ Four days later, a fifth member of the board resigned.²³⁷ But the corporation's troubles only escalated. There were massive debts, lawsuits by creditors, and the sale of rights to films to raise enough funds to keep the company afloat.²³⁸ In a letter published in the *New Yorker*, a group of employees asked to be released from the NDAs.²³⁹ New York Attorney General Eric Schneiderman launched a civil rights investigation into whether TWC had violated state civil rights and

moonves-metoo-lawsuit-cbs-shareholders-1235234872/ [https://perma.cc/38Y9-TF8W]; see Lead Plaintiff's Memorandum, *supra* note 230

233. Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html> [https://perma.cc/SWR7-JGBS].

234. Megan Twohey & Niraj Chokshi, *Company Scrambles as Weinstein Takes Leave and a Third of the Board Resigns*, N.Y. TIMES (Oct. 6, 2017), <https://www.nytimes.com/2017/10/06/us/harvey-weinstein-sexual-harassment.html> [https://perma.cc/4XDM-E4WA] (on October 6, three of the company's nine members of the board of directors, including Lasry, resigned after the allegations were published).

235. Megan Twohey, *Harvey Weinstein Is Fired After Sexual Harassment Reports*, N.Y. TIMES (Oct. 8, 2017), <https://www.nytimes.com/2017/10/08/business/harvey-weinstein-fired.html> [https://perma.cc/58EY-URVK] (Paul Tudor Jones became the fourth member of the company's board of directors to resign).

236. *Id.*

237. Kate Feldman, *Richard Koenigsberg Reportedly Steps Down from Weinstein Co. Board Amid Harvey Weinstein Allegations*, N.Y. DAILY NEWS (Oct. 12, 2017), <https://www.nydailynews.com/entertainment/richard-koenigsberg-steps-weinstein-board-report-article-1.3559426> [https://perma.cc/DP8D-448U] (board member Richard Koenigsberg, who was one of the four signatories of a board of directors statement defending Weinstein, resigned from the company on October 12).

238. Brooks Barnes, *Weinstein Company Files for Bankruptcy and Revokes Non-Disclosure Agreements*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/business/weinstein-company-bankruptcy.html>.

239. James Rufus Koren, *Weinstein Scandal Puts Nondisclosure Agreements in the Spotlight*, L.A. TIMES (Oct. 23, 2017), <https://www.latimes.com/business/la-fi-weinstein-nondisclosure-agreements-20171023-story.html> [https://perma.cc/KV5H-DA4X]; see *Statement from Members of the Weinstein Company Staff*, NEW YORKER (Oct. 19, 2017), <https://www.newyorker.com/news/news-desk/statement-from-members-of-the-weinstein-company-staff> [https://perma.cc/W5P2-MDUM].

New York City human rights laws in its handling of sexual harassment and other discrimination complaints.²⁴⁰

In February 2018, an investor group agreed to buy the remaining assets of TWC.²⁴¹ The deal floundered,²⁴² rebounded,²⁴³ and eventually collapsed when the investor group discovered that TWC had an additional \$55 million to \$65 million debt.²⁴⁴ TWC announced it would declare bankruptcy.²⁴⁵ A private equity firm, Lantern Capital would eventually acquire TWC for \$289 million, approved by a Delaware bankruptcy judge.²⁴⁶ With the company relaunching as Lantern Entertainment, TWC was completely shut down.²⁴⁷ Interestingly, the most damning story of the four films and shows was told about the corporation that no longer exists. On the other hand, the stories of corporate redemption are told about companies, real or composite, that continue to operate. Did Hollywood pull its punches on the companies that survived? Or is the case of TWC just categorically different, as Weinstein himself became the face of evil in the #MeToo world, and the company collapsed? Perhaps it is a bit of both.

240. Press Release, Off. of the Att’y Gen, A.G. Schneiderman Files Civ. Rts. Lawsuit Against the Weinstein Cos., Harvey Weinstein, and Robert Weinstein (Feb. 11, 2018), <https://ag.ny.gov/press-release/2018/ag-schneiderman-files-civil-rights-lawsuit-against-weinstein-companies-harvey> [<https://perma.cc/VW26-VQAU>].

241. Brooks Barnes, *Deal for Weinstein Co., Seemingly Dead, Is Reached*, N.Y. TIMES (Mar. 1, 2018), <https://www.nytimes.com/2018/03/01/business/media/weinstein-company-sale.html> [<https://perma.cc/7K96-CURN>] (the agreement included setting up a victim’s fund and the appointment of a majority female board of directors).

242. Sharon Waxman, *Weinstein Co Rejects Sale, Says It Will File for Bankruptcy*, WRAP (Feb. 25, 2018), <https://www.thewrap.com/weinstein-co-rejects-sale-says-will-file-bankruptcy/> [<https://perma.cc/7EGJ-FWZ5>].

243. Barnes, *supra* note 241 (the resuscitated deal was facilitated by the intervention of New York AG Schneiderman, whose lawsuit against TWC had thrown a wrench into the negotiations. The victims fund was increased to \$90 million, but the lawsuit would remain active).

244. Matt Donnelly, *Weinstein Company Sale Collapses After \$50 Million Liability Curveball*, WRAP (Mar. 6, 2018), <https://www.thewrap.com/weinstein-company-sale-called-off-yet/> [<https://perma.cc/QLB5-7XHT>].

245. *Id.*

246. Gene Maddaus, *Lantern Entertainment Pays \$5.5 Million to Take Three Quentin Tarantino Films*, VARIETY (Nov. 13, 2018), <https://variety.com/2018/biz/news/lantern-entertainment-pays-5-5-million-to-take-three-quentin-tarantino-films-1203027335/> [<https://perma.cc/UYT7-ZLEV>] (as part of the sale agreement, Lantern agreed to set aside 8.75 million to “cure” outstanding talent contracts).

247. Jenna Marotta, *The Weinstein Company Is No More: Buyer Lantern Capital Partners Rebrands as Lantern Entertainment*, INDIE WIRE (July 16, 2018), <https://www.indiewire.com/2018/07/the-weinstein-company-bankruptcy-sale-lantern-entertainment-1201983272/> [<https://perma.cc/NMQ3-QDMB>].

VII. #METOO AND THE CONSEQUENCES FOR CORPORATE
GOVERNANCE: REAL AND IMAGINED

Unsurprisingly, the actual corporate fallout from the #MeToo scandals tells a far more complicated story of corporate governance. From derivative shareholder actions to class action securities claims to federal and state attorney general investigations, a complex web of shareholder, stakeholder and regulatory pressures came to bear on the companies in the face of the sexual misconduct allegations. The real-life legal machinations reflect a number of trends that legal scholars have identified in corporate governance in the aftermath of #MeToo. Several scholars have looked at the increasing risk of corporate liability in the face of sexual harassment. In particular, they have explored the risk of fiduciary and security fraud liability for corporate officers for sexual misconduct under state corporate and federal securities law respectively.²⁴⁸

Hemel and Lund, for example, have tracked shareholder legal claims against directors and officers of companies for their failure to monitor or disclose sexual harassment.²⁴⁹ Some have brought derivative shareholder actions, alleging that the directors and officers breached their fiduciary duties under state law.²⁵⁰ They highlight two types of duty of loyalty violations in particular; first, where a director consciously breaks the law or allows the law to be broken, and second, where they fail to exercise oversight. Allowing sexual misconduct to occur or failing to provide adequate oversight to ensure sexual misconduct to occur would violate the duty of loyalty, and the basis for derivative shareholder actions.²⁵¹ Other shareholders have brought class action claims against publicly traded companies for violating federal securities law by failing to disclose allegations of sexual harassment.²⁵² Federal securities law imposes some affirmative duties to disclose information to shareholders, and also “makes

248. See Daniel Hemel & Dorothy Shapiro Lund, *Sexual Harassment and Corporate Law*, 118 COLUM. L. REV. 1583, 1632 (2018). See generally Michael D. Rebeck, Note, *Sexual Misconduct & Securities in the “Me Too” World*, 75 N.Y.U ANN. SURV. AM. L. 85 (2019); Erin Morrissey, *#MeToo Spells Trouble for Them Too: Sexual Harassment Scandals and the Corporate Board*, 93 TUL. L. REV. 177 (2018).

249. See generally Hemel & Lund, *supra* note 248.

250. *Id.* at 1628–31.

251. *Id.* at 1631 (further highlighting the legal challenges that shareholders face in bringing such actions, including the Caremark threshold for duty of loyalty violations). The plaintiffs must either show “that the directors ‘utterly failed to implement any reporting or information system or controls,’” or “that the board knew of evidence of corporate misconduct—the proverbial ‘red flag’—yet acted in bad faith by consciously disregarding its duty to address that misconduct.” *Id.* (citing *In re Caremark Int’l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996)). There are additional difficulties of establishing standing: “a shareholder will lack standing to bring a derivative suit unless the shareholder has demanded that the directors pursue the corporate claim or shows that demand would be futile.” *Id.* at 1632.

252. *Id.* at 1635.

it unlawful for a company to utter ‘any untrue statement of material fact’ in connection with a securities transaction and ‘to omit to state a material fact’ that is necessary to render another statement ‘not misleading.’”²⁵³

Hemel and Lund review these actions brought against companies for sexual harassment, with varying degrees of success.²⁵⁴ Few have actually gone to court, and those that did were not successful.²⁵⁵ However, as the authors point out, the cases that did go to court were from a pre-#MeToo era—derivative actions against ICN in 1998²⁵⁶ and American Apparel in 2010²⁵⁷ on the basis of sexual misconduct both failed, as did the securities claims against Hewlett-Packard in 2012 and CT Partners in 2016.²⁵⁸ But, around 2017, there was a shift. Some shareholder actions survived applications to dismiss—Signet Jewelers, for example, faced multiple

253. *Id.* at 1635 (citing Rule 10b-5 under the *Securities Exchange Act of 1934*) (emphasis added in original); Rebeck, *supra* note 248 (explores in further detail the potential liabilities for officers and directors under federal securities law).

254. Hemel & Lund, *supra* note 248, at 1613–27.

255. *Id.*

256. *White v. Panic*, 793 A.2d 356 (Del. Ch. 2000), *aff'd*, 783 A.2d 543 (Del. 2001) (ICN Shareholder Andrew White filed a derivative action against the company, board members, and a CEO Milan Panic, alleging that both Panic and the directors breached their fiduciary duties); see Hemel & Lund, *supra* note 248, at 1613–14 (White’s claims were dismissed on the grounds that there was no case made out for “demand excusal,” the court holding that the board was capable of deciding whether Panic should be sued on the corporation’s behalf, but the authors note that it served as a warning that corporate directors and officers could face fiduciary liability for involvement with sexual misconduct in the workplace).

257. *In re Am. Apparel Inc. S’holder Derivative Litig.*, No. CV-10-06576, 2012 WL 9506072 (C.D. Cal. July 31, 2012); (individual American Apparel shareholders brought derivative claims that CEO Dov Charney breached fiduciary duties with a history of sexual harassment and financial mismanagement); see Hemel & Lund, *supra* note 248 at 1617–18 (the court relied on *White v. Panic* to dismiss the claim, similarly finding a lack of particularized facts about the board’s failure to act despite knowledge of sexual harassment problems, and so the decision to sue CEO Dov Charney was also left to the board). A second derivative shareholder action was brought in 2015, but was also unsuccessful. *In re Am. Apparel Inc. Derivative S’holder Litig.*, No. CV-14-05230-MWF, 2015 WL 12724070 (C.D. Cal. July 28, 2015), affirmed, 696 F. App’x 848 (9th Cir. 2017)

258. See *Cement & Concrete Workers Dist. Council Pension Fund v. Hewlett Packard Co.*, 964 F.Supp.2d 1128 (N.D. Cal. 2013) (a pension fund filed a class action complaint on behalf of shareholders who purchased stock in HP between November 2007 and August 2010 and held shares as of then, claiming that the company and its CEO Mark Hurd violated multiple sections of the Securities Exchange Act of 1934). They claim that HP made false and misleading statements in the wake of a sexual harassment scandal involving Hurd, emphasizing in company policy that they would adhere to standards and refused to tolerate harassment which applied to Hurd, who endorsed the standards. *Id.* at 1135. The action was dismissed on the grounds that the misrepresentations were not material nor misleading. *Id.* at 1146. See also *Lopez v. CTPartners Exec. Search Inc.*, 173 F.Supp.3d 12 (S.D. N.Y. 2016) (following a *New York Post* article which exposed a hostile and discriminatory environment for female employers at the company, two shareholders filed a class action claiming the company had violated the Securities Exchange Act of 1934 by making misleading statements about the culture and failing to disclose information about the work culture and environment). In *Lopez*, the court dismissed the claims, finding that the company did not make an untrue material statement and there was no affirmative duty to disclose). *Id.* at 44.

shareholder class actions suits for violations of federal securities law.²⁵⁹ The actions were consolidated, and survived applications to dismiss.²⁶⁰ Of equal, if not more significance, however, is that many of the actions were settled. The earliest, highest profile was the shareholder derivative action against 21st Century Fox, which was not contested but settled for \$90 million.²⁶¹ The derivative action against Liberty Tax brought in 2017 in relation to sexual misconduct by the CEO was settled in 2019.²⁶² The securities action against Signet was settled for \$240 million in 2020.²⁶³

What has changed? Hemel and Lund observe that “societal attitudes toward allegations of sexual harassment have changed dramatically in the short time” since the American Apparel decision that did not see reports of CEO Charney’s masturbating in front of a female journalist and multiple sexual harassment claims against him as the kind of “‘red flags’ that require a board to investigate further.”²⁶⁴ The authors focus on the increasing risk of liability under corporate law fiduciary duties and securities law.²⁶⁵ But, the key takeaways, I would suggest, stepping back from the specificities of corporate and securities law, are precisely the shifting norms around sexual harassment and sexual misconduct. It is not the law that has changed; the tests for fiduciary duty liability and securities non-disclosure liability remain unchanged. What has changed is the understanding of how sexual misconduct fits into that legal framework.

259. *In re Signet Jewelers Ld. Sec. Litig.*, No. 16 Civ. 6728, 2018 WL 6167889 (S.D. N.Y. Nov. 26, 2018); see *Signet Securities Litigation*, SIGNET SEC. LITIG., <https://www.signetsecuritieslitigation.com> [<https://perma.cc/79ZQ-DX26>]. Beginning in 2017, multiple groups of shareholders brought claims against the company, which have since been consolidated into one class action alleging that the company made materially misleading statements about the quality of their credit portfolio for their in-house financing program and sexual harassment allegations within the company, which they claimed violated federal securities laws. *Id.*

260. Hemel & Lund, *supra* note 248.

261. See Jonathan Stempel, *21st Century Fox in \$90 Million Settlement Tied to Sexual Harassment Scandal*, REUTERS (Nov. 20, 2017), <https://www.reuters.com/article/us-fox-settlement-idUSKBN1DK2NI> [<https://perma.cc/3PPJ-M79C>].

262. *Asbestos Workers’ Phila. Pension Fund ex rel. Liberty Tax v. Hewitt*, C.A. 2017-0883-AGB (Del. Ch. Dec. 11, 2017) and was settled *In re Liberty Tax, Inc.* 2019 WL 2869767, Del.Ch., June 28, 2019. A second action was brought in by another pension fund. *In re Liberty Tax Inc. Sec. Litig.*, 435 F. Supp. 3d 457 (E.D.N.Y. 2020) (alleging that the company and its officers violated federal securities law by fraudulently making false and misleading statements which covered up Hewitt’s misconduct while he was CEO, and that these actions eventually caused Liberty’s stock price to plummet).

263. See Jonathan Stempel, *Signet Jewelers in \$240 Million Settlement over Sexual Harassment, Loan Portfolio*, REUTERS (Mar. 26, 2020), <https://www.reuters.com/article/us-signet-results-idUSKBN21D2WB> [<https://perma.cc/M9HE-XSJL>] (Signet settled in March of 2020 for \$240 million, and with insurers, was expected to pay those who were shareholders from Aug. 29, 2013, to May 25, 2017, who claimed they suffered losses on their stock because of Signet’s violation of federal securities laws.).

264. Hemel & Lund, *supra* note 248, at 1646.

265. *Id.*

From a “red flag” to a “material misrepresentation,” there appears to be a shift in the seriousness of sexual misconduct allegations to the core of the corporate mission. Sexual misconduct harms shareholders. Allegations of sexual misconduct has resulted in reduced stock prices, significant legal fees, big-ticket settlements, reputational damage with investors, partners and employees, current and future. Avoiding these economic harms of sexual misconduct is increasingly seen as falling squarely within the fiduciary duties of officers and directors.²⁶⁶ And failing to disclose information about sexual misconduct that can so seriously impact share value is increasingly understood as material for the purposes of securities regulation.²⁶⁷

Returning, then, to the films and television shows. None of them delved into the specificities of derivative actions and securities class actions. But arguably, they do touch on the most significant change underlying corporate liability under state corporate law and federal securities law: the shifting view of sexual misconduct causes harm to the corporation and to its mission of maximizing shareholder wealth. Sexual misconduct, once swept under the carpet, is increasingly seen as affecting the financial bottom line. The Murdochs recognized that the ongoing sexual harassment allegations were affecting their business and ultimately, their profits. We see this most clearly in *The Loudest Voice*. But the shift is evident in *Bombshell* (though Megyn Kelly’s voiceover tries to suggest otherwise) and *The Morning Show*. The change is not one that displaces the primacy of the shareholder in corporate governance; it is not a shift to a focus on stakeholders or ESG which allows for a broader array of corporate purposes.²⁶⁸ It is simply a shift in the meaning and implication

266. *Id.*

267. Rebeck, *supra* note 248 (noting that “sexual misconduct may now have a larger impact on a company’s value, thereby making it more likely that the sexual misconduct is ‘material’”).

268. ESG refers to Environmental, Social and Corporate Governance investment strategies, whereby investors apply non-financial factors as part of their investment decisions. Criteria might include how a company safeguards the environment or how it manages relationships with employees, suppliers, customers and communities. It is intended to encourage companies to act responsibly and shifts the corporate mission beyond simply profit maximization. It touches on a larger controversy around the legal duty of corporations, challenging the classical view that the sole legal duty of the corporation is profit. See Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> [https://perma.cc/RJJ8-HTKE]; see also Cydney Posner, *So Long to Shareholder Primacy*, HARV. LAW SCH. ON CORPORATE GOVERNANCE (Aug. 22, 2019), <https://corpgov.law.harvard.edu/2019/08/22/so-long-to-shareholder-primacy/> [https://perma.cc/5RB4-M5JL] (on the trend of moving away from shareholder primacy); Claire A. Hill, *#MeToo and the Convergence of CSR and Profit Maximization*, 69 CASE W. RESV. L. REV. 895 (2019) (on the #MeToo movement and ESG). My argument here is that the ESG controversy is effectively avoided in the film and television representations, as sexual misconduct comes to be seen as having a detrimental impact of the profit motive.

of sexual misconduct. It costs money—in lawyers, litigation and settlement. Its disclosure impacts share value, and can have broader reputational damage with potential investors, employees and partners. We see in *Bombshell*, *The Loudest Voice* and *The Morning Show* a change in the corporate officers understanding of the risk to the company posed by sexual misconduct. In each, the corporate officers come to see sexual misconduct as a risk to the economic bottom line—the very same shift that is occurring within the legal landscape of corporate governance.

This shift in the understanding of the economic costs of sexual misconduct is related to a second development in corporate governance in the aftermath of #MeToo. Amelia Miazad has argued that the #MeToo movement has produced a shift in corporate approaches to sexual harassment.²⁶⁹ The exposure of widespread sexual harassment has laid bare the failure of compliance policies that have dominated the corporate community’s approach to sexual harassment. Since the enactment of Title VII in 1964, the corporate community’s approach to sexual harassment was one of “compliance, defined by a myopic focus on legal liability.”²⁷⁰ She describes how this was accentuated by Supreme Court rulings that created a defense for employers if they made reasonable efforts to prevent sexual harassment: “to avoid liability, companies would proliferate policies and offer trainings without scrutinizing or reforming the underlying corporate culture.”²⁷¹ Miazad argues that the explosive revelations of sexual harassment has led to a shift from compliance to a focus on changing corporate culture, particularly by empowering more women in executive position.²⁷² She tracks “the growing number of stakeholders asking corporate boards to address the risk of sexual harassment through ‘corporate culture’ by addressing power differentials.”²⁷³ Beyond regular shareholders, these stakeholders include major investors (“The Big Three” asset managers, pension funds, proxy advisors, and shareholder activists) employees, lawmakers, regulatory monitors, insurance brokers and underwriters, law firms, and board advisors.²⁷⁴

269. Amelia Miazad, *Sex, Power, and Corporate Governance*, 54 U.C. DAVIS L. REV. 1913 (2021).

270. *Id.* at 1916.

271. *Id.*

272. *Id.*

273. *Id.*

274. *See id.* at 1937. “The Big Three” institutional investors are State Street, BlackRock, and Vanguard, who control increasing proportions of public traded companies. *See* Lucian Bebchuk & Scott Hirst, *The Spectre of the Giant Three*, 99 B.U. L. REV. 721 (2019) (on the growing influence of the Big Three asset managers and the challenge to corporate governance); Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSP. 89 (2017); Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory*,

This shift tracks in the films and television shows. The limitations of compliance, with its proliferation of policies and human resource managerialism, is represented as practically farcical in the films and television shows. In *Bombshell* and *The Loudest Voice*, the HR staff and the lawyers that advise them are characterized as exclusively serving the interest of the company.²⁷⁵ Allegations are met with denials, negotiations, settlements and NDAs. In *The Morning Show*, the HR investigation into Mitch's misconduct is entirely controlled by Fred, and represented as all about averting corporate and executive liability.²⁷⁶ In *The Assistant*, when Jane goes to human resources, Wilcock initially pretends to take the concern seriously, but when he realizes that there is no hard evidence, trivializes and dismisses her. Clearly, the era of compliance is not working.²⁷⁷

The realignment towards changing corporate culture is also evident in the shows. While *Bombshell* ends with Gretchen Carlson's complicated victory—a \$20 million settlement, an apology and an NDA—it subtly nods toward change.²⁷⁸ Gretchen is told by her lawyer that “money will establish that you told the truth, but no one can ever hear it directly from you”; “you will be muzzled” says the other lawyer.²⁷⁹ As she signs, her final words are, “maybe.”²⁸⁰ The text epilogue which runs with the song entitled “One Little Soldier,” tells of Fox's \$50 million payment to the victims of sexual harassment, and the \$65 million severance to Ailes and O'Reilly.²⁸¹ The final text comes back to the women: “the women who risked their careers to speak up against Ailes were among the first to bring down a public figure of his stature.”²⁸² And with a pause, “[b]ut not the last.”²⁸³ The ending of the film recenters the heroic individuals, the lean-in corporate feminism, while also gesturing to the #MeToo future that was coming.

If *Bombshell* gestures towards change, *The Loudest Voice* makes changing corporate culture explicit. In the text epilogue of the final episode we are told that Bill Shine briefly became co-president of Fox News, but was forced to resign over his handling of the sexual harassment

Evidence, and Policy, 119 COLUM. L. REV. 2029 (2019); Bernard S. Sharfman, *Opportunism in the Shareholder Voting and Engagement of the “Big Three” Investment Advisers to Index Funds* (Oct 20, 2022) (unpublished manuscript) (on file with author).

275. BOMBSHELL, *supra* note 3; *The Loudest Voice*, *supra* note 5.

276. *The Morning Show*, *supra* note 4.

277. THE ASSISTANT, *supra* note 6.

278. BOMBSHELL, *supra* note 3.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.*

crisis.²⁸⁴ The next screen tells us that Suzanne Scott became the CEO of Fox News.²⁸⁵ A powerful woman has been put in charge. Change in leadership has arrived at the very top.

Season one of *The Morning Show* ends with a powerful indictment of the corporate culture of UBA, when Alex and Bradley go off script to tell the truth about the sexual misconduct and its coverup at the network.²⁸⁶ “Corporate culture comes from the top down. And Fred Micklen dictated a culture of fear and silence and paranoia and pain,” says Alex.²⁸⁷ Bradley follows, “The abuse of power, the corporate corruption, it has to end. We cannot accept a culture of silence, here or anywhere.” It is not only the individuals—Mitch the harasser and Fred the protector—that are named, but the culture that they promulgate. Season Two then turns to the aftermath, and we now see a powerful woman at the top, who becomes part of the cleanup. Holland Taylor joins the cast as Cybil Reynolds, the Chair of the Board. Cybil makes changes: she fires Fred, puts Cory in charge, and hires, Stella, a young Asian woman as UBA’s first female president of its news division. It becomes clear that Cybil hired Cory, but especially Stella to clean things up. Stella is idealistic. She tells Alex that she is at the network because of what Alex had done on air, exposing the coverup: “What I want to do is change things here.”²⁸⁸ The message is one of diversification at the top. Like Scott at Fox News, Cybil and Stella are part of the redemption narrative, changing corporate culture through diversification.

Though it is not an uncomplicated story, Stella encounters endless resistance, particularly from Cory. In one heated exchange, she retorts with exasperation, “Everything done by a young Asian woman equals difference.”²⁸⁹ Cybil herself, was in charge during Mitch’s reign of sexual misconduct and Fred’s willful coverups. But she only appears in Season Two as a character in the aftermath of the expose of the conduct and coverups. Her later appearance seems to render her less implicated in all the wrongdoings; once it came to her attention (in season two), she took action. Cybil is all about the economic bottom line. It is about ratings—which are falling for *The Morning Show* and UBA generally—which is turn is directly about profit. In an exchange with Cory, where she squarely chastises him, she pronounces with unambiguous clarity “This is a business, not a morality play.”²⁹⁰ Cybil wants to clean house because it is

284. *The Loudest Voice* (Showtime television broadcast).

285. *Id.*

286. *The Morning Show*, *supra* note 4.

287. *Id.*

288. *Id.*

289. *The Morning Show: Kill the Fatted Calf* (Apple Inc. television broadcast Oct. 8, 2021).

290. *Id.*

what is good for business, and she makes clear to Stella that is why she hired her. In an impromptu exchange in the hallways, Cybil both admonishes and counsels Stella: she was brought in to clean things up, and so far she hasn't. "Take some responsibility. Show some character."²⁹¹ She tells Stella that she and Cory were a package deal, but that she should choose her allies carefully: "Who do you think is going to be here after the bomb goes off? I'm a cockroach Stella. I will always be here."²⁹²

The cockroach as a symbol of sisterhood, lean-in feminism and/or corporate redemption is not a very pretty picture. Then again, few of the women portrayed in the films and television shows are particularly appealing characters. The stars, from Megyn Kelly to Alex Levy, are ambitious, self-serving, often amoral individuals who do the right thing about sexual misconduct at the end of the day. The executives and directors, from Suzanne Scott to Cybil Reynolds are cutthroat corporate leaders who recognize that sexual misconduct is bad for business, and that is what makes them better than the leaders who came before. But, in the #MeToo films and television shows, the corporate structure and its profit motive is not the main problem. In striking contrast to the environmental and toxic tort films, where the critique is directly one of corporate greed and the amorality of corporate executives and boards chasing profit at any and all costs, the #MeToo films present a problem that is fixable within the corporate structure; all that is required is a change in the corporate culture. Indeed, the corporate *raison d'être* requires that the problem be fixed because the problem is bad for business.

Of course, the story of corporate redemption, at the behest of the board of directors and majority shareholders is at best a partial one. The boards indeed fired the high-profile sexual harassers and predators. But the shareholder actions, alongside increasing pressures from the multiplicity of stakeholders, tell a rather more complicated—and jaded—story of what was required to call corporate leadership to account and change. Yet, even taking all the stakeholders into account, we do see still see a narrative of corporate feminism. Sexual misconduct will be rooted out by changing the culture at the top; by putting more women into executive and board positions. The problem is individualized—of individual harassers and individuals looking away. So too is the solution: individual women put in positions of authority who will no longer look away and who will no longer tolerate the individual harassers. The solution—both real and imagined—is a corporate feminism. It is *Fearless Girl*, the bronze statue of the young girl, standing defiantly, hands on hips,

291. *The Morning Show*, *supra* note 4.

292. *The Morning Show: A Private Person* (Apple Inc. television broadcast Oct. 22, 2021).

initially placed in front of *Charging Bull*.²⁹³ If the charging bull was out of control with sexual harassment, it is the fearless girl who will face it down. Women will recalibrate the charging bull of corporate America and eradicate the sexual misconduct that is getting in the way of the bull's real quest of financial optimism and prosperity.

CONCLUSION

Films and television shows based on real-life events invariably take artistic license in their representation of these events. Stories are individualized and often sensationalized. Things that happened are left out, and things that didn't happen are written in. Characters may be embellished; indeed, fictionalized composite ones created. This is all the more so when the shows are only very loosely based on real-life events, as was the case with *The Morning Show* and *The Assistant*. Despite this artistic license, each of the films and shows examined tell a broader story about sexual misconduct allegations in the corporate content, a story with resonance to the corporate aftermath of #MeToo. Officers and directors of the media companies did not take allegations of sexual misconduct seriously; whether willfully or negligently, they ignored the misconduct and/or sweep the allegations under the carpet, with settlements and NDAs. And with the exception of *The Assistant*, each tells a story of corporate redemption (Weinstein and his company—as in real-life were beyond redemption; no doubt more stories will be told). In each, the bad guy(s) are fired (or forceable retired). The directors of the company come to see that the sexual misconduct affects their bottom line: it simply costs too much in terms of settlements, reputational damage and share value.

Hollywood's revisiting of the sexual misconduct allegations in the aftermath of #MeToo follows a familiar narrative arc: women are harassed, women speak out, women are ignored. Eventually—the #MeToo moment—things happen so that they can't be ignored anymore. (Megyn Kelly joins the chorus of women speaking out against Roger Ailes and Gretchen Carlson records the conversations in *Bombshell* and *The Loudest Voice*; Alex and Bradley expose the network coverup on live television). The directors have no choice but to act—heads roll. Sexual misconduct is denounced as antithetical to the corporate culture. And in the denouncement, the companies move forward with women at their helm. It is a little simplistic, yet it is not that far removed from the corporate shifts in the aftermath of #MeToo. Companies can seek redemption, by recognizing that sexual misconduct is bad for business.

293. Bethany McLean, *The Backstory Behind That "Fearless Girl" Statue on Wall Street*, ATLANTIC (Mar. 13, 2017), <https://www.theatlantic.com/business/archive/2017/03/fearless-girl-wall-street/519393/> [https://perma.cc/J4GF-SEXW].