

WOMEN IN THE WORKPLACE: THE PROBLEMS OF SEXUAL HARASSMENT*

by
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I. Introduction

In recent years, there has been increasing interest on the issue of sexual harassment in the workplace — whether in a government office, private corporation, commercial firm, college or university. As a result, most government and educational institutions in the United States and other Western countries have formulated sexual harassment policies and appropriate sanctions for their violation. Professional associations such as the National Education Association (NEA), the American Council on Education (ACE), and faculty unions in universities across the land in these countries have been active in developing mechanisms to determine at what point relationships among superiors and subordinates, such as faculty and students, administrators and staff, and so on, become sexual harassment. A point of contention, especially by those who oppose sexual harassment codes, is that most of these relationships being talked about are probably consensual. We will return to this point later.

This paper aims to examine this phenomenon in the modern age that has surfaced only recently, although it has been happening for a long time. It was only in 1986 that the first sexual harassment case was litigated before the U.S. Supreme Court. In that case, Meritor Savings Bank, FSB-V. Vinson, the U.S. high court ruled that sexual advances by co-workers which create a "hostile work environment" constitute a key determinant of sexual harassment. The court stated that sexual misconduct in the case at issue constitutes "sexual harassment" where "such

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conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." Finally, the decision ruled that the determining factor is whether the victim or respondent, "by her conduct indicated that the alleged sexual advances were unwelcome."

The verdict made commercial firms like Meritor Bank liable for damages as a legal remedy for such harassment as alleged in this landmark case. Since then, there have been several lawsuits and the courts continue to try cases involving one form or another of sexual misconduct in the workplace.¹

In the first place, what is sexual harassment? Does it always have to be a physical act? Where does one draw the line?

Defining Sexual Harassment

This problem has been defined in various ways but there is general agreement that "sexual harassment is the misuse of power that involves two people of perceived unequal authority and status, in a situation which has sexual overtones."² It is a manifestation of a power relationship.

The law that covers sexual harassment was derived from Title VII of the U.S. Civil Rights Act of 1964. The Civil Rights Act was a landmark legislation in the long struggle for equality of black Americans. Through various legislative and executive acts, the administration of Lyndon Johnson tried to address the grievances of disadvantaged groups, such as minorities and women, arising from historical discrimination and institutional inequality. The Civil Rights Act eventually led to the establishment of the Equal Employment Opportunity Commission (EEOC), which, in turn, promulgated guidelines in 1980 that became the basis for future sexual harassment policies.

In addition to the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972 prohibits sexual harassment. According to Title IX, sexual harassment is a form of sex discrimination. And through case law, federal and state courts in the U.S. continue to define sexual harassment,

the liabilities of employers and perpetrators, and the remedies available to victims of the offense.

By definition, sexual harassment is not limited to advances or physical acts. It could be visual as well as verbal. In one case at the University of Minnesota, an advisor displayed a poster of a nude on his wall. "Of his 15 women advisers, one student said the poster made her uncomfortable. She told us that she became sick everytime she entered his office."³ The advisor was furious but took his poster down. If he did not, he would be subject to a sexual harassment charge.

In the case of relationships between "consenting adults," say, between a professor and student, this could still be covered by the rubric of sexual harassment. Various policies on the offense carry "consent" clauses. Again the Minnesota case includes such a provision after a committee review of the University's sexual harassment policy. That clause stated that "in a relationship that turns bad, a subordinate's apparent consent cannot be used against harassment charges."⁴

What constitutes sexual harassment is often a function of perception based on gender. Males and females have vastly different perceptions or definitions of what comprises conduct with sexual overtones. Most men probably, think they are being friendly or flattering when they make a pass or display some body language. In some cases, they think "it is natural for a man" to do that. Others think it is "macho." Still in other cases, a man could rationalize his actions by "blaming the victim" who was asking for it.

Females, on the other hand, do not take such behavior as friendly or casual. Increasingly, as women become more economically active and meet all kinds of hassles in the workplace, they are bound to resist advances and other types of aggressive behavior of their co-workers.

A typical instance in which a man's and a woman's perceptions of "what happened" are extremely different may be seen in the following scenario:⁵

The victim's story: "Professor X came to my apartment uninvited on a Sunday morning. He said he wanted to teach me a folk song from the country that we're working on right now and asked if he could come in. I said yes. He came in, kissed me, and said, 'Why don't we go to bed?'"

The accused professor's version of the incident: "I went to her apartment uninvited on a Sunday morning and I said I was going to teach her about a folk song and I kissed her and said, 'Why don't we go to bed?'"

The versions were basically the same but the woman thought the professor's actions were offensive and an intrusion. On the other hand, as he detailed his story, he thought he was being casual and friendly.

Extent of Sexual Harassment

How pervasive is this offense in the working environment such as university campuses? It is difficult to state the precise degree at which it occurs because there is great reluctance on the part of students, for instance, to report sexual harassment by their professors. This situation goes right into the essence of sexual harassment: that it is a power situation. It is not about sex. Victims are intimidated. As Barbara G. Taylor put it, "sexual harassment is a put-down, not a turn-on"⁶ The premise is that the harasser has the power to hurt or damage the victim. In higher education institutions, the threatened damage is most often to a student's grade in a course, her progress toward a degree, her work on a thesis or dissertation, her recommendations for jobs or graduate school, or her reputation in her major department. As long as a student recognizes the power of a faculty member to affect her academic standing, she will probably be reluctant to call attention to his objectionable behavior. She will also recognize that a faculty member has greater standing and credibility in the university community than a student.⁷ This anticipation of losing the credibility match is enough to discourage a victim from pressing charges. In some cases, women students or faculty who persist and file complaints against their male colleagues or superiors are referred to as "mentally ill" or "emotionally unstable."

In any case, some determination has been made as to the extent of sexual harassment in the United States. Men as well as women are sexually harassed. However, sexual harassment is far and away a problem for women. Surveys conducted by the University of Minnesota Women's Center show that 33 to 42 percent of all college women report some form of harassment, but recent studies indicate the frequency maybe as high as 60 percent.⁸ In the reported cases, more than 95 percent involve males of greater power harassing females of lesser power,

e.g. male professor and female undergraduate student. Only 3 to 4 percent involve cases of men harassing other men. Hardly any statistics are available about powerful women harassing other women of lesser status and power. So it bears repeating that while sexual harassment can and does occur in any combination — male-male, female-female, and male-female, the reality is that it is a male-female phenomenon, with females as the victims.

In a smaller survey conducted by Louise Fitzgerald and her colleagues, 23 percent of 235 male faculty (or roughly 84 male professors, not a small (number) reported sexual involvement with female students.⁹ The survey examined three types of faculty-student behavior: 1) mentoring; 2) sexual interaction, and 3) sexual exploitation.

In a typical campus, you hear talk all the time about male professors sleeping with their female students. Some departments are more notorious than others in this regard. A typical situation is between a female graduate student and a male advisor of her graduate committee and thesis advisor. In many cases, of course, the relationship, is usually consensual. The female student even ends up marrying her advisor, who in turn divorces his wife, usually an older woman who had helped him through graduate school. In other cases, the "advisor-advisee relationship" sours and this is when a sexual harassment case could come up.

An American Psychological Association (APA) Division 12 survey of female graduate students (sample size not stated), who had become professional psychologists, examined sexual intimacy with and sexual advances from psychology educators. About 31 percent of those surveyed reported sexual contacts that proved "extremely exploitative and harmful."¹⁰

Another article shows how male faculty use their power position to conduct sexual liaison with their female students. The authors argue that "sexual harassment occurs as the confluence of authority relations and sexual interest in a society stratified by gender."¹¹ This is just another study demonstrating that sexual harassment is about power relations, not sex per se.

It has also been revealed in the various studies about this current phenomenon that sexual harassers are often repeat offenders. They

usually have a *modus operandi*. "They use the same words. They proposition the students they advise in the same way at the same time in their graduate careers. These harassers are predictable."¹² University administrators who are responsible for enforcing sexual harassment policies must watch out for these predictable patterns of behavior.

Sexual Harassment Policies

Before the Meritor case in 1986, most professor-student relationships were seen as consensual. But, as stated earlier, the Meritor decision made "consent" or "consensuality" no longer a viable defense for the accused. The correct line of inquiry, according to the law, is whether the respondent had indicated by her conduct that the overtures or advances of a superior was "unwelcome." It is this indicator that determines whether a "hostile" employment environment has been created as a result. The "welcomeness" issue was addressed in two other cases — *Naragon v. Wharton* and *Korf vs. Ball State University*.¹³ In the latter case, the court rejected the "consent" defense and upheld the university's action in dismissing the amorously erring professor.

Current concern over the prevalence of sexual misconduct among professional and administrative ranks has resulted in the adoption of codes of ethics and sexual harassment policies by universities and colleges. A study by two University of Hawaii professors randomly sampled 118 doctoral-level institutions and 230 baccalaureate level schools. Some 87 doctoral institutions and 103 baccalaureate colleges replied to the study.

Of these only 16 universities and 16 colleges had policies or codes of ethics that addressed faculty/administrator-student relationships. Only 15 public and 17 private institutions had sexual harassment policies, while 72 public and 85 private institutions did not. Thus, institutions are not yet rushing to adopt sexual harassment policies in great number but there is increasing pressure, as women continue to come out in the open, to discipline errant professors and administrators.

The policies examined by the above-cited study included both the "unwelcomeness" of sexual advances dimension, and the need and the professional conduct expected of faculty and administrators. As indi-

cated earlier an individual faculty member can become liable even in a consensual relationship if his conduct is no longer welcome by his student partner.

With regard to professionalism, the doctoral institutions surveyed were especially emphatic in their condemnation of unprofessional behavior among its faculty and staff. This is probably an outcome of the various litigations in which the decisions call attention to the greater expectation of professional conduct from the defendants, usually professors than ordinary individuals. In the *Korf v. Ball State University* decision, for instance, the court asserted:

"In any event, while there is no evidence that the young student Dr. Korf admitted having a sexual relationship with did not consent to engage in sexual activity with him, Dr. Korf's conduct is not to be viewed in the same context as would of an ordinary person in the street. Rather, it must be judged in the context of the relationship existing between a professor and his students within an academic environment. University professors occupy an important ethical obligation."⁶

In this case, the court relied heavily on the "Statement on Professional Ethics" incorporated by Ball State University in its faculty handbook. The bottom line is that the courts expect and maintain higher standards of conduct for members of the academic community than people in ordinary workplaces or on the street, as the *Korf* case shows. In short, professors should teach their students and not exploit them sexually. Professors should not use their power to extract sexual favors from their students.

Conclusion

The situation presented here on the extent of sexual harassment is specific to the United States, where it has been noted to be pervasive. But there is no doubt that sexual harassment is a universal phenomenon. The difference lies in how countries define the offense and how they handle the offenders.

In the Philippines, surveys and studies have to be done to document more confidently the extent of the problem. Government agencies and

other institutions in the country are not yet developing sexual harassment policies. But the major women's groups are concerned about the problem and will probably push for legislation to this effect. The ultimate goal of such legislation should be to ensure that the workplace, especially for women, should be harassment-free.

NOTES

¹See Elsa Kircher Cole, "Recent Developments in Sexual Harassment," in *Sexual Harassment on Campus: A Legal Compendium* (Washington D.C.: National Association of College and University Attorneys Publications, 1988), pp. 3-20 for a listing of recent U.S. court decisions on sexual harassment.

²This standard definition is part of a summary information handed out by various groups after presentations on sexual harassment on American University campus. See Anne Truax, "Sexual Harassment in Higher Education: What We've Learned," *Thought and Action — the NEA Higher Education Journal*, Vol. V, No. 1 (Spring 1989), p. 32.

³See Truax, *op.cit.*, p. 30.

⁴*Ibid.*, p. 32.

⁵*Ibid.*, p. 26.

⁶Barbara G. Taylor, "Response: Who is Responsible for Sexual Harassment?" in *Thought and Action, op.cit.*, p. 39.

⁷*Ibid.*, p. 40.

⁸Truax, *op.cit.*, p. 33.

⁹See Louise Fitzgerald, Lauren M. Weitzman, Yael Gold, and Mimi Ormerod, "Academic Harassment: Sex and Denial in Scholarly Garb," *Psychology of Women Quarterly*, Vol. 12 (1988), pp. 320-340.

¹⁰See Robert G. Glasser and Joseph S. Thorpe, "Unethical Intimacy: A Survey of Sexual Contact and Advances Between Psychology Educators and Female Graduate Students," *American Psychologist*, Vol. 41, No. 1 (1981), pp. 43-51.

¹¹Donna Benson and Gregg Thomson, "Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Relations," *Social Problems*, Vol. 29, pp. 236-251.

¹²Truax, *op.cit.*, p. 27.

¹³See Dorie Little and John A. Thompson, "Campus Policies, the Law, and Sexual Relationships," in *Thought and Action, op.cit.*, p. 19.

¹⁴*Ibid.*, p. 21.