

Women in the Workplace: The Problem of Sexual Harassment

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Sexual harassment is increasingly becoming a problem for women in their places of work. It is an old problem but it took a landmark decision in a United States court, Meritor Savings Bank vs. Vinson, to bring it out into the open. That case defined the key determinants of a sexual harassment offense. Up until this case, it was difficult to determine what constitutes sexual harassment and an accused party could always claim that his relationship with a victim was "consensual." Sexual harassment involves a power relationship in which the harasser has the ability to apply some sanction on his intended victim, usually a woman under his authority. The typical situation revolves around a male professor and a female undergraduate student. Although men as well as women are sexually harassed, 95 percent of reported cases involve males harassing females of lesser power. In the Philippines, the problem is seen as pervasive although no systematic documentation exists. Women's groups are working towards setting up institutions to develop sexual harassment policies.

Introduction

In recent years, there has been an 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 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. The opposing view of those who have reservations about sexual harassment codes is that most of the relationships being talked about are probably *consensual*, not harassing.

This paper examines this phenomenon 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 US Supreme Court. In the case of *Meritor Savings Bank, FSB vs. Vinson*, the US 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,"

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where "such 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*." (Italics supplied).

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 a 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 which means the accused harasser who is in a position of authority has the ability to resort to some sanction if refused or rebuffed by an intended victim.

The law that covers sexual harassment was derived from Title VII of the US Civil Rights Act of 1964. This Act was a landmark legislation in the long struggle in the US for equality of black Americans. Through various legislative and executive acts, the administration of Lyndon Johnson addressed 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 US Civil Rights Act, Title IX of the Education Amendments of 1972 also 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 US 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 physical advances or acts. It could be visual as well as verbal. In one case at the University of Minnesota, a faculty advisor displayed a poster of a nude on his wall. "Of his 15 women advisees, one student said the poster made her uncomfortable. She told us that she became sick everytime she entered his office" (Truax 1989:30). The advisor was furious but took his poster down. If he did not, he would have been subject to a sexual harassment charge.

In the case of relationships between "consenting adults," say, between a professor and a 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" (Truax 1989:32) (*Italics supplied*).

What constitutes sexual harassment is often a function of perception based on gender. Males and females have vastly differing perceptions or definitions of what comprises behavior with sexual overtones. It is noted that men generally think they are being friendly or flattering when they make aggressive moves towards women, or display some body language. In some cases, they think "it is natural for a man" to act in a certain manner. Others think it is "macho." Still in other cases, a man could rationalize his actions by "blaming the victim," that is, a woman is "asking for it." Lawyers defending persons accused of rape and other sexual offenses tend to invoke that defense, and in many cases, they succeed.

On the other hand, females generally do not take such male behavior as friendly or casual. Increasingly, as women become more economically active and meet all kinds of hassles at the workplace, there is a need to make their working environment free from the predatory and aggressive behavior of their male supervisors and co-workers.

A typical instance in which a man's and a woman's perceptions of "what happened" are different may be seen in the following scenario (Truax 1989:26):

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 intimidating, offensive, and intrusive. She filed a harassment charge against the professor. On the other hand, as he detailed his story, the professor thought he was being casual and friendly.

Extent of Sexual Harassment

How pervasive is this offense in various workplaces such as university campuses? It is difficult to state the precise degree in which it occurs because there is great reluctance on the part of students, for instance, to report the sexual misbehaviors of 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 puts it, "sexual harassment is a put-down, not a turn-on" (Taylor 1989:39). 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" (Taylor 1989:40). This anticipation of losing the credibility battle is enough to discourage a victim from pressing charges. In some cases, the credibility of women faculty or students who persist in filing complaints against their male colleagues or superiors is demolished. These female students are often perceived or "bad-mouthed" 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% of all college women report some form of harassment, but recent studies indicate the frequency maybe as high as 60% (Truax 1989:33). In the reported cases, more than 95% involve males of greater power harassing females of lesser power, e.g., male professor and female undergraduate student. Only 3 to 4% involve cases of men harassing other men. Hardly any statistics are available about women in positions of authority 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 primarily a male-female phenomenon, with females as the victims, practically in all cases.

In a smaller survey conducted by Louise Fitzgerald and her colleagues, 23% of 235 male faculty in American universities (or roughly 84 male professors, not a small number) was reported to have sexual involvement with female students (Fitzgerald, *et al.* 1988 as cited in Truax 1989:35). The survey examined three types of faculty-student behavior: (1) mentoring; (2) sexual interaction; and (3) sexual exploitation.

In a typical campus, one hears talk all the time about male professors sleeping with their female students. Some departments are even pinpointed as more notorious than others in this regard. A typical situation is between a female graduate student and a male professor, who might also be the advisor of her graduate committee and thesis. In many cases, of course, the relationship starts off as 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% of those surveyed reported sexual contacts that proved "extremely exploitative and harmful" (Glaser and Thorpe 1986 as cited in Truax 1989:36). Whatever the sample size was, that amounts to almost one-third of the total number of respondents—not a negligible percentage.

Another study shows how male faculty members 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" (Benson and Thomson 1982 as cited in Truax 1989:35). This is yet another validation demonstrating the main proposition that sexual harassment is about power relations, not *sex per se*.

It has also been revealed in the various studies 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" (Truax 1989:27). These studies suggest that University administrators who are responsible for enforcing sexual harassment policies must watch out for these predictable patterns of behavior on the part of traditional harassers.

Sexual Harassment Policies

As stated earlier, the Meritor decision made "consent" or "consensuality" no longer a viable defense for those accused of sexual harassment. 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 vs. Wharton* and *Korf vs. Ball State University* (Little and Thompson 1989:19). In the latter case, which involved homosexual males, the court rejected the "consent" defense and upheld the university's action in dismissing the erring professor who was charged by a student of sexual misconduct.

Current concern over the prevalence of sexual misbehavior among professorial 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 constituting 54% of the sample.

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

The policies examined by the above-cited study included both the "unwelcomeness" dimension of sexual advances, and the professional conduct expected of faculty and administrators. As indicated earlier, an individual faculty member can become liable

even in a consensual relationship if his conduct is no longer welcome by his student partner over a period of time.

With regard to professionalism, the doctoral institutions surveyed were especially emphatic in condemning unprofessional behavior among their faculty. This is reinforced by the outcome of the various litigations in which the decisions call attention to the greater expectation of professional conduct from the defendants, usually professors rather than ordinary individuals. In the *Korf vs. Ball State University* decision for instance, the court asserted (Little and Thompson 1989:21):

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 be conduct 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 place in our society and have concomitant ethical obligations.

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 who are powerless vis-a-vis their professors.

Sexual Harassment in the Philippine Context

The extent of sexual harassment in Philippine public institutions, let alone the private sector, has not been studied or documented in any manner. No policies or guidelines dealing with this offense are embodied in the manuals or codes governing personnel conduct in public or private institutions. In the *Faculty Manual* (1989) of the University of the Philippines (Diliman), for instance, there is a section on *Restrictions, Conduct and Discipline*, but this does not include any sanctions against faculty who sexually harass or abuse their students.

However, there are rules and regulations in the Manual relating to the question of discipline of faculty and employees, approved by the University of the Philippines Board of Regents on January 11, 1963. Under the section on "causes for removal or suspension," the rules state that no member of the teaching staff or employee of the University shall be removed, suspended, or reprimanded except for any of the following offenses: (1) dishonesty; (2) oppression; (3) misconduct; (4) neglect of duty; (5) conviction of crime involving moral turpitude; (6) notoriously disgraceful or immoral act; (7) improper or unauthorized solicitation or receipt of contributions from subordinate employees or students; (8) gross incompetence; (9) disloyalty to the Republic of the Philippines; (10) culpable negligence; (11) violation of the Civil Service Act or the Laws of the Code or reasonable University regulations; and (12) other acts prejudicial to the service (Faculty Manual 1989:68).

Statements of codes of conduct found in other public institutions contain similar if not the same provisions regarding causes for which personnel may be disciplined. This raises the basic question of whether it is still necessary to spell out a specific provision or generate legislation on sexual harassment since it could be argued that it is already subsumable under "moral turpitude," "notoriously disgraceful or immoral act," and "other acts pre-judicial to the service." In other words, the language and substance of existing rules may be made to apply to cases involving sexual harassment should they arise. What may be necessary is to define the scope of the offense, similar to what has been done in the universities abroad mentioned earlier in this paper.

The larger body of Philippine law also contains several provisions that again may be used to deal with sexual harassment cases. For instance, there is an offense of "unjust vexation" that can conceivably be interpreted to apply to sexual harassment.

But as in the American cases, the "legal remedy" is bound to be problematic in the Philippines because "the law lacks the ability to define sexual harassment in its fullest meaning to embrace the myriad of experiences reported by female students" (Elgart and Schanfield 1989:20). Even in the *Meritor Savings Bank vs. Vinson* case cited earlier, the majority decision of US Supreme Court Justice William Rehnquist rested on the definition of harassment by EEOC, an administrative body. This suggests a limitation of the law and the legal process in the resolution of sexual harassment cases. The issue of coming up with a definitive definition of the offense, legally speaking, will remain one of the gravest weaknesses of litigating cases in which sexual harassment is alleged.

In any case, the time has come to deal squarely with the issue with the use of administrative sanctions that employers of sexual harassers can resort to. According to Remy Rikken (1990), the executive director of the National Commission for Women in the Philippines, the incidence of sexual harassment in government agencies is not insignificant. And according to a female scriptwriter of a popular program on TV, she quit her job recently mainly because of the sexual advances of the producer who was fond of massaging her on the shoulders. Show business, she said, is one area where sexual harassment has been happening for a long time (Privileged Communication 1990). It is an occupational hazard. Aspiring movie stars particularly are easy prey for predatory male directors and producers.

The National Commission for Women has started the spadework for a future policy on sexual harassment cases that it plans to submit to the Philippine Congress in due time. It is hard to predict how this body, overwhelmingly predominantly male, of course, will respond to this initiative. Up until March 1988 in the US, when President Ronald Reagan's veto of the Civil Rights Restoration Act was overridden by Congress, there was still no mention in both houses of that body, of sexual harassment, an offense which has been recognized as sex discrimination.

This leaves two alternative routes for the resolution of cases involving sexual harassment. The first, which has already been mentioned, is to put pressure on the agency

head or the governing boards or presidents of educational institutions, to dismiss erring personnel, applying existing sanctions on sexual misconduct. Majority of the cases "resolved" in American universities took the quiet route of making errant professors resign, otherwise they would be formally charged by university authorities. Because of the delicate nature of the crime which would subject the victim to further trauma by exposing her case in public, the quiet way is often seen as a realistic solution. This has been protested by feminist groups and more and more cases are coming out into the open. In September 1989, Polytechnic University of the Philippines President Nemesio Prudente dismissed an Architecture professor following his conviction by a University Hearing Committee of three administrative charges including lascivious acts on a female student (dela Cruz 1989:16).

As narrated by Rosario Lorelyn Paras (her real name), the professor held her hand while she and her classmates were making some drawings for their assigned subjects. "She further testified that on the occasion of the Foundation Day of the University, while she was sitting inside their exhibit (sic) room, the respondent stood directly in front of her and raised the bottom portion of her 'culottes' (combination skirt-pants) towards her thigh, dissected her legs with his eyes and said, '*Oy, ang ganda pala ng legs mo.*' ('Hey, you've got nice legs.') She said that had she not placed her hand on her lap, respondent would have raised it further exposing her upper thigh" (dela Cruz 1989:16). The same professor was reported to have made "lewd advances" on other female students and had used "vulgar language" inside the classroom.

The other route smacks of a "vigilante" solution, which many may find controversial. Unable to find justice in legal or administrative venues, victims of sexual harassment and their supporters have resorted, in some cases, to "blacklisting" erring male professors and the like by openly exposing them in public places. Brochures and other written materials, usually from anonymous sources, are distributed in grocery stores, university departments, restaurants and other public places. They are even posted in women's bathrooms to inform students and would-be victims that "such-and-such is a known sexual harasser." The sources of these "black propaganda" campaigns cannot be traced, but they are often very effective. Moral sanctions through "anonymous justice" may be increasingly resorted to, given the ineffectual nature of "legal justice."

Conclusion

The situation presented here on the meaning and extent of sexual harassment is derived mainly from situations in the United States, where it has been noted to be pervasive. The Philippine situation with regard to this issue is less clear, given the paucity of written material on sexual harassment cases. But it can safely be assumed that sexual harassment is a universal phenomenon. The difference lies in how countries legally define the offense and how institutions handle the offenders. Social attitudes toward the offense also vary across countries with some cultures making light of women's complaints and justifying "normal male behavior." Women victims are often hesitant to come out. They are often traumatized by their experience and end up suffering in silence.

In the Philippines, surveys and studies have yet to be done to document more confidently the extent of the problem. Conventional wisdom has it that it is a pervasive problem. But we need harder evidence of its existence. Government agencies and other institutions in the country are not yet developing sexual harassment policies the way the US has. The legal remedy often has its limitations in dealing with sexual misconduct. But there is indication that major women's groups are concerned with the problem and will probably push for legislation to this effect. For now, there is need to ventilate the problem in the realm of public consciousness. It has not been aired sufficiently for people to recognize that it is a real problem. Many male circles still find sexual harassment a joking matter, or a "consensual" activity. The women's groups could promote greater awareness of this problem among women workers and students, the groups most vulnerable to sexual harassers.

The ultimate goal of such legislation and other efforts should be to ensure that the workplace, especially for women should be harassment-free. To achieve this, appropriate sanctions should be meted out to offenders and women should continuously educate themselves, and to take action, if necessary, to protect themselves from sexual hazards in the workplace.

But in the final analysis, the larger society has to be educated on the issue of sexual harassment so people will learn how to deal with it. If people are vigilant, the resulting environment will be self-correcting and less prone to harassing human behavior, sexual or otherwise.

Endnotes

¹ See Elsa Kircher Cole (1988) for a listing of recent US court decisions on sexual harassment.

² This standard definition is part of a packet of summary information handed out by various groups after presentations on sexual harassment on American university campuses. See Anne Truax (1989).

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