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SEXUAL HARASSMENT

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my opinion of
This discussion reflects what MIT leadership actually attempted to do, 1973-81 after the 1973 policy by JBW + PEG

INTRODUCTION

Sexual harassment (and racial harassment) are probably hardest to define of all grievances, complaints and problems which come to a university counsellor or grievance procedure. Probably no other topic generates more controversy in-house, in academic communities. Yet harassment, (and indeed an increase in interpersonal violence, exploitation and unprofessional behavior of all kinds) are much in the news and much too commonly reported in our offices.

This chapter will discuss some of the characteristics of sexual harassment, some of the issues involved and why the problems presented are so difficult to deal with. The last section makes recommendations for policies and procedures to deal with harassment in academic communities.

WHAT IS SEXUAL HARASSMENT?

LEGAL DEFINITIONS

As of August, 1981 sexual harassment has a legal meaning in academic communities. EEOC Guidelines (See Appendix) were promulgated in 1980; they are controversial but helpful to nearly all discussions. The Guidelines can serve to foster communications within a college or university whether or not they continue to carry the force of law in coming years. In addition many states have relevant laws, for example the new rape law in Wisconsin which carries graduated definitions of sexual offenses with graduated sentencing appropriate to the severity of the offense. Policy-oriented discussions of "What is sexual harassment?" must take cognizance of the legal standing of the subject as it varies from state to state and from year to year. We will return to this subject in the last section of the chapter for this reason. But first we discuss some of the reasons why it is so difficult to deal with sexual harassment issues, or even to define them for practical purposes.

WHAT KINDS OF CASES ACTUALLY COME IN? WHAT DO PEOPLE THINK ABOUT THEM?

An extraordinary variety of problems are now labelled sexual harassment. They range from assault to dirty jokes to attempts at seduction of students by faculty and of faculty by students. Criminal behavior, and consenting relationships that go awry, may be reported. Sometimes the offended persons are students who object to a consenting relationship between their instructor and another student. Frequently one side finds sexual behavior to be unwanted and offensive when the other side believed it to be a welcome

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courtship. The first problem is one of perceptions.

THE PROBLEM OF DIFFERING PERCEPTIONS

We come to the question of sexual harassment with different values: this is plain to nearly everyone. We also come to these questions with very different perceptions of fact. Issues of sexuality in the workplace and in educational settings bring forth probably the widest divergence in perceptions of any questions that confront administrators. However, this problem of perceptions becomes plain only very slowly to many people. Frequently people feel so strongly about their own perceptions that they find it nearly impossible to believe that responsible colleagues could disagree with them. In many ways this problem of different perceptions about sexualization raises unusual issues for managers.

In the usual case of an informal complaint brought by a student or employee, on any other subject, a counsellor may easily get to hear both sides. Often enough the positions of A and B will be found not so far away from each other as A at first believed. University counsellors are also accustomed to finding that A (and B) did not have "all the facts," or did not share the same facts. In these usual cases a counsellor may present to A the facts that B has, the facts to B that A has, and the positions of the two may quickly converge. At least A and B may feel more comfortable. Mediation ^{if it occurs} will usually be found to have helped.

Typical sexual (and racial) harassment cases are not like this standard pattern, even at an early, informal stage. If a counsellor gets to hear both sides, (which I do not by any means necessarily recommend ^{as a requirement}), three startling differences may

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often be noted. The first has to do with the degree of differences in opinion between the parties to a complaint. With any other informal grievance A and B may in fact not disagree as much as A first thought; they are typically only a few degrees apart in their presentations by the time one has heard the whole story. In sexual harassment cases A and B may well be 180° off each other.

Experienced counsellors will immediately recognize this situation as potentially serious. 180° differences at an early stage of an informal complaint are quite rare. Outside of harassment cases the only other circumstances in which this is likely to happen is when one side or both are emotionally ill or lying about criminal behavior. The experienced counsellor may then well suspect one or both sides of a harassment situation to be ~~very~~ ill or lying. It is not clear to me, however, having heard a great many such cases, that illness or lying are necessarily present in these situations. This is true even though neither A nor B can imagine how the other can reasonably hold the point of view he or she has.

For the second startling difference, if you hear both A and B, is that they will often, even usually, present the same facts. Both agree that B started to remove A's clothes, for example, but they strongly disagree about what this means. In a typical case A finds the behavior offensive and coercive and fears retaliation. B thought A wanted the advance, and is amazed at the thought of coercion or retaliation since B was sure of welcome: "A never said no!" But both tell the same factual story. The remarkable extent to which each side may, in an informal

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reconnaissance, recite the same basic facts removes from the counsellor the possibility of getting two people to agree by sharing more "facts" between A and B.

The third differences in these cases is that any ^{informal} intervention by a third party may make things worse. Quite frequently A and B will appear to become much more upset with each other if there is an attempt at mediation. The initial polarization is exacerbated, and ^{more} third parties may become involved. Frequently no one appears to "benefit" from mediation or any other kind of intervention; often no one will change his or her behavior or attitudes. In fact the reverse occurs all too frequently.

It is in the nature of sexuality, and of our individual experiences, that it is very difficult to understand what another person experiences, especially if that person is of the opposite sex. Because our own experiences of sex are so compelling to each of us, it is exceptionally difficult, and may be bewildering, to believe how different may be the views of our colleagues from our own. Administrators have to reckon with the fact that most people simply cannot easily believe that there are reasonable and responsible views other than their own.

An inexperienced observer of a "sexual harassment" case may trust to "fact-finding" and "evidence" to establish some kind of truth. And in formal grievances this will of course be necessary. But experienced observers ^{often} ~~usually~~ come to believe that there may be many "truths" about sexuality cases, and that it is possible and reasonable simultaneously to believe two people who present the same "facts" but whose views about what the facts mean are

diametrically opposed.

These unusual differences in perception lay a context in which our various value systems take hold. And it is the fact of multiple truths that make policy discussions so problematic. But this fact can also be an asset. Probably fortunately, our divisions of opinion do not coincide neatly with gender, race, age, class or ethnic background. Women and men are found in nearly equal numbers on all sides of the issues, so also with conservatives and liberals, minorities and non-minorities. Our disagreements about sexuality and power often unite us across other lines.

WHAT ISSUES OUGHT WE TO ADDRESS?

Many people believe that our major problems are to protect women from harassment by men, to teach men what harassment is as women see it, and to teach women how to stop harassment. Widespread public discussion of "sexual harassment," and the present legal requirement that we have a policy on the subject lead many to cast our issues into this framework. Moreover anyone who has dealt with a victim of serious sexual harassment is likely to be sympathetic to this point of view.

But many people in academic communities also want discussion of more and wider issues. Some are concerned by the abuse of power in our society and see sexual harassment as a critical subset of this sort, which however should be addressed together with other abuses, for example, anti-Semitism, and racial harassment. Yet others see harassment as only one form of abuse of power in a sexual context. They would like to address both harassment and

problems of favoritism on the basis of sexuality, including seductive behavior by students. For example faculty, and their spouses, often feel that faculty need policies proscribing the offer by students of sexual favors in exchange for academic advancement. This group believes that our fundamental problem is abuse of power by means of sex, ^{and conflicts of interest} rather than abuse of sexuality by means of power. Still others find these questions inextricably linked and feel they should be addressed in both ways, since both forms of abuse obtain. Many thoughtful persons in academic communities see harassment and favoritism as a kind of conflict of interest at variance with a meritocratic support of excellence which should obtain: Merit, and recognition of merit, can be distorted in two directions: negatively, by harassment; "positively" by favoritism. Either distortion on the basis of sex (or on any other basis of abuse or bribery) is seen by many to be unacceptable in academe.

There are also compelling problems of individual rights mixed into any address to these sets of issues. Policies and procedures must protect the rights of both offended persons and offenders. We must be sure that our legitimate institutional interest in human behavior on the premises, in work and in education, does not improperly infringe on the personal lives of those in the community. And we have to seek to do this in an arena where the alleged offenders often are bewildered by the thought that they have offended. The supervisor who thought he was expressing affection and admiration or humor may be puzzled or outraged to be thought to be "harassing." The faculty-student couple

who consider their love affair to be personal business may be bewildered and in turn offended, by complaints of colleagues about favoritism on the basis of sex. They may be particularly troubled by the notion that their affair is seen as "having the effect of substantially interfering with a (colleague's) (work) performance and creating an intimidating.....and offensive (working) environment" (EEOC Guidelines, April 1980).

A different but major set of issues revolves around the concept of mentoring. Many women and men ask that harassment and favoritism on the basis of sex and the fear of harassment and favoritism, be eliminated by strong policy statements on both issues. Other feel equally strongly that even the discussion of these issues may scare away potential mentors, especially for women, and that in any case policy statements may not work. Everyone who discusses mentoring, in the context of harassment and anti-favoritism policies, agrees that mentoring is essential, but they disagree about how to achieve their goals.

WHAT DATA DO WE HAVE?

Recent national surveys, including at least one major stratified, random sample, show that large numbers of women (and some men) have had experience with unwelcome sexual behavior at work and in education. Surveys conclude that a third, a half, or more, of all employed and student women, have been importuned or molested at some point in their lives in ways not proscribed and illegal. Anecdotal and clinical evidence indicate that small numbers of men are also regularly harassed. In my own work in a general (non-union) grievance procedure, about 2% of the

problems brought in are ^{really} serious sexual harassment cases. Why then do so many men and women wonder if there is a real problem here?

I believe that this is in part because of the different perceptions discussed above. Difficulty in assessing the importance of sexuality problems also arises because offenses are handled differently by victims, depending on the circumstance. The surveys that show that proscribed behavior is very common also conclude that most people are able to handle most problems most of the time, without reporting major injury. This is apparently most often the case among equals; ^{who listen to each other} among peers unwelcome sexual behavior is usually simply rejected.

The cases that come to grievance procedures and the courts usually are the small fraction of cases which are seen to involve some allegation of abuse of power. The alleged offender(s) usually are supervisors, or a group of student colleagues or co-workers; faculty, teaching assistants, or others in a position to punish or reward, like health care practitioners.

It is then probably correct to observe that most people most of the time do not feel particularly damaged by sexualized behavior at work and in education, ^{even if they dislike it.} Most people (especially well-respected administrators) do not observe the instances where students and employees and faculty feel intimidated, importuned, exploited, blackmailed or harassed. But I believe it would be a conservative estimate that 2% of female students and employees may run into some ^{very} serious problem of sexualized behavior every year. (I define "serious" as a problem which produces significant

*Very serious -
leaving the
job or
school*

physical and/or emotional distress, and disruption of productivity in the victim.)

WHAT KINDS OF PROBLEMS WILL BE REPORTED?

Common complaints include requests for sexual activity; obscene calls and letters; display of objects or art that are seen as pornographic; persistent sexual innuendo, discussions or jokes; propositions, touching or assaultive behavior. As noted above, most problems that get reported are either in the context of supervision or of groups of students or co-workers. Occasionally also a student will report problems from a single fellow student, sometimes a lover or rejected lover. In all these cases, if a problem is reported it is usually a problem where the offended person does not feel she or he has the power to stop the offense safely.

Very frequently the offended person fears retaliation. This is in fact nearly always the case where sexual occurs in a supervisory relationship. This is true even where the offender would be astonished to learn that the behavior was seen as coercive. Thus it is common to hear from students who do not dare to try to stop the behavior...and who refuse to report offenses until the end of a semester or until graduation. And frequently offended persons believe that "nothing can be done" without risk of retaliation and therefore never report.

Usually the offended person wishes only to have the harassment stopped. Only occasionally, out of hundreds of cases of an informal nature, have I heard an offended person ask for public retribution. Indeed, in the most typical case, an offended

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person will not report at all, until assured that no action will be taken without the complainant's permission. Complainants typically fear public exposure. Students in particular often believe their parents, friends and faculty will blame the victim for "leading someone on" or "asking for it." Complainants also frequently fear that universities will react too harshly as well as too publicly; "I don't want him to be fired because of me," or "I don't want to hurt his wife and children."

Offended persons often in fact blame themselves, and punish themselves, even in the many cases where reasonable observers might agree that the offender was apparently entirely to blame. I believe this feeling, whether or not justified, is sometimes responsible for a belief that the "administration will do nothing."

Sexual harassment occurs in extraordinary variety, and often an offended person is not at all sure what is happening or whether reasonable people would call something "sexual harassment." Sometimes the victim just suspends belief: "I couldn't believe this really was happening." For example, I remember a student at a western university whose professor stroked himself when alone with advisees. The professor did not expose himself, or touch or proposition students; he simply touched himself repeatedly and unappropriately. In another case at another school a professor sketched the feet of his student research assistant; on the spur of the moment he simply sat on the floor near her and drew on a pad while gazing at her feet and ankles. In other cases, not only is the offense very peculiar behavior but it appears to the victim to be very sudden, and totally without warning. Out of the blue, the offender began to caress her in an intimate way...

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In the preceding discussion I have mentioned the frequency of reports of an unequal power relationship, fear of retaliation and blame, fear of exposure, self-blame, the unexpectedness and strange variety of offenses, the simple wish "just that it would stop," a sense of disbelief. These common occurrences produce additional, very difficult, characteristic problems.

The first is the variety of cases of "freezing." Many people are conversant with the notion of "fight or flight" reactions to stress. I have also frequently heard accounts of what I think of as "freeze" reactions. There are ~~many~~ people who, when molested, will simply freeze. They will tell you, "I sort of watched what was going on from outside myself; "I couldn't even breathe; it was a long time before I could summon myself back even to move away at the end;" "I was so terrified I couldn't speak at all."

Freeze reactions are problematic for many reasons. They are often interpreted by an aggressor as acquiescence or even pleasure. Combined with the common notion that "'no' means 'maybe,' and 'maybe' means 'yes'," I believe that freeze reactions are responsible for some of the extraordinary differences in perception between aggressors and victims. In addition, some victims who "freeze" blame themselves. Not only do they worry about having provoked the offense, they blame themselves for not reacting.

Another difficult characteristic of sexual harassment cases is that usually the only available evidence is the statement of the offended person. Conclusive proof, meeting conventional standards, is usually absent. Unless there are several offended persons naming the same aggressor a victim may not have what he or she considers "enough" evidence. Combined with all the other problems

mentioned above this difficulty means that many (perhaps most) victims do nothing about harassment and do not report harassment. Thus harassers may continue without much hindrance, and each victim may be deprived of the supporting statements of previous and subsequent victims. And the public at large may not believe the problem exists. What then to do about all these questions? Unfortunately many people disagree about what to do; usually the only point of agreement is that everyone hates the subject (though for different reasons).

SOME OF THE POLICY POSITIONS THAT ARISE IN ACADEMIC COMMUNITIES

Those who see this subject as an abuse of sexuality by use of power usually want a very strong policy to proscribe sexual harassment. Those who would like each form of harassment to have its own discussions and policy-making, would prefer that sexual harassment be addressed by itself, and that separate discussions ensue about racial harassment, anti-Semitic harassment, anti-gay harassment, etc. Those who see abuse of power as the real issue may prefer to have a general harassment policy, which says, "Harassment will not be tolerated."

Those who are especially troubled by the abuse of power by means of sex may desire a conflict of interest policy or an anti-favoritism policy which seeks to illuminate or to limit the conflict of interest potential when sex enters into a supervisory context, even in the context of "true love." Such a policy for example raises questions about sex in a teaching or supervisory relationship, whether or not in an ^{apparently} ~~true~~ consenting relationship. However, many who are concerned with individual rights see this as an attempt

to "regulate sex." Others will maintain their interest is to prevent, limit or seek a reasonable end to conflicts of interest and that they have no interest in "regulating sex."

Many in the academic community are offended by any policy making with respect to sex; they feel demeaned and sullied to have the subject discussed in public. Often academics will deeply resent any intrusion of this topic into public discussion. Many in the academic community are disturbed by any implication that their college has an interest in their private lives. Further they are concerned that any institutional interest in consenting-adult relationships may foster McCarthyism among us.

Some believe that it will never be possible (and may not be desirable) to reach consensus on what is harassment, and would prefer to rely chiefly on an anti-favoritism policy or on a conflict of interest policy, in dealing with nearly all sexuality cases, since nearly all reported complaints arise in a supervisory context. Others find this point of view a cop out.

Some feel that if their institution has a conflict of interest policy that it should simply ask everyone to be sensitive to the feelings of others; that we "need platitudes." Others feel supervisors ^{who fall in love} should be asked to "ameliorate or get out of the conflict of interest in a reasonable period of time, if they fall in love with a subordinate." But still others feel this may not be possible with faculty and students and that in such cases the senior person should discuss the situation with a department head or a senior officer. The reporting recommendation however scares some of the community because it seems like the beginning of an

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an abrogation of the Fifth Amendment. These people would at most accept a reporting option: ("this is where to go if you want advice about falling in love with your student").

Some male faculty have asked for a conflict of interest policy to reassure their spouses and to give them a comfortable way of saying no to seductive students. At several universities groups of faculty wives have also requested such policies. Female and male students have often suggested that equal mentoring will be comfortable and acceptable for women only if conflict of interest policies are widely disseminated and discussed and understood. Others believe very strongly that such policies may frighten potential male mentors. All sides will cite eloquent examples.

Some feel we should spell out definitions of conflict of interest and harassment in considerable detail and seek to educate the community thereby. Others feel that university policies should be brief and general, like the U.S. Constitution, and that definitions and discussions belong in different places.

We have, in short, academic communities which care very much about harassment and the abuse of supervisory power. We have rather little consensus about the problems, how to see them or how to write policy about them. We must, I think allow for mistakes, in ourselves and others, as we try to deal in an area with many perceptions of truth.

DEALING WITH SEXUAL HARASSMENT: POLICIES AND PROCEDURES

Policies

Universities need clear-cut policies to support academic

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excellence without distortion. By written policies and the spoken word, administrators must take a stand on negative distortion, like harassment, and positive distortion, like sexual bribery and sexual favoritism. This needs to occur in a context of encouraging and enjoying cultural diversity and a powerful support to mentoring activities by men and women for men and women.

Substantive goals in this arena would include:

- . Community-wide discussion of harassment and favoritism and establishment of policies on these issues appropriate to each institution;

- . A commitment by administrators to try to prevent distortion of the academic process: by encouraging people to accept *only* reasonable differences in behavior from others; by taking a strong stand on abuse; by encouraging everyone to become much more sensitive as to how their behavior may affect others;

- . A public commitment by administrators to act effectively and responsively toward offended persons and with equal concern for the civil rights of offenders.

- . A widespread discussion and understanding of the laws about sexual harassment which affect each academic community.

Procedures

The goals for procedures to deal with these issues would include:

- . that everyone in the community knows about appropriate procedures and feels people's rights are responsibly protected;

- . that anyone (offended person or aggressor or supervisor-in-love) who has a question in this area has someone easy to go to,

in confidence.

The Appendices include examples of specific policies and specific informal and formal procedures and of a general harassment policy with a general informal-and-formal complaint procedure. Whichever route an administration takes, nearly all experienced observers agree that the availability of both the informal and formal procedures is essential.

The difference between formal and informal grievance procedures may itself vary from place to place. However most institutions would define a process as formal if there are to be written records, if there is any centralized institutional recording of a complaint, and if there is any reasonable likelihood of sanctions against alleged offenders. Raising the possibility of sanctions against an alleged offender should in addition always invoke the beginning of a process to inform the alleged offender of the complaint, and otherwise to protect that person's rights.

Every institution needs to make clear a recognition of institutional responsibility to try in reasonable ways to prevent abuse, to support offended persons and to deal unambiguously with proven offenders. It is not necessarily clear however how the latter steps may best be taken, in each individual case.

Various institutions have worked with different varieties of intervention, often some sort of informal address. This is often attempted where the offended person prefers this course, usually in non-criminal cases.* With trained, experienced intervenors it can sometimes help to have a senior person step in. In the usual case this third party investigates, admonishes, ^{and/or disciplines} the

*Where the offended person chooses this alternative, many institutions refer criminal cases to lawyers and courts, often via the college police office and/or university counsel.

offender where appropriate, no records are kept and everyone hopes for the best. Sometimes where the balance of evidence is appropriate, a written warning, a reprimand, demotion or withholding of a raise will ensue.

However, as indicated above, any third party intervention may make matters worse, at least as an initial step. In my own experience, the most effective action ^{in ambiguous cases} is for the offended person to go back to the offender, usually in writing.* (While many men hear a verbal "no" as "maybe" or "yes," no one in my experience has misinterpreted a written statement in this way.) This step often helps to establish more evidence, helps offended persons to learn to have more control over their lives, and is the most likely to protect the rights of the offended. Most important, this step nearly always works.

In writing this I do not at all mean to imply that the victim is necessarily to blame or that institutions need take no action. Indeed responsible action by offended persons is much more likely to succeed where administrators are known to be supportive. Moreover most offended people need personal support in writing a letter or taking other action and in coping with the pain and stress of the harassment itself.

The two most effective institutional ^{supports that I have seen} aids are referral to a responsible women's group, (sometimes an established, appropriate group, sometimes an ad hoc coming together of offended persons organized by a health care provider or women's center), and counselling (by a ^{health care practitioner} dean, other adviser or grievance person).

*See bibliography, Number , for a further discussion of this alternative.

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Counselling from whatever source should support the emotional needs of the offended person, help lay out all reasonable alternatives (including a discussion of possible institutional intervention), and aid the offended person with whichever alternatives are chosen. The counsellor must make clear also the institution's responsibilities toward ^{both the offended person} the offender(s) and what that implies.

It is important that a counsellor not rush to solution. Many offended people get in touch with their rage only slowly, especially in severe offenses, and need time--sometimes months of support--before they can make decisions with which they will later be comfortable. A counsellor should be especially sensitive to this possibility if the offense seems severe and the offended person chooses to take no action whatever, or if the offended person is being pushed hard by other people (in any direction).

If a counsellor simply supports the offended person to take action, or participates in some months of discussion, he or she may worry about institutional vulnerability to charges of inaction. This subject should be discussed if possible with university counsel. Usually careful personal notes, on each affirmation by the offended person about the alternative underway, will be considered adequate. A counsellor may also on occasion be troubled about his or her duty to warn (other) possible victims; this question definitely should be discussed with counsel.

Of course the most important process for dealing with sexual harassment has to do with community education and discussions, training programs, films, women's presentations, new faculty workshops and so on. Though beyond the scope of this chapter,

obviously what we need most of all is effective leadership toward encouraging diversity, sensitivity to other humans and genuine equality of opportunity for everyone, minorities and non-minorities, women and men.

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