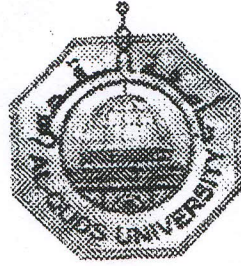


Al – Quds University

Deanship of Graduate Studies

عمادة الدراسات العليا

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**American Women and Equal Rights:
Sexual Harassment in the Workplace**

Zeina Mounir Barakat

Master Thesis

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Dedication

Dedicate this thesis for my Parents whose constant support and faith
throughout my studies.

Al-Quds University
Deanship of Graduate Studies
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Thesis Approval

American Women and Equal Rights:
"Case of Sexual Harassment at the Workplace"

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2005/2006

Dedication

I dedicate this thesis for my Parents whose constant support and faith were valuable to me throughout my studies.

Signed



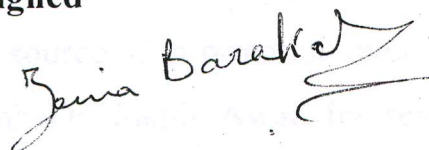
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Declaration

I certify that this thesis submitted for the degree of Master in Arts is the result of my own research, except where otherwise acknowledged, and that this thesis (or any part of the same) has not been submitted for a higher degree to any other university or institution.

Signed



Zeina Mounir Barakat

Date: September 2006

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Through the years I have spent studying for my masters at al-Quds University, I have become indebted to many people; some were active in guiding me throughout my studies; others offered much support and encouragement. In particular, I have been fortunate to have as my teachers and advisors two special people who provided much intellectual guidance and academic assistance during my work on this thesis: Professor Mohammed S. Dajani and Professor Munther S. Dajani. Both were a rich source of information over the past three years. Also, I would like to thank Dr. Samir Awad for reviewing the thesis and giving me valuable suggestions and helpful comments.

No doubt, I have benefited very much from my trip to Brandeis University, Massachusetts, in March 2006, as well as my visit to Washington, D. C. in April 2006, in the development of my ideas as a result of my consultation with Brandeis University faculty and procuring important reference material from its library and the bookstore.

ملخص

تتطرق هذه الدراسة الى موضوع نضال المرأة الامريكية منذ مطلع الثورة الامريكية ضد بريطانيا وتناقش الدور الذي لعبته من اجل تحقيق مطالبها والحصول على حقوقها وامتيازاتها الذي منحها لها الدستور الامريكي الذي اقر في عام 1791. ولكن وعلى الرغم من حصولها على حقها في التصويت عام 1920 الا انها عانت الكثير من التمييز ضدها وخاصة في مكان العمل.

ولم يكتف الرجل الامريكي في انه لم يمنحها اجورا متساوية كالرجال وجعلها تعمل في ظروف صعبة دون الاخذ بعين الاعتبار كونها زوجة وام ومربية، بل عانت المرأة الامريكية بالاضافة الى ذلك من التحرش الجنسي خاصة في الاحوال التي تكون فيها المرأة تتمتع بالجمال والجاذبية وكونها في اشد الحاجة للعمل لتغطية مصاريفها ومصاريف عائلتها. فتدخل المشرع واصدر عدة فوانين اهمها قانون الحقوق المدنية لعام 1964 يرغم فيها الشركات والمؤسسات على التعامل مع المرأة باحترام ومساواة ومنحها كامل حقوقها في مكان العمل.

وبرزت ظاهرة التحرش الجنسي في مكان العمل كسلوك مخالف للقانون في الولايات المتحدة الامريكية خلال العقود الثلاث المنصرمة. وفي البدء لم تكن هنالك قوانين خاصة بذلك فلجأت المحاكم لقانون 1964 للحقوق المتساوية الذي يمنع التمييز ضد المرأة. ثم نظم الكونجرس عدة قوانين خاصة بالتحرش الجنسي كسلوك مخالف للقانون وعملت المحاكم على تطبيق هذه القوانين مما لعب دورا كبيرا في الحد من ذلك. والمشكلة التي واجهت تطبيق هذه القوانين عدم وجود تعريف محدد لما يعنيه اصطلاح التحرش الجنسي واتساع هذا المفهوم الذي لم يقتصر فقط على اللمس الجسدي ولكن تعداه الى الإشارات والنظرات والتحديق مما له معاني التحرش الجنسي.

Abstract (In English)

This study probes the struggle of women in American society to achieve their rights focusing on the problem of sexual harassment as a case study. It looks at American women in their roles as citizens and professionals in the workplace. Then it investigates the different, and often contradictory, ways in which feminist women define what is in their best interests as women and analyze the processes by which they organize to act in concert in pursuit of public policies that serve those interests in an environment dominated by the other sex.

Understanding of sexual harassment has been evolving for some three decades, since it was identified as an unlawful employment practice of the Civil Rights Act of 1964. Legal interpretations of this broad concept (which has since been recognized by the U. S. Supreme Court and Congress as a form of Sex Discrimination) encompass behavior ranging from suggestive looks to rape. Finally, it studies the impact of male dominance in the work place on the working woman and the ways women had struggled to overcome sexual harassment in the workplace legally.

The thesis begins with an overview of the development of sexual harassment as a workplace problem, followed by a summary and evaluation of legal conceptualizations of sexual harassment, and legal strategies to combat sexual harassment at work. The American culture tries to ignore the problem of sexual harassment and victims of sexual harassment feel sensitive about raising the issue in order not to be accused that they encouraged this behavior.

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Definition of Terms

Defining "Sexual Harassment"

The definition of sexual harassment has always been a key topic for feminists who seek to provide women with a political vocabulary with which to resist male oppression. Men and women disagree about what constitutes sexual harassment. This makes it difficult to measure sexual harassment in order to punish those who commit this offense. Therefore, contributors to the sexual harassment debate have been concerned how to define "sexual harassment," and what constitutes "sexual harassment."

Sexual Harassment is generally defined as an offense that occurs when job opportunities, promotions, salary increases, even the ability to retain one's job depends on whether an employee complies with demands for sexual favors.

Sexual Harassment is also defined as "any unwanted and unwelcome behavior of a sexual or gender-specific nature that interferes with a person's ability to work, get an education, or do a ministry". Three important elements are:

1. The behavior is unwelcome or unwanted.
2. It is of a sexual nature or is gender directed.
3. The impact of the behavior interferes with the ability for someone to do a job, receive an education, or to do a ministry.

Sexual harassment may take a number of forms.

- ? **Visual:** leering; making sexually explicit gestures; displaying sexually explicit objects, pictures, posters, or pinups.

- ? **Verbal:** derogatory comments, epithets, slurs, jokes; unwelcome sexual advances, propositions, or demands for sexual favors; unwelcome comments about an individual's body or appearance.
- ? **Physical:** unwanted touching, such as patting, pinching, hugging, brushing against another's body, physical assault.

Thus, examples of sexual harassment include:

1. Uninvited touching or hugging
2. Requesting sexual favors for rewards related to work
3. Suggestive jokes of a sexual nature
4. Sexual pictures or displays
5. Continuing unwelcome flirtation or propositions
6. Obscene gestures or sounds
7. coerced kissing or fondling
8. Written notes of a sexual nature

According to guidelines issued by the Equal Employment Opportunity Commission, sexual harassment may be described as unwelcome sexual advances, requests for sexual favors, or other physical and expressive behavior of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; or such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or of creating an intimidating, hostile, or offensive employment or educational environment.

Not everyone agree as to what constitutes sexual harassment. However, sexual harassment can be: men against women, women against men, women against women, or men against men. For one who feel they may have been harassed, there is often that same self-doubt that frequently plagues victims of sexual assault/abuse: Did I encourage it? Was it my fault? Am I being too sensitive? People suffering sexual harassment report negative consequences including psychosomatic symptoms, loss of self-esteem, and interference with private life as well as negative impact on their careers.

Legal Definition of Sexual Harassment:

Sexual harassment under U. S. Federal law is generally defined as unwanted sexual contact of two main types:

(a) quid pro quo harassment which occurs when employment is conditioned on the submission to unwelcome sexual advances, pressure to trade sexual favors in return for some reward (job, promotion, grade);

or (b) hostile environment harassment: behavior that creates an intimidating or offensive working environment; unwelcome sexual conduct that was severe or pervasive enough to create an abusive environment for the employee.

Sexual harassment can occur in a variety of circumstances.

- ? A victim may be a woman or a man and may be of, or not of, the same gender as the harasser.
- ? A victim may be any individual affected by the offensive conduct, not just the person to whom the harassment is directed.

- 2 A harasser may be a victim's supervisor, a supervisor in another area, a peer, a member of the staff or faculty, a colleague, a student, or a College vendor or contractor.

If the abuse involved sexual harassment in the workplace, the employer may automatically be held responsible if the abuse was perpetrated by a supervisor and will also be found responsible if the employee can establish that the employer knew or should have known that employees were at risk of harassment or abuse from the co-employee. A plaintiff, under certain circumstances, may also be able to bring an action against the employer of a perpetrator or someone who failed to take sufficient action to protect the public from a perpetrator. This can only be determined on a case by case basis.

Some experts assert that sexual harassment is primarily an issue of power, not sex occurring when a person with power abuses that power. In her book, *Sexual Harassment in America* (1999), Laura Stein explores the definition of sexual harassment and the developing awareness of the concept in the late twentieth century¹. According to Barbara Sinclair Deckard, sexual harassment is "men's way of asserting their supremacy, of warning women to stay in their place." Such experiences "leave women feeling not just sexually used but psychically put down. The essence of such situations was not sex but domination."²

Definitions of Other Related Terms:

¹ Laura Stein, *Sexual Harassment in America*. (Westport, CT; Greenwood Press, 1999).

² Barbara Sinclair Deckard, *The Women's Movement: Political, Socioeconomic, and Psychological Issues* (New York: Harper and Row, 1979), p. 430.

- ? **Affirmative Action:** Programs through which businesses, schools, and other institutions expand opportunities for women and other minority groups.
- ? **Equal Rights Amendment (ERA):** A constitutional amendment which was not ratified by a majority of the states. It was first presented to Congress by the National Women's Party in 1923, declaring that "equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex." In 1972 The Congress passed the ERA but it was not ratified by the states.
- ? **Feminism:** Feminism means many things to many people. It is a "doctrine advocating the granting of the same social, political, and economic rights to women as the one granted to men"³. The word *feminisme* was first coined in France in the 1880s and referred to a social movement for women's rights. The view, articulated in the 19th century, that women are inherently equal to men and deserve equal rights and opportunities. The development of feminism has been rapid since 1945 but was articulated much earlier by Mary Wollstonecraft and Virginia Woolf. More, a social and political movement that took hold in the United States in the late 1960s, soon spreading globally. It was not used widely by women until the 1970s when

³ See Ginette Castro, *American Feminism: A Contemporary History* (New York; New York University Press, 1990); Jo Freeman (editor), *Women: A Feminist Perspective*, Second Edition, (Palo Alto, CA: Mayfield Publishing Company, 1979).

CHAPTER I

INTRODUCTION

“Man may work from sun to sun, but women’s work is never done.”

Anonymous saying

This chapter introduces the thesis by presenting the background of the research. It also presents the research statement, objectives, significance, problem, hypothesis, methodology, boundaries, limitations and definitions of terms.

a. Research Statement

When the new United States Constitution was finally approved in 1787 women lost the legal ground to be equal to men. Until well into the 20th century, women in the United States lived under many legal disabilities. As a result, women in American society do not feel safe and violence against them occur with alarming frequency. “This violence is not inevitable; its roots lie in gender stereotyping and unequal power.” When one gender dominates, the stage is set for the kind of violence this thesis explores – sexual harassment at work..

This thesis examines sexual harassment on the job. Sexual harassment is unwelcome behavior of a sexual nature. It is about the abuse of power. Since there is no single definition, the test is how the recipient feels about the behavior. The vast majority of complaints of sexual harassment have been by women against men - it has been estimated that nearly 50% of women in employment are affected by such harassment. It doesn't only

happen to women in offices or those employed with large groups of men, but to women in every occupation, of every age group, and from every community. I will argue that the United States poor record of sexual harassment law enforcement and the companies compliance cannot be explained solely by reference to specific aspects of the law, but rather, is a result of the very nature of the American social, political, economic, and legal system.

a. Research Objective

The objectives of this research are: (a) To explore the forces that have negatively affected women's status and economic as well as political powers in the United States; (b) To survey the major developments for the American women's struggle in various fields such as politics, education, work, religion, military and law, to achieve equal rights with men; (c) To examine women's past and present working experience in the United States; (d) To examine and analyze the wide spectrum of the issue of sexual harassment at work.

b. Research Significance

Personally, the topic of this thesis is of great interest to me as a working woman, though I am working on it for personal enlightenment, but at the same time to make a contribution to public knowledge. Generally speaking, the problem of sexual harassment has much significance in women's life. Research on the struggle of American women to achieve equal rights and to defend their integrity in the workplace carries much significance, particularly since, as Catharine MacKinnon begins her book, *Sexual Harassment of Working Women*, "sexual harassment of working

women has been one of the most pervasive but carefully ignored features of our national life.”

Sexual harassment in the work place is widespread in different societies. According to the Working Women’s Institute, “Sexual harassment is the single most widespread occupational hazard women face in the workforce.” Today, sexual harassment remains widespread in both corporate and academic communities. Sexual Harassment on the job must be brought into the open for discussion and control if women are to have equal opportunities at work, expectations about equal salary, and fair reward for competence. Women need to be assured that their work environment will be openly free from intimidation and undesired sexual behavior from those with the power to hire, promote, and fire.

Thus it is important to understand this phenomena experienced by the working woman, the challenges it presents in the workplace, and the quest to remedy this problem.

This topic is considered a taboo in Arab society. There no laws in most Arab countries that prohibited sexual harassment in the workplace. That is why, this research has profound significance for Palestinian working women whose culture forbid them from bringing this problem to the open or in public. It may encourage some victims to talk about the problem.

Thus this research carries much significance due to the scarcity of books published in Arabic about the problem. I hope to translate this thesis to Arabic and publish it since I could not find any book in Arabic dealing with this sensitive issue.

c. Research Problem

The sexual harassment controversy has raised several questions: What exactly constitutes sexual harassment? How does the American culture deal with sexual harassment? Does sexual harassment affect the women’s

frame of mind regarding work and employment? How did sexual harassment become an illegal form of sex discrimination? How can prevention measures reduce sexual harassment? What are the challenges which the American women face to overcome sexual harassment? Is an employer liable for hostile work environment sexual harassment committed by supervisory employees who use their supervisory status to sexually harass their employees? To what extent would an employer be responsible for the actions of his employees who engage in sexual harassment without his knowledge?

This research focuses on finding answers to the following central and subsidiary related questions: The central question is: Does the entry into the work force of large numbers of American women explain the jump in sexual harassment rates? Is this problem social, cultural, or just power politics? The subsidiary questions are: Are women seeking work primarily for psychological rather than economic rewards and so to avoid sexual harassment they ought to stay at home or work from home? How does the law remedy sexual harassment? How effective are Title VII of the Civil Rights Act of 1964 and the United States Supreme Court ruling that sexual harassment violates Title VII of the Civil Rights Act of 1964 in curbing sexual harassment? Would more public awareness of the problem help alleviate it?

d. Research Hypothesis

The origin of the term is from Latin, meaning “subject for a speech”, from Greek hypothesis, “proposal, supposition”, from hupotithenai, hupothē-, to suppose. Hypothesis. A hypothesis “is a declarative sentence that states that a specific relationship exists between two or more phenomena.” It is a “tentative explanation for an observation,

phenomenon, or scientific problem that can be tested by further investigation; something taken to be true for the purpose of argument or investigation; an assumption; an antecedent of a conditional statement. In general, a hypothesis is “a tentative supposition with regard to an unknown state of affairs, the truth of which is thereupon subject to investigation by any available method, either by logical deduction of consequences which may be checked against what is known, or by direct experimental investigation or discovery of facts not hitherto known and suggested by the hypothesis”.

This research examines the hypothesis that, “The more the number of women entering the job market rises, the more the cases of sexual harassment increases; however, the more this illegal act is exposed and the laws outlawing it more strictly enforced, the less the cases of sexual harassment.” This hypothesis states that there is a specific relationship between two variables: (1) sexual harassment on the job, and (2) the number of women entering the job market. In addition, the hypothesis describes the nature of that relationship: an increase in the second variable is associated with an increase in the first. Furthermore, this hypothesis states that there is a specific relationship between the other two variables: (1) sexual harassment on the job, and (2) the law enforcement of sexual harassment cases. The hypothesis describes the nature of that relationship as such: an increase in the second variable is associated with a decrease in the first. This hypothesis will be tested by collecting and examining data on women employment and sexual harassment cases to see if indeed such a relationship exists.

The thesis also investigates the hypothesis that women may avoid sexual harassment at work by not working and staying at home since it is claimed they do not need to work because they are supported either by their parents when they are single or by their husbands when they are

married. In support of this hypothesis, the mass media fiction in the 1930s, and early 1940s, presented employed women as “selfish and destructive to their families.” Women who are housewives it is argued can expand their work roles in many ways other than through participation in the paid labor force outside their homes.

In the early industrial era, working condition was hard and hours were long. Working-class women were increasingly devalued by their continued participation in activities men had taken over because these activities were regarded as demeaning for women. American male working class whose wages was sufficiently high encouraged their wives to withdraw from the marketplace “to pursue the goal, often elusive, of equipping their children to join the middle class.” The tendency of women to specialize in college in areas which have few employment opportunities, such as the arts and humanities, has contributed more to the number of educated women who work primarily in the home rather than in the paid labor market. This encouraged the negative “perception of education for women as a luxury”. The young single white women worker was not fully integrated into the workforce because it was assumed that she is working only temporarily - until she gets married. Older single women workers were considered “spinsters”- women who had been unsuccessful of getting a husband and who had substituted work for family life.

Furthermore, the research examines the related hypothesis that unemployment is an experience of no great consequence to women and have no impact on the lives of women, and unemployed women do not suffer from the conditions of poverty and the feelings of deprivation and unhappiness felt by the unemployed male; so women can spare themselves from being sexually harassed at work by staying at home and sticking to the traditional female role of homemaker.

Two types of hypotheses are commonly used in the social sciences: causal and relational hypotheses. Causal hypotheses attempt to show that one phenomenon causes another. Relational hypotheses, on the other hand, are statements that indicate whether two phenomena are related in a specific way, without demonstrating that one causes the other. Testing the above hypotheses about women entering the job market rate and sexual harassment cases will only indicate if a relationship exists between the two factors, not that rise in employment of women causes sexual harassment. Relations between hypotheses may be either positive or negative. A positive relation exists when an increase in one variable is associated with an increase in another. A negative relation exists when the existence of one variable coincides with the decrease of another. Thus a negative relationship exists between the other two variables: (1) sexual harassment on the job, and (2) the law enforcement of sexual harassment cases. An increase in strict enforcement of the law may result in a decrease in sexual harassment cases.

Because hypotheses are constructed to find out what relationship, if any, exists between the two variables, in order to test the hypotheses we need to measure the amount of change that occurs on sexual harassment cases when more law enforcement is exercised over a certain period of time.

e. Theoretical Framework

“One of the principal objects of theoretical research in my department of knowledge is to find the point of view from which the subject appears in its greatest simplicity,” wrote Willard Gibbs (1839-1903) The thesis employs a theoretical framework based on feminism theory for understanding present research and for guiding future research; this is important because in this context variables seem to operate differently in

international versus American areas.

Feminist research is a particular model of social research which involves theory and analysis that highlight the differences between men's and women's lives. However, feminist research is undertaken with a political commitment to the identification and transformation of gender relations.

Feminism is a diverse collection of social theories, political movements, and moral philosophies. Some versions are critical of past and present social relations. Many focus on analyzing what they believe to be social constructions of gender and sexuality. Others focus on studying gender inequality and promoting women's rights, interests, and issues.

Feminism is not a single ideology, but is rather characterized by a diverse set of perspectives and movements advocating social and cultural equality of the sexes, and promoting the political rights for women equal to those of men in all spheres and all aspects of life; an organized movement for the attainment of these rights; It has a strong belief in the necessity of large-scale social change in order to assert the power of women.

Feminism constitutes a range of contemporary theoretical perspectives (political, sociological, legal, psychoanalytic, literary, philosophical) in which women's experiences are examined in relation to actual and perceived differences between the power and status of men and women; it is viewed by many as a social justice movement in which issues of particular importance for women (e.g. domestic violence, pay equity, globalization) are analyzed, understood, and addressed from feminist perspectives. It is a philosophy embracing economics, politics, literature and indeed every aspect of the humanities, which seeks to posit women on an equal footing with men; and in doing so to show how men have established and reinforced their historical dominance.

f. Research Methodology

No specific methods are seen to be particularly feminist, but the methodology used is informed by theories of gender relations. In general, the case study methodology will be used in this research to study sexual harassment as part of the struggle of women in the United States to achieve equal rights and to protect themselves from sex discrimination in the workplace. My choice of methodology is to use the historical chronology - moving successfully from landmark cases to the present, as well as the statistical method for analyzing data to examine the impact of the increasing number of women entering the job market as related to sexual harassment at work. My study will incorporate a comparative approach to study the impact before and after. In addition to their value as theoretical frames of reference, these approaches offer unique methodological incites for procedures of data collection and analysis.

g. Research Boundaries

This thesis is restricted by two boundaries: the first is the geographic boundary which covers the United States; the second is the time boundary. Though the discussion of women rights covers a longer historical period beginning from the days of independence and the U. S. Constitution of 1791, the sexual harassment research begins in the late 1970s and covers it till the present.

h. Research Limitation

I have tried in my research to safeguard against potential personal biases that I may hold. Being a young Arab Palestinian Moslem woman, all observations, analysis and interpretations are filtered and influenced by

my social, religious, and cultural views, values, and perspectives.

Another major limitation to this research is being a Palestinian woman who have not resided in the United States with no personal experience what an American woman would go through in her daily life as a daughter, as a student, as a wife, and as a professional searching for work and actually employed in the job market.

A third limitation to the research stems from the fact of residing in Palestine without much access to the relevant data and information needed to tackle the problem; also, to meet American women with long working experience whom one would conduct interviews, ask questions and seek answers. This research would have covered the topics discussed in more depth has there been more resources available for me to conduct the study.

A fourth limitation is growing up in a society that does not understand the American culture, history and experience. From this context, Palestinians view sexual harassment as a result of the permissive nature of American society.

The fifth limitation is the lack of agreement on a common definition of sexual harassment. Scholars, academicians, and legal experts disagree about what constitutes sexual harassment and how to deal with it. This factor makes it more difficult to measure sexual harassment, particularly verbal harassment. For instance, when an employer walks in his office and greets his secretary by saying to her: “Oh, how beautiful you look this morning! What a lovely dress!” Would that constitute sexual harassment?

The sixth limitation may be that the problem is too sensitive and too controversial and women do not like to talk about it.

In my research, I have tried to overcome these limitations, though I admit my efforts at times may not have been totally successful.

CHAPTER TWO

REVIEW OF LITERATURE

“The family is not our world – the world is our family.”

- Anonymous

This chapter provides a thorough literature review of books dealing with the topic of research. It undertakes a full critical appraisal of relevant scholarly publication, literature and books to outline what has been done in this field of research. This literature review will have twofold purpose: the first is to study which major books dealt with feminism and the struggle of women to achieve equal rights, focusing on American women; the second deals with the major works on sexual harassment on the job in

the United States.

There is a flourishing literature in the field of equal rights movement. In her pioneering essay, *A Vindication of Rights of Women* (1792), Mary Wollstonecraft used the same ideas by which the Founding Fathers justified the American Revolution to legitimize the sexual revolution. Her essay, known throughout the 1800s as the "*feminist bible*," had been written to refute Edmund Burke's recently published essay, *Reflections on the Revolution in France* (1790), which denied the legitimacy of the revolution. Mary Wollstonecraft believed that the rights of man should be extended to include women. Her pioneering essay discussed woman's place in society in political terms. Wollstonecraft began her book by asserting that God had given "*natural rights*" to both sexes. Just as it was not God's intention for men to be enslaved by tyrants, so too, she claimed, it was not God's intention for women to be enslaved by men. Furthermore, she concluded, just as French and American men were justified in rising up against unjust monarchs, so women were justified in revolting against the tyranny of husbands, fathers, and brothers.

Author editor, literary critic, journalist, and poet, Margaret Fuller (1810-1850) is remembered as America's first true feminist. Her controversial book, *Women in the Nineteenth Century* (1845), transmits her values and belief in justice and equality for all human beings, with a particular focus on women. Her notion of equal rights includes those of an educational, economic, and legal nature, but more importantly, intellectual and attitude changes towards women by men and women. The book is a classic of feminist thought that inspired her contemporaries Elizabeth Cady Stanton and Susan Anthony to speak of Fuller as possessing "more influence upon the thought of American women than any woman previous to her time."

Simone de Beauvoir classic work *The Second Sex*, published in 1949, is the definitive statement of second-wave feminism. She gave women responsibility for their own lives, providing the theoretical basis for late twentieth-century feminism's discussion about romance as an important source of the psychological dependence and consequent subordinator of women.

American feminism literature argues that the American society is best described as a patriarchy, a male hegemony, in which the dominant male works to keep women submissive. They argue that all American institutions, from the state to the family to the grade schools, perpetuate dominance. American feminist writers include Gloria Steinem, Patricia Ireland, Susan Faludi, Marilyn French, Naomi Wolf, and Catherine MacKinnon. However, it was Betty Friedan's famous classic book, *The Feminine Mystique*, published in 1963, that encouraged many women to question the traditional assumptions and to assert their own rights. Friedan led the feminist revolution that swept the United States and, later, other countries in the 1960s and 1970s. *The Feminine Mystique* provided a call that led to heightened consciousness among women and, in consequence, to the establishment of a number of important national women's organizations in the United States. It identified the "problem that has no name," the trap of the educated American housewife whose aspiration were stifled with the four walls of the home. Friedan urged her peers to leave their homes, pursue careers, and reject the stifling constraints of post war domesticity. The book was the first statements to pave the way for the new feminist movement that would soon erupt.

Susan Faludi's bestselling book, *Backlash: The Undeclared War Against American Women* (1991), is a methodically researched and documented work challenging conventional wisdom about the American

women's movement and women's gains in achieving equality in the latter years of the twentieth century. Faludi begins the book by looking carefully at then-current myths about the status of women, including the press reports that single career women are more likely to be depressed than other women, that professional women are leaving their jobs in droves to stay at home, and that single working women over age thirty have a small chance of ever getting married. Not only are these myths not true, says Faludi, but they are evidence of a society-wide backlash against women and what they have achieved in recent years. She describes this backlash as a "kind of pop-culture version of the Big Lie" and declares that "it stands the truth boldly on its head and proclaims that the very steps that have elevated women's positions have actually led to their downfall."

In her book, Faludi takes the press to task for failing to challenge the myths about women in the 1980s and especially for spreading, through "trend journalism," stories about how unhappy women are, despite their having reaped the benefits of women's liberation in the 1970s. Faludi challenges the prevailing wisdom that the women's movement is to blame for women's unhappiness; she believes their unhappiness actually stems from the fact that the struggle for equality is not yet finished. Faludi uses data from a wide variety of sources, such as government and university studies, newspapers, census reports, scholarly journals, and personal interviews to explore women's status in the 1980s. The personal interviews offer a look at the individuals who are behind the "backlash" and, according to Faludi, are hindering women's progress. Faludi begins by stating that, though many may agree that the end of the twentieth century is a good time to be a woman, press reports and surveys indicate that women are unhappy with their lives. Often, this is blamed on a variety of factors related to feminism, such as women working outside the

home. “Women are enslaved by their own liberation,” claim many commentators who argue against feminism. But Faludi disagrees, arguing instead that women are unhappy because the real work of achieving equality has barely begun. She uses statistics that show that women still make less money and hold more low-status jobs than men and that domestic violence and rape are on the rise,

In her book *Ending Affirmative Action: The Case for Color-Blind Justice* (1996), Terry Eastland argues for a race-neutral, color-blind policy in the United States contending that affirmative action results in unfair treatment and only serves to foster racial resentment.

In the last decade, numerous excellent studies on Middle Eastern and Palestinian women that present new feminist perspectives and views and challenging the stereotypes of the Arab women focusing on gender and power, have been published. Mervat Hatem’s article on gender and the state, published in *A Social History of Women and Gender in the Modern Middle East* (1999), argues that past studies of the nineteenth and twentieth centuries almost exclusively have associated state-sponsored modernization with the progress and empowerment of women and seen “traditional” elements, including Islam, patriarchy, and tribalism as obstacles in the way of the promises of modernization.

Julie Peteet in her book, *Gender in Crisis: Women and the Palestinian Resistance Movement* (1992) states that none of the Palestinian Resistance factions focused clearly on the problem of women’s subordination, much less articulated a program of change. Peteet demonstrates certain aspects of their political and social programs, most notably their commitment to popular mobilization and to the development of political consciousness among a broad segment of the population, could not but lead to the mobilization and politicization of women. And it

was these women, encouraged to attend meetings and workshops, to participate in the defense of their homes or even in distant armed struggle, who began to develop not only the nationalist or class consciousness envisioned by their cadres, but also a new consciousness of their problems as women.

A unique gender perspective of the social history of the Palestinians in the occupied territories is presented in *Palestinian Women: Identity and Experience* (1993), edited by Ebba Augustin. The book discusses the roots of the role of women in the first *intifada* probes into the culture and the daily experience of Palestinian women who weave it.

The literature on women's labor-force participation surged in the 1980s. Compared to their peers of two decades ago, young American women in the 1980s felt more secure about their chances for active and full participation in areas that had been male domains. In their career expectations, and their expectations for work and family lives, young women began to have ambitious hopes and plans – closer to those traditionally held by young men of the same age group. In their book, *Women and Work: Problems and Perspectives* (1982), Rachel Kahn-Hut, Arlene Kaplan Daniels, and Richard Colvard, explore the issues, problems, and opportunities that exist for a growing number of women. The book examines the origins of contemporary expectations for women's work, and identifies the consequences and implications of these expectations.

Mary Frank Fox and Sharlene Hesse-Biber, in their book, *Women at Work* (1984), take a deep look at labor-force participation by American women. They explore the impact of economic, legal, social, educational, and political factors on women's employment and career options. They examine sex-role patterns, the types and status of jobs held by women,

the role of work in the lives of minority women, and strategies for improving opportunities for women in the labor force.

In *Women and Unions: Forging A Partnership* (1993), more than forty scholars and activists consider how women and unions can best serve each other and themselves. They discuss ways to close the wage gap and to meet family needs. They explore both the opportunities and the danger of temporary and part-time work. They debate the implications of women moving into union leadership.

Sexual harassment - unwanted, unsolicited, and no reciprocated sexual behavior or attention - of working women has been widely practiced and systematically ignored. Large number of women experience sexual harassment. Surprisingly, however, this subject was rarely discussed openly until the mid-1970s. Most books about the different aspects of sexual harassment are written for practicing attorneys, as well as for academics and practitioners. In 1979, Catherine MacKinnon in her book, *Sexual Harassment of Working Women*, was among the first to attempt to document the frequency of sexual harassment experienced by working women and to propose definitions and remedies. MacKinnon study of sexual harassment in the work place offers a serious attempt to understand sexual harassment as a pervasive social problem and to present a legal argument that it is discrimination based on sex. Beginning with an analysis of victim's experiences, she then examines sex discrimination as a whole, both for its potential in prohibiting sexual harassment and for its limitations.

Titus Aaron, with Judith A. Isaksen in their book, *Sexual Harassment in the Workplace: A Guide to the Law and a Research Overview for Employers and Employees* (1993), present an overview of the Civil Rights Act of 1964 and the research and legal opinions on sexual

harassment in the workplace. Definitions and perceptions of prohibited practices are discussed, as are effective responses for employers and employees. Recent court decisions, both state and federal, are covered in depth.

Shereen G Bingham, (Ed.) in her book *Conceptualizing Sexual Harassment as Discursive Practice* (1994) offers a discursive conceptualization of sexual harassment. Contributing scholars in this volume focus on everyday communication activities to explain how sexual harassment practices reproduce or transform oppressive conditions.

Clare Brant, and Yun Lee Too. (Eds.) in their scholarly book *Rethinking Sexual Harassment* (1994) takes an interdisciplinary and multidisciplinary approach to the topic. The three sections are called "Stories," "Categories," and "Contexts." The purpose of the book is to highlight the complexity of the issues that are covered by this term.

Constance Jones, in *Sexual Harassment* (1996), gives a general account of the issues of sexual harassment including a chronology of developments and a list of people who figure in the development of laws against sexual harassment, a guide to further research including a bibliography and list of organizations and agencies, and indices that contain the basic documents that define the legal concept of sexual harassment.

Anita Hill, in her book *Speaking Truth to Power* (1997), reflects on events before, during, and after her astonishing testimony in the Clarence Thomas hearings, offering for the first time a complete account that sheds new lights on this watershed event. In October of 1991, when Judge Clarence Thomas was nominated to the Supreme Court, Dr. Anita Hill, a former aide, told Federal Bureau of Investigations official that Thomas had sexually harassed her while she served beneath him. Hill's

accusations were leaked to the media by the Democratic Party. Though Anita Hill was already gone and serving on the faculty of the University of Oklahoma by the time that the stories leaked to the media, she returned to testify before the Senate Judiciary Committee and revealed that Thomas has allegedly verbally harassed her. During the hearings, Clarence Thomas' supporters tried to paint Hill as a sexually voracious, spurned woman. She describes the shame of relating Thomas' remark, "Who put a pubic hair on my Coke?" to the Congressional Committee: "At once, I was twenty-five years old again," she writes. "By that time I had had several jobs and worked with many different people, but never before had anyone ever uttered such an absurdly vulgar and juvenile comment to me. Disgusted and shocked, I could only shake my head and leave the office. I heard him laughing as he closed the door." Clarence Thomas, who was in charge of the agency that dealt with sexual harassment, denied the accusations and was essentially cleared of the charges by the United States Senate. However, this highly publicized event sparked much debate throughout the nation on what exactly constitutes "sexual harassment."

Francis. Achampong, in *Workplace Sexual Harassment Law: Principles, Landmark Developments, and Framework for Effective Risk Management* (1999), provides accurate and comprehensive information about workplace sexual harassment law and legal interpretation. The book covers evolution and principles of workplace sexual harassment law; it enumerates and describes landmark developments in sexual harassment law; and provides a legal framework for effective risk management.

In her book, *Sexual Harassment in America* (1999), Laura Stein provides a comprehensive history that explores legal prohibitions on sexual harassment, examining important historical cases, while focusing

on current areas of controversy, such as same-sex harassment and free speech issues. Political and social aspects of sexual harassment are examined through legal cases that defined and prohibited it. This book provides key primary documents on contemporary issues, mostly key court decisions on sexual harassment issues, supplemented by regulation and reports, statutes, and portions of Congressional debate.

In contrast, the study *Sexual Harassment at the Workplace in the European Union* (1999) concludes that 40% to 50% of employed women receive unwanted sexual proposals, mostly verbal harassment. The harassers are overwhelmingly men. All people suffering sexual harassment report negative consequences including psychosomatic symptoms, loss of self-esteem, and interference with private life as well as negative impact on their careers.

The focus of Wanda Dobritch, and Steven Dranoff's book, *The First Line of Defense: A Guide to Protecting Yourself Against Sexual Harassment* (2000) is corporate climate. The authors write that the corporate climate facilitates or inhibits sexual harassment and that responsibility for the climate rests with management, specifically with the CEO. Persons who are being harassed may agree with this analysis. The book offers an analysis of responses to a scenario of sexual harassment used in a training program devised by the authors.

Confronting Sexual Harassment (2005) by Anna-Maria Marshall examines the relationship between law and social change in the context of employees' everyday problems with sexual harassment. The book elaborates a framework for studying the role of law in everyday acts of resistance – what the author calls the legal consciousness of injustice.

CHAPTER THREE

AMERICAN WOMEN AND EQUAL RIGHTS

This chapter outlines the evolving role of women in American society; it examines how women equal rights in the United States have been influenced by the political, social and economic evolution and development. It examines how these developments have produced effects that worked for the goal of equal rights.

Women's status during America's history has undergone dramatic changes over the years. In American history two minority groups has been

engaged in major struggles to fight discrimination and to gain their rights: Blacks and Women. In the early years after independence, women had no political rights. When European women came to the New World in the early days of colonial settlement their life consisted of hard physical work in the house and in the field. In addition to women's traditional work in the house that included giving birth to children and raising them, providing food, clothing, shelter, she had to labor in the field or take care of the cattle and chickens in the barn. Colonial American society did not support the idea of equality between men and women. European men brought with them to America the belief in female inferiority. The traditional view and social customs that colonists brought with them from Europe asserted women's subordinate position. Women were to marry, tend the house, and raise a family. When a woman took a husband she lost what limited freedom she might have had as a single adult. Those few married women who worked for pay could not control their own earnings. Most could neither buy nor sell property or sign contracts; none could vote, sue when wronged, defend themselves in court, or serve on juries. In the case of divorce, women lost custody of their children and any family possessions. However, the wild life in colonial backward America gave women some freedom and independence. Women acted as educators to the children and encouraged men to establish schools and churches. They played a large role in tying men to the farmland.

Historically, American liberals have been advocates for women's equality and have affirmed the leadership gifts of women because of the philosophy advocated by European philosophers of the eighteenth and nineteenth century regarding the equality of women and men. In the 20th century, the American women won the right to vote and increased their educational and job opportunities. Although women in the United States have been considered naturally, physically and intellectually inferior to

men unable to perform work requiring muscular or intellectual development, nevertheless, when they were allowed personal and intellectual freedom, women made significant achievements.

American men made no effort to share political power with women. Nevertheless, American women felt that they had a right and a duty to participate in the political events of their time and region. The first political cause in which American women became actively engaged was in the American war of independence from Britain. The Daughters of Liberty called for boycotting British goods during the early days of the American Revolution, urged women not to buy British products and to make their own clothes and food. They improvised a drink of herbs and leaves to replace the famous English tea and eventually made Americans switch to coffee.

During the Revolutionary War, women contributed in virtually every capacity, from doing fieldwork at home to fighting on battlefields. But their pleas for rights under the new democracy were disregarded. The second political cause in which American women became actively engaged was to abolish slavery. Some women saw parallels between the position of women and that of the slaves. In their view, both were expected to be passive, cooperative, and obedient to their master-husbands. With the Union victory in the Civil War, women abolitionists hoped their hard work would result in suffrage for women as well as for blacks. But the 14th and 15th Amendments to the Constitution, adopted in 1868 and 1870 respectively, granted citizenship and suffrage to blacks but not to women.

During the 19th century, women in the United States organized and participated in a great variety of reform movements to improve education, to initiate prison reform, to ban alcoholic drinks, and, during the pre-Civil

War period, to free the slaves. Women in the abolitionist movement spoke out against slavery at public meetings. Some male abolitionists supported the right of women to speak and participate equally with men in antislavery activities.

A. Women's Rights Movement

Since independence throughout the nineteenth century, women were generally denied full civil and political rights although there was nothing in the constitution that restricted the right to vote to men. The state legislatures which determined voting qualifications, denied this right to women. This denial generally rested on the argument that the political order was composed of families and individuals and the differences between men and women made fathers and husbands the proper representatives of women.

First Women's Rights Convention of 1848

In July 1848, Lucretia Mott and Elizabeth Stanton organized the First Convention on Women Rights in Seneca Falls in New York to change the second-class status of women. They launched a peaceful revolution that has since encircled the globe-the Women's Rights Movement. At the convention, 68 women and 32 men signed a Declaration of Sentiments and Resolutions that was modeled after the Declaration of Independence which stated: 'we hold these truths to be self-evident: that" all *men and women* are created equal," and that "the history of mankind is a history of repeated injuries and usurpations on the part of man toward woman." It described 18 areas of life where women's rights were denied and demanded an end to women's inferior status. Following the long list of

grievances were resolutions for equitable laws, equal educational and job opportunities, and the right to vote. The convention was a crucial milestone in the nation coordination of the women movement, and paved the way for women's right to vote in August 26, 1920.

B. The Right to Vote

By 1869, securing the right to vote became the primary focus of the Women's Rights Movement. Women activists carried out a campaign using every strategy possible, from leaflets and petitions to speeches, legislative lobbying, and street parades. Finally, on August 26, 1920, the Nineteenth Amendment to the U.S. Constitution was ratified

Thus the goal of women's suffrage was finally realized in the nation as a whole by prohibiting denial of the vote on account of sex. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex." With this, American women won for themselves that most basic promise of democracy: "the right to vote". However, even after gaining the right to vote many inequalities continued to exist for women both in law and in practice

In 1971 the U.S. Congress designated August 26 as "Women's Equality Day." The date was selected to commemorate the 1920 passage of the 19th Amendment to the Constitution, granting women the right to vote. The observance of Women's Equality Day not only commemorates the passage of the 19th Amendment, but also calls attention to women's continuing efforts toward full equality. Workplaces, libraries, organizations, and public facilities now participate with Women's Equality Day programs, displays, video showings, or other activities.

C. Equal Rights Amendment

The Equal Rights Amendment was written in 1921 by suffragist Alice Paul. It has been introduced in Congress every session since 1923. It stated:

Section 1. Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

This amendment affirmed equality of rights under the law on account of sex. It initially received an overwhelming endorsement of congress where it passed in 1972 and swept through thirty-five states legislatures. The movement for its passage stalled and it was eventually defeated when the deadline for ratification expired in 1982. Despite an extension of the time limit for ratification by Congress, but it failed to be ratified by the necessary thirty-eight states by the July 1982 deadline.

Supporters contend that the ERA is needed because the equal protection clause of the Fourteenth Amendment does not provide adequate protection against sex discrimination. Opponents claim that the ERA will provide no benefits, and may hurt women.

The civil rights movements of the 1960s inspired a second wave of fervent activism confronting the inequities women faced in virtually all areas of American life. In communities everywhere, women worked on grassroots projects like battered women's shelters and rape crisis hotlines, child care centers and health clinics. Commissions on the Status of Women investigated and reported on women's needs. State and federal laws were passed outlawing discrimination in employment and education,

and women responded to their new opportunities with enthusiasm.

In recent times there has been an increasing involvement of American women in politics and their gradual progress toward more influential committee appointments. How women differ from men on various issues? Though the political objectives of women are varied, yet they differ from men. However, in many areas men and women may have similar political attitudes. Conservative women hold views very similar to conservative men and oppose many goals of the women's movement as threatening to the family structure.

American women important role in politics made politicians to become more sensitive to women's issues. Evidence from the 1980s indicates that "women provided the margin of victory for Democrats in several elections." The national exit polls asked voters who they preferred in their local House of Representatives races; overall, a majority of women voted for Democratic candidates, while a majority of men voted for Republican candidates."

American women have had the right to vote since 1920, but their political roles have been minimal. In international affairs, Eleanor Roosevelt was appointed to the United Nations in 1945. Eugenie Anderson was sent to Denmark in 1949 as the first woman ambassador from the United States. Jeane Kirkpatrick was named ambassador to the United Nations in 1981. In domestic affairs, Reagan set a precedent with his appointment in 1981 of Sandra Day O'Connor as the first woman on the United States Supreme Court. In 1984 the Democratic Party chose a woman, Geraldine Ferraro of New York, to run for vice-president. There are relatively few women in Congress. Generally speaking, female candidates for Congress find it more difficult to raise campaign funds than male candidates. Also, many voters, including women, do not vote for women.

2. Women in Society

The traditional American family views the father at work and the mother at home raising children, milking cows and washing clothes. Wifedom and motherhood were regarded as women's most significant professions resulting in giving them the stereotype image that "a woman's place is in the home."

Historically, a girl in American society tended to learn from her mother's example that cooking, cleaning, and caring for children was the behavior expected of her when she grew up. Her expectation for the future was marriage and motherhood. This trend has been changing in recent times. Similarly, American women have played a significant role in the growth and development of children. Male children were preferred over female children. American children of the 90s are still strongly influenced by women, yet little emphasis is placed on where, when, why, and how women have shaped the American society.

Freedom of Choice- Abortion

The arguments for and against the right of women to have abortion has dominated American society for many decades. Historically, abortion was not a criminal offense if it took place before the sixteenth week of pregnancy. During the last half of the nineteenth century state laws became more severe. In most states abortion was legal only if the mother's life was judged to be physically endangered. In 1973, however, the United States Supreme Court in the case *Roe v. Wade* ruled that states could not restrict a woman's right to an abortion in her first three months of pregnancy. In this case the Supreme Court accepted the argument that the laws against abortion violated women's right to privacy under the Constitution. It declared that the U. S. Constitution guarantees a "right to privacy" that includes a women's right to choose abortion. However, the

Court avoided answering the question: When does life start? The Court asserted the right of the state to impose any regulation it deems necessary to safeguard the health of the mother and protect the potential life of the unborn baby. However, *Roe v. Wade* was challenged when in 1990 Louisiana and Utah passed laws making abortion a crime.

By late 1990s the Supreme Court gave the states sweeping powers to make abortion difficult to obtain. However, the right to an abortion is constitutionally guaranteed right.

3. Women and Education

Educational opportunities for women improved slowly as secondary schools, then colleges, were established for women. Formal education for girls historically has been secondary to that for boys. In colonial America girls learned to read and write at girls schools. By the end of the 19th century, the number of women students increased greatly. With the advent of coeducational schools, policies still limited women's admissions, financial assistance, course or program choices, and participation in activities. Higher education particularly was broadened by the rise of women's colleges and the admission of women to regular universities.

4. Women and Religion

Christianity teaches that female and male were created in God's image and they are co-laborers with God as stewards of all creation. The first chapter of Genesis states, "Male and female he created them, and God blessed them . . ." Jesus defied custom and affirmed women as equal to men. In a time when tradition assigned women a limited role, Jesus saw them as made in the image of God and offered them the gift of salvation (Luke 8:1-3; Luke 10:38-42; John 4:7-42). His call challenged women and men equally to be hearers and doers of the Word (Luke

11:28). Early Christian theology perpetuated the views that women were a major source of temptation and evil. St. Jerome, a 4th-century Latin father of the Christian church, said: "Woman is the gate of the devil, the path of wickedness, the sting of the serpent, in a word a perilous object." Thomas Aquinas, the 13th-century Christian theologian, said that woman was "created to be man's helpmeet, but her unique role is in conception . . . since for other purposes men would be better assisted by other men." Until late in the twentieth century, leadership in the major religions was not deemed fit for women.

5. Women in the Military

During wartime American women have served in the armed forces. During World War II almost 300,000 women served in the Army and Navy, performing such noncombatant jobs as secretaries, typists, and nurses. Since World War II, women have served in every branch of the armed services. Originally they served in separate units.

The military had a 2% quota for women (which were never filled) until the 1970s. Now women are part of the regular service. They make up 11% of the armed forces. In the past few years, women have overcome many obstacles to serving in the military, performing well in a variety of nontraditional roles such as piloting helicopters.

Overall, more than 200,000 women currently serve in the armed forces. These women make up 15 percent of both the enlisted ranks and the officer corps, 6 percent of the Marines, and 19 percent of the Air Force. These women serve in a wide variety of positions. In part, that is because in 1994, during the Clinton Administration, the Pentagon discarded the "Risk Rule," and authorized women to serve in any military post other than in frontline infantry, Special Forces, or armor or artillery units.

Two important differences between the treatment of men and that of

women persist in military service:

1. Only men must register for the draft when they turn 18.
2. Regulations prohibit women from serving in combat.

6. Women and the Media

Historically, the American media, privately owned and totally dominated by men, did not treat women fairly and equally; their news was either unreported or reported with bias and prejudice. The top publishers, editors, reporters, newscasters, and journalists were men. In modern times, male monopoly of the media weakened to some extent as the American women began to take an active role in society, politics and the media. As a result, women are having a growing influence on the media, both as reporters and as subjects of media reports, particularly to make it become more accountable and more expressive of women's issues, dealing with women's needs as well as the public's diverse interests.

CHAPTER FOUR

WOMEN AND SEXUAL HARASSMENT

This chapter examines women entry into the job market increasing number and how they dealt with sex discrimination and sexual harassment. Specifically, the chapter examines the sexual harassment concept and analyzes how economic growth has contributed to changing the role of American women in society.

Women enter the Job Market

In colonial America, only few women worked in professions and jobs available to men such as doctors, lawyers, preachers, teachers, writers, and singers. By the early 19th century, however, acceptable occupations for working women were limited to factory labor or domestic work. Women were excluded from the professions such as engineering, law and agriculture as the 20th century opened. The writing, school teaching, and nursing profession were large fields of employment for women. Young women, who married early and bore many children, could not enter professional careers.

During the two World Wars 1914-1919 and 1939-1945, women's position improved by working in nontraditional jobs that were vacated by those men who joined the war.

In the paid workforce women's status was and still is inferior to men.

There is discrimination against women in every sphere of life, but it surfaces dramatically in the economic sphere of life. Studies indicate that since 1955 the gap between men's and women's pay has widened. In the few occupations that were open to women, they were paid far less than men.

By the early seventies women started entering the work force in increasing numbers. The female civilian labor force amounts to 63 million (as compared to 73 million males) representing 60% of adult women. State and federal laws were passed outlawing discrimination in employment.

Women constituted more than 45 percent of employed persons in the United States in 1989, but they had only a small share of the decision-making jobs. Although the number of women working as managers, officials, and other administrators has been increasing. Despite the Equal Pay Act of 1963, women in 1970 were paid less than men for the same jobs; in 1988, professional women did not get the important assignments and promotions given to their male colleagues. Women charging sex discrimination in jobs were not very successful.

Working women often faced discrimination because they were married or would most likely get married, they would not be permanent workers. But married women generally continued on their jobs for many years and were not a transient, temporary, or undependable work force. Despite their increased presence in the work force, most women still have primary responsibility for housework and family care.

There is a pervasive sense of inequality among American women executives. A 1992 Business Week survey of 400 female managers showed that half of the women surveyed say that corporate America is

doing somewhat better in terms of hiring and promoting women, but half also say that the rate of progress is slowing. Seventy percent of those polled see the male-dominated corporate culture as hindering their success, 10 percent more than those who said so 2 years ago.

A. Protectionism at Work

Beginning in 1950's, the women movement gained new strength in its battle against inequality at work. This led to new laws that empowered women with new gained rights:

- a. Requiring equal pay for equal work,
- b. Prohibiting sex discrimination in employment and between students in schools receiving federal funds
- c. Forbidding discrimination against pregnant women in the work place
- d. Limiting the hours that women could work
- e. Giving reduced work responsibilities for women workers with children

The Civil Rights Act of 1964 banned gender discrimination in employment. The protection of this law has been expanded several times. Women were given the right to sue employers suspected of illegal discrimination.

Over the recent years, the women labor movement grew dramatically. Both labor and women's movement and labor have developed into pillars of the social structure of Palestinian society in the territories. 86.2 percent of Palestinian women workers are unmarried; 6.9 percent are married, and 6.9 percent are divorced or widowed. The entry of women into the labor market does not represent a break with the old traditions, especially

with regard to the clothing industry in which most women are employed

B. Sexual harassment

Sexual Harassment occurs when job opportunities, promotions, salary increases, even the ability to retain one's job depends on whether an employee complies with demands for sexual favors. In 1991 the issue of sexual harassment burst into public consciousness when University of Oklahoma law professor Anita Hill accused Supreme Court nominee Clarence Thomas of sexual harassment. Polls report that some 21 percent of women say they have experienced sexual harassment at work while 41 percent claim to know someone who has been the victim of such treatment. The courts, regulatory agencies, and legislative bodies are gradually defining the law in this area. The Supreme Court decided: "That the law is violated when the work place environment "would reasonably be perceived, and is perceived, as hostile or abusive." Employers are responsible for preventing and eliminating harassment at work.

Over the past years, most universities and schools have adopted rules and administrative procedures designed to protect students from inappropriate sexual harassment on the part of faculty and staff members.. Most universities and schools encourage students to bring complaints to administration and faculty committees that investigate and punish violations of sexual conduct rules.

While women's work-force participation has doubled in the last 30 years, most women are still employed in a limited number of occupations, performing labor different from the kind of labor performed by men and

receiving less pay. For example, secretaries, waitresses, and nurses experience high demands, but receive limited autonomy and low pay. Routine, bureaucratic work is common in female dominated jobs (e.g., clerical work). Although women are joining the paid work force in record numbers and are moving into men's occupations, men are not moving into women's occupations. Until women's work is valued as much as men's work, this imbalance is unlikely to change.

CHAPTER FIVE

SEXUAL HARASSMENT AND THE LAW

This chapter presents a legal account of how the legal system operated to deal with the problem of sexual harassment on the job and to try to irradiate this problem by drafting laws and Supreme Court decisions setting the legal ground for outlawing the practice of sexual harassment.

Introduction

Existing American laws do not provide full equal protection to women and men and vary from state to state. Generally, state laws preferred the mother when establishing custody in divorce cases. Many of the current laws actually embody sex discrimination, and to change them would take years. A constitutional amendment would provide a uniform base for future legislation that would assure equal rights.

During the early history of the United States, a man virtually owned his

wife and children as he did his material possessions. Equity law which emphasized the principle of equal rights rather than tradition had a liberalizing effect upon the legal rights of women in the United States. For instance, some states passed laws that gave the wife the right to sue her husband allowing married women to own property separate from their husbands. In divorce law, however, generally the divorced husband kept legal control of both children and property.

During the 1960s several federal laws improving the economic status of women were passed. The Equal Pay Act of 1963 required equal wages for men and women doing equal work. The Civil Rights Act of 1964 prohibited discrimination against women by any company with 25 or more employees. A Presidential Executive Order in 1967 prohibited bias against women in hiring by federal government contractors. But discrimination in other fields persisted.

Affirmative Action

The Feminist organizations maintain that the burdens of sexism can be overcome only by taking sex into account in designing remedies. This meant that affirmative action must be used to find and hire qualified women and to help them compete in the labor force. The actual phrase "affirmative action" was first used in President Lyndon Johnson's 1965 *Executive Order 11246*, which requires federal contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." In 1967, Johnson expanded the executive order to include affirmative action requirements to benefit women. The set of public policies and initiatives design to help eliminate past and present discrimination based on race, color, religion, sex, or national origin, is under attack.

Much of the opposition to affirmative action is framed on the grounds of so-called "reverse discrimination and unwarranted preferences." In fact, less than 2 percent of the 91,000 employment discrimination cases pending before the equal employment opportunities commission are reverse discrimination cases. Under the law as written in executive orders and interpreted by the courts, anyone benefiting from affirmative action must have relevant and valid job or educational qualifications. Other equal protection laws passed to make discrimination illegal were the 1964 Civil Rights Act, Title II and VII of which forbid racial discrimination in "public accommodations" and race and sex discrimination in employment, respectively; and the 1965 Voting Rights Act adopted after the U. S. Congress found "that racial discrimination in voting was an insidious and pervasive evil which had been perpetuated in certain parts of the country through unremitting and ingenious defiance of the Constitution." Many have taken issue with affirmative action policies.

Sexual Harassment and the Law

Sexual harassment is a form of sex discrimination, became illegal under Title VII of the Civil Rights Act of 1964, Title IX of the Higher Education Amendments of 1972, and the Human Rights Law of New York State. Title VII of the Civil Rights Act of 1964, is a form of antidiscrimination statute, a law about sex discrimination in employment that came into being when a federal court accepted that idea for the first time, in *Williams v. Saxbe (1976)*. Initially, when the argument was first made that Title VII should be interpreted as including the prohibition of sexual harassment; it was rejected by the courts. In *Corne v. Bausch and Lomb, Inc., (1975)* the court concluded that the conduct complained of cannot constitute discrimination in employment, because it "appears to be

nothing more than a personal proclivity, peculiarity or mannerism. By his alleged sexual advances, [the alleged harasser] was satisfying a personal urge. Certainly no employer policy is here involved....” The district courts in *Miller v. Bank of America*, and *Barnes v. Train* expressed similar opinions. These decisions were later reversed on appeal. In 1998, the United States Supreme Court in *Oncale v. Sundowner Offshore Services, Inc.* endorsed the argument classifying sexual harassment as sex discrimination.

In 1980, the federal Equal Employment Opportunity Commission clarified its declaration that sexual harassment is prohibited under Title VII of the Civil Rights Act of 1964, and defined such behavior as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.” It is illegal for sexual submission to be made a condition of employment or assignment, and for sexual conduct to interfere with an employer’s work performance or the work environment. The Commission’s guidelines hold employers liable for the behavior of their supervisors, and for sexual harassment between co-workers if the employer should have known about it.

In June 1986, the United States Supreme Court made its first ruling on sexual harassment. The majority agreed that sexual harassment violates Title VII of the Civil Rights Act of 1964 and that discrimination based on sex creates “a hostile environment.” This ruling clearly indicated that sexually harassing behavior is against the law.

Despite the fact that many of the victims of sexual harassment seldom report it to anyone, that legal redress is a course rarely pursued, trials are expensive, emotionally draining, embarrassing, and difficult to prove, yet many women have publicly protested their victimization. During a single 12-month period in 1981, the Equal Employment Opportunity

Commission received 4272 discrimination cases that included charges of sexual harassment. The total number of sexual harassment charges rose sharply from 1992-1995, and has remained roughly at the same level since then. In 2001, 15475 cases of sexual harassment were filed in the United States.

Successful outcome from litigation have sent a red signal for those who may contemplate sexual harassment on the job. One such example is the "Peephole Case." Seven women coal miners from West Virginia won a lawsuit against the Pittston Company for its negligence in not having protected them from being watched by their male co-workers through peepholes as they showered and dressed in the bathhouse. Another successful case involves Mary Lebrato, a psychologist employed by the State of California. After she had reported being sexually harassed by one of her supervisors, she was passed over for a promotion promised to her. Lebrato's case was settled in her favor out of court.

The existence of widespread sexual harassment greatly restricts women's ability to participate as equals in the workplace. In fact, sexual harassment constitutes precisely the kind of barrier to equal employment that Title VII was created to prevent. Sexual harassment is particularly invidious because it negatively impacts on work performance and opportunities for advancement in the same way as sex discrimination in hiring, promotion and work conditions. Because a supervisor's sexual harassment of subordinate employees is invariably effectuated by the supervisor's control over the victim, sexual harassment is most likely to occur when there is an imbalance of power in the workplace.

According to a study of Fortune 500 companies, almost two thirds of sexual harassment complaints are brought against a woman's immediate supervisor or another person with greater power. Other studies show that

between forty to ninety percent of women in the United States workforce have been the victims of some form of sexual harassment on the job. Ninth Circuit Judge Alex Kozinski wrote: “It is a sobering revelation that every woman *-every* woman-who has spent substantial time in the workforce in the last two decades can tell at least one story about being the object of sexual harassment.”

With the enactment of Title VII, U. S. Congress indicated that the employer is best situated to guard against the occurrence of discrimination. To ensure that Title VII is effective in protecting women against sexual harassment in employment, employers should be required to take meaningful action to monitor and prevent sexual harassment in the workplace. If employers are held liable for sexual harassment where a supervisor invokes the employer’s authority, implicitly or explicitly, to sexually harass subordinate employees, employers will have a real incentive to implement the necessary policies.

Equal Rights women’s organizations advocate a standard of employer liability that is supported by agency principles and best comports with the realities of the workplace. The Supreme Court recognized that sexual harassment is a form of sexual discrimination that greatly inhibits a woman’s ability to achieve equality in the workplace. Agency principles and the policies underlying Title VII require the adoption of a legal standard that holds employers liable for hostile work environment sexual harassment where (1) a supervisor explicitly or implicitly invokes the employer’s authority to sexually harass subordinate employees; or (2) even if the harasser did not act as the employer’s agent, the employer knew or should have known of the harassment and failed to take appropriate action.

Constructive knowledge should be attributed to the employer if it failed to develop and disseminate a policy against sexual harassment or failed to provide all employees with an effective method of making complaints of sexual harassment.

CHAPTER SIX

SEXUAL HARASSMENT CASES

1. Davis v. Monroe County Board of Education, et al Case

LaShonda Davis was a fifth-grade student at Hubbard Elementary School in Monroe County, Georgia during the 1992-1993 school year. Another fifth-grade student, G.F., while in the classroom of teacher Diane Fort, allegedly tried to touch LaShonda's breasts and vaginal area. G.F. also allegedly made sexual comments to LaShonda, such as, "I want to get in bed with you," and "I want to feel your boobs."

LaShonda complained to Fort and also told her mother, Aurelia Davis, about G.F.'s behavior. G.F. again engaged in similar conduct on two other occasions. LaShonda allegedly reported both incidents to Fort and her mother. After one of the incidents, Mrs. Davis called Fort who told her that the school principal, Bill Querry, knew about one of the incidents.

G.F.'s behavior continued. He allegedly placed a door-stop in his pants and behaved in a sexually suggestive manner toward LaShonda during their physical education class. LaShonda reported this incident and other subsequent incidents to Maples, the physical education teacher. LaShonda also told another teacher, Pippin, when G.F. sexually harassed her on

other occasions. An unidentified teacher allegedly told LaShonda that Principal Query was not ready to listen to her complaint about G.F. At some point, Fort reassigned LaShonda to a seat away from G.F., but G.F. continued his unwelcome sexual behavior. LaShonda and her mother visited Principal Query to discuss G.F.'s behavior. At the meeting, Query asked LaShonda why no other students had complained about G.F. and said that he would have to threaten G.F. a little harder. On the same day, G.F. was charged with sexual battery, which he did not deny.

In all, LaShonda accused G.F. of eight separate instances of sexual harassment, six of which occurred in Fort's, Maples' and Pippin's classes. LaShonda reported four instances of sexual harassment to Fort, two to Maples and two to Pippin. She reported the final incident to her mother and Principal Query.

Aurelia Davis, on behalf of her daughter, LaShonda, sued the Monroe County Board of Education for the school officials' failure to remedy G.F.'s sexual harassment of her daughter. The United States **District Court** for the Middle District of Georgia dismissed for failure to state a claim upon which relief could be granted. Davis appealed and a divided three judge panel of the United States Court of Appeals for the Eleventh Circuit reinstated the claim. Upon rehearing en banc, the Court of Appeals held that Title IX did not allow such a claim. Davis filed a petition for certiorari with the Supreme Court. The Supreme Court has not decided whether it will grant certiorari.

In this case, school officials were aware of the situation, yet took no meaningful action to deter it. The lower courts' opinions hold, in effect, that regardless of the severity of the harassment and the cognizance of teachers and other school officials, a school is under no obligation to prevent the harassment. This conclusion directly contradicts the spirit and

purpose of Title IX.

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” A plain reading of the statute indicates that Title IX was intended to eliminate *all* types of sex discrimination.

Recent studies show that the vast majority (65-85%) of girls reported being sexually harassed in schools. Peer sexual harassment is the most common form of harassment student's experience. Regardless of the identity of the perpetrator, sexual harassment causes real and demonstrable harm to students' educational and social development. Sexually hostile environments reduce female students' class participation and cause some students to drop out of classes entirely.

School officials are in a unique position to intervene as many instances of harassment occur in classrooms and other areas where students are supervised. The lower courts' opinions, however, leave schools with no incentive to address the problem. Fear of liability would encourage schools to develop policies and procedures mandating intervention when problems arise. Experience shows that adequate training for teachers and other school personnel enables them to respond effectively to peer sexual harassment complaints, resulting in reduced sexual harassment in schools.

Without an incentive to stop peer sexual harassment or to create adequate policies to deal with the widespread problem of peer sexual harassment, schools will continue to ignore indicia of peer sexual harassment. If the Supreme Court does not act to reverse the lower courts' wholesale rejection of Title IX's applicability to peer sexual harassment cases,

students will continue to suffer, as will their education.

Girls and women will be unable to achieve their full potential if subjected to sexual harassment in their schools and places of work. Excluding peer sexual harassment from the spectrum of discriminatory conduct prohibited by Title IX ignores the harmful effects of peer sexual harassment and schools' abilities to ameliorate the problem. In fact, the Department of Education's Office for Civil Rights ("OCR") recognizes schools' obligations under Title IX to take immediate and appropriate steps to remedy known peer sexual harassment.

The OCR recognizes the wide range of responses schools can employ in peer sexual harassment cases. Contrary to the fears expressed by the lower courts, schools are not limited to the extremes of either completely failing to respond or causing immediate suspension or expulsion. Rather, the action a school takes will be sufficient so long as it ameliorates the problem. For example, in this case, school officials could have investigated the complaint, permitted LaShonda to change her seat so that she did not have to sit next to the alleged harasser for three months, or imposed progressive discipline.

2. Oncale v. Sundowner Offshore Services Case

Joseph Oncale worked for Sundowner Offshore Services on a Chevron U.S.A oil platform in the Gulf of Mexico from August to November 1991. John Lyons was Oncale's supervisor; Danny Phippen and Brandon Johnson were Oncale's co-workers. Oncale was forcibly subjected to sex-related, humiliating actions by Lyons, Phippen and Johnson in the presence of the rest of the crew. For example, Lyons placed his penis on Oncale's neck on one occasion and on his arm on another occasion. Lyons also forcefully pushed a bar of soap into Oncale's anus while Phippen restrained Oncale as he was showering on Sundowner premises. Lyons

threatened Oncale with rape.

Oncale complained to supervisory personnel but no remedial action was taken. In fact, Oncale was told by Sundowner's Safety Compliance Clerk, Valent Hohen, that Lyons and Phippen picked on him too, calling him a name that suggested homosexuality. Oncale finally quit, requesting that his pink slip indicate that he voluntarily left due to sexual harassment and verbal abuse. During his deposition, Oncale stated: "I felt that if I didn't leave my job, that I would be raped or forced to have sex."

Joseph Oncale filed a Title VII action in the United States District Court for the Eastern District of Louisiana. The District Court granted summary judgment to the defendants relying on a 1994 Fifth Circuit decision that harassment by a male supervisor of a male subordinate does not state a Title VII claim. On appeal, the Fifth Circuit affirmed. Oncale filed his petition for certiorari to the United States Supreme Court, and the Court granted cert.

A unanimous U. S. Supreme Court held that Title VII, banning on-the-job sexual harassment, applies when the harasser and victim are the same sex. Justice Scalia, delivering the opinion for the Court stated: "There is no justification in Title VII's language or the Court's precedents for a categorical rule barring a claim of discrimination because of sex... merely because the plaintiff and defendant (or the person charged with acting on behalf of the defendant) are of the same sex."

The Court drew on its previous holding in *Meritor Savings Bank, FSB v. Vinson* to emphasize that Title VII "evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment." Although same-sex harassment was not the principal evil Congress targeted with the enactment of Title VII, statutory prohibitions

must also cover comparable evils. The Court rejected the notion that the harassing conduct should be motivated by sexual desire to support an inference of discrimination on the basis of sex. The plaintiff must show, however, that the harasser's conduct was not "merely tinged with offensive sexual connotations, but actually constituted discrimination because of sex." Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment is beyond the reach of Title VII.

In holding that conduct must reach a certain level of severity and pervasiveness before it can be deemed sexual harassment, the Court rejected the notion that recognizing liability for same-sex harassment will transform Title VII into a general civility code for the workplace. Rather, Title VII is specifically aimed at preventing discrimination because of sex, not merely conduct "tinged with offensive connotations." The Court said: "the statute does not reach genuine but innocuous differences in the ways men and women routinely interact with members of the same and of the opposite sex...[t]he objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances."

3. Faragher v. City of Boca Raton, Florida Case

Beth Ann Faragher worked as an ocean lifeguard for the City of Boca Raton, Florida. Bill Terry, Chief of the Marine Safety Section, was authorized to supervise all aspects of the lifeguard's work assignments. David Silverman, a Marine Safety lieutenant and then captain, supervised the lifeguards' daily duties. Located at a remote worksite far removed

from the rest of city government, Terry and Silverman, the highest ranking supervisors in the Marine Safety Section, were granted virtually unchecked authority over the work environment and the supervision of their subordinate employees.

Throughout their employment, Terry subjected Faragher and another lifeguard, Nancy Ewanchew, to uninvited and offensive touching. Silverman made various offensive comments and gestures to both Faragher and Ewanchew. Both lifeguards complained to a supervisor, Marine Safety Lieutenant and Training Captain Robert Gordon. Although Gordon had received complaints from other lifeguards about Silverman's language and conduct, he failed to report the complaints to his supervisor, Terry, or to another City official.

Ewanchew and Faragher resigned from their lifeguard positions with the City in 1989 and 1990 respectively. In April of 1990, Ewanchew wrote a letter to the City's Director of Personnel complaining that while employed with the City, she and other female lifeguards had been sexually harassed by Terry and Silverman. The City, after investigating Ewanchew's complaint, concluded that Terry and Silverman engaged in inappropriate conduct. Both were reprimanded and disciplined.

In 1992, Faragher sued the City of Boca Raton for sexual harassment under Title VII. The U.S. District Court for the Southern District of Florida entered judgment for Faragher on her Title VII claim against the City. The court held that Faragher was subjected to sufficiently severe and pervasive offensive conduct to create a hostile work environment. The court also held that, under agency principles, the City was directly liable for Terry's and Silverman's conduct based on their supervisory authority and the overall work structure. Finally, the court found the City to be indirectly liable for Terry's and Silverman's offensive conduct

because the severity and pervasiveness of the conduct supported an inference of knowledge or constructive knowledge on the part of the City regarding Terry's and Silverman's sexual harassment of Faragher.

On appeal, a panel of the U.S. Court of Appeals for the Eleventh Circuit reversed the district court's judgment for Faragher on her Title VII claim against the City. That panel opinion was vacated and rehearing en banc was granted.

The Eleventh Circuit en banc opinion focused on two issues: (1) whether the City may be liable under Title VII for Terry's and Silverman's hostile environment sexual harassment of Faragher, regardless of its actual or constructive knowledge of that harassment; and (2) whether the City knew or should have known of Terry's and Silverman's hostile environment harassment of Faragher. The court found that Terry and Silverman neither acted within the scope of their employment in perpetrating the harassment against Faragher, nor were they aided in accomplishing the harassment by the existence of their agency relationship with the City. Additionally, the court failed to find a factual basis to conclude that the harassment was so pervasive as to charge the City with constructive knowledge. The court concluded, therefore, that the City was neither indirectly nor directly liable for the harassing conduct.

In June 1998, the Supreme Court held that an employer is liable to a sexual harassment plaintiff for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action results from the harassment, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. The affirmative defense consists of two elements: (a) the employer must

have exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) the plaintiff employee must have unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. The Court described a “tangible employment action” as including discharge, demotion or undesirable reassignment. Here, the Court held as a matter of law that the City of Boca Raton had not met the elements of the affirmative defense.

As a result of this decision, women who experience sexual harassment at work must find out whether their employer has a sexual harassment policy or other grievance procedure in place. If the employee does not avail herself of the procedures and their protections, she must be prepared to show evidence that her decision was reasonable. Otherwise, she will be precluded from recovering on a claim of sexual harassment.

4. Ellerth V. Burlington Industries Case

Kimberly Ellerth worked in Burlington’s Chicago office from March 1993 through May 1994, first as a merchandising assistant and later as a sales representative. Theodore Slowik was a New York based Vice-President of sales and marketing, supervising Ellerth’s immediate supervisors. Slowik had ultimate decision-making authority over Ellerth’s hire and subsequent promotion. Ellerth spoke with Slowik once per week and saw him when he traveled to her Chicago office twice per month and when she traveled to business related conferences in New York and elsewhere. Ellerth was required to get Slowik’s approval of special sales to her customers.

Soon after Ellerth began working for Burlington, Slowik began to subject

Ellerth to harassing acts and comments, coupled with threats that her refusal to submit would result in retaliation. For example, in the summer of 1993, Slowik made a series of comments about Ellerth's legs and breasts, stating "you know, Kim, I could make your life very hard or very easy at Burlington." On another occasion, Slowik demanded that Ellerth perform what she understood to be fellatio, stating "On your knees again, Kim."

On a third occasion, when Ellerth was being considered for a promotion, Slowik informed her that he had hesitations about promoting her because she was "not loose enough." Slowik also refused to answer Ellerth's work-related questions over the phone unless she told him what she was wearing.

Ellerth did not submit to Slowik's solicitations. Nonetheless, he continued to subject her to unwanted touching of her body; numerous offensive jokes; unsolicited comments about her body, particularly her breasts, legs and buttocks, to others in her presence; and unsolicited offensive comments about other women's bodies.

Ellerth resigned soon after Slowik refused to authorize a special project for one of Ellerth's customers, asking, "are you wearing shorter skirts yet, Kim, because it would make your job a whole heck of a lot easier?"

Three weeks after resigning, Ellerth informed Slowik's supervisors at Burlington that she had resigned due to Slowik's harassment, which she found "unbearable." She testified that she did not complain about Slowik's harassment while still employed by Burlington because she feared that to do so would put her job in jeopardy.

Ellerth filed a Title VII action against Burlington in the United States District Court for the Northern District of Illinois, Eastern Division. The

District Court entered judgment for Burlington, holding that Burlington was not liable for the sexual harassment under a hostile work environment theory and that Ellerth was not constructively discharged. The District Court stated that it could not reach Ellerth's quid pro quo claim because she had not specifically alleged it in her complaint.

Ellerth appealed. A three-judge panel of the United States Court of Appeal for the Seventh Circuit reversed the District Court, holding that there was no requirement that complainants plead particular sub-theories of sexual harassment when making a charge of sexual harassment.

The Seventh Circuit, en banc, affirmed, finding Burlington liable for quid pro quo sexual harassment. It held that employers may be held strictly liable under Title VII even if the allegedly harassed employee neither submitted to a supervisor's sexual advances nor suffered any adverse employment consequences as a result of refusing these advances. "An employee who does not submit [to the quid pro quo demand] may well undergo anxiety, distress, and loss of productivity regardless of whether the threat is carried out." The United States Supreme Court granted certiorari.

On behalf of several women's organizations, Equal Rights Advocates authored an amicus brief in this case. We argued that when a plaintiff employee makes a claim of sexual harassment, an employer should be held liable for the acts of its supervisor regardless of whether the employee acquiesced to the threats or suffered adverse employment consequences. Harassment occurs regardless of whether the plaintiff actually submits to the harasser. Even if a plaintiff does not comply, threats by a supervisor impact the terms and conditions of employment.

A plaintiff should not be required to prove economic injury to state a

claim of quid pro quo harassment, i.e., the conditioning of job benefits upon a victim's acquiescence. A plaintiff's claim should be sufficient if the plaintiff can demonstrate that economic injury is threatened, that economic injury was avoided by the plaintiff's acquiescence to sexual overtures, or that non-monetary terms or conditions of employment (such as hours or work assignments) were threatened or actually affected by the quid pro quo harassment. In many instances an employee may suffer harm even if she suffers no adverse employment or economic consequences. She may suffer from stress, emotional distress and loss of productivity.

ERA also argued that an employer's liability should not hinge on the plaintiff's characterization of the sexual harassment or on the often blurred distinction between quid pro quo and hostile work environment sexual harassment. Rather, following agency principles, liability should be assessed against the employer whenever a supervisor harasses an employee. Under both quid pro quo and hostile work environment theories of sexual harassment, the harassment generally derives from the supervisor's abuse of authority. It is the authority vested in the supervisor by the employer that enables the supervisor to commit the wrong.

In June 1998, the U. S. Supreme Court held that an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse, tangible job consequences, can recover against the employer without showing that the employer is negligent or otherwise at fault for the supervisor's actions. However, unfulfilled threats must meet the "severe or pervasive" test for sexual harassment. In this case, the Court concluded that the plaintiff employee had experienced three unfulfilled threats, amongst other abusive behaviors, which met the "severe or pervasive" test. The Court stated that it expressed no opinion

as to whether a single unfulfilled threat is sufficient to constitute discrimination in the terms or conditions of employment. The decision collapsed the distinction between *quid pro quo* and hostile environment for the purposes of establishing employer liability. The Court also re-affirmed its holding relating to employer liability in *Faragher*. The Supreme Court held that an employer is liable to a sexual harassment plaintiff for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action results from the harassment, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. The affirmative defense consists of two elements: (a) the employer must have exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) the plaintiff employee must have unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

This *Ellerth V. Burlington Industries Case* raises important issues regarding an employer's liability for sexual harassment by a supervisor. Most harassed employees do not complain at all. Although almost two-thirds of harassment complaints are brought against either a woman's immediate supervisor or another person with greater power, only ten to fifteen percent of women either respond assertively to or report their harasser. Imposing liability on employers would appropriately shift the risk and burdens associated with sexual harassment from the employee to the employer. This would encourage employers (who are already in the best position to prevent the occurrence of harassment) to create and disseminate policies and procedures against sexual harassment, to institute trainings, and to create grievance procedures. Effective policies and procedures will decrease the incidence of sexual harassment,

enabling women to achieve their full potential in the workplace.

5. Gebser V. Lago Vista High School District Case

Frank Waldrop, a teacher at Lago Vista High School, met Jane Doe when she was an eighth-grade honors student in his wife's class. Jane Doe was thirteen at the time. In the ninth grade, Doe was assigned to Frank Waldrop's advanced social studies class. Waldrop often flattered Doe and made a point of spending time alone with her.

In the spring of 1992, Waldrop, knowing that Doe would be home alone, visited under the pretext of returning a book. He initiated sexual contact with Doe, fondling her breasts and unzipping her pants. During the summer, Waldrop and Doe, who was then fifteen years old, had sex on a regular basis.

Although none of the encounters took place on school property, the parents and guardian of two other students complained to Michael Riggs, the high school principal, that Waldrop had made inappropriate remarks in the presence of female students. Riggs organized an investigation into this complaint, but Waldrop denied the charges and Riggs failed to bring the matter to the attention of the district superintendent.

Frank Waldrop's sexual exploitation Jane Doe ended in January of 1993 when a Lago Vista police officer happened to discover Waldrop and Doe having sex. There was no direct evidence that any school official was aware of the relationship until that time.

Jane Doe and her parents brought a section 1983, Title IX and negligence action against Lago Vista School District in the United States District Court for the Western District of Texas. The District Court granted summary judgment to the School District. Jane Doe appealed the

summary judgment on the Title IX claim. The United States Court of Appeals for the Fifth Circuit held, based on a common law agency theory, that the School District was not liable under Title IX for a teacher's sexual harassment of a student. The United States Supreme Court granted cert.

The case requires the Supreme Court to determine what standard governs a school's responsibility for sexual harassment by its teachers. Equal Rights Advocates and other women's organizations argue that a school should be held liable for sexual harassment where: (1) the harasser acted as an agent of the school by relying on the victim's belief that the harasser was acting under the apparent authority of the school or by using the authority delegated from the school to accomplish the harassment; or (2) the school knew or should have known of harassment, yet failed to take prompt and appropriate corrective action.

In applying the second standard, a school's failure to adopt and disseminate effective policies and procedures for addressing sexual harassment should establish constructive notice of any harassment that does occur. If the school had taken reasonable steps to find out about harassment, it would have actual notice of the harassment. Sexual harassment in school is eminently foreseeable, especially when one considers the power exercised by teachers over students. Thus, if a school fails to provide reasonable measures for reporting and adequately addressing incidents of sexual harassment, and such harassment occurs, the school should be liable under Title IX. It should have known about and responded to the harassment.

In June 1998, the U. S. Supreme Court held that a school district will not be liable for sexual harassment unless an official of the school district, who at a minimum has authority to institute corrective measures on the

district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct. The Court reasoned that the principal enforcement mechanism of Title IX is administrative and requires actual notice of the alleged misconduct to officials of the funding recipient. Therefore a damages recovery against a school district based on principles of respondent superior or constructive notice (as opposed to actual notice) would frustrate the purposes of Title IX. Because the defendant school district had no knowledge of the teacher's sexual harassment of the plaintiff student, the district is not liable.

As a result of this decision, children who experience sexual harassment at school and their parents must inform a school official of the harassment. The Court requires that the official be of a high-enough level to be able to institute corrective measures on the school's behalf. Although the opinion does not specify which officials would satisfy the notice requirement, it indicates that the student must inform at least the school principal.

The U. S. Supreme Court's decision in *Gebser v. Lago Vista High School District*, has powerful implications for the right to be free from sexual harassment and sexual discrimination in schools. Under Title IX, women and girls are entitled to the fundamental guarantee of equal educational opportunity, free from sexual harassment. However, the goal of achieving equality of rights for women and girls cannot be attained if the school systems in which our children are taught allow sexual harassment to continue unabated or lack adequate policy guidelines for receiving and addressing sexual harassment complaints.

Schools should be held liable for the sexual harassment aided by a teacher's actual or apparent authority. Schoolteachers have a unique ability to exert power over their students. In fact, the Seventh Circuit recently acknowledged that "[t]he damage caused by sexual

harassment... is arguably greater in the classroom than in the workplace because that harassment has a greater and longer lasting impact on its younger victims, and institutionalizes sexual harassment as accepted behavior.” Studies indicate that the vast majority (65-85%) of female high school students are victims of some form of school-related sexual harassment. Of students who reported experiencing sexual harassment, 44% reported harassment by a member of the school staff other than a principal, 16% reported harassment by a teacher and 2% reported harassment by a principal. With no way to voice their complaints in sexual harassment cases, students will remain victimized and silenced.

Experience has shown that the adoption by schools of clear sexual harassment policies and adequate reporting procedures can reduce the incidence of sexual harassment. To encourage the development of policies and reporting procedures, schools should be deemed to have constructive knowledge of sexual harassment if they fail to establish anti-harassment policies and meaningful reporting procedures. Otherwise, schools will continue to ignore indicia of sexual harassment and allow it to proceed unchecked.

CHAPTER SEVEN

CONCLUSIONS

The Civil rights and liberties define limits on governmental action.

Government limits define the character of liberty but also elaborate the meaning of gender equality. Policies of the government affect the nature of liberty and equality in American society. Women as an inferior minority in American society remain struggling in all fields to ensure their abilities to succeed in independency and self reliance. Women's rights are not an argument of law only but also an argument of self reliance and social acceptance

In modern times, for a free, liberal, democratic country such as America, it is taken for granted that women are liberal, free and politically equal. However, the irony is that equal rights for women in America is still a controversial issue and is still not fully accomplished. The civil rights movements of the 1960s helped improve the status of women in society. It inspired a wave of independence and equality for women in virtually all areas of American life. In my view, until the passage of an equal rights amendment, American women will not enjoy the same rights as American men and will continue to have an unequal division of labor by sex.

The improving of the status of women, and specifically promoting its civic and political rights, their increased participation in the media, as well as combating violence and sexual harassment directed against them, should be a priority in all official programs and projects.

This research examined the hypothesis that women may avoid sexual harassment at work by not working and staying at home since it is argued they do not need to work because they are supported either by their parents when they are single, or by their husbands when they are married. Though it is indeed the case that most work force women are married and living with their husbands, however, statistics show that more than one quarter of all work force women are married to men who earned less than \$10,000 a year, which is just about what the U. S. Bureau of Labor

Statistics had estimated was necessary for an urban family of four to maintain a low standard of living. Thus women living with their husbands or those separated, divorced, or widowed, work out of economic necessity, and seek work out of sheer economic need rather than out of boredom or a search for fulfillment.

Furthermore, the research concludes that unemployment is an experience of great consequence to women and have much impact on the lives of women, and unemployed women do suffer equally from the feeling of deprivation and unhappiness felt by the unemployed male. We find that this perspective can be substantiated since the majority of women work for precisely the same reason that men do; they need money to pay for their expenses. Furthermore, parents and husbands do not provide the kind of economic protection they are assumed to give.

No doubt, the 1986 United States Supreme Court ruling that sexual harassment violates Title VII of the Civil Rights Act of 1964 and that discrimination based on sex creates “a hostile environment,” was a clear indication that sexually harassing behavior is against the law. As a result, many large companies to have programs for managers explaining what sexual harassment is and that the company can be held liable for such behavior. Also, it made official agencies become more responsive to complaints of sexual harassment. As Francis Coles noted, “sexual harassment has moved from back room to courtroom and from fun to fines. What used to be a joke has been discovered to be institutionalized within the workplace.”

Laws and regulations by the U. S. government and extensive programs by various women organizations for better job environment and conditions for women form part of the strategy towards the achievement of gender

equality, poverty eradication, and sustainable development. The objective is to expand employment opportunities for women, while enhancing their conditions of employment and eliminating gender discrimination, and sexual harassment at work. These policies and programs focus especially on the needs of poor and vulnerable women and aim to demonstrate that women's economic empowerment also benefits their families, communities and societies. Operating at both federal and national levels governmental policies aim to promote an integrated approach based on capacity-building, policy analysis, awareness-raising and targeted practical interventions, which addresses the many interrelated problems faced by women within and beyond the workplace. They also aim at raising awareness on issues of family responsibilities, maternity protection and sexual harassment. Another critical area of concern is women's participation in decision-making and management where perhaps the most intractable inequalities persist. Many American women continue to be subject to occupational segregation and few break through the "glass ceiling" separating them from top-level management and professional positions. Here the U. S. uses the model of encouragement to promote equal working conditioned and better working environment without much governmental intervention to keep the momentum going so that women having senior management positions will be accepted as normal.

Here we need not to ignore the role of the media in highlighting sexual harassment as a serious offence in the work place.

In conclusion, sexual harassment is a serious problem with serious consequences for women suffering from it and it is folly to underestimate its significance on women, the family, and society.

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APPENDICES

APPENDIX I

Joint Resolution of Congress, 1971 Designating August 26 of each year as Women's Equality Day

WHEREAS, the women of the United States have been treated as second-class citizens and have not been entitled the full rights and privileges, public or private, legal or institutional, which are available to male citizens of the United States; and

WHEREAS, the women of the United States have united to assure that these rights and privileges are available to all citizens equally regardless of sex; and

WHEREAS, the women of the United States have designated August 26, the anniversary date of the passage of the Nineteenth Amendment, as symbol of the continued fight for equal rights: and

WHEREAS, the women of United States are to be commended and supported in their organizations and activities,

NOW, THEREFORE, BE IT RESOLVED, the Senate and House of Representatives of the United States of America in Congress assembled, that August 26th of each year is designated as Women's Equality Day,

and the President is authorized and requested to issue a proclamation annually in commemoration of that day in 1920, on which the women of America were first given the right to vote, and that day in 1970, on which a nationwide demonstration for women's rights took place.

APPENDIX II

Women's Equality Day 2003

Presidential Proclamation

The 19th Amendment to the Constitution, ratified on August 26, 1920, guaranteed the right to vote for American women. Women's Equality Day commemorates this constitutional amendment and is an opportunity for citizens across our country to honor those who took part in the long and difficult struggle for women's suffrage, as well those since 1920 who have continued to fight for equal rights for women.

Beginning with the Seneca Falls Convention in 1848, women's suffrage supporters lectured, wrote, marched, and lobbied for enfranchisement of American women. Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott led this movement and advocated an amendment to the Constitution that would guarantee women the right to vote. Through their vision and dedication, these women advanced the fight for equal rights.

Today, American women are making a difference in their communities and workplaces. Women's accomplishments in education, business, science, art, medicine, athletics, and every other field have made America better and stronger. The courage and determination of American women are exemplified in the personnel serving in our Armed Forces. Women across America are also helping to secure our country by serving as police officers, firefighters, doctors, nurses, paramedics, and first-responders.

Americans believe in opportunity for all and on this day, we honor the achievements of women who have charted the path to equal opportunity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States do hereby proclaim August 26,

2003, as Women's Equality Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

GEORGE W. BUSH

APPENDIX III

Title VII of the Civil Rights Act of 1964

The following is the text of Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. The Civil Rights Act of 1991 (Pub. L. 102-166) (CRA)

amends several sections of Title VII. These amendments appear in boldface type. In addition, section 102 of the CRA (which is printed elsewhere in this publication) amends the Revised Statutes by adding a new section following section 1977 (42 U.S.C. 1981), to provide for the recovery of compensatory and punitive damages in cases of intentional violations of Title VII, the Americans with Disabilities Act of 1990, and section 501 of the Rehabilitation Act of 1973. Cross references to Title VII as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * *

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in

cases under title 11 [*bankruptcy*], or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5 [*of the United States Code*]), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26 [*the Internal Revenue Code of 1954*], except that during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], persons having fewer than twenty five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty five or more during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [*29 U.S.C.151 et seq.*], or the Railway Labor Act, as amended [*45 U.S.C. 151 et seq.*];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) Is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 *et seq.*], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 *et seq.*].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is

unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on the job training program, or Federal entity subject to section 2000e-16 of this title .

EXEMPTION

SEC. 2000e-1. *[Section 702]*

(a) This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) It shall not be unlawful under section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor - management committee controlling apprenticeship or other training or retraining (including on the job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) (1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title *[sections 703 and 704]* shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

- (A) the interrelation of operations;
- (B) the common management;
- (C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. [Section 703]

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment

opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin

in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious

corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist action or Communist front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 *et seq.*].

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different

standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any

professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29 [*section 6(d) of the Fair Labor Standards Act of 1938, as amended*].

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor - management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin

employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) (1) (A) An unlawful employment practice based on disparate impact is established under this title only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required

to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) (1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class

represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28, United States Code.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. *[Section 704]*

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. *[Section 705]*

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the

Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 [United States Code] governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges [hearing examiners], and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5 [United States Code], relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges [hearing examiners] shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5 [United States Code].

(b) (1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title [sections 706 and 707]. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) The Commission shall have an official seal which shall be judicially noticed.

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken [*the names, salaries, and duties of all individuals in its employ*] and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) The Commission shall have power-

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical

assistance as they may request to further their compliance with this subchapter or an order issued there under;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) To make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) To intervene in a civil action brought under section 2000e-5 of this title [*section 706*] by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) **(1)** The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this title, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-

(A) Individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) Individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this title or such law, as the case may be.

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of title 5 [*section 9 of the Act of August 2, 1939, as amended (the Hatch Act)*], notwithstanding any exemption contained in such section.

(j) (1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this title shall not be excused from compliance with the requirements of this title because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. *[Section 706]*

(a) The Commission is empowered, as hereinafter provided, to prevent Any person from engaging in any unlawful employment practice as set forth

in section 2000e-2 or 2000e-3 of this title *[section 703 or 704]*.

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on the job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the

Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days

after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) **(1)** A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that

in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this title (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) (1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no

further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay

further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 [*of the United States Code*], the judicial district

in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) **(1)** If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3 (a) of this title [*section 704(a)*].

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title [*section 703(m)*] and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title [*section 703(m)*]; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) The provisions of chapter 6 of title 29 [*the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)*] shall not apply with respect to civil actions brought under this section.

(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Any civil action brought under this section and any proceedings

brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28 [*United States Code*].

(k) In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (**including expert fees**) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL

SEC. 2000e-6. [*Section 707*]

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be

accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Effective two years after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], the functions of the Attorney General under this section shall be transferred to the

Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5 [*United States Code*], inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Subsequent to March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title [*section 706*].

EFFECT ON STATE LAWS

SEC. 2000e-7. [*Section 708*]

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this

subchapter.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES
SEC. 2000e-8. *[Section 709]*

(a) In connection with any investigation of a charge filed under section 2000e-5 of this title *[section 706]*, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement

whenever it

determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports there from as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders there under. The Commission shall, by regulation, require each employer, labor organization, and joint labor management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court,

as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one

year.

INVESTIGATORY POWERS

SEC. 2000e-9. *[Section 710]*

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 *[section 11 of the National Labor Relations Act]* shall apply.

POSTING OF NOTICES; PENALTIES

SEC. 2000e-10. *[Section 711]*

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

VETERANS' SPECIAL RIGHTS OR PREFERENCE

SEC. 2000e-11. *[Section 712]*

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 2000e-12. *[Section 713]*

(a) The Commission shall have authority from time to time to issue,

amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5 [*the Administrative Procedure Act*].

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 2000e-13. [*Section 714*]

The provisions of sections 111 and 1114, title 18 [*United States Code*], shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18 [*United States Code*], whoever in

violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

SEC. 2000e-14. *[Section 715]*

[There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission *[Council]* shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity

legislation, orders, and policies. On or before October 1 *[July 1]* of each year, the Equal Employment Opportunity Commission *[Council]* shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

EFFECTIVE DATE

SEC. 2000e-15. *[Section 716]*

[(a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c)] The President shall, as soon as feasible after July 2, 1964 *[the enactment of this title]*, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1 of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. *[Section 717]*

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5 *[United States Code]*, in executive agencies *[other than the General Accounting Office]* as defined in section 105 of title 5 *[United States Code]* (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission *[Civil Service Commission]* shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under

this section. The Equal Employment Opportunity Commission [*Civil Service Commission*] shall-

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) Consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him there under. The plan submitted by each department, agency, and unit shall include, but not be limited to-

(1) Provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department,

agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission [*Civil Service Commission*] shall be exercised by the Librarian of Congress.

(c) Within **90 days** of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission [*Civil Service Commission*] upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission [*Civil Service Commission*] on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title [*section 706*], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) The provisions of section 2000e-5(f) through (k) of this title [*section 706(f) through (k)*], as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in

employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

SPECIAL PROVISIONS WITH RESPECT TO DENIAL,
TERMINATION, AND

SUSPENSION OF GOVERNMENT CONTRACTS

SEC. 2000e-17. [*Section 718*]

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5 [*United States Code*], and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

APPENDIX IV

Videos on Sexual Harassment Training

1. **A Policy Is Not Enough**

The US Supreme Court rulings made it clear that organizations can be held liable for the supervisors' behavior, even if they had no knowledge of that behavior. It's not enough for an organization to draft a policy against harassment.

2. **Harassment Is...**

This new program will raise awareness regarding harassment and explain the do's and don'ts of creating a respectful work environment for everyone.

3. **It's About Respect: Recognizing Harassment in a Diverse Workplace**

This memorable program will raise awareness regarding harassment and explain the do's and don'ts of creating a respectful workplace for everyone.

4. **It's Not Just About Sex Anymore: Harassment & Discrimination in the Workplace**

Now - more than ever - employees must understand that there's far more to workplace harassment and discrimination than just sex. Is your organization prepared for this changing world?

5. **It's the Law: The Legal Side of Management**

This program turns managers into a frontline defense against costly litigation. Armed with an understanding of the critical legal issues facing them today, your managers will take a wealth of practical knowledge back to their departments.

6. **Let's Get Honest**

LET'S GET HONEST is a two part training program that addresses

how difficult it is to live in a sexually-charged society while working in an environment that is supposed to be void of anything sexual.

7. **No!...Basta Ya De Acosame (No!...Stop Harassing Me)**

This is the premier spanish video training package (no dubbing). It covers the topics of illegal discrimination and harassment, including sexual harassment and preventative steps available to all employers and managers.

8. **PATTERNS - Preventing Sexual Harassment**

"Preventing Sexual Harassment" looks at 4 common patterns of inappropriate behavior- the habitual harasser, the smitten harasser, the bully, and the jilted harasser.

9. **PATTERNS - Responding to Sexual Harassment**

Responding to Sexual Harassment examines the legal liability issues and questions of personal responsibility that managers and supervisors must face.

10. **PATTERNS - Rights and Responsibilities**

This orientation program describes what sexual harassment is, how it is damaging to the person being harassed, the harasser, the workgroup and the organization, and what an employees rights and responsibilities are in this area.

11. **PATTERNS - The Series**

Sexual harassment at work is more than a legal issue. It is fundamentally a behavioral problem. PATTERNS takes on the behavioral challenge, arming employees and managers with the information they need.

12. **Sexual Harassment: It Can Happen Here**

Through a series of compelling scenarios, employees learn to recognize sexual harassment and respond immediately to eliminate it from their workplace.

13. **Sexual Harassment in the Workplace... Identify. Stop. Prevent. II**

Everyone loses when sexual harassment occurs. It lowers morale and productivity and it can result in costly time-consuming lawsuits. The key is to eliminate sexual harassment before it starts.

14. **Sexual Harassment: A Manager's Guide**

Sexual Harassment: A Manager's Guide will promote a safe working environment that encourages employees to openly talk about potential problems and will help eliminate sexual harassment in your workplace.

15. **Sexual Harassment: A Manager's Guide in California**

By equipping managers with the knowledge they need to prevent and respond to harassment situations, it helps to eliminate sexual harassment in the workplace this video will meet the California State Law requirements for your organization.

16. **Sexual Harassment: It's Not Enough To Know Better - Employee Version**

Video-based training for employees designed to help any organization reinforce its message that sexual harassment is unacceptable and will not be tolerated.

17. **Sexual Harassment: It's Not Enough To Know Better - Manager's Version**

Video-based training for managers designed to help any

organization reinforce its message that sexual harassment is unacceptable and will not be tolerated.

18. **Sexual Harassment: It's Not Enough To Know Better - The Series**

Video-based training for employees and managers designed to help any organization reinforce its message that sexual harassment is unacceptable and will not be tolerated.

19. **Sexual Harassment: You Make The Call**

Sexual harassment continues to occur in today's workplace. The vast majority of problems happen because of a lack of understanding rather than intent.

20. **Sexual Harassment: A High Price to Pay - Employee Awareness**

This compelling video weaves together the dramatic story of one harassment case with expert interviews to create a captivating and memorable message that sexual harassment will no longer be tolerated

21. **Sexual Harassment: A High Price to Pay - Management Briefing**

This informative video dramatically demonstrates how incidents of sexual harassment – including poorly handled or unresolved complaints – can translate into liability exposure and staggering monetary losses.

22. **Sexual Harassment: A High Price to Pay - The Series**

A High Price to Pay is a two part series that provides employees and management with a clear understanding of what legally constitutes sexual harassment; what to do if sexual harassment

occurs; as well as the severe consequences.

23. **Sexual Harassment: A Manager's Guide**

Safeguard your organization with this Trainer's Toolkit® that revolves around the most recent Supreme Court rulings and legal issues.

24. **Sexual Harassment: Awareness, Perception & Prevention - The Series**

This program features 10 subtle sexual harassment vignettes that demonstrate the importance of zero tolerance, setting the right example, handling complaints, and timely and thorough investigations.

25. **Sexual Harassment: Awareness, Perception & Prevention, A Manager's Responsibility**

This program features 10 subtle sexual harassment vignettes that demonstrate the importance of zero tolerance, setting the right example, handling complaints, and timely and thorough investigations.

26. **Sexual Harassment: Awareness, Perception & Prevention, An Employee's Perspective**

This program features 10 subtle sexual harassment vignettes designed to help viewers explore the question of welcome ness, appropriateness and the critical "do and don'ts" in preventing sexual harassment in the workplace.

27. **Sexual Harassment: Is It or Isn't It? II**

Here's a practical solution when you need to provide sexual harassment awareness and prevention training to a mixed group of office personnel and manufacturing employees.

28. **Sexual Harassment: New Roles/New Rules**

Described by a lawyer for a Fortune 10 corporation as "the best video I've ever seen on sexual harassment!"

29. **Sexual Harassment? You Decide! Real Situations for Discussion**

Sexual Harassment? You Decide is ideally used for reinforcement training or as a part of your overall harassment-prevention curriculum.

30. **Subtle Sexual Harassment - Program 1**

Subtle Sexual Harassment is intended to take the titillation out of sex harassment training and allow employees to go beyond the obvious cases most of us already recognize as wrong.

31. **Subtle Sexual Harassment - Program 2**

Subtle Sexual Harassment is intended to take the titillation out of sex harassment training and allow employees to go beyond the obvious cases most of us already recognize as wrong.

32. **Subtle Sexual Harassment Series**

Subtle Sexual Harassment is intended to take the titillation out of sex harassment training and allow employees to go beyond the obvious cases most of us already recognize as wrong.

33. **The Sexual Harassment Quiz (2nd Edition)**

This is a re-make of Enterprise Media's top-selling sexual harassment program of all time. This is the only video that combines genuine viewer interaction with engaging instruction.

34. **You Call That Respect: Overcoming Obstacles to a Respectful Workplace**

Workplace harassment. Do we know it when we see it? Do we know how to respond to it when we witness it? Or are the victims of it?

35. **You Can Stop Harassment - Taking Responsibility Program 1**

What distinguishes You Can STOP Harassment is its positive message. The programs in this series are not about pointing fingers and assigning blame. We all share responsibility for stopping workplace harassment.

36. **You Can Stop Harassment - The Responsible Leader - Program 2**

What distinguishes You Can STOP Harassment is its positive message. The programs in this series are not about pointing fingers and assigning blame. We all share responsibility for stopping workplace harassment.

37. **You Can Stop Harassment - The Series**

What distinguishes You Can STOP Harassment is its positive message. The programs in this series are not about pointing fingers and assigning blame. We all share responsibility for stopping workplace harassment.

38. **You Need to Know... Sexual Harassment is Illegal (2nd Edition)**

You Need To Know... Sexual Harassment is Illegal is a 5-minute sexual harassment policy video that leaves no doubt about your organization's policy stand on sexual harassment in the workplace.