

AN ABSTRACT OF THE THESIS OF

Mark J. Porrovecchio for the degree of Master of Arts in Interdisciplinary Studies in Speech Communication, Speech Communication, and Philosophy presented on May 2, 1997. Title: Promoting Progress: A Rhetorical Analysis of College and University Sexual Harassment Codes.

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Abstract approved:

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This thesis is a rhetorical analysis of sexual harassment codes on college and university campuses. The situational model proposed by Lloyd Bitzer is used to examine representative artifacts from Rice University in Houston, Texas, and Oregon State University in Corvallis, Oregon, so as to determine whether they operate as "fitting" rhetorical responses to the situation generally and the exigence of sexual harassment specifically. The body of this analysis develops in eight stages: an introductory discussion of sexual harassment and research conducted thereon; examination of codes as ethical and situational constructs; explication of the rhetorical framework; the nature of the exigence as a historical and campus-specific imperfection; examination of the publics that create the rhetorical audience; the inartistic and artistic constraints operative within the rhetorical situation; an analysis of the two codes; and summary comments and recommendations. Within the last two sections the determinations are made that: 1) the codes do not currently function as a "fitting" response to the situation/exigence, and that 2) revisions can be made so as to promote a more pragmatic and "fitting" response to sexual harassment.

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**Promoting Progress:
A Rhetorical Analysis of College and University
Sexual Harassment Codes**

by

Mark J. Porrovecchio

A THESIS

submitted to

Oregon State University

in partial fulfillment of
the requirements for the
degree of

Master of Arts in Interdisciplinary Studies

**Presented May 2, 1997
Commencement June 1997**

Master of Arts in Interdisciplinary Studies thesis of Mark J. Porrovecchio presented on May 2, 1997

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ACKNOWLEDGMENTS

I would like to thank Dr. Trischa Knapp, Dr. Judith Bowker, and Dr. Peter List for their help during the creation of this thesis. I would also like to express my appreciation to Dr. Jonathan King, who served as the graduate school representative.

Dr. Trischa Knapp deserves special recognition for serving not only as my advisor but also as my mentor during my stay at Oregon State University. In addition, I must thank Dr. Robert Iltis for his guidance and support throughout my time in the Department of Speech Communication. His help in formulating the initial stages of this thesis proved an essential component in the final product.

Finally, I wish to thank my father, mother, brother, and grandmother, without whose help and encouragement my education to this point would not have been possible.

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Promoting Progress:
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Chapter I: Introduction

Imagine a world without sexual craving. Katie Roiphe talks of such a place, as invented by the feminist writer Charlotte Perkins Gilman in her book Herland. In this make-believe utopia, "everything runs smoothly and rationally . . . [and] none of the women harbors any sexual feelings, towards men or towards each other" (86). The concept of sexual desire is nonexistent in this world of fiction. But the real world is not Herland. The real world is a place where people can be, and are, sexually harassed.

So it is somewhat surprising that sexual harassment, as an area of research and analysis, has only been studied for approximately twenty years. As such, many questions still exist. This thesis is a continuance of this relatively new area of research and a search for answers via the method of rhetorical analysis. Specifically, this thesis is seeking to make a determination as to the effectiveness of sexual harassment codes on college and university campuses. "Effectiveness" is meant in this instance to indicate the degree to which these codes function as persuasive means of explaining and responding to sexual harassment.

Crucial to such an issue of function is an initial preview of the definition of sexual harassment that will be the focal point of our critical inquiry: the one created by Equal Employment Opportunity Commission in 1980 [EEOC]. This definition, as this thesis will demonstrate, is the basis of sexual harassment codes on campuses across the nation. But,

¹ Portions of this thesis have been presented at conferences under the titles: "Rethinking the Constraints: Examination, Application, and Revision of "The Rhetorical Situation" (Northwest Communication Association Conference, April 1997) and "The Ethical Implications of the Rhetorical Situation: An Analysis of College and University Sexual Harassment Codes" (Speech Communication Association Conference, November 1996).

as will also become clear, the EEOC definition is complicated by the nature of the situation in which it resides. What follows is the EEOC definition and the liabilities that extend from it:

Section 1604.11 Sexual Harassment

a.) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting such an individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b.) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the records as a whole and the totality of the circumstances, such as the alleged nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.

c.) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

d.) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have

known of the conduct, unless it can be shown that it took immediate and appropriate corrective action.

e.) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

f.) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII. and developing methods to sensitize all concerned.

g.) Other Related Principles: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit. (Crusius and Channell 374-375)

From this foundation my rhetorical analysis develops along a distinct path. That is to say, the research that currently exists in relation to sexual harassment is predominately quantitative rather than qualitative. Present research focuses in large part on how people react to hypothetical scenarios, material is coded and compiled so as to provide information as to cases of future fact. But this rhetorical analysis is more present-situated in that the functions of codes are being studied as historical facts brought to bear in the current academic situation. As such, a review of literature related to sexual harassment would be redundant in that specific quantitative materials will be covered extensively in later chapters. This quantitative material is used to supplement the rhetorical analysis and to help flesh out distinctions, but is not to be considered the focus of this thesis.

More generally, there exists an extensive body of research related to the connections between human interaction and the influences of sex and gender.² Carol Gilligan notes that "women's and men's voices [are heard] differently" and, historically, men have been given primary placement and women have largely been relegated to a secondary status in matters of relationship ("Letter" xiv). Given this divide, Gilligan develops a more thorough treatment of women's perceptions--of relationships, of interdependence, of conflict--in the ground breaking In a Different Voice. And works since then have furthered this discussion by examining the ways in which men and women differ, the ways in which they are similar, the ways in which they react--socially, interpersonally, and so on--to these relatively new discussions of sex and gender.

This ongoing discussion about the effects of sex and gender is important. But, as much as this information textures my research focus, it also does little to get at the problem I am seeking to examine: sexual harassment codes as a matter of persuasive discourse. While male and female, masculine and feminine, differences and similarities are an obvious component of any discussion of sexual harassment, too extensive a treatment thereof would only serve to muddle the direction and clarity of my thesis. The purpose of my research is not to study the gender and/or sex implications of the codes per se. Rather, I am looking at the codes as a distinctive rhetorical response to sexual harassment. As such, sex and gender theory will be used in much the same way as the quantitative

² For a discussion of socialized gender roles and their effect on the sexes in specific communication contexts, refer to Scudder, Joseph N., and Patricia Hayes Andrews. "A Comparison of Two Alternative Models of Powerful Speech: The Impact of Power and Gender Upon the Use of Threats." Communication Research Reports 12 (1995): 25-33. For information related to sex biases in the promotion of specific communicative frameworks, see Shepherd, Gregory J. "Communication as Influence: Definitional Exclusion." Communication Studies 43 (1992): 204-217; and Foss, Sonja, and Cindy Griffin. "Beyond Persuasion: A Proposal for An Invitational Rhetoric." Communication Monographs 62 (1995): 2-17. Finally, for general overviews of sex and gender differences, refer to Stewart, Lea P., et al. Communication Between the Sexes: Sex Differences and Sex-role Stereotypes. 2nd ed. Scottsdale: Gorsuch Scarisbrick, 1990; and Bate, Barbara, and Judith Bowker. Communication and The Sexes. Prospect Heights, Ill: Waveland Press, Inc., 1996.

materials. At those points where such material is pertinent to the ongoing rhetorical discussion, it will be included to help expand the understanding of sexual harassment.

Moreover, the structure of this thesis is dictated in large part on the basis of the theoretical model I have chosen and will expand upon in the following chapters. Initially, we must set the situational stage. Chapter Two will provide us with a philosophical explanation of codes as ethical sanctions on conduct and will serve to demonstrate the situational nature of the codes as a response to sexual harassment. More so, this chapter will help us to determine the dual function of the codes--as explanations of and sanctions against sexual harassment--as previewed at the start of the introduction. The next chapter will then introduce the method to be used in studying the codes. Therein we will examine the situational approach to rhetoric as articulated by Dr. Lloyd F. Bitzer. This framework is based in the assumption that there are three primary components that determine a situation: exigence (an imperfection), constraints (which mediate changes within the situation), and audience (those who respond to the rhetor's discourse by changing the exigence). All things being equal, a rhetor will craft a response to the situation that is in line with these components; such a response would be considered "fitting" in that the sum result would be the audience responding to the rhetor in such a way as to positively modify the exigence. Pause will then be given to critiques, such as those provided by Richard E. Vatz and K.E. Wilkerson, that have come about in response to Bitzer's situational perspective. We will finally examine one application of this model so as to more thoroughly understand the previous criticisms and the possible limitations of the situational approach that these criticisms suggest.

Chapter Four will examine the development of the exigence of sexual harassment as a historical, societal fact and a situational component on campuses. This analysis will clarify how the exigence, in a parallel to the dual functions of the codes, is observable as a factual and perceptual entity. The focus of Chapter Five will be the persons who stand as possible mediators of the exigence. These persons, as will become clear, create both

general publics and a specific rhetorical audience capable of modifying the exigence of sexual harassment. But these persons are also subject to forces, to constraints, that limit and restrain their ability to respond both to the exigence and to the discourse of the codes. Additionally, the creators of the codes are subject to and, in turn, create situational restrictions. As such, Chapter Six will explore both the inartistic and artistic constraints within the campus situation.

With the above components of the situation thus set forth, we finally turn our attention to determining the degree to which sexual harassment codes function as fitting response to the campus situation. Crucial to this analysis within Chapter Seven is the extent to which the dual functions of the codes respond to the realities of sexual harassment. As will become clear, it is my estimation that the codes as currently articulated are not "fitting" in so far as they fail to accurately reflect the factual and perceptual conditions of the exigence. Given this determination, we must turn our attention to possible revisions which might provide a response that is more "fitting" than the one currently in existence. These suggestions, while initially radical in their departure from the standard means of creating codes, are nonetheless based in: 1) the analysis thus conducted, and 2) a pragmatic belief that present realities must be integrated into the codes if future benefits are to be had.

The goal of this thesis is to promote a more thorough understanding of sexual harassment--as a social factor, a historical development, and an academic problem. On a more personal level, I hope that this thesis would lead to a reassessment of how we formulate sexual harassment codes. To my mind, progress in prevention of sexual harassment must be sparked by reflection-based revisions that seek not absolute standards, but flexible guidelines. Sexual harassment cannot be forced into a template, and to continue with such an assumption is to disgrace those falsely accused and demean those that suffer unduly from its real and unethical harms.

Chapter II: Codes as Ethical Constructs

Moral communities [are] founded on a blend of consensus on general norms for important roles and tolerance for how people play the roles it remains an unrealized ideal for entire societies but still a viable target for aspiration true community may not be possible in any society until it is achieved throughout the world. (Kultgen 51)

The statement above is generalizable to the nature of the problem regarding sexual harassment codes on college and university campuses: we would ideally wish that persons did not harass others, but such a wish is affected by the diversity of factors such as the perceptions of the persons involved, the nature of the situation, and the types of constraints within a given environment. While we will defer a more extensive discussion of these factors until later chapters, we can at least make the following claims: college and university codes are a complex mixture of ethical components; the makeup of the ethical components are as complicated as the mixture they create.

On the one hand, it is obvious that these codes are teleological in that they "hold that the moral value of an action or practice is a function of the consequences" (Callahan 19). We, as members of the campus community, subject harassers to a variety of punishments, to consequences, based in their act(s) of harassment. These judgments are matters of community formulation in that we make determinations as to what acts "would survive the appeal for justification from reasonable persons" (Bok 93). The ethical codes that determine such judgments are based in the assumption that "action involves character, which involves choice; and the form of choice attains its perfection in the distinction between Yes and No" (Cralle 25). These original italics highlight an important feature of the topic under discussion: choice that takes the form of harassment-as-action demonstrates that the consequential "No" is based on the quality of character as shown in the given act.

At the same time, sexual harassment codes embody an ethical absolute: no one should harass another person sexually. Given this interpretation, these codes are also deontological in that "once [the] moral rule is established, it is exceptionless" (19). In other words, we seek via the condemnation of sexual harassment to codify the inherent value of an individual to carry on their business free from unwanted sexual acts. Or, as Martin Buber states in "Elements of the Interhuman," we make judgments against certain acts so as to engage other persons as an inherently valuable person, deserving of respect, and capable of thought and choice (31-41). Thus, sexual harassment codes are based in the category of actions which deny consent and choice as components of participating in a given sexual act.

Hence, we arrive at a quandary: what purpose do the codes serve as responses to the exigence? This chapter is an attempt to begin the process of answering that complicated question. More so, the analysis herein serves to demonstrate that the codes as ethical constructs is inherently situational in nature; that is to say, the codes herein are a result of historical factors generally and campus/academic factors specifically. As such, the discussion will develop in several parts. Initially, we will survey the philosophical foundations of ethical codes. An analysis of the structure of the sexual harassment codes will then be undertaken to demonstrate their relation to two basic matters of ethics: autonomy and sanction. Additionally, these codes will be compared with other ethical codes of conduct that are found in a variety of professional settings. This comparative analysis will serve to demonstrate the general connection of the codes to other constructs that deal with ethical concerns but, more so, the necessary distinctions which render them unique artifacts suited to individual critical treatment. Finally, by studying the foundations upon which compliance to codes of conduct are based, we will put forth some concluding comments relating to the discussion that has occurred. As a result of these observations, it should become apparent that sexual harassment codes, as much as other codes of conduct, are: 1) sufficiently complex to warrant the analysis that will occur in the preceding

chapters, and 2) forms of discourse suitable for scrutiny given the rhetorical framework that will be endorsed in the very next chapter.

The Foundation of Ethical Codes

As was alluded to in the introduction, ethics deals with questions of morality. The word ethics, "meaning character or custom," is focused on two general types of concern: 1) individual character and how such is determined, and 2) the social rules which constrain that conduct by virtue of delineating what is positive and negative in given instances (Shaw 3). The sum effect of these concerns is evident when we begin to discuss ethical codes: social rules are provided, codified, so as to regulate the individual's character.

Perhaps the most important component of these codes is the matter of autonomy, the ability for the individual to govern their actions. But that governance is a tricky movement between the freedom to make choices and the ability to make those choices without coercive pressure exercised on our ability to do so (Appelbaum and Lawton 32). More so, a person must be capable of obtaining all information related to a choice for that choice to truly operate without coercion; that is, the constraint of information by another person is coercive in that such constraint factors out details necessary for making a choice (33).

The autonomous individual is also connected to a larger framework of social conduct. Worded simply, these social rules of conduct take the form of one of several principles: paternalism, harm, offense, welfare, or legal moralism. The principle of paternalism asserts that "a person's self-determination may be justifiably restricted in order to benefit the person" (35). We would not let a person with a mental disorder, given this principle, to inflict injury on themselves even though they were capable of doing so. The harm principle operates in contrast to the first, in that it restricts persons so that they do not impose harm on other persons (36). Although a rapist can rape a person, it goes

against the harm principle to allow them to do so. The offense principle contends that it is just to regulate self-determination if it causes offense to others; a flasher would be an example of a person in violation of this principle in that their need to expose themselves conflicts with other person's right to avoid such displays. The fourth type of principle, welfare, functions in opposition to the harm principle in that the benefit of others is a justifiable reason to regulate the individual (37). Hypothetically, the person with all of the food on a desert island would be required, via the welfare principle, to distribute that food to the other people on the island. The final principle, legal moralism, restricts the individual "in order to prevent immoral action" (37). Sodomy laws operate as an example of constraints that restrict sexual activities that certain persons have determined to be immoral. The second and last principles are the most applicable to sexual harassment codes. Although shades of all of the principles can be noted in sexual harassment codes, legal moralism and the harm principle seem the most directly related in that the harm that is caused is sanctioned against via a legal mechanism that determines harassing behaviors to be unethical.

Care must be taken at this juncture to note the problems inherent in these types of principles. While they all favor some type of benefit--to the individual, to others specifically, to society in general--they also necessarily reduce the function of autonomy. As such, the questions surrounding ethical codes double back to the very definition of ethics. That is, how do we deal with the tension between the individual's rights (autonomy) and the rules of social conduct (codes)? Answers to this question are often as problematic as they are simple. On one hand, it would be easy to say that total autonomy is granted if the individual operates outside of the realm of socially constructed rules. But there are few, if any, cases where a person is capable of such unrestricted freedom; in other words, there are no hermits in the world today. In an attempt to overcome these problems, certain theorists have proposed the interesting notion of a subjective, yet universal code.

Such is the case in an essay by Paul Allen. He argues that "according to [R.M.] Hare's thesis of universalizability, logic requires us to decide to do to others only what we are willing to have done to ourselves--under relevantly similar circumstances" (50). The obvious problem is that such a formulation leads to some uncomfortable implications: a murderer, willing to be murdered in a "relevantly similar circumstance," is thus allowed to murder. Allen, however, believes that the fault in Hare's original theory can be overcome if we are to look at the idea of immediate freedom: the ability to do what one is currently choosing to do free from sanction (52).

This form of autonomy that Allen endorses is further channeled into a universal application: since we would not want another person to take away our immediate freedom, "every agent is required by logic not to decide to thwart the immediate freedom of others" (53). More so, this principle is constrained by the "relevant clause" of Hare's original theory in that any feature that is found in our formulation of immediate freedom is extended to our consideration of others (54). By this logic, we cannot murder because we would not allow ourselves to be murdered. The reason is that the immediate freedom we have is based on our autonomy and the person to be murdered has the exact same autonomy--the inclination to murder is thus rendered secondary to our ability to operate autonomously. Allen's revision is thus: 1) subjective by being based on our own preference for autonomy; and 2) universal in that it would be held by all logical thinking people in any situation (56-57).

This type of construction of moral conduct is faulty in at least two regards, both of which are demonstrated sufficiently when taking into consideration sexual harassment. If "logic" is a requirement for the proper functioning of Allen's theory, then many instances subject to ethical consideration fall outside its reach. When we recall the harm and legal moralism principles, we notice that they hinge on stopping actions that fall outside of ethical conduct as prescribed by social rules. Actions of this type can be labeled illogical in so far as the rules of social conduct define right and wrong. Secondly, Allen keeps

Hare's notion of "relevance" as a component of his formulation. But, judgments of what is relevant are significantly hampered when actions are illogically autonomous; the need to fondle another person for sexual pleasure is an irrelevant factor in judging how we ethically treat another person, insofar as that other person does not want to be fondled. In sum, Allen's formulation seems to be idealistic at best and utopian at worst when making ethical and moral judgments about codes of conduct generally or sexual harassment codes in particular.

Now that we have looked at the general reasons for the formulation of ethical codes, and at the problems inherent in one attempt to deal with their complex nature, we must turn our attention to the nature of sexual harassment codes on college and university campuses. By looking at the specifics of these codes, we will be able to understand better their relationship to other types of ethical codes that are operative in society today. Additionally, later questions of compliance will become easier to address with the structure of the codes already laid out.

Sexual Harassment Codes

As was mentioned in the introductory chapter, the definition of "sexual harassment" created by the Equal Employment Opportunity Commission [EEOC] in 1980 is the primary explanation of the problem used in a wide variety of legal, employment, and educational settings. This definition includes two manners of harassment, quid pro quo and "hostile environment," and also the liabilities that extend from either type of harassment (Crusius & Channell 374-375).

Each campus code is based on the above factors offered by the EEOC. In addition many of the codes make a direct reference to the ethical implications of sexual harassment. Oregon State University, the first of the artifacts in the rhetorical analysis, includes the comment in its 1995 Purpose Statement that OSU realizes there are "moral and legal

obligations to ensure" that the campus is free from sexual harassment--a rather direct explication of OSU's belief that constraints must be placed on the social conduct of those persons within the campus community (1).

Slight modifications are also made to the codes so as to focus the definitions on the academic arena. To illustrate this point, note the similarity of the following three definitions of sexual harassment:

1. "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" (Oregon State University, "1994" 1).
2. "Sexual harassment may involve the behavior of a person of either sex against a person of the opposite or same sex, and occurs when such behavior constitutes unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical behavior of a sexual nature" (Rice University, "1992" 1).
3. "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment" (Crusius and Channell 374).

In the first two definitions, the influence of the third--EEOC--definition is more than just passing. The former modifies the EEOC definition with the movement of a few words; the latter makes the definition more inclusive with a direct reference to same-sex sexual harassment. Other codes are illustrative of the same point. Western Washington University's 1986 definition uses the exact EEOC definition (1); Middlebury College in Vermont offers a brief statement of purpose that then refers to the "violations of the civil rights laws" (1); Howard University in Washington, DC, simply refers the readers to Titles VII and IX in its 1993 policy (1); and The University of Maryland College Park code is once again a subtle modification of the EEOC definition (3-4).

When the focus shifts to what makes sexual harassment illegal, the definitions again turn directly to the EEOC: as an implicit or explicit condition of employment or "education," as a basis for employment or "educational decisions," or when it unreasonably affects the "academic conditions" so as to create an intimidating, hostile, or

offensive environment. Cornell University substitutes the word "conditions" for the term "performance" (1). But law student Jollee Faber mentions one area that is not covered in these codes: student-to-student harassment (86). Although court cases have established the connection of employer/employee and student/teacher harassment claims filed under Title IX and VII, they have not outlined how legal recourse is to be addressed in peer harassment cases (86-90).³

The result is that academic institutions have phrased codes in such a way as to imply all types of harassment, yet ignore specific cases. The conclusion that Barbara Bate and Judith Bowker reach in regards to secondary institutions easily applies to colleges and universities as well: "policies continue to be written primarily with the teacher/student relationship in mind, giving only passing notice to harassment among students" (252). The absence of recourse in the codes for this type of harassment serves to demonstrate that sexual harassment codes are comparably similar in not only what they include, but what they leave out.

The changes in the organizational structure of the codes are relatively minor. These changes are, for the most part, expansions of the procedural sections or, in other cases, the inclusion of the EEOC guidelines where they had only been referenced previously. The former types of change are the result of legal changes that affect issues, such as the length of time to file a complaint; the latter modifications occurred in the years directly after the creation of the 1980 definition and liabilities, representing a move to bring the then-current sexual harassment policies in line with the new federal regulations.⁴ In sum, colleges and universities vary the word choice, placement, and content with few

³ Faber's argument is complicated by a troubling fact: although the codes may not deal explicitly with peer-to-peer harassment, supplemental materials do. The Rice University artifact is contradicted in that a pamphlet that is given to all new staff, and available to students, makes the claim that "peer harassment is one of the most common forms of sexual harassment"(2). But this statement does not mention that such action is not considered in a legal sense.

⁴ The two artifacts that are the focus of this thesis contain representative examples of these historical modifications and they will be expanded upon in the fitting response section, Chapter Seven.

exceptions to the pattern described above. But, from this starting point, the codes develop along one of two paths. So as to simplify matters, we will henceforth label these basic and extended codes.

The first type, basic, contains the above definitions and provisions (modified as described above to suit the academic setting) and the procedural process through which a person can use the code. A representative example of this type is the previously mentioned sexual harassment policy offered at Oregon State University. The introductory section contains statements of purpose, policy, and definition, followed by the more general statements related to consensual relationships and the ways in which to create a harassment free environment (1-3). The code then goes into an extended amount of detail in describing complaint procedures of both a formal and informal nature. The former is "the process of gathering information to either establish a suspicion of sexual harassment or to attempt to resolve a disagreement without following a formal procedure"; whereas the latter is "the process of investigating a case of alleged sexual harassment and making a determination as to whether or not sexual harassment occurred and, where appropriate, providing a resolution to the complaint" (4).

While both types of complaints include additional sections related to persons who may file charges and the procedures available in each instance, formal complaints are extended to include a discussion of: board rules, collective bargaining agreements, initiation of formal grievance, appeal to faculty grievance committee, decision by the committee and appeal to the president, appeal to state board, effect of time limits, non-retaliation standards, and two-year review process (5-10). The final sections of the basic code detail sanctions that can be imposed on members of the campus community as determined by their respective position (employee, student, etc.).⁵

⁵ These components of the basic code (and the distinctions to be made when compared to an extended code) will be examined in detail in the Fitting Response chapter.

The second type, extended, follows the same format as the basic type code but includes an element not offered in the basic type: prohibited behaviors. These behaviors range from explicit gestures to subtle innuendoes. By offering a list of behaviors that are subject to sanctions, extended codes expand the area of constraints offered. This expansion changes the dynamics of the given sexual harassment code as a response to the situation in that it has "the power to constrain decision and action needed to modify the exigence" in a way that is far greater than basic type codes (Bitzer, "Rhetorical" 21). Going beyond a general discourse about the sexual harassment situation, an extended code such as the one offered by Rice University, the second artifact in the rhetorical analysis, specifies those actions within the situation that are subject to constraint.⁶ What follows are two examples of the more explicitly-stated types of prohibited behaviors found in college and university codes:

1. Unwelcome types of touching, pinching, gesturing (Rice University, "1995" 2).
2. "Risqué" jokes, insulting sounds, continuous idle chatter of a sexual nature (University of Maryland College Park 5).

These elements of the sexual harassment codes on college and university campuses--the EEOC definition and provisions, and the basic and extended types thereof--serve as the standard throughout the academic community in the U.S. Now, we shall provide a brief comparative sketch of sexual harassment codes and other ethical codes of conduct that are found within the professional spectrum. The results of this cursory analysis will demonstrate that sexual harassment codes, while obviously distinct in their location within the sexual harassment situation in general and on campuses specifically, are connected to other codes of conduct in many practical ways.⁷

⁶ An issue that will be addressed in the actual analysis of the codes-as-responses is the extent to which an Extended code, by stating prohibited actions, necessarily ignores actions that fall outside of the code but could still be construed as violations.

⁷ A matter of analogy helps to clarify how these components of sexual harassment codes operate in a rhetorical fashion. Bitzer notes that the Declaration of Independence is rhetorical in that it is

That these sexual harassment codes differ from other ethical codes of conduct is obvious. Codes such as the American Medical Association's [AMA] Principles of Medical Ethics and the Association for Computing Machinery's [ACM] Bylaw 19, Code of Professional Conduct, are directed towards differing contexts (Appelbaum, Appendix 422; 425). But those differences illustrate that the "context" is, in all practical senses, a substitution for the word "situation." As such, we must briefly examine the similarity of ethical codes of conduct for, while distinctions yield little practical benefit, they are indeed comparable in many ways. This examination is of import because it provides an illustrative parallel to the development of sexual harassment codes; that is, codes are generally similar but are also individually distinct in much the same way as the codes are historically developed yet campus specific. In the similarities we note features which connect the sexual harassment codes to other ethical forms of sanctions. In the differences we note the specifics which make them a situational factor.

First, the use of the term "professional" designates a certain groups relationship based on their shared occupational pursuit. In a very real sense, sexual harassment codes on college and university campuses operate in the exact same manner; that is, colleges and universities are professional centers of education. Campuses form a "plurality of publics" where participants operate within a realm of shared interest in much the same way that the AMA's or the ACM's members do. While it may be true that we are not oft-inclined to label students and professors comparable "professionals," such a designation fits if we are to view it from a situational perspective. As Bitzer suggests, these groups comprise distinct publics that are recognizable in their contrast with other such groupings of persons in that they form "a community of persons who share conceptions, principles, interests,

enthymematic ("Public" 86). Sexual harassment codes follow a similar structure: major premises (sexual harassment as federal and educational violation, statement of intent) followed by minor premises ("hostile environment" and quid pro quo) and, in the case of the extended codes, particular instances that support the major and minor premises.

and values, and who are significantly interdependent. This community may be characterized further by institutions such as offices, schools, laws, tribunals" ("Public" 68). Hierarchically, there is no doubt that students and professors differ inasmuch as administrators and contractual employees differ from them as well. Yet they rely on the educational center for those distinctions and are interdependent to the degree that the situation defines the shared locale in which they operate.

The point to be stressed is that situations demonstrate a relative degree of similarity in their organization even if that structure is directed to different tasks, such as medical or educational pursuits. And the parallels in the codes that we have examined are based in the similarity of the ethical constraints that are placed on their differing members. As such, the terms "professional" or "context" apply not only to occupations, but to groups that are significantly interdependent and distinguished by institutional structures. Sexual harassment codes are, in short, connected to a range of differing codes of conduct in that they all place sanctions on the autonomy of the individuals within the respective situations.

Questions of Compliance

The initial tendency in looking at compliance, "self-regulation," also deals with the issue of autonomy. Given that people operate, to varying degrees, as individuals within specific realms of social constraint, there is a belief that they can also regulate their actions within those realms. The first type of self-regulation is admission: by entering into a professional group we agree to operate in line with that group's rules of conduct (Bayles 126-127). Colleges and universities provide this type of regulatory mechanism in that students agree to abide by the rules of the institution. The second type of self-regulation is discipline: the group's ability to punish those who have been admitted but disregard rules of conduct (129-130). Again, colleges and universities operate in this fashion in that

boards are set up to deal with infractions related to issues such as general conduct, substance abuse, and sexual harassment.

Both of these internal types of compliance operate on the assumption that the individual and the group are capable of regulating themselves, out of the scope of the larger society. But such idealism often bears tainted results: self-regulation can mutate into a "private matter" (what is done and why it is done is ambiguous to outsiders) and at worst the perpetuation of unethical behavior (the Tailhook scandal offers the example of people self-regulating--not ethical behavior--the flow of information about behavior into the general public).

The next compliance-gaining type is an expansion of the previous ones, again relating back to autonomy. The difference is that "professional autonomy" extends beyond the interaction of self/profession (the person and their relation to the group) to the more comprehensive relationship of profession/societal (the group and the contact with the larger society). The first type is centered on expertise: those involved in the profession know how to deal with that profession's conduct problems (Bayles 133). As we have seen, colleges and universities frame the nature of sexual harassment so as to focus on the fact that it occurs in an educational context. The next type is based on the concept of independence: the inclusion of those outside the profession in matters of conduct intrudes on that profession's autonomy (135). In regards to this type, campus sexual harassment codes differ in that they are tied to the EEOC, a government committee, for the definition which frames the exigence and are held to liabilities that extend from that definition. The third and final type is related to confidentiality: allowing outsiders to scrutinize the profession's rules of conduct destroys the professional/client--and, we can add by extension, educator/student--relationship (136). In this instance, campus codes diverge from this compliance type in that the only area in which confidentiality is an issue is in relation to complaints filed and persons named in such complaints. In regards to other aspects of sexual harassment codes, confidentiality is not a factor as persons found guilty

of harassment are subject to penalties which makes the person known to those within the campus community.

All of these professional compliance techniques can run into similar flaws, if on a larger scale, as the self-regulation concepts. The assumption that internal matters are removed from the concerns of a larger public ignores the relationship of the profession to the larger society, the overlap of societal issues of conduct into the professional realm, and the need for outside scrutiny that is independent from those directly involved in the profession. As a result of the flaws in the aforementioned areas, suggestions have been made to adopt new strategies for compliance. The use of laypersons is one alternative, but there is often the problem of deciding the scope and nature of their activity in formulating and regulating conduct (Bayles 138-139). Indeed, the situational perspective operates on the assumption that only those audiences capable of authorizing and mediating change can provide the means by which to modify the exigence; yet, at the same time, the codes are built on the materials provide by persons from outside of the campus situation--again, the EEOC. Another possible compliance technique is the revision of codes so that they are more explicit, increase the chances for the reporting of violations, expand investigative devices, and streamline the process by which professional membership can be revoked (140-142). But, as was noted in looking at extended codes, those explicit inclusions necessarily limit those actions which can be designated as a breach of the code. A final alternative places emphasis on the idea of stopping violations, not merely punishing those that occur. Central to this plan is the use of educational materials that infuse all professional activities with some degree of ethical implication (144). But, as was noted earlier, if the materials are not standardized in the description and explanation of the conduct subject to sanction, more problems than benefits may be accrued.

These matters of compliance have import on all of the codes that have been discussed, but our attention must finally return to a discussion of sexual harassment codes.

Specifically, we must now address the question of "function" that was raised at the outset of this paper and note how that question factors into the rhetorical analysis.

Consequence and Condemnation

The basis for and the regulations within ethical codes of conduct are a complicated mixture of what ideally to do and what realistically happens. The autonomous individual is located in a complex matrix of differing rules of social conduct. They must abide by these ethical rules set forth by the different publics to which they claim membership if they are to avoid the consequences of actions determined to be negative: condemnation via sanction. As such, sexual harassment codes serve two primary purposes. First, they are educational in that they provide definitions of, explanations about, sexual harassment. Secondly, they provide a sanctioning mechanism in that they explain the options open to the harassed and the punishments incurred by the harasser. Together, these dual purposes create the overall function of the code: an explication of and a reaction to sexual harassment.

That the educational and sanctioning purposes of the codes are disregarded should not surprise anyone. As with malpractice and other unethical professional practices, there will always be those that throw into conflict the optimism of Kultgen's "moral community." But what is important is that for all the similarities that sexual harassment codes share with other types of codes, they still stand as a distinct form of response with distinct problems. Thus we return to my introductory comment that sexual harassment codes provide a problematic form of discourse which are in need of critique. In their connection to other codes of conduct we are able to note the ethical foundations and philosophical underpinnings that render them rhetorical; in their individuality, sexual harassment codes offer a distinct mode of ethical and rhetorical discourse warranting an equally philosophical, and situational, critical treatment.

For these reasons, the next chapter turns to the methodological framework best suited to guide the work to be done in the preceding chapters. The situational perspective seeks to make a determination as to the nature of social constraints, of discourse that changes the actions of the public. But, more than that, the end goal of this rhetorical format is the articulation of a response that might be more pragmatic, more fitting, than the one originally constructed. Just as we determine that acts such as sexual harassment have (negative) consequences, we must assess the means by which we define and react to those negative actions. Such assessments might provide us with a clearer explanation of how the response that explains and sanctions against sexual harassment operates and if that response "fits."

Chapter III: The Rhetorical Situation

In 1968, Lloyd F. Bitzer published "The Rhetorical Situation" which introduced a method of rhetorical inquiry promoting an understanding of discourse as a situational creation. In 1980, he expanded and clarified the initial critical construction, introducing a more thorough treatment of audience and speaker response to situational components. The result of these two articles is the creation of a philosophical framework that goes beyond traditional Neo-Aristotelian critical constructs by positioning "rhetoric-as-essentially-related-to-situation" (18). More so, this situational perspective challenges the conventional, modernist modes of rhetorical inquiry by seeing the rhetor as part of the impetus for, not sole creator of, the persuasive discourse that arises in a given situation.

With these perceptual components in mind, this chapter will develop in four stages: an analysis of "The Rhetorical Situation" and "Functional Communication: A Situational Perspective," scrutiny of the criticisms that have come about in response to Bitzer's framework, an examination of the ways in which the situational perspective has been utilized and suggestions as to reasons for such usage and, finally, a discussion of the problems and benefits inherent in the use of this critical framework.

The Situational Perspective

There are many theoretical frameworks by which to approach the understanding of rhetorical discourse. Some methods emphasize the viewpoint of the rhetor, or the audience, or even the genre from which the artifacts draw their commonalties. The situational approach to rhetorical criticism is grounded in the search for an understanding of "the nature of those contexts in which speakers or writers create rhetorical discourse" ("Situation" 17). Those contexts, using Bitzer's terminology, become the situations in which the persuasive discourse is found. And these situations can be of differing designs

dependent on the factors found therein. On the one hand, a situation may be the interaction of many component parts (complex) or it may be relatively simple in its organization; on the other, it may be highly or loosely structured depending on how many of "its elements are located and readied for the task to be performed" (23). In sum, a rhetorical situation is a combination of both of these factors (simple/complex organization and loose/highly structured).

More specifically, a rhetorical situation is:

A complex of persons, events, objects, and relations presenting an actual or potential exigence which can completely or partially removed if discourse, introduced into the situation, can so constrain human decision or action as to bring about significant modification of the exigence. (20)

Thus, three factors are necessary to create a rhetorical situation: exigence, audience, and constraints. The exigence, "an imperfection marked by urgency," is rhetorical in so far as it can be modified by discourse. In contrast, the singular acts of urgency to which we are treated everyday--a car crash, the death of a friend, the birth of a baby--are not capable of modification as they present themselves in the context of their situation and, therefore, are not rhetorical exigencies (20). The second element, audience, is no less important to the understanding of the rhetorical situation. The audience acts as the body that is influenced by the discourse and is capable of "being mediators of change" (21). That modification is affected and influenced by the force of constraints. Constraints are those "persons, events, objects, and relations which are parts of the situation because they have the power to constrain decision and action needed to modify the exigence" (21). In regards to constraints, there are two types: those which are the creation of the rhetor (artistic) and those which are found in and active within the situation (inartistic).

This blending of exigence, audience, and constraints forms the situation which provides the rhetor with "an invitation to create and present discourse" ("Situation" 21). But not all of the rhetorical responses to the situation are successful. The situation, given

that it is affected and controlled by the unique characteristics found therein, calls forth a particular "fitting response." But what makes for a response that fits the situation? Bitzer answers this crucial situational question in the essay "Functional Communication: A Situational Perspective." Therein he argues that two types of responses are possible in a situational account of rhetoric. The first type of response is complementary and is best thought of as an obvious reaction--a call to war by a president in the wake of an aggressive attack by another country. The corrective response, however, is the more "essential" of the two in that this response seeks to promote a change demonstrated as necessary within the situation ("Functional" 36-37). The distinction to be made between these two types of responses is that the former operates as a natural, rhetorical outgrowth of the situation whereas the latter promotes a change in the status quo.

Corrective rhetorical responses are further divided by Bitzer into two subgroups. The first is a response that is called forth as a result of real or potential exigences perceived by the speaker. When a school board takes measures to boost security after a recent rise in drug activity, or in response to suspicions that there has been an increase, they are attempting to modify the potential or actual increase in drug activity. The second subgroup of responses promotes "continued and successful situational activity" ("Functional" 37). In this case, the lack of the rhetorical response would create difficulties within the situation, would create other exigences. This subgroup is often recognized when it is absent, such as when we are asked to do a simple task for a friend and fail to respond or respond in the negative. The distinction to be made between these two types of responses is that the former is an attempt to reduce or remove the exigence, as in the case of sexual harassment codes, whereas the latter is an attempt to perpetuate the current situation via rhetoric.

Regardless of the type and/or subgroup of the response that is called for by the situation, many obstacles lie in the path of the "fitting response." An audience may choose to ignore a speaker's rhetoric, a rhetor may miscalculate the type of response that is

necessary or may misidentify the controlling exigence in a given situation. As such, the responses to the exigence by the speaker, as creator of the response, and the audience, as possible mediators of the exigence, are paramount. If the speaker is unsuccessful, then the audience will not mediate the change called for. The result will be the perpetuation of the exigence or the alteration of the exigence that is not "fitting." To help determine the fitting nature of the speaker's response, Bitzer offers up six factors that influence the responsiveness of the speaker and audience to the exigence. If these factors are not adequately taken into consideration by the speaker, they are less likely to be understood by the audience that the speaker addresses. Thus, how a speaker responds determines how and if an audience does the same.

The first factor, degree of interest, involves six principles of motivation for the speaker and the audience: an exigence that demonstrates a high amount of factual substance will yield the most interest; direct knowledge of the exigence creates more interest than merely knowing about the exigence; interest is higher the more closely one is located to the exigence; an exigence that has a direct impact on people immediately known to the speaker or audience will arouse more interest than one that involves anonymous individuals at a distance from them; personal involvement--some feeling of responsibility--for the exigence will increase interest; and the amount of specific interest, denoted by specific emotional responses to the exigence, signals a higher degree of interest than a general response to the exigence ("Functional" 31-32). The speaker's degree of interest, as demonstrated by their motivation to respond, will determine the audience's degree of interest. In essence, the speaker must make the audience aware of the exigence and persuade them to act on the response provided.

The other five factors that influence responsiveness are: modification capability, risk, obligations and expectations, familiarity and confidence, and immediacy ("Functional" 32-33). The degree to which all six of these factors are present will help to determine "accurately that messages of a certain kind will occur" (34). That is to say, the more

chance one has of modifying the exigence (whether as speaker or as audience) and the less risk associated with such modifications will necessarily increase the likelihood that such a response will be initiated.

Rhetorical situations are also capable of, and often require, modification in much the same way as differing situations call for differing responses. The reason for this modification is quite simple: each situation is a combination of different features that are structured in various ways. A speech code and a code of conduct for an organization are similar in nature but, as the previous chapter demonstrated, they are also structurally different and unique. In a slightly different fashion, the components within individual situations shape and determine the nature of the modification required. As a situation progresses, it will (necessarily) take on new characteristics to fit the modifications and dispense with those characteristics which have faded from view. In other cases, the situation will be so radically altered by the infusion of new constraints that it become a structurally different situation. As an example, a speech related to the war on drugs in the 1980s may be similar to a speech given addressing the exigence of drugs in the 1990s, but the situation is no longer--in the sense of time, constraints, audience, and information--the same. A response to a previous form of the situation, or to a related situation, or a new situation, will not be rhetorically effective in so far as it is responding to a past version or a different type of situation. This similarity of situations and situational components can, in turn, provide for a specific situation's continued existence or eventual destruction ("Situation" 23).

Criticisms

"The Rhetorical Situation" has been the focus of significant amounts of criticism, often for seemingly innocent misunderstandings as to its nature and function as a means of explaining what gives rise to rhetoric or, in other cases, due to approaching Bitzer's

position from a theoretically divergent rhetorical framework. Most often, these arguments focus on Bitzer's use of the situation as the ambiguous creator of the rhetoric (Patton 37). Those critics of the situational perspective, however, have failed to note a crucial element in the theory that Bitzer has proposed: one of the most fundamental parts of the situation is the rhetor who stands within the situation and not, as some of the preceding critics argue, at a distance from it (Mackin 286).

Richard E. Vatz, in his essay "The Myth of the Rhetorical Situation," provides one of the most reprinted criticisms of Bitzer's situational perspective. He argues that rhetoric is not situational; rather, "situations are rhetorical" (159). In addition, Vatz puts forth the argument that rhetoric, far from creating meaning, is an effect of meaning in that rhetors create persuasive discourse in response to facts within a situation (160). While these rationalistic arguments seem at first to be serious blows to the situational perspective of Bitzer, they operate in most cases as supporting argument for a situational understanding of rhetoric. In answer to much of what Vatz describes as flaws, a careful reader can find answers located directly in the text of Bitzer.

One of the earliest claims that Vatz makes is that "no situation can have a nature independent of the perception of its interpreter or independent of the rhetoric with which he chooses to characterize it" (154). These "dependent" factors which Vatz is quick to point out are dealt with in the area of constraints, in the "set of . . . beliefs, attitudes . . . motives and the like" that determine the rhetor's actions (Bitzer, "Situation" 21). The rhetor has "perceptions" that are in turn affected by the situation in which they find themselves. This claim of dependency is funnelled through the larger argument that "The Rhetorical Situation" amounts to a predetermined view of events in "which rhetoric inexorably follows, or should follow" (Vatz 155). But, as Patton demonstrates, the should part of the above argument is also key to its undoing (41). By the very fact that not all situations produce rhetoric, that these situations can and do decay, the deterministic claim against the situational perspective seems fallacious. Given these observations, rhetoric is

situational in that the success or failure of persuasion is tied to the situation in which it occurs.

The next major argument that Vatz raises against "The Rhetorical Situation" is twofold: that "there is a choice to communicate" and a choice to translate "information into meaning" (156-157). Although the above analysis highlighting that not all situations produce rhetoric answers the question of choice, a more extensive answer is necessary. I would posit that the choices Vatz refers to are part of 1) what distinguishes different situations and 2) an extended reference to the effect of constraints on the situation. In no way is the "act of creativity" necessary to create rhetorical discourse negated by the situational perspective. As Patton confirms, "in any given situation, a rhetor decides about the form and content of intended discourse in accordance with operative constraints" (41). That freedom of movement in creating (or not creating) discourse implies the choice that Vatz seems to believe is absent from Bitzer's perspective. This choice, in turn, points to the creation or possibility of creating meaning within the situation. An audience that responds to the speaker's discourse is responding by extension to an exigence that the speaker has interpreted persuasively for them; the meaning of the given imperfection is to be found in the success or failure of the rhetoric.

The final argument of Vatz's that must be addressed is the contention that the situational perspective "ascribe(s) little responsibility to the rhetor" (158). This claim ignores the effect of the exigence on the discourse, the rhetoric that is sought in response to the exigence, and the very basis of Bitzer's theoretical framework. The rhetor responding to the situation, and the exigence, is answering the "invitation to create and present discourse" (Bitzer, "Situation" 21). That invitation is no idle call for any type of discourse that the rhetor chooses. The situation calls for "a fitting response, a response that fits the situation" (22). Therein lies the responsibility of the rhetor. Although it must be admitted that rhetors can and do fail to provide a fitting response to the situation, the

search for said response is the very foundation upon which Bitzer builds "The Rhetorical Situation":

The world presents imperfections to be modified by means of discourse--hence the practical need for rhetorical investigation and discourse . . . rhetoric as a discipline is justified philosophically insofar as it provides principles, concepts, and procedures by which we effect valuable changes in reality. (24)

As Mackin notes, this lofty sounding goal of rhetoric is much more practical than Vatz would lead one to believe; indeed, Bitzer provides a method of inquiry which considers "rhetoric pragmatically as a moral act that results when interaction between organism and environment creates a problematic situation" (286).

K. E. Wilkerson also finds problems with the search for "valuable changes in reality" as proposed by Bitzer. The foremost claim that he levels against "The Rhetorical Situation" is the ambiguity in the definitions. To highlight this point, Wilkerson offers the example of a child's hunger and his mother's response as a situation fitting Bitzer's perspective (85). I would posit that this scenario does involve an exigence, but not a rhetorical one necessarily. While one may argue that the mother would be persuaded by the son's calls for food, I would label such an attempt to critique the situational perspective minimalistic to the point of absurdity. Hunger, as described by Wilkerson, cannot be considered a rhetorical exigence in that, without food, we die; it does not require discourse to be satisfied because it is a component of a larger "necessity [that] cannot be changed" (Bitzer, "Situation" 20). What Wilkerson has done is akin to refuting the situational perspective by arguing that a naked child, caught in the "situation" of getting out of a bath, rhetorically modifies the exigence by having his mother hand him a towel.

The second, and more substantive, argument Wilkerson raises against "The Rhetorical Situation" is that it fails to "establish natural boundaries for the area of human

activity it would comprehend . . . specify a set of phenomena which can be readily observed . . . [and] align with a general theory of human communication" (83-85).

Arguments could be made that these standards, created by Wilkerson to advance his own theoretical principles, are self-serving. But, as a matter of analysis, we can return to Bitzer for answers to these critiques. The natural boundaries of the situational perspective are explicit in the very label that describes the perspective: the situation. The diversity of examples which Bitzer provides--a fishing expedition, a political campaign, eulogies, and the like--seems sufficient to warrant dismissing the first of Wilkerson's claims ("Situation" 24).

The question of how available a set of phenomena are for observation also seems to be apparent. By scrutinizing the nature of the exigence, audience, and constraints in a given situation, the critic is able to observe the characteristics that set one situation apart from another ("Situation" 21). That the fishing expedition is different from the inaugural address of a President only serves to highlight that rhetorical situations are 1) readily observable and 2) unique in their individual makeup. Finally, the alignment of Bitzer's rhetorical approach with a more general theory of communication is not as unlikely as Wilkerson would have a reader believe. I would label "The Rhetorical Situation" an historical perspective and, if further specificity is necessary, an active component in what has come to be considered genre criticism. But these forms of criticism are all connected to the more general Neo-Aristotelian critical framework as well. And the Neo-Aristotelian critical approach, at least as articulated by Bitzer, is easily aligned with a pragmatic approach to communication: we create messages so as to create specific responses. By focusing on specifics and treading lightly upon the overall approach that Bitzer endorses, Wilkerson seems to have missed the comment that "from day to day, year to year, comparable situations occur, prompting comparable responses" (24).

A brief look at Phillip K. Tompkins' response to both Patton and Bitzer in The Quarterly Journal of Speech's "The Forum" suggests that some criticism of "The

Rhetorical Situation" is little more than in-house bickering offering little in the way of constructive revision or commentary. Indeed, his suggestion of "a new formulation of situational theory" provides the most evidence of questionable critique: "Rhetorical discourse shapes, and is shaped by, rhetorical situations; by imputing causal status either to discourse or situation, in whatever degree of force, one may be simply bracketing a sequence of events in an arbitrary manner" (87).

Initially one wonders what about Tompkins' proposition is theoretical and what, by extension, his formulation adds to the understanding of a situational approach to rhetoric. While Tompkins claims this revision merges the ideas of both Bitzer and Vatz, the larger issue is how this formulation offers up anything in the way of "completeness, wholeness"--ingredients he asserts to be lacking from "The Rhetorical Situation" (86). More so, the initial discussion of the creation of rhetorical discourse seems entirely complementary to Bitzer's explication of situation. Situations and the rhetoric that is related to them are not creations removed from past situations and rhetoric; each is influenced by what has come before.⁸ Bitzer's own analysis of Tompkins' argument lends credence to my preceding observations when he states in the very same issue that "there is nothing 'new' in the 'new formulation'" (92). The irony is that Tompkins seems to have underestimated two situations--the one he spoke of and the one he spoke in--which leads to a result which is not, given Bitzer's terminology, "fitting."

The most recent critique of "The Rhetorical Situation" and its subsequent elaboration comes in the 1996 article "Bitzer's Model Reconstructed," by Craig R. Smith and Scott Lybarger. They preface their examination of the situational perspective by noting that "as we move through the postmodern era, rhetorical critics face the difficult task of organizing and integrating various methods as well as assessing more and more

⁸ A fictional scenario seems to be sufficient proof of this point: a person who sees a child drown, because they did not wear a life vest that they were told to put on, is influenced by that situation when they tell another child to do the same.

fragmented texts" (197). While the claim of textual fragmentation is, in itself, worthy of examination--authorship being one of the first casualties in this supposed postmodernist era--our attention must turn to the actual reconstruction they propose.

The central issue that the authors raise is that much of Bitzer's articulation of the situational method is flawed in so far as it is orientated around factors as realities rather than perceptions. These factors, such as the controlling nature of the exigence as catalyst for the purpose of the speaker's rhetoric, are suspect in an age when there is an increased recognition of "multiple audiences, exigencies, constraints, and perceptions surrounding rhetorical events" (197). Hence, the authors' argue that there is a need to create a more expansive version of the situational perspective by which to deal with these perceived challenges.

The problem with the analysis that develops, however, is twofold: the authors either include (or ignore) in their reconstruction ideas that are already admitted by Bitzer's original model or they force the false dichotomy--comparable to the questionable divisions noted by Mackin--between speaker and situation, arguing that the exigence operates "as the primary locus of critical inquiry because it transcends . . . speaker's purpose, audience, perception and scene" (198). In regards to the former, one must admit that the recognition of various critical tools complementary to the situational perspective is a healthy result; as to the latter, it must be argued that the situational perspective is useful in that it acknowledges the interaction between speaker and situation.⁹

Smith and Lybarger posit that Bitzer's model ignores the "potential of the rhetor to create an exigence and/or a situation with a rhetorical message" (201). While there is no explicit textual reference to this problem, one need look only to the fact that "The Rhetorical Situation" allows for the infusion of new factors into a situation, indeed, allows

⁹ Smith and Lybarger disparage Bitzer for showing an affinity towards the pragmatic approach of John Dewey. The irony is that Dewey provides not only a classical treatment of the intimate connection of the situation (environment) and the individuals therein, but also offers us a continued point of reference in the following chapters.

for the creation of new situations out of the decay or maturation of preexisting ones. As a thoroughly human creation, the issue of exigence arrives at our perceptive feet by no other than human means. The authors also argue that it is fallacious to claim that situational components are available for objective scrutiny. But there seems to be an error in arguing that a situation is not objective in so far as the channel that exists between speaker and situation sets up a relatively stable spectrum of interaction; that is, speakers operate within a situation and a situation is continually modified by the speaker's operation therein. Just as we can note the effects that a declaration of war has on segments of the populace (given that different audiences would respond in different ways), we can also survey the possible reasons for a President to issue such a response to an act of aggression. That such interactions should breed different situations and new factors within preexisting ones only points to the need to look towards a "controlling" exigence if one is to critically scrutinize a rhetorical situation in a systematic manner.

These aforementioned difficulties are then channelled into a "situational analysis" of several anti-drug speeches by President George Bush. What is initially striking is that the authors see multiple exigences as a manifestation of "new rhetoric," not as a fact that spans the history of rhetoric (205). But, even if one accepts the fragmentation argument, there runs a constant sense that much of what is being discussed is already allowed for in the Bitzer construction. When Smith and Lybarger state that "making the exigence a reality for an audience does not necessarily guarantee that an audience will be motivated to act," they supplement this by noting that Bitzer was correct in highlighting the need to persuasively engage constraints if the rhetoric is to be successful (207). On the very next page, they assert that Bitzer's model can incorporate close textual analysis, which in turn will provide "a useful reform of Bitzer's model because it allows the critic to achieve more depth in terms of stylistic analysis while remaining inside a cogent system of critical theory" (209). But, in any practical sense, are these really reconstructions? I would argue

that they are merely extensions of Bitzer, complementary supplements that stand independently of any necessity for insertion of postmodernist theoretical presumption.

Hence, we need to return to the secondary concern previously mentioned: the wedge that is driven between speaker and situation, with situation arising as predominant, in this postmodernist reinterpretation of Bitzer's theory. The problem with such a division is complex in that such a presupposition naturally leads one to assume that a "modernist" theory cannot deal with "postmodern fragmentation of public discourse and audience" (209). The real problem becomes a matter of theoretical orientation in that the postmodernist restructuring comes to be: 1) a needlessly complicated means by which to achieve similar results as are found using the original Neo-Aristotelian approach, or 2) so all encompassing as to be of little practical benefit.

These points are made clearer in the authors' concluding section, wherein they offer the four primary points of revision promoted in their essay. The first is to eliminate the term "controlling" in regards to an exigence. Even if we suppose such a modification, the critic is still confronted by the need to focus on one exigence if they are to create a sufficiently workable critical arena. That other exigencies may exist, may be of import, is still not discounted in this instance. The second suggestion, to revise the model so as to account for multiple exigencies, audiences, and a diversity of constraints within a situation, is more symptomatic of my secondary concern. Part of the power of the situational model is that it locates certain features within a situation and studies them, acknowledging by implication that no work of rhetorical criticism can do everything. If we were to revise the model given the above suggestion, we then face the task of implementing such a critical directive. Much better to narrow our field of inquiry, in my opinion, than to cut loose the critical ship from the moorings of practicality. The third revision, to "open the model to close readings, reconstruction of texts, and ideological critiques," speaks to both of my concerns (Smith and Lybarger 210). While close reading seems a beneficial inclusion, the latter two revisions would transform situational analysis into something completely

different--which is, perhaps, the point. But the situational model does not reconstruct texts, it analyzes situational components; it does not focus on ideological critique, though it may in fact look to ideological factors as crucial factors in a situational criticism.

Thus, when we arrive at the final suggestion that Bitzer's model should be revised so as to facilitate ideological criticism, it is best to note the obvious: one theory can and should be complementary to other approaches, but it should not--as a result---become the other theory. Smith and Lybarger provide, it must be admitted, positive extensions of Bitzer's situational approach. Yet they sacrifice those extensions to a needlessly nebulous use of postmodernism, to a prioritization where the situation stands above the persons located therein.

Application of The Rhetorical Situation

Given the above discussion of the criticisms leveled against the situational approach, it seems that the use thereof could go one of two ways: an engagement by critics interested in a philosophical perspective that has raised so many questions, or the shying away from a theoretical framework that is clearly not in line with the majority of rhetorical theories. In my opinion, the movement has sadly been towards the former. While often mentioned in texts that provide overviews of rhetorical theory, "The Rhetorical Situation" and its subsequent 1980 elaboration, seem to have been relegated for the most part to the status of a point of contention and not of critical analysis. When it has been applied, as is the case of the thesis we will examine, the criticism has been vague and the conclusions sloppy.

Lynn M. Disbrow's analysis of the Reverend Jesse Jackson's speech to the 1984 Democratic National Convention offers a promising start.¹⁰ The artifact that is the

centerpiece of her analysis, the delivered speech, is to be contrasted with an original manuscript. Her critique looks at how the revisions affected Jackson's "response to the exigences, constraints and expectations of the rhetorical audience" (i).

The problem that develops, however, is less the path chosen by Disbrow and more the way that path is analyzed. She traces the rise of the rhetorical situation from the beginning of Jackson's presidential campaign. Little analysis is made that is related to Jackson prior to 1984. I would argue that this exclusion of Jackson's historical progression as a public speaker undermines the rest of Disbrow's analysis. This is partially due to the treatment she expects to get out of such a short time frame. Questions as to Jackson's "credibility as a Democratic candidate and as a moral leader" warrant a deeper historical treatment (7).

Given this time frame, the analysis of the "controlling exigence--Jackson's credibility as a legitimate Democratic candidate" is a bit superficial (5). I make this argument because the critic is left with little ability to develop a sufficient picture of credibility. More historical treatment would be necessary to investigate Jackson's basis for entering the presidential race, for determining "the dimensions of judgment brought to the social situation," dimensions that directly influence perceptions of credibility (Delia 269). It is not enough to assume Jackson's aspirations; the critic must seek out those past influences which are brought to bear in the current rhetorical situation. These considerations are of particular importance if the analysis of the revised speech and the prior manuscript is to clearly address the situational influences which necessitated such a "drastic departure" between the two texts (Disbrow 27).

¹⁰ The reader is advised to look to: Garret, Mary, and Xiaosui Xiao. "The Rhetorical Situation Revisited." *Rhetoric Society Quarterly* 23 (Spring 1993): 30-40. This article provides the reader with an example of the current critiques of Bitzer's formulation and with a critical application that tries to integrate postmodernist (i.e., Derrida) and subjectivist (i.e., Vatz) approaches in studying "political discourse from nineteenth century China . . . responding to the two Opium wars" (30). For the purposes of this thesis, however, sufficient treatment has already been given to such critiques and, as in the case of Disbrow's thesis, the application of the situational perspective.

Perhaps the most significant problem with the analysis is the lack of information given concerning the constraints and the audiences in this rhetorical situation. Disbrow references "Jackson's background as a civil rights leader" without sufficient historical background to explain this emphasis (60). In essence, she refers to Jackson's past after already concluding it to be an insignificant factor in the exigence of the current situation. These weaknesses are then channeled into the final section dealing with the audiences. Disbrow gives a grocery list of audiences: The Rainbow Coalition, The Democratic Party, The Black Leadership Family, and The American Public (76-78). Again, we return to the problem of not providing a sufficiently comprehensive historical background from which to extend the discussion of the constraints and audience. When we arrive at Disbrow's concluding statement, that "it is difficult to say if Jackson's speech was a fitting response," we have to agree with her (85). That agreement is based not on what she has done in the previous eighty-four pages of rhetorical analysis, but in what it seems that she has failed to do.

The problems with Disbrow's thesis should not entirely be leveled at her however. These 'fault-lines,' if you will, can be traced back to the comments made in the opening of this section: the relegation of Bitzer's theory to a reference point. The culprits in this positioning of "The Rhetorical Situation" are, it seems, the very people who should be interested in the continued relevance of such a challenging rhetorical theory: Bitzer's peers and, as I shall expand upon shortly, critics trying to use the situational perspective as a critical methodology.

The current "rhetorical situation" within academia seems compelled to constrain rhetors who wish to disregard the party line in favor of new theoretical principles or, in an age of postmodern practice, are cautious in their acceptance of models that are overly broad. Seeing as how "The Rhetorical Situation" dates back to 1968, current has come to mean contemporary. What, then, is the reason for such a hostile attitude towards

alternative constructions of rhetorical theory?¹¹ I believe that the answer lies partially in the twofold problem of scientization and assumed objectivity in rhetorical theory. The former emphasis can lead to a weakened ability to promote the pragmatic uses of theory; the latter denies the inherent need of critics to address rhetoric that appeals to them personally.

Scientific analysis is an important facet in the study of communication that can clearly provide an easy companion to rhetorical study. Steven A. McCormack's Information Manipulation Theory (IMT), as an example, can help to illuminate rhetorical messages that "covertly violate the principles that govern conversational exchanges" (1). But when rhetorical theorists become too captivated by the use of science, they give up their right to claim rhetorical study as a distinct and important area of study in and of itself. They relegate rhetorical inquiry to a subordinate role, leaving it to cower behind the supposedly all-powerful methodologies of science (Nothstine, Blair, and Copeland 33). This is where Bitzer's perspective diverges. "The Rhetorical Situation" is denying the need to play subordinate by claiming that philosophical methods, not scientific means, can be employed to study rhetoric.¹²

This scientization of rhetorical study also infuses critical discussion with an unhealthy notion of distance, of supposed objectivity (Nothstine, Blair, and Copeland 39). Such a stance, whether implicit or explicit in the discussion of rhetorical theory, necessarily casts "The Rhetorical Situation" into the shadows of accepted convention or

¹¹ Other rhetorical perspectives that share a similar divergence from the norm seem to be ripe for criticism as well. Sonya K. Foss and Cindy L. Griffin's 1993 articulation of "Invitational Rhetoric" met with similar ridicule.

¹² This "scientific support system" is not an entirely new construct either. It seems to be a historical and oft-raised criticism that the canon of philosophical inquiry, to which rhetoricians most certainly add, turns to schemas that in some way legitimize its work . . . as if to say that its endeavors are not valid in and of themselves. As William James notes in 1886, "ethical treatises may be voluminous and luminous . . . but they can never be final, except in their abstractest and vaguest features; and they must more and more abandon the old-fashioned, clear-cut, and would-be 'scientific' form" (232).

into conflict with current fads in theorizing. When Bitzer talks of "valuable changes in reality" being possible, he is promoting a pragmatic and controversial end goal for rhetoric: a value judgment of what the persuasive discourse says ("Situation" 24). This stance is not meant to imply an entirely subjective bent either. Bitzer is pushing for critics to look up from their artifacts and address the audiences (students and lay persons alike, if such a distinction is really necessary) that such scholarly work should have influence over. If the current scientization and objectification of rhetorical theory is left unchecked we, to borrow from Kenneth Burke, will "solve no problems . . . for ourselves by such solutions" (219). For, even with all the scholarly emphasis and detail, what use is an analysis that remains at a distance from the world in which it exists?

Conclusion

"The Rhetorical Situation" is clearly a challenging and controversial piece of theory. The discussion surrounding Bitzer's approach guarantees that it will continue to spark discussion and promote debate. Those effects, in my estimation, signal the fact that the situational perspective offers a valuable alternative to other rhetorical methods. Otherwise, much less time and paper would have been wasted on glorifying or debunking the theoretical framework Bitzer has provided.

Clearly, some of the criticisms leveled against "The Rhetorical Situation" are not frivolous attempts to negate a theoretical model just for the sake of negation. Questions as to ambiguity raised by Wilkerson and the possible extensions as highlighted by Smith and Lybarger demonstrate constructive steps in a positive direction. As to the former, the critic must be attentive to the fact that the philosophical openness of "The Rhetorical Situation" can create huge gaps in analysis as was demonstrated in the problematic thesis by Disbrow. But those flaws can be remedied if the critic takes the freedom of the model to demand comprehensive treatment of the component parts of analysis; the exigence,

constraints, audience, and fitting response must be sufficiently detailed so as to sustain the rhetorical criticism that is the result. In relation to the latter issue, one of the primary extensions Smith and Lybarger argue for--close text reading--helps to compensate for the deficiencies that result from the ambiguity of key terms. In compliment, this very thesis uses artifacts that necessitate not only close text criticism but also historical treatment of the situation being examined. In short, both problems can be overcome if the critic notes the theoretical gaps and adjusts their criticism to them.

Problems notwithstanding, "The Rhetorical Situation" is a provocative and beneficial method of rhetorical criticism. Indeed, two of the most important aspects of "The Rhetorical Situation" are to be found in the overall tone of the model: its sharp delineation of what is meant by the term "rhetoric" and the inherently ethical underpinnings of such a perspective. Bitzer makes it clear that some responses are rhetorical and others, while being discourse of varying kinds, are not. While his theoretical assumptions encompass a wide variety of instances that could be determined to be rhetorical, they are also firmly examples of public discourse which pursues some form of persuasive change. This reining in of the notion of what rhetoric is serves to acquaint the student and scholar alike with a perceptual field uncluttered by the current trends at universalization, at a hermeneutical extension of rhetoric into every imaginable nook and crevice of scholarly and public pursuit. As Bitzer himself argued (in a different, yet applicable context) in the Van Zelst Lecture at Northwestern University, "it is not surprising that few people know what the art of rhetoric once was and should be again" (15). The situational perspective is also inherently ethical in its focus on a fitting response. Such a rhetorical demand implies the search for good ends and better results than the initial response to the exigence may provide, the search for "imperfections to be modified by means of discourse" ("Situation" 24).

Given the discussion above, it seems that the situational perspective is a suitable complement to the "situation" outline in the previous chapter. "The Rhetorical Situation"

provides a framework suited to the task of analyzing sexual harassment codes in at least two ways. Initially, the situational model is clearly philosophical. As such, it is suited to the critique of codes which are equally philosophical in their focus on education and sanction of ethical/unethical actions. Secondly, even with all of the criticisms raised, this method provides for a form of rhetorical criticism that moves beyond mere judgment towards revision. When evaluating the "fitting" nature of sexual harassment codes, such a determination offers the possibility of "real world" benefits.

Thus, the following chapters will merge the academic situation with the situational form of analysis, ultimately leading into a judgment of the response that the codes provide. In the case of sexual harassment, such a judgment is of vital importance if we are to seek not only an appropriate manner of interaction with others, but a proper response to violations of such interaction.

Chapter IV: Exigence

Bitzer makes it clear that situations are historical in development. As modifications occur to initial situations, via the infusion of new factors such as constraints, they can give rise to new situations ("Situation" 21). This modification of the situation is of import as we look at sexual harassment in that this exigence is a historically developing fact; it is an example of a persistent imperfection that continues to exist "in spite of repeated modifications" (20). More so, Bitzer notes that these historically evolving exigences are of two component parts: "a factual condition plus a relation to some interest" ("Functional" 28). In the case of sexual harassment, these parts are found in the actual act and the potential for the act occurring--parallels to the codes' dual functions of activation based on a concrete occurrences of harassment (procedures both formal and informal) and the explanation prior to an occurrence (definitions and, in the case of extended codes, a list of prohibited behaviors).

As a result of sexual harassment's continual development and component parts, demarcation of the exigence is problematic. There is the chance that, as in the case of Disbrow's thesis, the critic takes the exigence as a matter of fact, thus ignoring a crucial point of situational analysis: an exigence evolves and must be tracked as such. Or there is the chance that scrutiny will be given to only concrete examples of the exigence, casting into shadow the perceptions of the act prior to its occurrence. Finally, there is the chance that the exigence and other situational elements might be so thoroughly blended together that they fold into themselves, creating a circularity of assumptions better left for a postmodernist form of analysis. Hence we need to supplement Bitzer's notion of historical development with Roderick Hart's explanation of social forces and cultural boundaries.

The concept of social forces operates from the assumption that "no piece of discourse can be understood outside of its natural habitat" (Hart 71). That is to say, a rhetorical situation carries with it elements that can be examined so as to provide the

boundaries for analysis. An examination of the cultural boundaries takes the "natural habitat" and seeks to examine "the effect of culture upon human interaction" (73). This examination is a review of the situational elements "available for scrutiny by an observer or critic who attends to them," a categorization of the organization and structure of the situation in which the controlling exigence is located (Bitzer, "Situation" 22-23). Thus a historical review of the events which spawned the exigence of sexual harassment is essential in that it clarifies for the critic those forces (matters of habitat) and boundaries (cultural examples of the situation's existence) which separate the sexual harassment exigence from comparable exigences--domestic violence as an example--and the more general societal manifestations of sexual harassment. But this historical examination must then direct itself towards the specific campus situation and the role that the exigence plays therein.

As such, this chapter will trace the historical development of the sexual harassment in both the larger societal sense and then in the more specific campus area. We will begin the examination of the exigence as a historically observable fact by noting two events which helped to bring attention to sexual harassment. The next stage of analysis will focus on individuals' perceptions of sexual harassment and the workplaces in which they are located. The final historical part of the analysis will review the creation of legal responses to sexual harassment by noting the development of laws and the subsequent court cases that have been tried. These two areas--the general and the legal--provide us with the social and cultural markers which denote the existence of the historical sexual harassment situation. We will then move to the campus-specific situation. Herein we will initially note social forces and cultural boundaries which perpetuate sexual harassment. Next we will examine the exigence as it is demonstrated in the effects that it has on persons within the campus setting (audience). Finally, we will survey the major academic court cases related to sexual harassment. As is obvious, the campus situation contains a parallel system of general and legal markers which will help to clarify the nature of the exigence

therein. By initially surveying the larger societal context of sexual harassment, we will be in a better position to then analyze sexual harassment as an academic, and controlling, rhetorical exigence warranting analysis.

Historical Development

Before we can understand the laws that surround sexual harassment, we must look at the effects sexual harassment has on society. The reason for this is quite simple: these effects encompass every area of society and are directly related to how people perceive the issue--at times, in startlingly different ways. They also help to lay the groundwork for understanding the historical development of the situation in an important way: legal responses are responses after the fact, they are reactions to an exigence based in a societal recognition of an imperfection. This general recognition is then encoded into law. As a hypothetical example of this pattern of historical development, a call for a drug to be restricted prior to any knowledge of its detriment to specific persons or groups would be foolhardy; we must have knowledge of the problems with an exigence before we can call for a modification thereof. So, before a dissection of the legal responses can be undertaken, a grounding in the facts that paved that path must be entertained. These facts will be initially represented by two general catalysts which brought the exigence to the attention of the general public: the Clarence Thomas/Anita Hill trial and the Tailhook scandal.

On October 11, 1991, the Senate Judiciary Committee heard charges of sexual harassment brought against then Supreme Court Nominee Clarence Thomas by his former employee Anita Hill. Although the charges by Hill did not stop Thomas from being appointed to a seat on the Supreme Court, the public sat in awe as the events graphically unfolded before them on television and in the paper. The official 1991 Congressional Quarterly transcripts detail a pattern of alleged harassment that ranged from references to

the size of Thomas' penis, to graphic comments related to oral sex, to Hill's hospitalization for stomach pain that she attributed to the stress of these experiences (2982). Throughout the hearings, Thomas maintained his innocence and expressed how he was "shocked, surprised, hurt and enormously saddened" by the allegations (2979). Hill, on the other hand, answered accusations that she had made a mistake in waiting so long to come forward. As she stated in regards to her testimony, "when I was asked by a representative of this committee to report my experience, I felt I had to tell the truth. I could not keep silent" (2982).

The "truth" that Hill spoke of may not have stopped Thomas from taking his seat on the Supreme Court, but it did have the effect of demonstrating the complicated and divisive nature of sexual harassment. That this exigence has come to light as more women have entered the workforce, after the battles for sexual equality in the 1960s and 1970s, is not in dispute. But society still contends with the myths and hard realities of this exigence, as demonstrated in this commentary on the effects of the Hill/Thomas hearings:

"Americans have been taught to think that they had individual, legally protected rights to equal treatment in the workplace and elsewhere. Yet many women believe they are discriminated against by a society that is still sexist at heart" (The Economist, "On the Way" 26). As is obvious, what is thought by both men and women is placed in tension by sexual harassment.

Occurring only a month before the Thomas hearings, yet coming to light a full year later, another event sharpened the public awareness of sexual harassment. From September 5-7, 1991, the 35th Annual Symposium of the Tailhook Association was held at the Las Vegas Hilton. The convention, a gathering of active and retired military members, defense contractors, and others, dates back to 1956. But that year, the events that occurred led to media scrutiny and a shake up in the way that the military deals with cases of sexual harassment and other instances of misconduct.

The 1992 Department of Defense's official review of Tailhook makes mention of the "gauntlet," an event where males lined the walls outside of their rooms fondling woman as they walked by, and touching that "ranged from consensual pats on the breasts and buttocks to violent grabbing, groping, and other clearly assaultive behavior" (5). The following investigation, rife with abuses of power and intentional cover-ups by top officials, led to the dismissal of several officers and the reprimanding of scores more. One official from the department of the Navy, in Enclosure Seven of the investigation review, sums up the causes of the intense attention focused on the Tailhook incident:

We know from reports of victims that a significant number of naval aviators participated in or witnessed assaults on at least 25 women, 14 of whom were female naval officers. However, relatively few naval officers provided information to the investigators, and those who did generally minimized their own involvement and/or failed to identify those who were present.

That the exigence is witnessed in this instance in a military setting only deepens our understanding of the extent and scope of sexual harassment. And it demonstrates how the social settings and historical demarcations of sexual harassment have helped to place sexual harassment on the lips of a public who, only a few decades ago, had never heard the term before. As such, the events describe above are part of the fabric that has been woven into the ongoing public debate about sexual harassment, that has been mixed into the developing historical situation. But that development also has effects in general, has consequences that extend beyond confirmation hearings and military conventions.

When focus is placed on the individual, however, those effects are often difficult to gauge. As with any other experience, the description of sexual harassment is complicated by both the outsider's description and the insider's experience, with different descriptions and reactions to harassment being the result. Until recently, the analysis of sexual harassment was scarce, though certain patterns have developed in the still evolving study of the exigence. Stewart, et al., report that "on a personal level, victims report symptoms

such as nervousness, irritability, loss of motivation, sleeplessness, and weight loss" (232). These reactions are only the beginning of what many researchers see as an overall erosion of the person's self-esteem and self-confidence. One report states that upwards of 20% of the women surveyed after being sexually harassed demonstrated psychological and physiological symptoms similar to those found in rape victims (Sandler 7). Research is also clear that after the initial reaction the majority of sexually harassed persons respond in informal ways. These actions can run the gamut from ignoring the event to talking with the harasser in the hopes that they will stop the behavior. As a respondent to the 1988 U.S. Merit Systems Protection Board [MSPB] survey said, "I informed the individual as to how I felt about his behavior and why I felt he should change his behavior if we were to remain friends" (17).

The reasons for seeking informal means by which to deal with sexual harassment and, as a result, avoiding formal actions are diverse: some see the result as not worth the trouble, others feel they won't be believed or, if they are, will be subjected to further harassment (Stewart et al. 232). Whatever the reason, those emotions feed into actions that, in most cases, skirt the formalized mechanisms for dealing with the harassment. This last result is perhaps the most unfortunate. As the 1993 New York State Governor's Task Force on Sexual Harassment [GTFSH] concludes about this phenomenon, "victims who do not make formal complaints suffer as much or more" than the few who choose to pursue aggressive courses of action (3).

The residue of the harassment, or its continued perpetuation among those who choose not to speak up, has a direct impact on the workplace. If the harassment is in fact occurring in the place of employment, those effects can be compounded. People may fear that their jobs, promotions, and career security will be directly affected by how and if they respond to the harassment. While the definitions used and the methods for gathering information about sexual harassment vary in reliability, the following statistics are indicative of a widespread problem.

The first study of sexual harassment in the workplace was done in 1976 by Redbook magazine. Of the 9,000 self-selected respondents, 90% indicated that they had been the victims of sexual harassment. Cook reports that 59% of the 40 million women in the United States had been victims of sexual harassment in the work force. In 1988, the federal figures collected by the MSPB found that 42% of all women and 14% of all men had been the victims of some form of sexual harassment ("Studies" 1). In the recent update of the same survey, which used a sample group of 8,000 federal employees, the numbers for both groups had increased to 44 and 19 respectively, at an estimated cost to the government of \$327 million dollars over a two-year period "in terms of sick leave and job turnover" (New Media Publishing 1). In both the private and public sectors, surveys have also highlighted the need for more information on sexual harassment. A respondent to the MSPB survey pointed out, "general information would be helpful in pointing out the problems that can arise from thoughtless as well as intended sexual harassment" (6).

But pointing out the problem may not be enough. Cook states that "although most executives indicated that they favor having a company policy against harassment, few organizations appear to be addressing the problem" ("Studies" 1). This makes Debra Haffner's claim that a healthy work environment is "one that promotes and respects all people who integrate sexuality into their lives in non-exploitative, appropriate ways" seem optimistic at best when our attention is focused on sexual harassment (11). To be aware that there is a problem of sexual harassment is quite a different thing from promoting and following through on policies against sexual harassment.

It must be admitted that sexual harassment within society surely existed prior to the 1976 Redbook survey. But a specific response to such acts was not legally, nor rhetorically, enacted until the EEOC drafted their definition and liabilities statement in 1980. As such, the effects of sexual harassment were effects related to sexual discrimination per se; the responses were reactions to an unnamed action which persons felt was wrong, but were at a loss to explain in a legal context. Thus, it is best that we

now note the development of the legal context in which responses to the exigence are generated. The development of sexual harassment laws follows a fairly simple pattern of evolution: Title VII of The Civil Rights Act of 1964, Title IX of The Education Amendments of 1972, and the 1980 EEOC expansion of Title VII Section 1604.11. The impacts of these laws are incredibly complex. What follows is an explanation of how these laws came to create what is the most widely accepted definition of sexual harassment, both in society and on campuses across the nation. These laws, in turn, have been continuously evaluated and revised by the legal challenges that people have brought against them.

Before the amendments of 1972 and 1980, the Civil Rights Act did not address cases of sexual harassment. Rather the act was pointed towards cases of more generalized discrimination based, predominantly, on race, color, and religion. But, with the following inclusions, the act come to be the focal point of current sexual harassment standards.

Title IX. The Education Amendments of 1972 prohibit "discrimination on the basis of sex in any educational program or activity receiving federal financial assistance" (GTFSH, Appendix C 36). This was the first time that both educational and private sector workplaces had sanctions placed on sexually discriminating conduct. Enforcement of Title IX was, and is, under the auspices of the Department of Education. It is important to remember, however, that this amendment did not include the notion of sexual harassment.

Title VII. On November 10, 1980, the Civil Rights Act of 1964 was amended to include section 1604.11 Sexual harassment. This addition is unique in two senses: 1) it provides a definition of sexual harassment for the first time, and 2) this definition is a federally enforceable law that provides a comprehensive explanation of employer liability in sexual harassment cases. As was previously noted, two types of harassment are referenced in Title VII. The first form of harassment addressed, quid pro quo (or "this for that": sexual favors must be given for a return in employment benefits), happens when an agent of the place of employment harasses a person who is under their authority.

Employers are held liable for this type of harassment even in cases where they had no direct knowledge that it was occurring. The second form is what has come to be known as the "hostile environment standard." Susan Bayly explains that this standard differs from quid pro quo harassment (where sex affects the future job opportunities and benefits of the harassed) in that "no discriminatory effects on wages, job assignments, or other tangible benefits is required" (299). As will later be discussed, this distinction between the two types of sexual harassment has been the subject of legal scrutiny in recent years.

Legal Revisions of the Civil Rights Act. Much of the change that goes on in the interpretation of sexual harassment law is the result of court cases, rather than the act itself. In fact, it wasn't until five years had past that the EEOC guidelines were officially tested in court. In 1985, the Washington State Supreme court heard Glasglow v. Georgia-Pacific Corp. In the case, two female workers were verbally and physically harassed by a male coworker. Cook states that the decision in favor of the women "establishes the standard Washington state courts will follow in deciding hostile work environment in sexual harassment cases" ("Cases" 1). Expanding directly from the EEOC guidelines, the Supreme Court's opinion was that:

Casual, isolated, or trivial manifestations of a discriminatory environment do not affect the terms or conditions of employment to a sufficiently significant degree to violate the law. The harassment must be sufficiently pervasive so as to alter the conditions of employment. (qtd. in Cook, "Cases" 1)

The U.S. Supreme Court first ruled on workplace sexual harassment a year later in Meritor Saving Bank, FSB v. Vinson. This case involved a woman who alleged that her male boss had, among other things, exposed himself to her and forcibly raped her. She argued that these acts created a hostile work environment and violated Title VII. Justin Weddle states that the ruling in favor of the woman is unique because it "resembled quid pro quo harassment decisions--the hostile environment was a condition of employment

applied to one gender and not another" (726-727). Once again, the EEOC guidelines were cited to further clarify the court's stance on what constitutes a "hostile environment".

More recently, the 1991 U.S. Court of Appeals at San Francisco's ruling in Ellison v. Brady expanded the definition of "reasonable person" to cases of sexual harassment specifically. The case focused on a female IRS agent who had been subjected to unwanted love letters from a male co-worker. After initially being relocated to another office, an agreement was reached by which the male co-worker could return to his original post in six months if he promised not to bother the female worker anymore. The female worker sued for sexual harassment. Initially, the case was rejected by the IRS, the EEOC, and the federal district court, with the court ruling that the case was "isolated and genuinely trivial" (qtd. in Bayly 300).

On appeal to the Ninth Circuit, the case was remanded to the district court. In its instructions to the district court, the circuit court argued that they should adopt the victim's perspective in order to avoid "ingrained notions of reasonable behavior fashioned by the offenders" (qtd. in Cook, "Cases" 1). The court continued:

Congress did not enact Title VII to codify existing sexual prejudices . . . we hope that over time both men and women will learn what conduct offends reasonable members of the other sex. When employees internalize the standard of workplace conduct we establish today, the current gap in perception between the sexes will be bridged. (Bayly 301)

The dissent argued that the need for a female-based perspective was not supported by evidence and that it contradicted the presupposition within Title VII that the legal test should "apply to all persons, regardless of gender" (301). The developments within this case are important in that they demonstrate the disagreements about male-bias in sexual harassment cases.

In a case heard shortly after Andrews, Robinson v. Jacksonville Shipyards, Inc., the "reasonable woman standard" was upheld. The case centered on a female employee's

complaints about sexually explicit pictures being posted in a predominantly male workplace. The ruling in favor of the plaintiff by the Florida district court reversed the earlier "social context" findings in the 1986 case of Rabidue v. Osceola Refining Company. In that instance, the Sixth Circuit had argued that laws could not be used to overturn established social conceptions, only to decide specific cases. But the Florida court argued that such a context argument perpetuated "pre-existing discriminatory environments" (Bayly 302).

In 1993, the U.S. Supreme Court further clarified their stance on the hostile environment clause of Title VII in the case of Harris v. Forklift Systems, Inc. The case involved a woman who alleged sexual harassment by an employer in the form of verbally demeaning statements. Lower courts had ruled that the comments were offensive, but did not constitute psychological abuse. In overturning the lower court decision, the Supreme Court referred back to section 1604.11 of Title VII in ruling that conditions of employment can be altered even without proof of psychological suffering on the part of the person, thereby violating the sexual harassment law. Responding to the court's decision, Hale and Dorr's 1994 Labor and Employment Bulletin notes the broad scope of what can be considered a hostile environment and cautions that "employers should carefully monitor the workplace to avoid problematic situations" (4-5). The caution implicit in this warning is of two types: 1) a workplace should be free from harassment, but 2) harassment is, as stated in the liabilities section of the EEOC guidelines, a liability to which the employer is held predominantly accountable.

Such liability on the part of the employer becomes confusing when the issue of sexual harassment is related to cases of consensual relationships. The history of the people's relationship seems to have as much bearing as the type of behavior that is engaged in . . . at times and to differing degrees. In the 1988 case of Koster v. Chase Manhattan Bank, the court "found no sexual harassment when the defendant had a previous consensual relationship with the plaintiff" (Bennett-Alexander 138). On the other

hand, such a prior relationship was of no consequence in the 1988 ruling on Shrout v. Black Clawson Company. In this instance, the two persons had been involved in a three year relationship, but for four years afterward the defendant engaged in varying degrees of sexual harassing behavior that the plaintiff continuously rejected. The court ruled in favor of the plaintiff because, "even though the relationship had begun on a consensual basis, the defendant's activity was not welcomed by the plaintiff and the relationship had passed into the realm of sexual harassment" (138-139). In both instances, though, one thing is sufficiently clear; the nature of the employee's relationship(s) will be examined in making determinations as to whether sexual harassment has occurred.

The court cases discussed above must be tempered with a contrasting piece of evidence: many employees have failed in the past to take advantage of formal complaint procedures which lead to court proceedings and, for those that do, the result is often negative. The MSPB section on federal employee responses to sexual harassment notes that "formal remedies are rarely used to deal with sexual harassment. Only 5 percent of both female and male victims responding in 1987 said they took formal action to deal with the harassment, and most of these employees viewed the action they took as non-productive" (17). While the depth of understanding related to sexual harassment has increased since 1987, the recent court cases indicate that formal complaints still offer an often conflicting standard of interpretation in regards to the EEOC guidelines. One area that demonstrates these conflicts succinctly is the nature of psychological and emotional harm in sexual harassment claims.

As the 1994 case of Harris v. Forklift Systems, Inc., demonstrated, proof of psychological injury is not necessary to prove a hostile environment in a sexual harassment suit. But many plaintiffs are still seeking compensation for psychological injury. James McDonald and Paul Lees-Haley argue that "junk science"--evidence supplied by witnesses with no formalized training--in the courtroom is detracting from the real cases of sexual harassment and setting a dangerous precedent for what constitutes psychological injury.

They argue from the beginning that psychological injury is difficult to prove and that, in many cases, expert testimony tries to establish "severe psychological injury as a result of nominal exposure to objectionable conduct" (51). They state that this type of fraudulent testimony is based on the faulty notion that sexual harassment causes mental disorders, a claim to which they say there is no scientific backing (52).

What has led to this problem, McDonald and Lees-Haley continue, is that very little research has been done on the subject. They cite research which posits that "a review of outcomes yields a list of possible effects but does not allow conclusions about their prevalence or the conditions under which any particular effect will occur" (54). The difficulty in collecting research is based, in large part, on the fact that definitions vary, study groups are inherently biased towards victims, and that the measurement of psychopathology varies from study to study in both content and reliability (54-57). The other problem in sufficiently documenting psychological injury is that the effect an offensive joke has on one person may not correspond to its effect on another.

The result of these limitations is that a person who presents expert testimony may actually only be describing an injury based on one case, not a catalog of documented facts, or they may not "possess any clinical orientation at all" (60). McDonald and Lees-Haley conclude by arguing that, for a test to be reliable, it must use the proper format (they refer to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders), be done by a professional with a clinical background, and be evaluated against current information and the patient's medical history (62-67).

It may be easy to initially dismiss these arguments. How dare they, we scold, how could they claim that someone was in this for the money. But the authors, one a lawyer and the other a clinical psychologist, raise some important issues. As with any area of serious concern, people will abuse the system. Proper tabulation and reporting of psychological injuries due to sexual harassment suffer each time a fraudulent case is heard. What's more, with repeated instances of suspect testimony, a snowball effect can occur:

sexual harassment cases will begin to be judged by, rather than against, the "junk science" that McDonald and Lees-Haley talk about. Skepticism in regards to legal cases may seem an inappropriate goal, but caution is necessary if progress is to be made.

Caution notwithstanding, it is safe to make at least one claim: the shape and scope of the Civil Rights Act has shifted dramatically over the last 23 years since changes were adopted that began looking at sexual discrimination generally and then sexual harassment as a specific imperfection. With those changes came legal challenges that defined the ways in which the court looks at sexual harassment cases. And, in the midst of this ongoing process, codes have been adopted on campuses across the country to deal with the exigence.

Exigence on Campus

As with the discussion of the historical development of sexual harassment, we must first look to the general rise in comprehension of the exigence by those within the academic setting. Seeing that the personal perceptions and effects of sexual harassment on the employment sector have already been covered, we will move directly into the academic setting. First we will note general biases operative within the situation which serve to demonstrate the cultural boundaries and social forces which surround the exigence. We will then analyze the specific legal responses to the exigence within the academic context.

When one steps figuratively and literally into the campus situation they are treated to more than just instructional books, comradery, and social networks. They are treated, in short, to the messages that these educational supplements promote. Research has pointed to the fact that ingrained sex discrimination exists in the texts, teacher-student relations, and social organizations found on campuses. This discrimination promotes the male over female patriarchal hierarchy that increases a tendency to view the sexes as

different based on biological make-up, rather than individual merit. These attributional statements are often taken at face value by students and teachers and perpetuated by other audiences. And these types of discriminatory attitudes infuse the sexual harassment spectrum with a cluttered barrage of often patently false information; in short, these attitudes bolster the imperfections of the exigence, lending support to the perpetuation of sexual harassment.

Jordan Titus surveyed the works of five major publishers of education foundations textbooks (those books used to train future teachers). In the explicit content of the material analyzed there were no sexist indicators. However, the implicit messages did promote a biased review of sex in that they emphasized conventional sex roles for both males and females and offered no discussion of how deviations from these roles--in gender orientation, as an example--are to be addressed (42). More so, Titus noted that these texts failed to accurately note the differences between sex and gender, creating "the misleading implication ... that both refer to mutually exclusive, dichotomous, and unambiguous categories" (40). The result of this blended description of the socialized and biological self is ambiguity. But the result of deferral to traditional, and not always accurate, sex roles is skewed clarity: the "weaker" person is subject to the demands of the "stronger" one.

M. Gail Jones noted similar discrepancies in teacher/student classroom interactions. In the conclusion of her review, she notes that "at all educational levels, teachers give male students more praise, criticism, and overall attention" (37). Although the research was focused on education before the post-secondary level, the implication is that students and the teachers that educate them come into the college and university systems with a programmed sense of what "sex roles," and the gender ties that stem from them, mean . . . and that sense may not be accurate. Once again, cultural boundaries are in place which perpetuate the exigence of sexual harassment via discriminatory social interaction methods. Whether correct or not, these patterns of interaction are also

reinforced outside of the classroom in certain organizational settings sanctioned by colleges and universities.

Mindy Stompler and Patricia Martin, in a gender-based ethnographic study of little sister organizations (female groups affiliated with male fraternities), found that they "encourage women's subordination to, exploitation by, and dependence on, men" (150). These effects are the result of the women being subjected to terminology ("sweethearts" and "dream girls") and activities which place them in a subordinate position to their male peers (153). Indeed, the selection process weeds out those women that do not fit the fraternity's criteria for attractiveness; one chairman of a little sister organization even went so far as to admit that a few candidates were "nice," but were not selected because they were "heavy girls" (157). What's more, these young women often do not note the effects that this atmosphere has on them:

Our data suggests . . . that this element of the campus culture devalues women. Although individual women who are little sisters cite a litany of benefits, we conclude that the program fails to enhance, and does much to harm, undergraduate women's lives when viewed through the critical lens of a gender perspective. (183)

These subtle and not so subtle endorsements of attitudes that promote a biased view of one sex, whether in the instructional texts for teachers, the classes we take, or the groups we belong to, helps to explain the large number of cases of male to female sexual harassment. If a person is indoctrinated with the sense that men are better than women, the idea that a man will harass a woman isn't so shocking. On a larger level, all forms of sexual harassment are reinforced by any stereotype that concludes that one person is better than another based on their sex or on the gender orientations that they display. But these problems of gender and sex are filtered out into the general campus setting, a distinct community with equally distinct characteristics.

Far from just being another employment area, the academic community has the distinction of also being a place where students and professors, faculty and graduates, mix and interrelate in the pursuit of educational goals: to learn, to teach, to exchange ideas. This mixture of different relational contexts and social settings creates a unique environment in which harassment can run rampant. More so, this diverse mix denotes the "plurality of publics" which, as Chapter Five will make clearer, create the rhetorical audience capable of remedying the exigence of sexual harassment. And, as with the more general historical effects noted in discussion of personal perceptions in this chapter, students within this "public" setting face a similar debilitation as a result of sexual harassment. Expressing an erosion of both her personal and professional self, a graduate student reported the effect of her advisor's sexual harassment: "Some days as I drove to campus, I began to cry so hard that I had to turn around and go home. I lost all confidence in my scientific abilities . . ." (GTFSH 34). Sadly, such personal consequences have only recently become the focus of study. Dr. Gladys Brown states in the introduction to the Sexual Harassment Resource Manual for the University of Maryland College Park, "sexual harassment in higher education is not a new issue, but has until recently been a hidden silent one" (4).

But, like the research done in the personal and work arenas, a conclusion can be drawn about sexual harassment in the academic setting within the past two decades: the problem--as a matter of both perception and documentation--is widespread.¹³ In a 1982 study of sexual harassment, involving 927 students, faculty, and staff from the University of Rhode Island, "13% reported personal knowledge of a sexual assault on someone else" (Rubin and Borgers 402). Of 226 female graduates and undergraduates students surveyed

¹³ When reviewing these results, it is important to keep in mind a fact that problematizes some of these findings: there is no standardized means by which to measure incidence of sexual harassment. This problem is summarized by Barbara Dziech and Linda Wiener in their explanation of a list of surveys they had studied. They comment on how each "employed different research techniques and slightly different definitions of sexual harassment. Some used random-sampling; others reported on self-selected respondents" (qtd. in Crusius and Channell 388).

at Eastern Carolina University, 33% reported being sexually harassed by male teachers; the behaviors were broken down into seven types: verbal; leering and ogling; clothing, body, and sexual attitudes related remarks; unwanted physical contact; pressure for sexual activity; demands for sexual favor; and physical assault (Rubin and Borgers 403).

A 1984 harassment study found that 30% of undergraduate women experienced sexual harassment from at least one professor during their undergraduate career. Another study, conducted in 1985, found that 16% of graduate women students had been physically assaulted (GTFSSH 26). A 1987 study at an East Coast public university found that of the "356 randomly sampled graduate women," 60% reported "at least one experience of sexual harassment" (Rubin and Borgers 404). But these numbers may be deceptively low. As Brown notes, "a study at Harvard showed that only 5 percent of the students who had an experience they would label sexual harassment reported it to a college official" (6). Factor in the amount of under reported male and same-sex cases of harassment and the numbers could be much higher.

A University of California at Berkeley study textures the above explanations when it reports that "26% of the 235 male faculty members reported sexual involvement with female students" (Clark 1). Such a factor is not, in and of itself, proof of sexual harassment. But it is nonetheless an indicator of why schools are adopting consensual relationship policies. These policies are direct reactions to a variety of problems related to sexual harassment: an abuse of power, a conflict of interest, or the perception by an outside party that such relationships are the only way, the quickest way, or the easiest way by which to secure a grade or position. Hence, the telling statement in OSU's 1995 Sexual Harassment Policy: "all employees should recognize the possible negative consequences of sexual or romantic liaisons in the workplace and academic program" (2). That sexual harassment or claims thereof are one of the primary "possibilities" seems evident.

But how have these reports of sexual harassment been channeled into the legal arena? What follows is a look at the most important campus cases and the effect they

have had on shaping sexual harassment law. These cases have had an important impact on the ways in which campus codes (through the connections drawn under the EEOC definitions and subsequent clarifications in Titles IX and VII) have been challenged and, as a result, defined further in recent years:

In the 1977 case of Alexander v. Yale, the first sexual harassment complaint filed against an educational institution, the Second Circuit Court ruled that "quid pro quo could be argued even if the harassed student suffered no tangible loss of benefits; and that the existence of environmental harassment could not be established by rumors and hearsay" (Clark 8).¹⁴ This ruling, while upholding harassment based on request for sexual favors, implicitly dismissed the hostile environment standard by ruling that arguments based on a climate of harassment were not compelling (Bayly 303). Two years later, in Cannon v. the University of Chicago, it was ruled that an individual can sue a state institution on Title IX grounds, further extending the rights of the harassed beyond claims related to specific individuals to include those against institutional bodies. The next crucial step in the development of educational sexual harassment law was in the 1984 case of Grove City College v. Bell (1984). In this instance, it was "ruled that enforcement of Title IX cannot apply to colleges that do not receive federal monies" but that students who receive federal financial aid can argue via Title IX, making practically all schools subject to discrimination laws (Clark 8).

Four years later, another case tested the hostile environment standard under Title IX guidelines. In Lipsett v. University of Puerto Rico, a First Circuit court reversed the pattern set and followed after Alexander v. Yale. According to Bayly, Title VII could be applied "but only under the specific facts of the case: the harassed person, a female medical resident, was both a student and employee" (303). This ruling follows from a case

¹⁴ For matters of clarity it should be noted that this case was tried under Title IX standards and, as a result, is based on a claim of discrimination not, as would be possible after the inclusion of Title VII in 1980, sexual harassment.

heard three years prior, Brown City College v. California State Personnel Board. In this case, Title VII rulings of sexual harassment were problematized based on the fact that Title IX does include language that interprets students and faculty as employees within the academic workplace. As such, it is more difficult to establish "knowledge of harassment on the part of the institution"--a prerequisite for claims of liability following from the EEOC guidelines (Clark 9).

But that difficulty is contradicted by the more recent comments of Terry Roach, Senior Counsel to the President of the University of Maryland at College Park. He posits that such assumptions about the establishment of prior knowledge can have serious ramifications for an institution. As such, Roach argues that once a complaint of sexual harassment is discussed with any person who has authority at the school "it is likely that the institution will now be judged to have had actual knowledge of the harassment . . . the complaint is not 'on hold' until the victim walks through the approved door. Rather, independent and prompt responsive action by the institution is required" (308).

Finally, Franklin v. Gwinnet County Public School (1992), heard by the U.S. Supreme Court, completely reversed the precedents set by the lower courts in regards to the hostile environment clause. Clark explains that the ruling "established monetary damages awarded in sexual harassment cases against educational institutions" (9). This ruling stands in direct opposition to a federal district court ruling three years earlier, in Bougher v. University of Pittsburgh, which stated that "Title IX does not permit a hostile environment claim as described for the workplace by [the EEOC regulations]" (qtd. in Bayly 303). Thus, the hostile environment standard has shifted from being a work force-specific mechanism to being an avenue of legal recourse within the academic setting.

Conclusion

The analysis undertaken demonstrates that sexual harassment exists as a complicated imperfection both historically and academically. But the preceding analysis of these dual frameworks also serves to clarify the distinctions between the two; for it is not sufficient to merely say that sexual harassment is societal and also academic. That simplicity of delineation, though true on its face, leaves the critic no closer to an understanding of either context. That an exigence exists as a general, evolving, historical fact does not mean that it exists in the same form in all of the situations in which it is present. Indeed, sexual harassment-as-exigence is present not only in a given act thereof, but also in the perceptions prior to the act; it is a factual reality and a perceptual factor.

That both contexts analyzed in this chapter have components in common is also not a fact to be confused with them being the same. The campus situation is not just a part of the societal situation, for the perceptions of sexual harassment and the court cases rendered therein point to a different set of social forces and cultural boundaries; the cases that have been undertaken involving the campus public are shaped by the nature of the situation. Simply put, the "natural habitat" is academic and the "cultural interactions" are necessarily a reflection of the habitat in which administrators, faculty, staff, and students are situated. As a result the exigence in the academic environment can be distinguished from the more general historical manifestations of sexual harassment.

More so, the previous discussion of the exigence helps us to initially determine the shape of the academic situation. Framed in the terminology used at the outset of this chapter, the organization of the sexual harassment situation is complex in that "many elements [are] made to interact"; the situation is also highly structured in that all of the components dealt with in this chapter are "ordered to the task to be performed" (Bitzer, "Situation" 23). These elements and components are "objective and publicly observable" in so far as this chapter notes the historical development of situation by tracing the

development of the exigence. These historical factors, in turn, help to frame and define the academic situation. In short, sexual harassment and the situation(s) in which it is located--historically and academically--are observable via our review of specific examples, personal perceptions, employment contexts, and academic circumstances; the creation and revision of the Civil Rights Act; the implementation of the EEOC guidelines; and also the legal interpretation(s) of sexual harassment laws.

Katie Roiphe sums up these elements and the interactions they breed when she states that the academic setting "with its emphasis on intellectual exchange, on the passionate pursuit of knowledge, with its strange hours and unworldly citizens, is theoretically an ideal space for close friendships" (93). Herein we can note that the direction of goals are different, the ends sought are different, the very means by which such goals and ends are achieved are distinct from the societal situation. But the imperfection of sexual harassment forces into flux the "ideal" and "theoretical" nature of the interactions within the academic setting; it infuses the habitat with a problematic breach of conduct that codes attempt to remedy. It is for these reasons that the campus setting warrants a situational analysis. Hence the ongoing task is to further elaborate on the nature of the campus context by analyzing the other components which make up a rhetorical situation. The next chapter will thus turn our attention to the next factor within this situation: the publics that function as the rhetorical audience that will judge the discourse created in response to the academic exigence.

Chapter V: The Rhetorical Audience

As was discussed in Chapter Three, the rhetorical audience is composed of those persons capable of meditating change "so as to modify positively exigencies in rhetorical situations" (Bitzer, "Public" 73). Administrators, faculty, staff, and students are those audiences within this situation which have the capability to affect change; they are those persons who can respond to the sexual harassment codes in such a way so as to decrease the incidents of sexual harassment. Additional groups such as the larger community (and sub-groups therein) and the alumni may indeed share an interest in reducing sexual harassment. Yet they do not function within the situation as has been previously articulated. They may enter into, pass through, and interact with, the campus situation, yet they do not possess the membership that the other audiences do. It is important to note that, should an incident of sexual harassment occur to a member of these extraneous publics, the procedures and processes to which they would appeal are related in large part to the societal situation; that is to say, their appeal is to the court system and not to the academic review board.

But such delineations warrant a more comprehensive articulation. To that end, we will begin by noting different audiences--which create publics--within the campus situation. Central to this discussion is the problematic nature of referencing information related to these audiences, information which often focuses on overly rigid delineations of male and female, masculine and feminine. From that foundation, we must go a few steps further; we must clarify the relationship between the "plurality of publics" and the creators of the discourse to which they are treated. The establishment of this connection is essential. For, without a clear understanding as to such a relation, we would fail to sufficiently understand why these audiences are capable of reacting to the rhetorical response--the fundamental measure of whether or not sexual harassment codes are fitting

or not.¹⁵ This section of the chapter will develop following the components of Bitzer's essay, "Rhetoric and the Public Knowledge." We will note how these publics must: 1) be connected via shared knowledge, 2) operate as an audience based in their relation to the historical development of the situation, 3) be defined by the competent representation of what they know based in how the speaker presents them with such information, 4) be authorized to act as a rhetorical audience, and 5) be clarified as a rhetorical audience in relation to the speaker.

The Audiences as Public

Getting at the nature of the audiences involved in the campus sexual harassment situation is difficult because of how the academic environment operates when confronted with the issue of sexual harassment. Mary S. Strine explains that in the campus context, sexual harassment "compromises" the "reasonable expectations" of what education should do and undermines "the foundational norms of academic life" (392). That those norms may in fact be merely "ideals" is not the point. Most persons within the campus community would assume or expect to be treated as equals in so far as sex (gender) should not be a determinant of one's abilities as a member of the academic public in whatever position they operate. But, just as sexual harassment undermines such an optimistic expression, our discussion of sexual harassment uncovers a huge discrepancy in the information available about each of the publics, about the rhetorical audience capable of remedying the exigence of sexual harassment.

To wit, the discussion of sexual harassment often focuses on a dichotomy that is disturbing if an attempt were made to apply it generally: men sexually harass and women

¹⁵ As should be apparent, I refer to "publics" as the collection of audiences on each campus. These campus publics form a "plurality of publics" which then create the collective "rhetorical audience." For while these publics are distinct in some ways, the subsequent discussion clarifies the fact that their rhetorical function is the same: the audience judges the discourse of the speaker via their response.

are harassed. The acceptance of such a delineation would render the discussion of audience as stereotypical as the skewed perceptions that perpetuate sexual harassment. Granted, most of the information brought to bear in the previous chapters provides overwhelming evidence that most cases of sexual harassment are perpetuated by men towards women. But the extension of that fact to the extent that victims are "women" and "men" are the criminals is a reductive fallacy; sexual harassment defined solely on the basis of specific cases is no longer sexual harassment. A most lucid example of this problem is contained in "Narratives of Sexual Harassment: Organizational Dimensions," by Bryan Taylor and Charles Conrad:

We chose to exclude the ten narratives . . . received from authors identifying themselves as men. These are rich texts in their own right: they contain descriptions of sexual "hassle" by women, claims of reverse victimization from accused harassers, complaints about the awkwardness of the current sexual harassment climate, and one argument against affirmative action hiring. . . . Our exclusion of these narratives was based not on the sex of the authors, but on the content and range. (407)

The authors were also compelled to make the comment that they "noted an important (if not surprising) absence in the narratives submitted by men: no male wrote identifying himself as a sexual harasser" (407). The parenthetical aside is as disruptive of content as it is illuminating of the "not surprising" problems the critic confronts when they attempt to gather balanced material related to sexual harassment. While this type of subjectivity will be addressed more thoroughly in the next chapter, it is important to note at this point because such information litters our understanding of sexual harassment. Such a tendency has disastrous ramifications: we perpetuate an understanding of the interactants in the sexual harassment situation as destructive as the act itself. As a result of these problems in data, the following discussion of the audiences which create the publics is based on: 1) general information about each audience, and 2) information related to procedures which make the distinctions between the audiences apparent.

Administration. This is an audience which, in many instances, implements policy as much as it responds to actions that are based in the same. As such, administrative persons are treated to a fluctuating standard of accountability when dealing with sexual harassment. Administrative duties thus alternate between "knowing the administrative channels available to process a complaint of sexual harassment" and serving as a "role model" for their wards (UMCP 20; 32). And, as Conrad and Taylor note, this component of the public is often "diffused between loosely coupled bureaucratic units and levels" that are historically dominated by males (405). The result is that the administrative audience must be many things at once: authority, reference, role model, and decision-making body on a variety of issues. At the same time, the uneven historical distribution of the sexes within this audience exacerbates perceptual, emotional, and managerial inequalities between its members. Nonetheless they function as a part of the rhetorical audience in that they--perhaps more than other audiences on campus--maintain some level of organizational power related to the issue of modifying the exigence of sexual harassment.

Faculty. This audience is one in which males have, in much the same way as in the administrative body, "traditionally enjoyed higher numbers, status and formal control over institutional resources and rewards" (Taylor and Conrad 405). In contrast to these historical realities, the female members of this audience are "traditionally undercapitalized, underadvised, naively trusting in meritocracy, and underinvolved in important networks" (406). Additionally, faculty duties bring them into more direct contact with the body of persons who experience the highest degree of sexual harassment: students. Their actions--between peers and as mentors to students--offer as a result of their close proximity the most intimate examples of behavior to the student population. But, once again, they operate as a rhetorical body in that they are capable of responding to and mediating sexual harassment.

Staff. This audience--the secretarial workers within departments and those employees in subordinate positions within the administrative hierarchy--stands in a slightly

ambiguous position: they provide channels of communication between the faculty and the administration, the students and faculty, the administration and the students, and vice versa. The nature of their job is, in other words, dependent on their connection to the other audiences which form the publics. And such a relationship brings them into contact with perhaps the most diverse patterns of interaction on the campus. In addition, they operate in contrast to the faculty and the administration in that they have historically been represented by female members. As a rhetorical audience, they operate as the group with the most diversity of audience interaction; they serve, in other words, as the go-between for the other groups listed herein.

Students. The first of the members of this audience that must be addressed are the graduate students. The majority of these persons operate in the flux between hired employee and active student, they are under contract to perform a duty yet they are continuing their education. And, even for those who are not under contract with the institution, their status is unclear in regards to sexual harassment in at least one area: who are their peers? As has been noted, peer-to-peer harassment is not legally recognized, but that problem is only compounded if we look to this group's alternating role as student and instructor (or research assistant or work study). The undergraduate student's position is more clearly defined in that their membership in the campus public is for all intensive purposes based on educational goals, although they too may be employed in a variety of internship and work study positions.

For both graduate and undergraduate students, sexual harassment loom large as an observable factor with which they must contend. And their means for dealing with sexual harassment are compounded by their relation to the other audiences: they stand closest to teachers who perpetuate the most statistical evidence of harassment against them, yet farthest from the public (administrative) which handles the means by which to deal with sexual harassment in both informal and formal modes. Conrad and Taylor succinctly summarize the students' standing:

Students are commodified (e.g., as enrollment data) and devalued as transient, needy and 'difficult'. This devaluation is structural: support systems for harassment victims (e.g., Student Services) are typically feminized (sex-segregated) and marginalized within the institutional power structure.
(405)

While this information further supports the "unnatural" delineation of persons on the basis of their sex, it is also applicable to both male and female students in that student experiences of harassment have the effect of decreasing self-esteem and increasing the notion of submission to an admittedly hierarchical system (Strine 394). Given all of these complexities within the student "public" sphere, they also demonstrate themselves to be a rhetorical body capable of modifying the exigence; they deal with the most reported cases of harassment and are in one of the most undervalued institutional positions: they stand in direct contact with the exigence and stand to gain and/or lose the most should they choose to mediate change within the sexual harassment situation.

While there are other groups that could be discussed as possible audiences--contractual employees, temporary hires, special event staff--they are by and large absorbed into the previously discussed audiences. Their concerns and interests, when related directly to sexual harassment, are dealt with in the discussion of the audiences above. It suffices to reiterate that each campus' audiences create a "public." Our attention at this point must turn to that relationship between these publics, and their collective relation to the creators of the codes, the EEOC. These connections helps to further clarify the campus publics' standing as a collective rhetorical audience.

The Publics as Audience

As was mentioned in the introduction, the first thing that an audience must possess is the knowledge of certain situational facts; that is to say, a collective sense of what is true in a given situation (Bitzer, "Public" 72). The specific knowledge that is in the

possession of the members of the campus publics is that sexual harassment is wrong. Even those persons who harass (and we defer discussion of those that do not think their actions are harassment until the next chapter) can note that what they do is contrary to the common knowledge of the campus body. Knowledge must be further clarified in that it is not a mere opinion or belief, but a readily observable fact. Such a position may seem to be, at first glance, fallacious given that not all persons see sexual harassment as the exact same thing. But the exigence of sexual harassment does not change insofar as it remains a constant rift in the knowledge of the publics which must be remedied. This constancy is not meant to imply that dispute does not exist as to the qualities and shades of the imperfection. Indeed, disputes as to the designation of such and such an act as "sexual harassment" further fuse the publics together. These value judgments of the act are part of the situation, they are indications of "a community exhibiting diversity within unity" (74). And such value-based disagreements as to specific issues still revolve around a central and concrete tenet: sexual harassment impedes the smooth running of the campus environment.¹⁶

How is such a stance possible? First we must be clear that facts are situation-specific and historically derived. They are, as John Dewey states, "an acquired result of the workings of natural impulse in connection with environment" (187). We understand sexual harassment in context of the situation in which it occurs, not in a general sense. Without some tie to other experiences that confirm, contradict, and complicate, sexual harassment exists only in abstract. The employee at an aerospace firm has a different knowledge of sexual harassment than, say, the graduating senior at a Midwest college. But the campus-specific environment, tied as it is to the historical development of sexual harassment, necessarily finds verification of such a fact in past situations where persons have judged sexual harassment to be wrong. Factual judgment, in this situational sense, is

¹⁶ Alfred North Whitehead discusses the commonality that is fused through such "value-experience" in his book Modes of Thought, New York: The Macmillan Company, 1938.

a process which finds verification by reflection on past instances, and such continued observation allows us "to arrive at . . . more precise knowledge" (Russell 164).¹⁷ Hence the employee and the senior are connected generally in so far as they note a fact, but are distinct in the manner in which they arrive--at and interpret--such knowledge.

The second component of verifying the existence of the campus' audiences as publics is tied to the preceding one in that the campus audiences reference the larger societal sexual harassment situation. Bitzer argues that in many instances such audiences "stands in" for a public ("Public" 73). If we were to study the larger societal manifestations of sexual harassment, we might conclude that the campus audiences stood in for the more general societal public in that they display relatively similar functions within their respective domain. In other instances, standing in is more a designation of comparable to and, as Bitzer goes on to note, audiences and publics "overlap and coincide" in certain environments (73). Such is the case in this situation. The audiences that have been noted previously are publics in so far as they are capable of fulfilling two requirements: authorizing and mediating change. That these audiences share a similarity with the societal public--in knowledge at the very least--merely confirms the historical development of the campus situation.

The third factor that must be entertained centers on the connection of the audiences-as-public to the creators of the code, the EEOC. In this instance, the second factor is clarified due to the fact that the EEOC is a public, historically verified speaker now engaged in the implementation of their discourse--the codes--in the campus situation. As such, the rhetor-as-representative is required to "know what the public knows and speak as the public would speak were it articulate and aware of its truths and interests" (Bitzer, "Public" 74). Since the campus publics form the rhetorical audience that will

¹⁷ Other scholars have also suggested that Bertrand Russell's philosophical works provide a template for a "speech communication" examination of rhetoric. As Donald L. Torrence notes, "Russell, like Plato in the Phaedrus, does present views which form the fundamentals of a sound system of rhetoric" (153).

judge the speaker's response to sexual harassment, this rule becomes important: if analysis demonstrates the EEOC to be in tension with the publics' knowledge of sexual harassment or to be unaware of their interests, the campus publics are less likely to mediate and activate change. Thus the speaker, the EEOC, is required to demonstrate the reasons that they are entitled to function as a spokesperson for change, why their response to the exigence should be seen as fitting within the campus context.

The question of entitlement leads us to the fourth factor of authorization. Bitzer argues that "authorization is needed when a proposed act or message might seriously affect the well-being of others" ("Public" 75). That the EEOC operates as a historical institution initially and a campus-specific organization secondly demonstrates that they have at the very least established a claim to operate as speaker. Problems have been addressed in previous chapters, however, that complicate that authority. When looking at the nature of the codes in Chapter Two it was noted that they had undergone very little transformation in their transition from societal to campus response, a fact that deserves more attention in that a situation "prescribes the response that fits" (Bitzer, "Situation" 22). But the true nature of authorization must be deferred until an analysis of the codes is complete, for the EEOC's accreditation is based in a situational analysis of the rhetorical audience's response to the discourse which the commission provides.

The final factor is summed up in the question: "what is the proper authorizing ground of expressions of truth and value and of judgments and actions in public rhetorical address?" (Bitzer, "Public" 76). This question fuses the audiences on each campus and the EEOC together in that the authorizing ground for providing sexual harassment codes is based in the extent to which they mirror "the knowledge and interests of the public" (76). As was already noted, the common knowledge of the campus public that must be articulated is that sexual harassment is wrong. More so, it was explained that sexual harassment is a historical fact, a public act, with consequences "for good and evil [that] extend to others--perhaps many others" (77). The aerospace worker and the student, the

legislator and the administrator, all are affected by sexual harassment. That the situations differ solidifies the nature of sexual harassment as an exigence manifest in differing situations to differing degrees. That multiple audiences form publics points to the existence of disagreements within the unity of a given situation. Hence, the question of authorization is grounded in the audiences' acceptance of a speaker's discourse, in the validation or rejection that occurs rhetorically between the two.

It is these complicated factors which lead to the designation of the administrators, faculty, staff, and students on college and university campuses as a "plurality of publics." These publics are similar to societal publics, hence they are historically verifiable. But they are also the same across campus boundaries, thus forming a "rhetorical audience" capable of responding to the EEOC's codes within the campus situation, within the context that is the focus of this rhetorical analysis. These points of analysis seem to confirm Bitzer's statement that "the testing of public knowledge . . . occurs in the successive and overlapping rhetorical situations which the public encounters as it interacts with its total environment" ("Public" 90). Such a test is only possible through the process of distinguishing differences and noting similarities of "environmental" situations, of defining the nature of a given audience and the messages it is asked to respond to, and clarifying who asks them to formulate such a response and by what authority. The test is, in sum, a rhetorical one.

Conclusion

The analysis of the audiences that has occurred in this chapter has been complex, alternating between matters of fact and issues of philosophical, indeed theoretical, orientation. But the result is that we do not merely know that audiences exist, we understand why they exist. We have placed the audiences in context by moving beyond lists and into examination of the factors that determine their makeup and warrant their

designation as a public on each campus. These individual publics were then shown to operate as a "plurality of publics" connected to each other. Finally, as a collective "rhetorical audience," these publics were shown to be authorized and capable of mediating the exigence as articulated in the rhetoric of the EEOC and manifest in college and university sexual harassment codes. This process may seem at first glance needlessly complicated. But it is essential that the complexities of the situation are treated to an equally extensive analysis if critical gains are to be the result.

Some of the matters discussed herein are also demonstrative of why a situational analysis such as this is necessary. An issue as complicated as sexual harassment will necessarily obscure certain material as it illuminates other information. In regards to the composition of the audiences-as-public, scholars and critics still have to contend with the problematic ways in which male and female perspectives are collected and analyzed. An audience is not an androgynous mass of gender-neutral similarities; it is a collection of persons influenced and empowered by issues of sex, gender and socialization. Just as situations are modified, so too should the means of explaining and analyzing them. As such, the next chapter will explore how the problems noted in the initial section of this chapter work to constrain the operations of the rhetorical discourse within the situation.

Chapter VI: Constraints

Bitzer argues that constraints are those "persons, events, objects, and relations which are parts of the situation because they have the power to constrain decision" ("Situation" 21). These constraints are further divided into inartistic and artistic categories, the former being operative within the situation and the latter being the result of the speaker's discourse. But arriving at a sufficient understanding of these constraints is difficult. The reason being, they often overlap and sometimes contradict each other, folding into other areas of the rhetorical situation. Given these complexities, this chapter will develop in three parts. First we will analyze the inartistic constraints which are operative in the campus situation. Specifically, we will analyze the current research into the influence of sex and gender on perceptions of sexual harassment. Next suggestions will be provided as to why the research is divided on the topic and how these divergent results operate as constraints. Finally, we will look at the artistic proofs that the EEOC brings to the campus situation; we will look at those features which the rhetor uses in an attempt to secure the favor of their audience.

Much of this chapter relies on the references that can be made to previous discussions within this thesis. The preceding chapter on the rhetorical audience is essential in that it clearly sets out those persons who are part of the discussion of the inartistic constraints above. Additionally, the relations and events detailed in Chapter Four help to clarify the nature of the exigence as a factual and perceptual reality which constrains persons as much as persons react to the same. In essence, the perceptions of the audience and the artistic tools of the speaker provide the objects which previous information helps to clarify and the subsequent chapter will analyze. The reader is well-served to keep these factors in mind while examining the following information.

Inartistic Proofs

At present there is a split in thought regarding the influence of gender and sex on perception(s) of sexual harassment. Although both groups embrace similar terms, they are by no means similar in orientation. Those proponents of the gender perspective hold that people are more likely to label behaviors as sexual harassment dependent on how they are influenced by factors such as age, marital status, feminist ideology, and frequency of behaviors (Brooks and Perot 31). This group holds that the definitions of behaviors are related in large part to how one is socialized. The second group focuses on the concept of sex as the determining factor in most cases of sexual harassment. The distinction is thus a matter of biological or sociological perspective. So as to untangle these complicated orientations we will: 1) look to two studies that reach two different conclusions, 2) offer a more holistic analysis which would posit that the more substantive answer to perceptions of sexual harassment is an "attributional" blend of the two perspectives, and finally 3) provide both a possible explanation for the discrepant conclusions that are reached and examine how these conclusions texture our understanding of the operative constraints within the campus sexual harassment situation.

The research done by Linda Brooks & Annette R. Perot and John Ryan & Sylvia Kenig provide distinct theoretical orientations to sexual harassment. Although both studies are dealing with slightly different variations on the subject, they are in essence studying the same overall phenomena. The former looks at the "perceived offensiveness" of behaviors that come to be labeled sexual harassment; the latter seeks to explain the factors that give rise to certain definitions of the same (31; 231). What is interesting for the purposes of this section are the different conclusions that the authors reach. Brooks and Perot come to the conclusion that "feminist ideology and frequency of behavior showed direct effects on perceived offensiveness" of sexual harassment behaviors (45). In contrast, Ryan and Kenig found "no significant relationship . . . between reported

harassment and gender role ideology" (241). The italics, which are mine, serve to clarify the differences in the conclusions reached by the two respective studies. While the first sees the influence of ideology as a determinant of sexual harassment, the second dismisses ideological orientation as insignificant. And while feminist and gender role ideologies are indeed different, they nonetheless serve to demonstrate that ideology in general is placed in conflict by the two studies. The question that must be posed at this point is whether these findings are the result of different methodological orientations?

To a degree they are. Brooks and Perot spend a great deal of time providing evidence that ideology is a major factor in the labeling of sexual harassment, while including the previously mentioned factors such as marital status and age into the overall schematic set up for deciding if a behavior is harassment and if the behavior will be reported as such (34-35). Kenig and Ryan, on the other hand, are quite explicit in their dismissal of the above types of claims. They believe that the ideology argument can be used "by perpetrators to suggest that reports of sexual harassment are overreactions on the part of the victim" (232). So the question now becomes a matter of how these divergent orientations are funnelled through the research base of each study.

The Brooks and Perot study sampled 306 "full-time, tenure-track women faculty members" and 500 women graduate students (35-36). These participants then engaged in an experiment that included the independent variables of a five-point inventory of sexual harassment behaviors. These variables were based on the dependent criterion of "perceived offensiveness" and "reporting." The Ryan and Kenig study used a population sample of 359 women of varying academic status--faculty, graduate, and undergraduate--and 300 men of a similar academic makeup (232). The independent variables of organizational position, age, and gender role ideology were then tested against seven types of dependent variable behaviors: unwanted sexual jokes or remarks; suggestive looks or gestures; deliberate touching, cornering, or pinching; pressure for sexual activity; actual or attempted rape or sexual assault (234).

At this point, some comments must be made about two differences in the respective studies: sample groups and variable use. The people surveyed in the first group are exclusively female, whereas the second group includes a cross-section of both male and female subjects. In addition, the first study's independent factors more closely resemble the dependent factors within the second study. I believe that these differences are important. Not only do they point out significant differences between the sample populations of each study, they also demonstrate different frameworks for attempting to test similar questions regarding the reporting of sexual harassment--differences that will be expanded upon in the end of this section.

The results are also intriguing in how they diverge. It is interesting that the same-sex study supports an ideological and gender bias in sexual harassment, while the mixed-sex study finds sex to be "the most profound influence" in predicting sexual harassment (Ryan and Kenig 240). In essence, the former provides a socialized explanation for harassment whereas the latter sees a biological explanation as the most plausible. These conclusions seem to suggest that the sample group plays a large part in determining the nature of the result. The use of behaviors as independent variables in the first study also seems to shade the results: does the reversal of very similar behaviors to dependent variable status in the second study in any way influence the results of the study? The answer to that question cannot be reached within the scope of this thesis. But we can note at this point that other research into sexual harassment subsumes these studies in the focus on both sex and gender. This balance is, in many ways, more practical as well. The biological person is constantly interacting with the social world. As such, who we are as a genetic fact is shaped by how we are treated and how we treat others socially.

Additional research seems to support the above hypothesis. Following the increase in research on the perceptions of sexual harassment in the early 1980s, Paula Barr conducted studies that looked to Gender Role Socialization Theory as a possible

explanation.¹⁸ The studies involved 195 and 219 students, respectively. The subjects were looking at employee/employer scenarios that portrayed varying degrees of severity culled from sexual harassment claims. The hypothesis driving these studies was that "more severe behaviors would be more easily identified as sexual harassment than less severe behaviors" (465). Although information differed in each study area, Barr notes a finding in the second survey that is supported by the first survey which points to gender-role socialization as the predominant influence on perception:

In the scenario in which the target indicates unwelcomeness but is sexually provocative, a majority of both male and female respondents did not perceive the behavior as sexual harassment. The behavior was deliberate, repeated, and unwelcome. However, the victim, by engaging in sexually related conversations with her co-workers, was not acting as the guardian of proper sexual behavior. (467)

Thus, the study purports that the socialized way in which we act is linked to how we perceive a behavior. If the behavior is sexual and unwelcome, yet occurs within the confines of a socialized sex role, the study suggests that we are far less likely to conclude that it is sexual harassment even when it fits the definition.

Studies such as this one help to remedy the sex and gender dichotomy in that our sex operates as a filter through which others perceive and respond to our gender role. This complicated blend is furthered in the work of others who have studied socialized patterns of behavioral acceptance. According to A. Bandura, "sex-role differentiation usually commences immediately after birth ... indoctrination into masculinity and femininity is diligently promulgated by adoring children ... and through non-permissive parental reaction" (qtd. in Stewart et al. 22).

¹⁸ The reader must be reminded that the use of the term "gender," as in the case of Gender Role Socialization, is more accurately to be regarded as biological "sex." As was noted in the Titus research, such blending of terms is often as dangerous as it is confusing.

This link of Barr to Bandura suggests that the behaviors we deem acceptable or unacceptable may be "taught" at a very young age, that the constraints that are operative in the campus situation are the result of a long, historical pattern of socialization shaping our biological selves. The research that was presented on foundation textbooks, teacher/student interactions, and social organizations seems to support this contention as well. But our attention must now turn to how such behaviors are complicated when persons attribute socialized actions to the sex of the person, which is in itself an assumption that is in large part the result of socialization.

Attribution theory is based in the hypothesis that there is "a pervasive tendency for the actors to attribute their actions to situational requirements, whereas observers tend to attribute the same actions to stable personal dispositions" (Jones and Nisbett 90). As has been noted, we lack data not only on male's perspectives but also in regards to harasser's perceptions of the actions in which they engage. These facts complicate the observer/actor relationship but, more so, they operate as constraints: the majority of material surveyed provide a male/harasser and female/harassed perspective. If such material is the rule, then perceptions about harassment and decisions based on those perceptions are constantly channelled through a filter which is not always accurate. And, while the use of the word "stable" implies a constancy in actions, there is actually some divergence in how stable the behaviors are that an observer attributes to an actor when looking at sexual harassment. A grope in one instance can be radically altered if the context is shifted to another instance. The attribution model can thus be seen as a constraint-based theory in the sense that it looks at the behaviors that fall outside of the normal, stable actions of the actor within a given environment.

John Pryor begins his attributional discussion of lay persons' perceptions of sexual harassment with the comment that "policy definitions of behaviors that constitute sexual harassment literally abound" (273). This statement directly relates to the issue of constraints in that it will complicate the speaker's ability to provide the audience with a

"fitting" discourse; that is, if members of a public are privy to differing definitions they are less likely to share a uniform understanding of the exigence of sexual harassment. Pryor then goes on to discuss three explanations for sexual harassment: power imbalance, repetitive historical patterns, and individual interpretation (274-276). These issues once again add to our understanding of the constraint-infused domain of campus sexual harassment. Not only do multiple definitions exist, but also explanations for the creation of the exigence or the perception thereof.

Pryor suggests an explanation for these constraints by arguing that "a general context of social-sexual behaviors" is the basis for the discrepancy in what actions people label as sexually harassing, in what they attribute to a sender as a harassing behavior (276). For males, the attribution of harassment occurs when they exhibit behaviors that fall outside of their perceived social role. Pryor argues that, for those with "profeminist attitudes," the range of behaviors that can be labeled as sexual harassment widens as a consequence of being generally more informed on behaviors that could be labeled as such (278).

These assumptions were then tested using a conceptual, methodological approach. The test group consisted of eighteen males and females from a university that were randomly placed into one of three conditional experiment groupings with twenty-four individual scenarios representing fluctuations in consensus, distinctiveness, and consistency. Additionally, the actors in these scenarios were varied into three types: a professor, teaching assistant, and a student (279-280). The results of this experiment gave support to "an attributional model of the lay person's understanding of sexual harassment" in that behaviors outside of a person's normal social role were deemed more harassing (284). In addition, behavior that was "independent" of the social role of the actor was not construed as harassing because the context was removed from the attributional analysis. In other words, with no basis for judgment of a person's overall social role, there was no basis to judge a behavior as a deviance from that norm.

An interesting difference, though, was reported in the subjects' "inferred perceptions" of the female target and the male actor (284). The male subjects in the experiment seemed to determine that the male actor behavior could be construed in a different fashion by the actor than the female target. On the other hand, the female subjects did not generally make a distinction between actor and target perception (285). Another difference emerged in how subjects viewed the behaviors when the actor role was differentiated. The professor actor was seen to be exploiting their "normal" social role when engaging in harassing behaviors, while the student was seen to be acting in a manner relatively consistent with their normal behavior.¹⁹ These results have import when looking at the constraints that exist in the campus sexual harassment situation. If a social role accents a judgment of a behavior, then the previous chapter's discussion of the campus publics indicates that each audience is held to a differing standard based on their role within the situation. In much the same way, the sex of the person seems to also accent a judgment of harassment--recalling Strine, Taylor, and Conrad's discussion of the discrepancies in male and female recollections of sexual harassment.

Other studies further the connection of socialized behaviors being attributed to the sex of the person. In 1989, Luis Garcia, Laureen Milano, and Annette Quijano looked at people's perceptions by undertaking a study that uses vignettes representing various stages of coercion. Although the specific activity mentioned is date rape, the findings support the attributional explanation of perceptions related to sexual harassment. The subjects that the authors gathered were evenly divided by sex and were students at a university. The responses of the subjects were tabulated using the sex of the subject, the sex of the victim, and the level of coercion as variables.

¹⁹ These differences were expanded upon in a 1988 study Pryor conducted with Jeanne Day. Following the same line of attributional analysis, Pryor and Day posit that the discrepancy in male and female labeling of harassing behavior is perspective based in that it is seen by the male sender as "accepted" if no direct actions to the contrary are taken by the female. But the female receiver, faced and presented with the exact same behavior, sees the progression as "more and more harassing" (417).

The researchers noticed a reoccurring tendency of the subjects: "male subjects perceived these sexual advances as slightly more coercive when the victim was female, whereas females perceived the advances as slightly more coercive when the victim was a male" (569). In other responses, low coercion advances were deemed more coercive if the victim was male. Overall, the study showed a strong correlation between the amount of negative feelings displayed towards the victim and the higher the level of perceived coercion. These findings offer an explanation for the existence of the stereotype that a person who is sexually harassed in some way "deserved it." If we negate another person based on sex or gender, we are more likely to engage in behaviors which mirror that negation. In other words, the reason that they "deserve it" is because of the "way they are." The researchers conclude by noting that more study is needed if an additional level is to be examined: attribution theory as a determinant of acceptance/non-acceptance of coercive sexual advances.

In 1992, Paula Popovich, et al., studied the forms and consequences of behavior as indicators of perceptions related to sexual harassment. Their research shows that "males rated statements less negatively than did females, especially when the statement described 'physical' behavior with 'hostile environment' consequences" as opposed to verbal behavior with only economic consequences (609). We can theorize that, in much the same way as with subtle coercion, as physical threats increase the amount of negativity attributed to the harassed increases as well. But what is even more revealing about this study is that the male subjects show a generally higher level of acceptance of physical behavior. Males assigned the harassed woman negative attributions, whereas the harassing male would not be judged on their overall physical behavior by the same subjects. That persons will differentiate the behaviors they judge based on the sex of the person supports a socialized view of others. But that view is directed towards a person of a different sex; again, a compelling reason to see sex and gender as inclusive factors in the creation of perceptual constraints.

Two additional perspectives are helpful at this juncture in that they expand the previous discussion. They were not integrated into the text discussion above because, although they support the attributional model, they add to that research by examining two additional factors: the issue of power and the problem of revising codes.

Hierarchical Level Theory. This framework focuses on the discrepancies in the perceptions of high-power and low-power persons. And, it is important to note, hierarchical power use against low-power people is the most common of the sexual harassment dimensions; be it employer to employee, teacher to student, each scenario is directly related (as the EEOC definition is) to the use of sexual harassment by a harasser on a person in a position of less power. With that in mind, the research into hierarchical placement as a perceptual determinant, as a constraint, is important. When we attribute certain characteristics to high-power and low-power persons, we endorse a socialized view of the workplace or the campus that is in many instances necessary. Low-power persons look to high-powered persons for support, advice, and mentoring. But sexual harassment is an exploitation of those differentials.²⁰

Jasmine Tata looks at the impact of sexually harassing behaviors, gender, and hierarchical level on subjects' perceptions of sexual harassment (199). Working from the hypothesis that sexual harassment is multidimensional (consisting, in this view, of gender harassment, seductive behavior, and sexual bribery, coercion, and assault), Tata gathered a sample group of 50 male and 70 female undergraduate student volunteers. They were presented with 15 sociosexual behaviors and asked to rank them using a seven point system (202). The results demonstrate that hierarchical level, as well as gender, influenced the subjects' perception of harassment and seductive behavior, but did not affect their perceptions of other sexually-related activities (207).

²⁰ Indeed, incidents of sexual harassment can occur but be in conflict with those standard differentials. When hierarchy is seen as the predominant catalyst for sexual harassment, it is not surprising that peer-to-peer harassment is not sanctioned against legally.

These findings provide a good starting point for examining hierarchy as a cause of sexual harassment perception. Specifically, these results are important to the study of sexual harassment in education because the subjects are representative of one of the larger audiences on campuses. The interaction of gender and hierarchy is also worth commenting about. In many instances, we can conclude that gender is a determinant of real or perceived hierarchical status. With more women being sexually harassed by men and more men historically in positions of power, perception and hierarchy become important components in an understanding of constraints.

Asynchronous Model. Mark Hickson, R.D. Grierson, and Barbara Linder provide suggestions for reforming the way in which the academic community deals with sexual harassment. These revisions are based in the argument that sexual harassment is the result of the sender having feelings for the receiver that are "non-mutual" with the resulting behavior being sexual harassment (112). These non-reciprocal actions develop, according to the authors, in stages that range from: aesthetic appreciation (cautious compliments); active mental groping (visualizations of a sexual nature); social touching (intentional interaction); foreplay harassment (more private encounters); sexual abuse (verbal comments and physical touching of an unwanted nature); and ultimate threat (if you don't, I will . . .). The authors argue that these stages ultimately result in psychological, emotional, and economic harms to the receiver (112-115).²¹

If we recall the findings of the previous studies, we can note how these non-reciprocal actions and their subsequent results are attributional. The sender feels that the recipient--based on their socialized power position, their perceived sex role, or both--should see these actions as a natural result of their relationship. If the receiver refuses the advances, the receiver is either seen as "saying no when they mean yes" or as "deserving"

²¹ While the issues raised in this section are beneficial, it is best to reference the discussion of fraudulent psychological injury cases in Chapter Four.

the subsequent increase in action. The authors, then, see the need to adopt plans that will make prevention of sexual harassment easier, to adopt policies that will make a preventative response by the receiver easier. Their three-tier plan addresses the institutional, faculty, and student responses that should be taken, distinctions that provide an easy companion to the last chapter's delineation of the campus audiences (116). They argue that the institutional response is to make the policy explicit and accessible and to educate the workers on the policy through workshops. The procedures to be followed in a given case should also be equally clear and known to all. If a person is found innocent of charges, files pertaining to the case should be destroyed. And, in all cases, the identities of the people involved should be kept strictly confidential.

The faculty should be open in acknowledging both the existence of harassment and the fact that it is not a matter of academic freedom. But faculty should also not seek out people in a witch hunt fashion. Students, when faced with harassment, should tell a person so as to gain advice on whether to file a formal complaint. They should make the harasser aware that they are willing and ready to file charges against them. The activity should be documented and one-on-one activity with the harasser should be avoided. The harassment should be dealt with in a timely fashion, with the harassed fully aware of the procedures open to them.

Hickson, Grierson, and Linder conclude by acknowledging that these actions "may be argumentative," but are necessary given the "serious nature" of the problem (116). More so, these types of actions help to ward off the destructive use of grapevine gossip that could impede the process of filing, following through, and winning a case of sexual harassment. The authors' suggestions point to a problem noted in Pryor's article, discrepancy in labeling, and their suggestions extend beyond that analysis to offer general ways in which the constraints could be modified so as to change the nature of responding to the exigence. Additionally, they downplay the role of a problematic part of the codes--the informal response--in favor of highlighting the use of formal sanctions. This article

displays materials that "constrain decisions" in that it provides information suggesting that perceptual differences lead to actual conditions; it solidifies the dual nature of the exigence noted in Chapter Four while positing that exigence is best attacked prior to occurrence, rather than after the fact.

Discussion of Divergence

The power of communication is often a question of what we decide to see rather than what simply is. That is, each person brings to the communicative table a set of notions that influence the work they do. The study of sexual harassment is no different. In the previous analysis, we saw the above dispositions played out: different researchers reaching different conclusions about the same issue. That we started with two readily divergent perspectives and worked towards a more holistic attributional understanding is a choice. And while that choice was based in a review of the literature available, it does not do away with the disagreements that exist. As such, dueling results operate as constraints in much the same way as the previous perspectives discussed; that is, they are decisions about decisions and actions within the campus situation. They complicate the codes' ability to solicit an audience response to modify the exigence of sexual harassment. So as to understand the nature of these inartistic constraints, this section of the chapter will examine how such constraints are perpetuated and the effect that such divergence has on the campus situation.

The studies that we have looked at support the contention of Dair Gillespie and Ann Leffler that research "provides the documentation that legitimates (or 'delegitimates') particular definitional claims about social problems" (491). In simplified terms, research will support certain definitions while it discounts others. In the two research-based studies on the social problem of sexual harassment that we first looked at, two competing claims rose to the surface: that ideology is/is not the major influence in predicting sexual

harassment. But the legitimacy of those studies and the ones that followed is influenced by the ways in which they went about reaching those conclusions. So as to clarify the nature of this divergence, we will focus on the two initial studies.

The first area that may provide insight into the underlying reasons supporting the different conclusions has already been mentioned: sample group makeup. While some might argue that the subjects used in the two studies were generally representative of the situation in which they were found (academia), they are more accurately "nonprobability sample[es] involving nonrandom selection of individuals that happen to be readily available and willing to participate" (491). College populations provide a vast resource for research. If the studies had stayed focused on the campus public, the problems related to sample group would be reduced. But both studies attempt to extend the conclusions to the larger societal situation based on these sample groups.

Even when Ryan and Kenig note that "women faculty were included in the study because of their low numbers within the university" we cannot assign their sample group a probability label (232). The reason being, low numbers of women on a campus would have to be represented by a proportionately low number of women in the sample group to even be considered "representative." The bolstering of a sample population to include under-represented groups must be combined with a larger sample of other groups in the study. The question of "random sampling" must also be addressed. Both studies are, beyond the nonprobable label, using subject groups that were specific to the educational locale. This emphasis tends to skew the conclusions to the degree that they are "generalized to the population of individuals from which the cases were randomly selected" (Gillespie and Leffler 495). In the context of this thesis, that is not a problem. The populations used in the studies were academic and the focus of my analysis is the same. But when Brooks and Perot make the argument that their results could support "what appears to be a widespread lack of information" on the issue of sexual harassment, we must be careful not to extend that claim too far beyond the scope of the study they

have carried out (45). As with the problem of sample groups, the nature of how they are sampled frames the conclusions drawn. In short, academic populations will yield results that have the most direct bearing to the academic environment. Although this may seem self-evident, it is ignored in the conclusion of each study.

The final area that must be entertained is the way in which the data was arranged. As has already been mentioned, there was an inverse use of similar variables in each study. But, even more importantly, those variables were tested using different definitions of the same exigence. The Brooks and Perot study, which found no significant gender (meaning: sex) effect on reporting sexual harassment, nonetheless tied all references to a female noun. Thus, when they comment that a person "will not report an experience unless she first labels the incident as sexual harassment," we are left to question whether or not the female-emphasis is just a matter of stylistic license (33). This argument relates to the problems found in looking at the campus audiences: there is a general lack of data related to male perceptions of sexual harassment. Given that absence, such terminology may be the result not merely of persons being overlooked, but of them not being researched at all. The Ryan and Kenig study also has a female emphasis, but is more inclusive in detailing the "differing definitions of putative sexual actions on the part of men and women" (232).

These definitional bases provide the foundation from which the remainder of each study is conducted.²² The biggest problem with each base of study is the way in which the authors lead the readers and, one could argue, the subjects towards a decidedly narrow view of sexual harassment. As an example, the term "feminist ideology" is problematic in that it explains little. But the extensions that are drawn from this vague phrase have more apparent ramifications: said ideology becomes a female mind-set, the fear of retaliation is a female response to harassment, and the issue of gender becomes not a question of how

²² Note the use of "definitional" rather than definition. Both studies are rather broad in the ways in which they define sexual harassment. Thus, I am emphasizing the ways in which they use those broad bases as a means to conduct the respective research.

men and women respond to and perpetuate sexual harassment, but how one of the two has been victimized. In short, "the result has been a failure to comprehend the organizational scope and functions of sexual harassment" (Gillespie and Leffler 498). To be clear, these objections are not raised as a means of disparaging the results of either study. But these complexities lead me to reference other materials so as to gather a more holistic understanding of perceptions than either of these two studies could present. And these issues are pointed out because, in both instances, they demonstrate "the pragmatic choices that [researchers] must make given that it is not possible to address all questions, to use all possible definitions, or employ every research strategy" (498).

Such choices may be necessary, but they also constrain the decisions rendered in the academic situation. The perpetuation of false distinctions, the extension of a situation-based conclusion to a larger situation, both affect the ways in which persons think about sexual harassment. On the perceptual level, decisions about the exigence are as practical as the materials available. As we have seen, these pragmatic choices in research may lead to less practical perspectives on who does what to whom in a given situation. On the actual level, the misleadingly rigid dichotomy between males and females throws biological fact into a socialized mix and blends out distinctions: we start to ignore the fact that the "he" who harasses "she" isn't always a male and the receiver of the harassment is not always female; we, in essence, marginalize occurrences of harassment that fall outside of the research objectives and theoretical definitions thereof.

Taken a step farther, Bitzer argues that constraints can operate as either "opportunities or limitations" ("Functional" 24). We can conclude that the constraints noted in the analysis above operate more as the latter and less as former in that the chance for change is thrust up against a rather inflexible perceptual wall. More so, a campus audience that is treated to a stereotypical view of sexual harassment is likely to view the act itself in equally stereotypical ways. This stereotypical lens is, it must be admitted, based in a well-established fact: male to female harassment is the most recognized, documented,

and talked about form currently. But a fact cannot become the totality of information available, or sought, in this or any instance. The "opportunity" to view sexual harassment in a balanced way is "limited" when the research-based constraints blend out deviations from the established pattern. As has already been discussed, this creates problems in perspective. We become socialized agents accepting of equally socialized studies. But, as has also been noted, factual examples of harassment--peer-to-peer, gay/lesbian, woman-to-man--suffer as well. Valuable changes in the reality of sexual harassment are complicated when examples that don't fit are cast aside in favor of more palatable scenarios.

Artistic Proofs

Even a cursory glance at basic texts in rhetoric will uncover the three word summary for artistic proofs: ethos, pathos, and logos. A speaker must demonstrate themselves as worthy of being listened to, doing so will translate into the audience responding positively to the discourse, and this is accomplished via a logical synthesis of content and organization; together these proofs create the foundation from which persuasive discourse stems. But we must defer a discussion of one of these components until the next chapter, for pathos is a judgment that can only be rendered after an analysis of the codes has been undertaken. The pathetic appeal is, in the case of sexual harassment and in light of the situational framework, an appeal determined via the rhetorical audience's response. At this point, we must instead focus on the credibility of the speaker and the means by which they attempt to secure it.

It has been noted that the codes are enthymematic in nature in that they are based on a major premise (sexual harassment is illegal and threatens the campus environment), and further divided into component parts ("hostile environment" and quid pro quo). In the case of basic codes, the examples are implicit in the description and definition of sexual

harassment; in extended codes, the examples of sexual harassment are explicit. These structural items all center around the logical topic of "Future Fact." That is to say, the EEOC guidelines base their persuasive power in the argument that codes respond to sexual harassment if they are followed or, as Aristotle states generally, "a thing will be done if there is both the power and the wish to do it" (132). That power is federal enforcement and informal college sanction and the wish, as has been previously demonstrated, resides in the judgment of the campus publics. Again, we note the parallel constitution of both code and exigence: a response is both educational and sanctioning in connection to an exigence which is both actual and potential. But certain factors complicate the legal constraints presented by the speaker in this instance. Most notably, the problem relates to the terms used in creating the codes, both in their relation to other supplemental materials that exist in the campus situation and their connection to legal interpretations of key phrases.

A casual glance at the materials related to sexual harassment on college and university campuses leads to a rather obvious observation: there has been the creation of too many definitions with too many ways of interpreting them. Sharon Howard "acknowledges the difficulties in arriving at a definition of sexual harassment" and then goes on to list different types of definitions "before employing a definition that has become commonplace"--the EEOC definition (507). But these "other" definitions operate as constraints in that they restrict the ability of the EEOC definition to function as the primary explanation. This definitional ambiguity is further highlighted in the University of Maryland College Park's 1990 sexual harassment policy. In the definition section they list six different ways of labeling sexual harassment. These vary from defining it as offensive, a "breach of a trusting relationship," coercive, and simply "a violation of professional ethics" (4). Dr. Gladys Brown, the person who compiled the data for the manual, readily admits this multiplicity of definitions by granting that "the definition of sexual harassment may differ slightly among educational institutions" (4).

These discrepancies have been noted previously when discussing the differences between basic and extended codes, but they are compounded by the problems of interpreting legal definitions. Some terms have been accepted but have never been defined specifically. The ideas of "reasonable person" and "hostile environment" are therefore important to discuss. The discussion of the first is framed in the context of its biases, the second in regards to the recent shift in the way the courts define it.

Courts often rely on using the "reasonable person standard" in judging a case; that is, in a given situation, what would a reasonable person judge to be right or wrong? At first glance, this sounds like a fair way to look at sexual harassment. But, as Kathryn Abrams points out, this "standard only complicates the controversy" (48). First, she argues that the term itself is wrought with a male-bias that renders a female perspective marginal. Historically, and in an ironic complement to my arguments about research choices earlier, the decision of what was "reasonable" and the "person" who made such decisions has been male. Secondly, how can there be only one reasonable standard of truth? The first argument is valid in that the emphasis is on a masculine-derived terminology. The second point she raises ties directly into the problematic existence of differing "actual" standards for "potential" actions.

Her conclusion, however, is only a further clouding of the issue. She argues that the term should be replaced with reasonable woman so as to "characterize the evaluation of harassment, like the experience of harassment itself, as a phenomenon strongly differentiated on the basis of gender" (50). But this new definition then shifts to being sex exclusive in a female sense even if it is a shift that is legally supported by the cases that were reviewed in Chapter Four. If the goal of using this phrasing is truly to "create a less oppressive workplace," one wonders the extent to which such a change accomplishes that end goal. But, as Nancy Alderman and Caroline Kennedy point out, interpretation of the "reasonable person" standard is a continuing, not a finite, process. As is the case with the majority of legal terms, "such standards can take on meaning only over time, case by case"

(156-157). The implication of this legal flexibility is that what is construed as a reasonable person should change as the information about sexual harassment changes.

The "hostile environment" standard is directly related to the questions raised in regards to the former term. As Deborah Wells and Beverly Kracher argue, the decisions of what constitutes a hostile environment should be shifted from the perspective of a reasonable to that of a reasonable victim (423). Keeping in mind the arguments raised by Abrams, we need to look at what the two authors offer. The crux of their argument revolves around the idea of using Rawls' "Theory of Justice" to construct a definition of a hostile environment on the basis of the victim's perspective. As rational beings, they argue, we would view that perspective as just in the Original Position: the concept of knowing only information pertinent to the issue to be resolved (424-426). Thus, their reconstruction of the standard would use respect for persons as a basis for treatment of others in a work (and education, we can add) environment. There are some questions that must be raised though. Is a theory such as Rawls' applicable to sexual harassment? Can this type of theory be applied to all cases in all situations? As Abrams pointed out, if the truth is fluctuating it is hard to use the absolute standard of the reasonable victim or, for that matter, reasonable woman.

These questions as to the definitions of key terms, though related to logos, are also connected to the ethos that the creators of the codes demonstrate. If doubt exists as to the nature of the codes' premise(s), then the credibility of the creator is also clouded. These problems are, however, decreased by the fact that the EEOC references a historically-generated basis for authority: the Civil Rights Act of 1964. As such, the speaker is connected to a larger body of work which demonstrates the ethical nature of the EEOC via an established past fact of decreasing discrimination and then, in 1980, sexual harassment. This credibility-through-reference argument is not mere conjecture on my part; as Aristotle notes, "the way to make ourselves thought to be sensible and morally good must be gathered from the analysis of goodness already given" (91). Indeed, such a

reference decreases the problems of character created by the codes' definitions and the contradictory definitions found in supplemental materials.

Conclusion

The discussion of constraints in this chapter signals the completion of the background analysis necessary prior to an analysis of the codes themselves. But this discussion of constraints serves a more important function as well: it introduces us to those materials--be they operative and independent or creations of the speaker--within the situation which present themselves as rhetorical factors that influence how the speaker and the rhetorical audience responds to the exigence (Bitzer, "Functional" 23). As such, the cloudy nature of ingrained discrimination demonstrated within texts, classes, and campus organizations serves to "orientate" both the audience and the speaker to the specific situation we are studying, serves to constrain the manner in which they approach a subject so intimately connected to notions of gender and sex. That the discussion of perceptions of sexual harassment showed both disagreement and similarity only furthers the complicated orientation of members of the campus publics to the situation. What is learned and endorsed in a larger societal context, or even a broader academic environment, filters into how we study, define, and explain a specific exigence. These perceptions shade both the sender and receiver's understandings of the same problem; they constrain our evaluations and place value judgments on the nature of the problem.

Hence the speaker is faced with the daunting task of presenting facts constrained by value implications, of arousing an audience of "diversity within unity" to respond, of presenting themselves as competent to call for such a response and present such materials. That such a task is only now being touched upon is as purposeful as it is logical. Without our established understanding of the theory, codes, situation, audiences, and constraints to which the speaker is responding, we would be doing little more than suggesting that

sexual harassment codes deserve analysis. But, given that these facts are in order and their significance is explained, we can now turn to the last of the artistic proofs, pathos. More so, we can analyze the success or failure of the rhetor to meet that artistic constraint's requirements as demonstrated in the crafting of a response. Whether it is "fitting" or not is the matter that determines such judgments.

Chapter VII: The "Fitting" Response

As was noted, fitting responses can be of two types: complementary or corrective. Whereas the former simply fits "because the situation enables it to be well received," the latter is produced so as to change the nature of the situation (Bitzer, "Functional" 36-37). Sexual harassment codes are of the corrective variety in that they respond to the exigence of sexual harassment within the campus situation. By setting up codes which constrain and sanction against activities, this type of response attempts to "correct" the imperfections created by the exigence. These corrective responses can be of two types. On the one hand, the response can be created simply in an attempt to keep the situation going. In contrast, sexual harassment codes are direct responses to an exigence within the situation that needs to be modified or removed.

It has also been noted that the structure of the codes and the nature of the exigence contain parallel components. The codes have the dual function of education and sanction, of explaining the exigence while also acting in response to cases of sexual harassment. The exigence, in turn, is a combination of the potential for the act and the act as actual. Hence, a "fitting response" would be a merging of the both exigence and response: the educational mediating the potential occurrences of harassment and the sanction responding to the actual violations of conduct.

Given these observations, we must analyze the basic and extended code types so as to determine the degree to which the above blending occurs. The first section will be a historical review of the development of the Oregon State University [basic] and Rice University [extended] sexual harassment codes. This review will look not only at the current forms of the codes, but also at the forms that they took at different stages in their development. Following from this analysis, a judgment as to the responses will be provided based on the six situational factors which determine speaker and audience responsiveness to the exigence. The sum goal in each case is a judgment as to whether or

not both corrective codes stand as fitting responses to the situation given the highly structured and complex organization of the campus situation.

Basic Codes

As an extension of the Civil Rights Act of 1964, Oregon State University's sexual harassment policy dates back to the late 1970s. At the time, no set policy was in place aside from those that dealt with cases of sexual discrimination as filed under The Education Amendments of 1972, Title IX. But there existed complaints about sexual harassment. As a result, then president Robert MacVicar sent a letter dated November 15, 1979 to all members of the campus public (save for the students). The second paragraph of the letter contains a summary of the recommendations of Oregon State System Chancellor of Higher Education R.E. Lieuallen. These recommendations were based on the definition of sexual harassment provided by "the American Association of Colleges Project on the Status and Education of Women [AAPSEW]" (1). The conceptualization of sexual harassment at this time blended the ideas of "hostile environment" and quid pro quo together, while clearly noting that acts of harassment involved the use of power against a person for sexual reasons.

The third paragraph of the letter is also interesting in the distinctions that it makes related to cases of sexual harassment. To wit, the discussion focuses on the effects of charges on both the victim and the accused. But the wording is rather ambiguous and tentative: "Unless harassment is blatant, the victim may doubt his or her perceptions and be unwilling to discuss it with others. The victim may fear, justly or not, retaliatory measures such as low grades or poor letters of recommendation" (1). While the perceptual problems seem to be a matter of pragmatic importance given that retaliatory measures might be taken, the comment that a victim's fears may be unfounded seems an odd inclusion.

The letter also includes several direct references to the changes that were occurring to Title VII. MacVicar notes that court precedent was moving towards the "inclusion of sexual harassment as a form of sexual discrimination" (1). However, he also makes it clear that there was no ability to petition for damages from an employer who did not know, but should have known, that sexual harassment was occurring in their place of business. As previous discussion has made clear, once the EEOC guidelines were in place, employers could be found liable even if they were not aware that harassment was occurring. The conclusion of the letter establishes the manner in which cases at the time should be dealt with given the above explanation: make it clear to the campus community that sexual harassment is punishable under existing administrative rules, make sure persons are made aware of these rules, provide for confidentiality and publicize such provisions, take prompt action to investigate complaints, and inform the Office of the President should such complaints be filed (2).

Such procedures took on a more definitive nature in November of 1983 when Policies and Procedures Prohibiting Sexual Harassment at Oregon State University was released.²³ This policy is the prototype for the current codes in place at OSU and follows the same basic structure, albeit in a slightly less extensive format and in a slightly different order. As an example, the initial bibliography of laws and policies related to sexual harassment is slightly longer in the 1983 code, whereas the abbreviated version is included in the appendix in the 1994 version. There are, however, three areas in which the differences between the 1983 and 1994 policies are more than a matter of order and extension: sanctions, harassment-free environment guidelines, and consensual relationships.

²³ This policy was reiterated on November 4, 1985, in a letter to all vice presidents and department heads by Acting Vice President for Academic Affairs and Provost Bill Wilkins. The content of this letter follows the same basic structure of MacVicar's 1979 letter, highlighting once again that persons within the academic community should be made aware of sexual harassment procedures available to them.

The sanction section follows the same format as the 1983 code, but differs in an important way: although "more severe sanctions" are threatened for persons found guilty of sexual harassment, no contextual examples are given save for a referral to rules already in place (2). In contrast, the 1994 code makes an explicit reference to these sanctions. For students, there is the possibility of a "warning, required educational activities, restrictions, disciplinary probation, suspension and/or expulsion"; for academic employees, "removal from an assigned post and reassignment, suspension or termination"; for employees, "written reprimand, suspension, reduction of pay, demotion, and finally, termination of service" (10). These inclusions are of importance rhetorically in that they give explicit examples of the constraints that are operative in the situation should a person choose to engage in sexually harassing behavior; that is, reference to sanctions are not twice-removed from review by a person reading the newer versions of the code.

The five-point "harassment-free environment" section of the 1983 code also differs from the newer versions of the code. The reference to supplemental educational materials is different and certain phrases have been altered in the 1994 version. But the most important change is the addition of a sixth point: "information regarding sexual harassment specifically for students is contained within the student code of conduct" ("1994" 3). This addition is of rhetorical importance in that it references the materials to which the student audience is held accountable, further solidifying the nature of sanctions operative within the situation.

Finally, the 1983 policy makes no reference to consensual relationships. As has previously been noted, the 1994 version contains a full page of information related to the subject. That this topic was not included in the former version is understandable. The EEOC guidelines were barely two years old and educational institutions were moving to implement revisions that radically altered how the issue of sexual harassment was dealt with. No longer was sexual harassment a serious concern in context of sexual discrimination, it was a serious concern in and of itself, backed by federal law and

punishable by a wide range of sanctions. But its inclusion in the latter version is once again an infusion of more constraints into the perceptual and structural field of the situational audience. There is now a concern about "abuse of power" or a "conflict of interest," a concern that a "third party" may construe such relationships as symptomatic of a hostile environment (2). These changes all point to the evolving evaluations on the part of the campus public, assessments that were altered to include intimate teacher-student relationships as possible components of the exigence.

There is a singular difference between the 1994 and 1995 versions of the sexual harassment codes.²⁴ Under the formal procedures section that deals with "applicants for academic staff positions" a complaint must now be filed within 180 days, whereas the 1994 version allowed for 365 days. This time-related revision operates as a narrow expansion of constraints within the situation in that it deals with only two audiences: the prospective academic staff member and the administrative audience that handles such complaints. But the term "prospective" requires further analysis in that these persons were not included within our previous discussion of audiences-as-public.

It was noted that a rhetorical audience has a membership within the given situation, that they must possess the ability to authorize and mediate change (Bitzer, "Public" 73). To a certain degree these "prospective" persons have these powers: their complaints can affect the status of members within the rhetorical audience. But the nature of the formal complaint relegates them to the status of a non-situational public or, more accurately, a member of the larger societal public; that is to say, their complaint may result in the removal of a member of a campus public, but their membership is not within the plurality of publics that create the rhetorical audience. More so, a formal complaint includes the "right to file with state and/or federal agencies" ("1995" 6). At the point that such a right is invoked, the exigence being dealt with is not campus-specific. These types

²⁴ As a matter of composition, an error can be noted in both the 1994 and 1995 versions of the OSU code: subsection (a) in each version mistakenly references the nonexistent "Title VIII."

of historical overlap have already been discussed and it has also been noted that they complicate our analysis. What is sufficient to note at this point is that "prospective" operates as a designation which will exclude certain persons from consideration as authorizing and mediating components within the campus sexual harassment situation.

The path that has been tracked in the development of Oregon State University's sexual harassment code is remarkable to the extent that there are few changes to the fundamental structure of the code. Those changes that are of import have resulted in the clarification of sanctions within the code: the explicit articulation of constraints that are operative where before they were merely implied or relegated to matters of reference. Such revisions signal, at least at this juncture, that the responses within this basic code artifact are to some degree adaptive to the fluctuation and infusion of materials into the situation. The other changes that have been noted are less problematic or engaging rhetorically. They are only notable in so far as they compliment the above revisions: phrases have been varied, materials that are referenced have been adapted or expanded upon, new materials have been added so as to modify the response as the situation changed, a matter of filing deadlines has been cut in half, and the nature of who files such complaints has lent to a clarification of membership within the rhetorical audience. But our attention must now turn to an analysis of the similarities and differences within the extended code artifact from Rice University.

Extended Codes

The Rice University sexual harassment code has followed a similar path developmentally. The May 10, 1982 staff newsletter from Pearl S. Gray, then Rice University's director of the Affirmative Action Office, begins with an almost identical discussion of sexual harassment as is found in Robert MacVicar's 1979 letter. This document relies on the very same American Association of Colleges Project on the Status

and Education of Women [AAPSEW] definition. The letter also sets out the development of legal precedents that show sexual harassment to be a crime punishable under the sexual discrimination laws of 1972, while noting that the EEOC guidelines had recently been implemented.

A problem that develops is the way in which these two issues--the AAPSEW definition and the EEOC guidelines--are addressed in connection to each other. Gray references the definition as is, then frames the EEOC guidelines as an explanation of "violation[s] . . . with respect to employment" (1). But the information that follows these comments contains the EEOC definition as well. The resulting duality of terms is compounded by the fact that the former definition contains extensions not explicitly noted in the EEOC guidelines, extensions such as "subtle pressure for sexual activity," "sexist remarks," and "implied or overt threats" (1). Herein we see the germ of the extended code type: the movement beyond the legally recognized guidelines towards a categorization of behaviors that would be considered sexual harassment given an outside source.

The final part of the same letter also recalls the OSU letter (and the follow-up one sent out by Bill Wilkins in 1985) in the information distribution measures adopted: the academic community needs to be made aware that sexual harassment is prohibited, persons who feel they have been harassed should take their complaints to the Affirmative Action Office, supplemental materials need to be visibly displayed, and the above information needs to be disseminated throughout each individual department. These measures are followed in the final paragraph by additional comments which note that complaints must be filed in writing and that "every attempt" will be made to maintain the confidentiality of the harassed (1-2).

In a letter dated a day later and sent out for publication in the student handbook, the material is altered slightly. Gone is a direct reference to the AAPSEW, although their definition is included in its entirety. The information distribution measures are also

contained in this letter. But they have been adapted so as to inform students of actions taken by the administration which are directed to "all faculty, staff, and management service employees" (1). These comments are then followed by what is the first documented sexual harassment code at Rice University.²⁵ As in the case of basic codes, the procedures are first laid out: students are directed to contact the Affirmative Action Office if they have been sexually harassed, then informal and formal measures are expanded upon (2-3). In this version, it must be pointed out, references to prohibited behaviors are restricted to the ones listed in the AACPSEW definition. Another difference between this version and the later ones is that the discussion of complaints related to faculty, staff, and employees is not contained herein, but exists only in the staff newsletter's discussion of employment-related cases of sexual harassment.

The differences between the two preceding versions of this code, Policy No. 830-89 and 803-92, are noticeable in both the quantity of material and degree of information. The 1989 version, for instance, removes any explicit mention of prohibited behaviors but contains in the introductory statement the comment that "sexual harassment will vary with the particular circumstances" (1). This phrasing is followed by the EEOC definition, but they label that definition as merely a "description." In contrast to the previous version of the code, the 1989 guidelines also revise the confidentiality clause to include "impartiality" and the assurance that both "will be maintained." The rest of this version, which is only two pages in total length, contains: informal procedures (which now include the mention of counseling and advice), formal complaint procedures, and an explanation of the makeup of the panel of inquiry that will hear sexual harassment complaints.

²⁵ The designation of this as the first "documented" policy is based on interviews conducted by myself at Rice University in the spring of 1996 and information gathered by the Affirmative Action Office's Director Catherine Keneally and Department Secretary Carmen Irvin. Although the two preceding versions (No. 803-89 and 803-92) reference the original document as being created in 1981, searches turned up no such document in the university files. Irvin posits that the date is either incorrect or that the original document was never actually "copied down" until Gray's messages in May of 1982.

This latter section focuses primarily on the composition of the panel as determined by the persons involved in the complaint procedure. For two students, a faculty chair and two faculty and student members will make up the panel; for faculty, faculty members; for staff, staff members; when the parties are from differing audiences, a faculty chair and two representative members from each party will be included. In all instances, the chair will "normally" be a non-voting member save in instances of a tie (2). The decisions rendered in these panels will be forwarded to the "appropriate" administrator for "final resolution" as determined by the nature of the parties involved. The document ends by stating that sanctions imposed range from a warning to dismissal, and that persons found guilty of sexual harassment "may be subject" to criminal charges.

There are several items that are of interest in this document, beyond the initial description/definition distinctions made in relation to the EEOC guidelines. First, the panel operates as a functionary of one audience, the administrator, in that they are appointed by the President at the request of the Office of Equal Employment Opportunity Programs, the larger designation for the department which includes the Affirmative Action Office. Secondly, the panel's decisions are non-binding in that they are then sent to different parties for final resolution. The result is a dispersal of responsibility for the response to complaints that is not clearly explained. While the President of Rice University determines the panel, other persons are in charge of determining the outcome: the Vice President for Student Affairs, the Provost, the Vice President for Finance and Administration, and the representative administrators in other complaints (2).

The 1992 policy--the current form of the code--is strikingly different. The text is broken up into two separate sections: Policy and Procedures. In the first, a policy statement similar to those contained in the OSU policies provides the premise for the code: "it is the policy of Rice University to provide an environment that is free from sexual harassment because such conduct seriously undermines the atmosphere of trust and respect that is essential to a healthy work and academic environment" (1). Following from

the policy explanation are the legal authority and definition sub-sections, both of which reference the EEOC and Titles VII and IX. Within these two parts, the problems of definition/description are removed in that the legal authority for the code (EEOC) is now also the provider of the definition.

But it is subsection D which finally solidifies the nature of the extended code, explicit in the initial versions and partially removed in the previous version. Under the title of "examples of prohibited behavior" a grocery list of acts are provided. These scenarios are tempered by the comments that these "may" be forms of sexual harassment while, at the same time, other types of behavior not listed may also constitute the same. Such behaviors are: "sexual propositions, invitations, solicitations, and flirtations"; "threats and insinuations"; "unwelcome verbal expressions" which include "insulting sounds and whistles"; "sexually suggestive objects" not related to "educational purposes"; physical acts which are "unwelcome and inappropriate"; and finally "consensual relationships" resulting in "favoritism" that "adversely" affects others (2). These behaviors are followed by the call for prompt reporting, the promise of non-reprisal for "good faith" complaints, and disciplinary actions against those who file "malicious [and] false accusations" (2).

The next section, procedures, is identical to the sections in the 1989 version, save for changes and extensions in the wording of the informal and formal complaints processes. Indeed, the makeup of panels and distribution of powers are the same. But some of the changes are worth comment. There is now an introductory paragraph which explains that the "initial course of action" for a person who is being sexually harassed is to tell the harasser to stop. However, this action "may not be feasible, may be unsuccessful, or the individual may feel uncomfortable" dealing with the problem in this way (2). The informal sub-section now includes an explanation of the purposes of this procedure: "the aim . . . is not to determine whether there was an intent to harass but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the lowest possible level. No disciplinary action is taken in resolving informal complaints" (3).

In the panel of inquiry sub-section, the confidentiality and impartiality section is now included (in the previous version it was contained in the definition section), but the latter term has been removed and in its place is the term "privacy." The wording has also shifted from "will be maintained" to "will be protected to the extent possible" (4). Additionally, this section now explains the basis of the panel's decision-making process and, in doing so, more explicitly explains the nature of the non-binding results that are sent to the proper administrative persons: "the panel's report will detail the allegations, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses" (4-5). The section ends, in this version, with a revised statement of the actions that will be taken. There is no reference therein to criminal charges; rather, there is a general statement that the administrator "will take whatever disciplinary action is indicated" (5).

The historical development of Rice University's sexual harassment code is rhetorically engaging to the extent that it differs developmentally from the Oregon State University's code. Rather than demonstrating minor shifts towards the clarification of sanctions within the code, the Rice University code provides an alternating frame of reference related to prohibited behaviors. While the initial distinction between descriptions and definitions of sexual harassment are downplayed in No. 803-89, they are resolved to the extent that they are separated in the 1992 code into two separate concerns within the policy section. Such revisions signal, at least at this juncture, that this version of the extended code has grown more concrete over time, delineating what "is" the act and what is an "example" of the act. In further contrast to the basic code artifact, the other changes are also more substantive in that they clarify the procedural framework of the panel of inquiry and the nature of its function as a component of the response to sexual harassment. At the same time, however, the extended artifact does not include such minutiae as time limits for filing complaints, or separate divisions of procedure for the differing academic audiences. But our attention must finally turn to an analysis of both the

basic and extended codes, and a judgment as to their effectiveness in operating as "fitting" responses.

Analysis

With the examination of both code types completed, we now turn to an analysis of them that seeks to determine the degree to which they "fit" the situation. More so, we must analyze the extent to which the codes parallel the nature of the exigence within the academic situation. The reasons being, the response operates within the situation and is a response not to the situation in general, but to the imperfection that is seen as warranting a change. As such, we will now turn to the six factors of responsiveness provided by Bitzer and explained in Chapter Three. These factors of response, focused on both speaker and audience, will secure a determination as to the success of the codes' in responding to sexual harassment. For, if either speaker or audience shows a deficit in response not matched by the other, the indication is clear: the response of the former is not successful in securing the latter to operate as mediators of change.

The first issue that must be addressed in analyzing the "fitting" nature of the basic extended codes is the degree of interest that the speaker and audience have in relation to the exigence ("Functional" 32). Given that the code is primary and an audience response is a secondary reaction which determines if the speaker's response--the code--is "fitting," this method of judgment is warranted; that is to say, if there are problems in the formation of the response these factors will have a bearing on the judgment of the code by the audience. The first subcomponent of interest, factual conditions, is readily observable in the formulation of the basic and extended codes; that is to say, sexual harassment is a fact that is comprehended by both the audience and the creators of the code types. Hence the degree of interest is high in regards to this component.

The second component, possession of actual knowledge, is a bit more complicated. While we may agree that everyone in the campus situation knows about sexual harassment, the codes-as-response are framed so as to apply to both persons who have been or have alleged that they have been sexually harassed and also persons securing a general, educational, knowledge about the exigence. The response is, as such, directed to the actual and the potential exigence in that information about harassment and information after the fact of harassment are both included. But actual knowledge is complicated further by the different perceptual orientations and definitional explanations operative within the situation. Whereas some may perceive sexual harassment to be manifest in peer-to-peer relations, the basic code does not recognize such types of sexual harassment. Thus the educational function of the response, while providing information about harassment, excludes certain information that is operative within the situation.

In the extended code, there are different problems in regards to actual knowledge. By listing behaviors that "are" sexual harassment, certain acts that could be determined to be sexual harassment are relegated to questionable status. While it is true that the Rice University code makes it clear that the behaviors listed are not the only types of sexual harassment, such distinctions lead to a question: are there contexts where the behaviors listed are not sexual harassment? Alternately, the list can be construed as being overly broad, raising yet another contextual, and educational-based, question: are these behaviors always sexual harassment? The list of behaviors is previewed with the comment that sexual harassment may "take a variety of forms," but those forms can either be seen as too limited or too expansive dependent on how the list is viewed (Rice, "1992" 2).

The above problems are compounded by the fact that the interpretation of actions by sender and receiver may differ greatly, hence the rather ambiguous nature of an informal complaint: "to either establish a suspicion of sexual harassment or to attempt to resolve a disagreement"; and to aid a person who "is uncertain as to whether what they are experiencing is sexual harassment" (OSU, "1995" 4; Rice, "1992" 3). That the exigence

can be considered a matter of both suspicion and disagreement or, in the case of the extended code, a matter of uncertainty, points to the following paradoxical conclusion: degree of actual knowledge is low in so far as perceptual and definitional explanations of sexual harassment differ, high to the extent that the sanctioning component does specify procedures available should an act be harassment based on the educational explanation.

The third component, proximity in place and time, is a situationally high factor. The campus situation, as was noted in Chapter Four, is literally cluttered with occurrences (actual) of and perceptions (potential) about sexual harassment. Each audience is aware of the exigence in so far as the materials, both code specific and supplemental, are dispersed throughout the campus situation. The expansiveness of the exigence is also related to the fourth component, magnitude of factual conditions, or the extent to which "consequences are numerous and of great significance" ("Functional" 32). That the basic code delineates the procedures available to each audience indicates the extent of the possible effects. In the extended code, the procedures are not distinguished by audience, but the composition of each panel of inquiry and the person who reviews the panel's report are based in audience distinctions. In sum, the factual conditions are connected to the perceptual conditions, creating a relatively high degree of interest.

Components three and four are offset to a degree by the fifth interest determinant, personal involvement. That is to say, the proximity of the exigence may be high and it may be located throughout the situation, as a perceptual and actual matter of observation, but actual involvement--like actual knowledge--is reserved in most cases for those that have dealt with some manner of sexual harassment personally. While it is true that we can extend personal involvement to include persons that have been privy to the educational aspects of the code, their relationship is still perceptual to the extent that they are not dealing with the exigence-as-actual. Given these problems, interest is medium to low in this regard.

As such, the sixth component, quality of interest, is difficult to assess. Both code types are not set up to respond to the quality of an experience of sexual harassment, except in the sense that the informal procedures deal with "suspicions" or "uncertainty" whereas formal methods deal with "allegations." That is to say, the informal procedures within both code types treat the issue of sexual harassment as only part of a larger discussion with no real sanctioning power. Only when the matter is transferred to a formal complaint are measures taken and panels set up to address sexual harassment. Indeed, in this situation, the nature of the experience is irrelevant in so far as any actual case of sexual harassment is judged not by the qualities experienced by the harassed or the harasser, but by determinations made by the creators of the code or the respective panel of inquiry set up in conjunction with the creators. The extended code tempers these distinctions, however, by making mention of the penalties that can be incurred for interfering with a person seeking counsel about sexual harassment or filing a false accusation with "malicious intent" (Rice, "1992" 2). In these instances there is a "quality" assessment on the part of the creators as to the process and the use thereof that is absent in the basic code.

The second and third factors, modification capability and risk, deal with the degrees of change possible in responding to the exigence and the dangers that the speaker and audience feel by doing so. These factors deal exclusively with the sanctioning aspects of the code in that the educational interest in the codes does not translate into modification of the exigence; there is no risk in referencing the codes for the purposes of clarifying what potential actions are sexual harassment. In other words, the response of the audience is based largely on the degree to which the codes make such actions palatable. As such, the codes operate from the basis that modifications are possible and that risk is low. But the audience response should, if such were true, demonstrate a comparative level of response to the codes themselves. As Bitzer points out, rhetoric is a form of communication "which seeks to establish correct judgments, primarily in the areas of

practical and humane affairs" ("Public" 68). Given that codes are a form of rhetoric meant to shape actions (that is, respond to and modify the exigence of sexual harassment), there should be at the very least some way of telling if the codes are able to do so. The basic and the extended codes, however, do not operate so as to make such audience responses verifiable in regards to the educational components. In regards to the sanctioning components, verification is only possible through the reaction to an actual manifestation of the exigence.

Demonstrative of these problems is the fact that sexual harassment claims are collected with other types of campus offenses, such as hazing, or divided simply by the type of harassment. Using statistics obtained on October 15, 1995 from Bill Oye, the official in charge of conduct at Oregon State University, we can see the following breakdown:

- 12 in person sexual harassment cases
- 1 phone case
- 2 instances of E-mail harassment
- 17 streakers (nudity in public) charged with "contributing to a hostile, offensive environment."

This total presents us with 32 documented cases of sexual harassment or other types of sexually offensive behavior. These types of statistics provide the school with valuable information to be sure. But they do little to determine if OSU is closer to a "harassment-free environment." And a comparison of these statistics to the previous year's count of 14 sexual offenses gives little measure of comparative risks. These problems are compounded once again by the nature of supplemental materials that detail the existence of sexual harassment. Although one official at the Affirmative Action Office sees these statistics as "indicative of a change," in the two years prior there were no reports of sexual offenses listed in the OSU statistical handout. The Rice University records related to sexual harassment complaints are equally ambiguous. In the five-year

period beginning in 1991, a total of five complaints were reported, with none occurring in 1991-1992 nor during the 1995-1996 school year.²⁶

The combined conclusion that can be drawn is that a lack of modification is occurring and that risk cannot be assessed. It seems entirely implausible that in the former instance no sexual harassment occurred for two years and then, suddenly, the numbers jumped to such a degree; in the latter instance, it seems equally unlikely that such a low number of complaints translate into actual occurrences. In both cases, it also helps to bear in mind that complaints are based on the formal charges and not on the informal methods. As such, an interesting disjunction can be noted in both codes: responsiveness on the part of the codes' creators is high in so far as the statistics represent the number of formal complaints they responded to, but the audiences' response to the exigence is low in so far as the statistics compiled indicate a reaction to the codes.

These problems channel into the next factor, obligation and expectation, in that there is an implied obligation for the school to respond to the exigence and a further expectation by the audiences that they will do so. But, as Bitzer notes, the response must be "fitting" and the previous two factors demonstrate some significant problems with the reliability of the codes as both educational and sanctioning responses. Now it could be argued that those previous problems are the result of the supplemental materials misrepresenting the outcomes of the codes. However, it has been noted that such supplemental materials function as constraints--much like the perceptions of the exigence--and a "fitting" response needs to modify itself given those realities. In other words, the obligation is being met to the extent that the codes provide a sanctioning mechanism. But the nature of that response is in tension with the diversity of expectations operative within the situation; it is in conflict with the those perceptual factors that the educational component of the codes do not deal with.

²⁶ These statistics were provided by Carmen Irvin, department secretary for the Office of Equal Employment Opportunities Project, on March 22, 1996.

The next factor, familiarity/confidence, offers explanations of these previous problems. Given that the basic code is seventeen years old, it has been posited that it should have undergone modification as the situation changes. But we have noted that very little change has actually occurred save for the revision of certain sanctioning items: time limits and the alteration of certain phrases and sections. Additionally, the educational component of the code-as-response has not undergone significant changes since 1980. As such, the familiarity with the exigence as a potential or an actual condition operative within the situation has not bred a confident modification of the response. The codes seem stuck in time to the same extent that the EEOC guidelines upon which they are based have not changed. The extended code, although undergoing more apparent changes in the move from implicit to explicit listing of prohibited behaviors and in the clarification of definition/description distinctions, has also remained relatively constant.

These facts are then channeled into the final factor of immediacy, the idea that the speaker and audience are "more likely to respond if they believe their efforts must occur now or never" (Bitzer, "Functional" 33). While it is admitted that the process of responding to the exigence of sexual harassment is ongoing, the immediacy of sexual harassment has not decreased. In fact, immediacy has increased as situational constraints have expanded the understanding of the exigence. But the codes stand at a historical distance--in development and revision--almost two decades old. As supplemental materials have come to include ideas such as peer-to-peer harassment and sexual "hassle," the educational sections of the codes have not. In both codes, the only notable change in relation to historical developments is the inclusion of consensual relationships as an introductory matter of concern.

These consensual changes are problematic in that they relate back to the discussion of actual knowledge and experience. In both codes the perceptual stress is put, not on the interactants, but on third parties who may interpret the actions to demonstrate favoritism or a hostile environment. While such perceptions cannot be discounted outright, they

create a problem in responsiveness that relates to both speaker and audience: how does a speaker respond to a claim of sexual harassment that is filed by a person not involved in the acts being described; do the audience members in question have any say as to the person's designation of their behavior as sexual harassment? The basic code warns about the negative consequences in the workplace and academic programs and the extended code cautions about the adverse effects. But a referral to both highlights the codes' inability to properly explain how such a complaint would be resolved. In the basic code there is no further mention of how such a third person dispute would be solved via either informal or formal measures. In the extended code, the formal panel of inquiry is not set up--as explained--to deal with a "three person" sexual harassment complaint. The sum result of this singular modification is troubling in that the educational revision that has occurred in line with present problems (teacher-student relations) has not been matched by a change in the sanctioning structure of the rest of the code.

Which brings us to the actual judgment of the basic and extended codes as corrective responses to a situation which is complex in the organization of its rhetorical elements and highly structured in the presentation of its elements. In regards to the educational aspect of the codes, there is little doubt that these responses are not fitting in so far as they have not adapted sufficiently to the continually evolving perceptions of sexual harassment as a potential problem. In relation to the sanctioning section of the codes, the response is fitting to the extent that there are procedures in place to deal with cases of harassment. But this corrective response is also flawed in that revisions in the educational sections are not matched by changes in the sanctioning sections. More so, sanctioning mechanisms (as directed to the actual incidents of harassment) are complicated when the explanation of the potential harassment is problematic.

These judgments are based on the fact that, while the degrees of interest demonstrated by both speaker and audience are relatively high, the other factors that determine the nature of a response are questionably constructed. In essence, the basic and

extended codes operate within a situation where persons are aware of and responsive to sexual harassment to varying degrees. But the codes do not compliment that interest with a sufficiently corrective framework. Indeed, the complex organization of the situational elements can be contrasted with the relatively rigid means of modification noted in the basic code; the presentation of elements is offset by the dated response which ignores general increases in familiarity and expectation within the situation. In the extended code, the structure is equally rigid and the fundamental difference, prohibited behaviors, is problematic in that it has no contextual basis to which it can appeal. Paradoxically, the behaviors listed are so expansive as to ignore instances when they might not be sexual harassment, so limiting in that no indication is given to explain what other behaviors might be sexual harassment.

While codes cannot do everything, they clearly do not do enough in this instance to warrant the designation "fitting." When the educational mechanisms in both codes, corresponding as they do to the perceptual part of the exigence, ignore a component of sexual harassment mentioned in inter-situational material (such as peer-to-peer harassment) they create a damaging gap between what the audience knows and what the speaker says. When the sanctioning devices, corresponding to the actual manifestations of harassment, contain ambiguous procedures--which in at least one instance do not deal with an educational component therein--what is known by speaker and audience is thrown into conflict by what they can do about it. The sum result are stopgaps at the fundamental levels of the basic and extend codes; the educational materials do not mesh with the situational perceptions and the sanctioning methods do not compensate for educational revisions.

But the indication that these code types are predominantly not "fitting" responses cannot be the sole result of this thesis. The goal of rhetoric, of a criticism that analyzes the persuasive nature of rhetorical situations, is to "effect valuable changes in reality" (Bitzer, "Situation" 24). As such, our attention must finally turn to suggestions which

might help to pave the way for more constructive codes, suggestions which take the analysis and channels it into a productive means for finding an alternative. Without such a concluding step, the work to this point would be no longer be criticism, it would merely be critical.

Chapter VIII: Recommendations

The judgment that the response provided by the codes is not fitting is, in many ways, not surprising. Sexual harassment, as a historical reality and a campus-specific exigence, transcends the rhetorical framework of a set speech delivered to a stationary audience in a concert hall. Yet sexual harassment is an exigence that locates itself, as a potential matter of perception and an actual matter of action, in different situations. As such, sexual harassment can be studied in the context of those environments. The task at present is to provide a final discussion which offers the possibility for "fitting" future revisions. This discussion is an opportunity to map out a future path of progress in regards to sexual harassment on college and university campuses.

Given the complexities thus set forth, this final chapter will develop in two distinct stages. First, we will survey suggestions provided by Bitzer and note how they, while positing a means of achieving "fitting" responses, only muddle our discussion with the antiquated notion of a universal public. Secondly, we will turn our attention to the work of John Dewey and note the ways in which a pragmatic approach might yield the most benefits in so far as providing radical, yet possible and progressive, suggestions as to the future of sexual harassment codes.

Situational Suggestions

A review of Bitzer's own suggestions as to how one would craft a more fitting response to complicated exigences provides some positive suggestions, but very few practical answers. In his essay "Rhetoric and the Public Knowledge," Bitzer moves beyond the critical recommendations applied within this text and towards a questionable notion of universalized truth. He notes that certain exigences are "global, and no less than a universal public is sufficient to authorize their modification" (91). That sexual

harassment has global implications is not in dispute. While my research focused on the development of the exigence within the United States, the effects of such do not dissipate the moment we leave this country's borders. But we are confronted with a serious problem: do global exigences such as sexual harassment necessarily recommend universal solutions/responses? I posit that can not be the case for, if such were held as true, then the situation expands itself to be so encompassing as to be nothing less than the husk within which we conduct all of our social activity.

No, situations exist in reference to other situations. Their nature as distinct entities capable of scrutiny is based in the constraints which modify and encompass the activities therein. As was the case with sexual harassment in context of the campus situation, we noted both inartistic and artistic constraints which distinguished it from the larger social environment. We saw that legal precedents rendered actions related to and decisions about sexual harassment, for lack of a better word, "academic." Finally, we noted that both code types were, by definition, campus-related and comparable in the educational and sanctioning functions they included. An employer and an employee are subject to comparable constraints when dealing with sexual harassment within the workforce. But the audiences within the campus public are capable of such a comparison in that they are not exactly the same.

The audiences that make up the "campus public," the publics that create the "rhetorical audience," serve as the possible mediators within the distinct campus situation. That they intersect with and blend into other publics at different times is, like the global implications of the exigence, a reality that cannot be disputed. The walls that surround the academic situation are largely figurative, but their figurative quality takes on real shape when we note that the terms that describe these audiences differ from those that reference their comparative social counterparts. More so, the perceptions of the individuals within a given situation are shaped, for good and ill, by that context. Moves have been made to study the perceptions of audience members within academia yet there still remains a deficit

in our understanding of the perspectives of both males and harassers. And when the critical task is to analyze how the rhetorical audience works to provide a determination of the speaker's fitting response, we would no sooner consult the doctor down the street than we would expect the doctor to solicit the advice of a teaching assistant.

In general discussions, such distinctions lose their shape. When we speak of sexual harassment on the whole, all persons are capable of giving a response. But when we move into specific situations, shaped by specific constraints, and effecting certain audiences, such broad responses become less effective. These generalities become frames of reference, not methods for progress. Such are the reasons why we need to be suspicious of Bitzer's claim:

Rhetoric's task in this new and dangerous age is to assist the formulation and creation of that knowledge and method constitutive of wisdom characterizing a universal public. This universal public will serve as the authoritative agency of decision and action needed to reduce contemporary anxieties and to provide conditions of universal culture. The central goal of rhetorical practice, therefore, is the Isocratic goal--to fashion means and provide impetus towards civilization, with regard to all humanity. (91)²⁷

The irony in the above claim is that the presumption of persuasion is gone should we concede to the lofty ideals it proposes. Should such an authoritative body exist, rhetoric would lapse into Platonic decree, and the suggestions of the critic would calcify into platitudes rendered on high. There is a secondary problem with the above pursuit: the Isocratic promotion of pan-Hellenic culture becomes a universal culture and the notion of a situation as a framework disappears under the stress of the extension.

²⁷ The universal decision-making body is not new to discussions of rhetoric, nor is it primarily a manifestation of Neo-Aristotelian theory and criticism. Chaim Perleman, in The Realm of Rhetoric, appeals to a similarly nebulous body of rhetorical judgment when he explains that a "universal public" is comprised of "at least all of those who are competent and reasonable . . . of an infinite variety of particular audiences" (14).

But the expansiveness of Bitzer's goal does provide an insight into the problems already noted in looking at the two code types: both assume that the codification of a response can extend to provide a fitting response for a variety of interests; the codes attempt to match the potential and the actual exigence with an educational and sanctioning response. Such attempts are undercut by at least two factors: 1) situations change over time, and 2) the recognition of a readily observable fact is subject to the context in which it is viewed. In regards to the first factor, it was noted that the codes' inability to provide a fitting response was based, in large part, in their failure to adequately reflect the perceptual diversity within the situation. These changes within the situation relate to the second factor. The depth of knowledge related to sexual harassment has changed within the last two decades.

The observation can thus be put forth that a code, if unreflective of situational changes, will fail to be fitting in so far as it ignores or misinterprets the current perceptions of the exigence. Thus our final task is to put forth concluding comments related to the future of sexual harassment codes on college and university campuses. Such comments should be viewed as a "rough sketch" rather than a definite call for action; they are made in the interest of extending and complementing the criticism that has transpired. These suggestions, given the problems inherent in the "universal" implications of Bitzer's endorsements, will necessarily move beyond the situational method. By doing so, we temper the possibility of endorsing changes which are either too absolute or so generalized as to fail in addressing the specific campus situation which we have examined.

Pragmatic Suggestions

There is a point in the previous discussion of Bitzer that serves to orient us to the direction of the recommendations that will be made: "we seem unable or unwilling to acknowledge that some truths are not to be found in [the present], but rather become,

over time, and perhaps pass in and out of existence" ("Public" 92). Such a stance seems, to my mind and given the preceding analysis, to be the case with the exigence of sexual harassment. Only a few decades previous, and in certain individuals currently, the prevailing notion was largely that sexual harassment was "boys being boys." But increased awareness spawned by the legal and social examination of the exigence has led to its observation as a fact that runs contrary to ethical conduct. Now, these observations are complicated by often competing determinations as to the nature and scope of sexual harassment. But it suffices to say that the fact remains, no matter how shadowed and textured by perceptual distinctions, that sexual harassment is a negative act imposed upon others. Thus, the truth of sexual harassment is twofold: it is an act that can be described as unethical but it is also a truth which is modified as our value judgments and knowledge of it changes. As the situational context changes so do our determinations of how that act affects us, as a potential for harm and as an actual instance of unethical conduct.

But the codes surveyed seem ill-suited to such a recognition of truth; they seem stuck in the contextual value judgments expressed in the EEOC definition. In the case of the basic code, the educational and sanctioning adaptations that have been made are minute in relation to the data that has been collected since 1980. Indeed, the current version of the OSU code only changes a time limit. When looking at the extended code, more fluctuations have occurred, but the prohibited behaviors now listed in the Rice University code trace their existence back to 1979 and are coupled with procedural problems similar to those found in the basic code. Metaphorically speaking, the walls that surround the campus situation have grown, and they have grown away from the responses to them.

What possibilities exist to remedy these problems of figurative distance and literal complication? My answer is tied to an understanding of how we determine what constitutes progress. Simply put, progress is moving forward, it is a "present reconstruction adding fullness and distinctness to meaning" (Dewey 281). The

reconstruction is necessary due to the inadequacies that we have found in the present response. These inadequacies are based in the continuation of past methods of responding to sexual harassment. The distinctions are also evident in light of the inadequacies that have been noted. The two codes blend too many factors together to adequately complement the depth of perceptual divergence inherent within the situation. The sanctioning component cannot stand alone; it is connected to the educational component and creates the overall response. Hence, my belief is that any future formulation of sexual harassment codes needs to overcome the problems of the past and, in doing so, provides a framework suited to the realities of the present. What follows is a brief discussion of three factors that need to be kept in mind should code revisions be undertaken that are reflective of the analysis found within this work of criticism.

The codes must be progressive in composition. The basic and extended codes need to be modified so as to create a flexible and adaptive means of combating sexual harassment. By "flexible" it is meant that they must provide the framework for decisions as to cases in general; by "adaptive" it is meant that they must be relative enough to allow for the distinctions within each, individual case. But, I can hear the question, where is the code in these suggestions? Given the current formulations of codes it seems fairly safe to respond: nowhere. But the present situation demands a relative measure of judgment should we hope to give serious consideration to the complicated and often contradictory claims of sexual harassment.

This relative measure must be distinguished from mere "relativism." The revisions that are being suggested do not call for random decisions rendered off the cuff but, in line with the situational method of criticism, responses that fit. The previous analysis demonstrates that a response that fits the campus situation can not be too fixed in either its attachment to past methods of determination or in concrete descriptions of an exigence as textured as sexual harassment. The fitting response must be as flexible and adaptive as the situation in which it resides, as open to interpretation as the audiences are to perceptions

of the exigence. In both codes, the miscue comes not in the direction that is taken--the education about and sanction of acts of sexual harassment--but in how rigidly and absolutely that line is drawn.

As such, progressive sexual harassment codes can be thought of in terms of regulating principles which operate as:

Not . . . fixed rules for deciding doubtful cases, but instrumentalities for their investigation, methods by which the net value of past experience is rendered available for present scrutiny of new perplexities. Then it will follow that they are hypotheses to be tested and revised by their further working. (Dewey 241)

The codes should use situationally reflective language. A primary problem with the codes was that the explanatory material did not mesh with the perceptual understanding of sexual harassment within the situation. Suggestions can be provided at this juncture which might help to overcome this divide. The "harassment free environment" statements that are currently in place contain patently false comments in their initial phrasing: "maintenance of an environment free from sexual harassment is important"; "it is the policy of Rice University to provide an environment that is free from sexual harassment" ("1995" 3; "1992" 1). These must be amended to assume a future tense if the statements are to hold any rhetorical integrity in so far as ethos is concerned. Even if the questionable statistics related to both artifacts are to be taken as accurate, neither school can claim to have either maintained or provided an "environment" free of harassment. Perhaps the statements are meant to reflect an optimistic wish on the part of the creators. But the point to be stressed is that regulating principles, to embrace progress, need to promote as accurate a picture of the current state of things as possible.

The codes should rely on audience participation in their articulation and implementation. Following from the suggestions for a progressive and situationally reflective code, the scope and nature of the statement should be the responsibility of the

public designated to formulate it. The statement should, in other words, contain a method for regular revision and involve all audiences in its regulation. The revision component anchors the modification to current speculation and value judgment; it keeps the statement from becoming an absolute and continues its perpetuation as a constantly adaptive means of regulation. Such continual complication is as essential as it is initially frustrating. But these disturbances of acceptance and codification operate to assure progress in so far as "every genuine accomplishment instead of winding up an affair and enclosing it as a jewel in a casket for future contemplation, complicates the practical situation" (Dewey 285). In the current forms of the codes, acceptance on the part of the campus public is largely a matter of indifference save for those with actual experience. Very often that which is potential is deferred until it becomes an actual; that which is educational only becomes important when it transforms into a matter of sanction. That we are compelled by this revision to respond, and respond often, only signals that we are to now take seriously the changing nature of the exigence. An answer to the implementation aspect can possibly be found in reflection on the extended artifact's "panel of inquiry." While it was criticized in the analysis for being problematic in the division of labor and the manner of addressing third-party complaints, it could be modified to reflect this progress-oriented approach by expanding the panel's composition to include a more representative sample of the audiences involved in the campus situation.

Where would we stand should we take these suggestions to heart? Nearer to progress and farther away from absolute measures severed from evolving situations and continually changing exigences. The educational nature of the response could be transformed into a flexible means of explanation and could be coupled with an equally malleable method of sanctioning. All audiences would now know what was happening to whom by virtue of their role in creating, revising, and using the codes to which they are subject. By using this more pluralistic approach, the outlook as to the exigence would also be more progressive. That is, the potential and the actual nature of sexual harassment

would be represented and revised, not by a single creator, but by the diversity of situational participants that experience and perceive sexual harassment, often in different ways. And these revisions would lead to the admittance that sexual harassment codes, as currently framed, stand in the way of progress. That is to say, they are not "fitting" in so far as they adhere to a framework which has been proven to be minimally adaptive, perceptually unreflective in key areas, and divisive in their inclusion of all audiences. As John Dewey notes in comments that are applicable to the previous discussion:

Rigid moral codes that attempt to lay down definite injunctions and prohibitions for every occasion in life turn out in fact to be loose and slack. Stretch the ten commandments or any other number as far as you will by ingenious exegesis, yet acts unprovided for by them will occur. No elaboration of statute law can forestall variant cases and the need of interpretation ad hoc. Moral and legal schemes that attempt the impossible in the way of definite formulation compensate for explicit strictness in some lines by implicit looseness in others. The only truly severe code is the one that forgoes codification, throwing responsibility for judging each case upon the agents concerned, imposing upon them the burden of discovery and adaptation. (Dewey 103)

Such revisions may not sit well with persons who prefer the hard and fast rule to the adaptive and progressive. There is always something alluring in referencing the past. But the degree to which these suggestions will be heeded cannot be ascertained within the final passages of this thesis. This act of criticism has shown that the attempts made to modify the exigence of sexual harassment on college and university campuses have not been rhetorically successful. As such, this analysis is offered up in the hope that a new response might be found, in the hopes that we do not surrender ourselves to the fallacy that what was translates into what is. Sexual harassment, as an unethical reduction of others, demands forward thinking. Best that those steps are taken in the here and now, so that the future responses to sexual harassment have the best chances of being productive.

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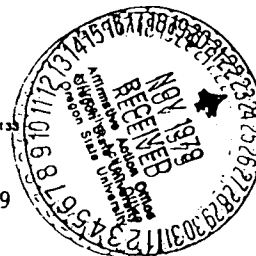
APPENDICES



Office of the President

Corvallis, Oregon 97331

(503) 754-4133



November 15, 1979

To: Deans; Directors, Academic and Service Units; Members of the Faculty and Staff

From: Robert MacVicar, President

Subject: Sexual Harassment

The topic of sexual harassment has been receiving much press coverage recently. A memorandum has been received from Chancellor R. E. Lieuallen, Oregon State System of Higher Education, regarding sexual harassment in education and the impact a sexual harassment charge and litigation would have on Oregon institutions of higher education. Following is an abstract of his memorandum:

Sexual harassment has been defined in several ways by the American Association of Colleges Project on the Status and Education of Women to include actions such as verbal harassment or abuse; subtle pressure for sexual activity; sexist remarks about a person's clothing, body or sexual activities; unnecessary physical contact; and soliciting sexual favors accompanied by implied or overt threats. Any individual who uses his or her power or position to extort sexual gratification or to verbally degrade a person in a subordinate position and, but for that person's sex would not have done so, has sexually harassed the subordinate.

Sexual harassment is a very serious charge and a very difficult one to adjudicate discreetly and fairly. It may create untenable positions both for the victim and for the accused even after the validity of a charge is established. Unless harassment is blatant, the victim may doubt his or her perceptions and be unwilling to discuss it with others. The victim may fear, justly or not, retaliatory measures such as low grades or poor letters of recommendation.

Case law under Title VII of the Civil Rights Act of 1964 has upheld at the Federal Circuit Court level the inclusion of sexual harassment as a form of sex discrimination. It appears courts are moving more clearly to hold the employer responsible for the act even without the employer's acquiescence or ratification when explanation of the employer's lack of awareness is unreasonable. In addition to suit or complaint under Title VII, victims may also use state tort law. Proving a case under tort law is likely to be much more difficult than under Title VII. However, if a plaintiff can prove the employer was unwilling to prevent the harassment or to respond once aware of it, the employer may become subject to damages.

To establish an environment in which sexual harassment is not considered acceptable behavior, I am requesting that all administrators and supervisors implement the following:

1. Make sure that faculty, staff, and students understand that sexual harassment is prohibited behavior under the Board's Administrative Rules both in educational programs and employment.
2. Make sure employees and students know that grievances relating to sexual harassment may be brought under any of several existing grievance procedures (Faculty Handbook, pp. 40-41, Student Handbook, p. 57, and OSEA contract).
3. Provide for confidentiality of both victim and alleged respondent to extent possible and publicize the intent to do so.
4. Take prompt action to investigate and, if upheld, provide remedial action.

Because of the sensitive nature of the subject, if complaints of this nature occur at Oregon State University, the Office of the President, AdS 622, should be advised that a complaint has been initiated.

RM:is

A-4

Vice President for
Academic Affairs
and Provost



Corvallis, Oregon 97331-2128



November 4, 1985

MEMORANDUM

TO: Vice Presidents, Deans, Directors, Department Heads

FROM: Bill Wilkins *Bill Wilkins*
Acting Vice President for Academic Affairs and Provost

RE: Sexual Harassment

To help assure that Oregon State University is free from sexual harassment, I am requesting all administrators and supervisors to do the following:

1. Discuss the attached guidelines with faculty, staff, and students. Stress to each supervisor and employee that sexual harassment is prohibited behavior under the Board's Administrative Rules, both in educational programs and employment. Accomplish this as soon as possible.
2. Notify OSU's Affirmative Action Office (x3556) immediately if you have questions, concerns, and/or a possible complaint. Report promptly.
3. Make certain that employees and students know that grievances relating to sexual harassment may be brought under any of several existing grievance procedures (Faculty Handbook, pp. 40-41; Student Handbook, p. 57; and OSEA contract).
4. Provide for confidentiality of both victim and alleged respondent to the extent possible and publicize the intent to do so.

BHW/nrh

Attachment

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f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of sexual harassment under Title VII, and developing methods to sensitize all concerned.

g) Other related practices. When employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied the employment opportunity or benefit.

Case law under Title VII of the Civil Rights Act of 1964 has upheld at the Federal Circuit Court level the inclusion of sexual harassment as a form of sex discrimination. Courts are moving more clearly to hold the employer responsible for the act even without the employer's acquiescence or ratification when explanation of the employer's lack of awareness is unreasonable. In addition to suit or complaint under Title VII, victims may also use state tort law. If a plaintiff can prove the employer was unwilling to prevent the harassment or to respond once aware of it, the employer is subject to damages. (The employer is responsible for notifying all employees of sexually prohibitive behavior. If it can be shown this was not done, OSU becomes liable).

Director
Affirmative Action

SEXUAL HARASSMENT

Sexual harassment is prohibited. Any individual who uses his or her power or position to extort sexual gratification or to verbally degrade a person in a subordinate position and, but for that person's sex would not have done so, has sexually harassed the subordinate.

Sexual harassment as defined by the Equal Employment Opportunity Commission is as follows:

Section 1604.11 Sexual Harassment

- a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is either explicitly or implicitly made a term or condition of any individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- b) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the records as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.
- c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knows or should have known of their occurrence. The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.
- d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.
- e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the commission will consider the extent of the employer's control and other legal responsibility which the employer may have with respect to the conduct of such non-employees.

POLICIES AND PROCEDURES
PROHIBITING SEXUAL HARASSMENT
AT OREGON STATE UNIVERSITY

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LEGISLATION AND POLICIES
PERTAINING TO SEXUAL HARASSMENT

Title VII of the 1964 Civil Rights Act, Section 703

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.)

Department of Education (34 C.F.R. Part 106)
Department of Energy (10 C.F.R. Part 1040)
Department of Agriculture (7 C.F.R. Part 15a)

Executive Order EO-81-7 State of Oregon, 1981

OAR 580-21-310 to 580-21-470

Equal Employment Opportunity Commission: Guidelines on Discrimination
Because of Sex (29 C.F.R. Part 1604.11 (a) November 10, 1980)

Office for Civil Rights, U.S. Department of Education, Memorandum:
"Title IX and Sexual Harassment Complaints," August, 1982

Oregon State University Personnel Division Policy 8.1.1.2

Oregon State University Student Conduct Code, OAR 576

Memorandum to University Executive Officers, Deans and Directors,
Re: Sexual Harassment. From: President Robert MacVicar,
November 22, 1983

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SANCTIONSFACULTY

Faculty found to have engaged in sexual harassment may be subject to a written reprimand to be included in personnel files under the provisions of OAR 580-21-320 and 580-21-385 and/or to evaluations of less than fully satisfactory service and/or even more severe sanctions. If a proven incident of sexual harassment has occurred and after the delivery of a written reprimand arising out of such conduct, more severe sanctions for cause may be instituted under OAR 580-21-325 through 580-21-470 and 580-22-045. Such conduct may be handled under OAR 580-21-310 to 470 at the discretion of the President.

CLASSIFIED STAFF AND MANAGEMENT SERVICE EMPLOYEES

Classified staff found to have engaged in sexual harassment may be subject to disciplinary action in accordance with current collective bargaining agreements. If a proven incident of sexual harassment occurs, sanctions in accord with the progressive discipline concept shall be instituted, including written reprimand, suspension, reduction of pay, demotion, and finally, termination of service.

Management service employees found to have engaged in sexual harassment may be subject to disciplinary action in accordance with provisions of Personnel Division Policy 8.1.1.2, including possible written reprimand, suspension, reduction of pay, demotion or dismissal.

STUDENTS

Students found to have engaged in sexual harassment may be subject to sanctions under the Student Conduct Code, OAR 576.

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HARASSMENT-FREE ENVIRONMENT

Maintenance of an environment free from sexual harassment is very important. To provide this environment, the following procedures must be implemented:

1. All Deans, Directors, Department Heads and Supervisors must inform all employees that sexual harassment is prohibited.
2. These Policies and Procedures should be emphasized by the Deans in School meetings and explained by Departmental Chairs to faculty, classified staff and management service employees. Directors should discuss the issue in staff meetings. Those who have questions, concerns, or feel victimized by sexual harassment should be referred to the Affirmative Action Office immediately.
3. The posters, "It's Against the Law," and "Sexual Harassment is Unacceptable Behavior at Oregon State University," and any other such material for display provided by the Affirmative Action Office must be widely disseminated and displayed in every Department and School or College office. Also, a copy of the posters and memorandum from the President dated November 22, 1983, plus other materials provided by the Affirmative Action Office and marked for display must be posted in every Dean's office, in the office of every Department Chair, and in every Director's Office.
4. All Head Residents and Resident Advisors must display both posters, distribute copies of a pamphlet, and discuss the rules with residents in their living groups.
5. Deans, Department Chairs, Directors, Head Residents and Resident Advisors are encouraged to invite the Director of Affirmative Action to talk to their staffs concerning this very important issue.

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PROCEDURES FOR FILING SEXUAL HARASSMENT COMPLAINTSFACULTY

Faculty grievance procedures prohibiting sexual harassment are the same as for any other discrimination complaint. These procedures are outlined in detail in the 1980 Affirmative Action Plan. The grievance procedures, briefly, are as follows:

Informal Complaints

Any faculty member who considers herself/himself a victim of sexual harassment should contact the Affirmative Action Office immediately. The Director of Affirmative Action will request a written report (on an OSU form) from the faculty member setting forth the allegations of sexual harassment. The Affirmative Action Director, after consultation with the aggrieved party, will investigate the matter thoroughly, maintaining confidentiality if at all possible. A sincere effort will be made to settle the allegation informally by talking to the people directly involved, talking with the Department Heads of the people involved, the pertinent Dean, and any others who may have knowledge of the incident(s). Following this intensive investigation, the Affirmative Action Director will make a decision regarding whether or not sexual harassment has occurred and suggest or implement a settlement of the allegation. The Affirmative Action Director will consult the President and the Legal Counsel for the President.

Formal Complaints

If satisfactory resolution to the grievance cannot be reached through the above informal procedures, the aggrieved party may file a formal complaint with the Equal Employment Board of the University.

Equal Employment Opportunity Board. The Board is appointed by the President and makes recommendations to him. The Board has authority to hear any complaint properly presented to it which alleges the practice of employment discrimination based on race, color, religion, sex, age, national origin, handicap or Viet Nam era veteran status within Oregon State University, or the existence of a policy, practice, or procedure within the University which results in discrimination either by itself or by its method of application. The Board is designed to provide a readily available forum for complaints alleging discrimination within the University and is not intended to be used to review complaints which have already been adjudicated or are being processed in other formal due-process procedures.

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Who May File a Complaint?

1. Any University employee, former employee, applicant for employment or any organization.
2. If complaint alleges general discriminatory practice as opposed to discrimination against the complainant personally, the complainant, upon request of Board, shall furnish names of individuals alleged to be adversely affected.

Procedures:

1. Complaints must be in writing, signed by complainant, and must state basis of claim including summary of facts or policies which are alleged to be discriminatory.
2. Complaints to the Board shall be filed with the Director of Affirmative Action who shall make a preliminary review of the matter, gather relevant data and within a reasonable time, make a preliminary decision as to whether or not the complainant has been discriminated against.
3. The decision made by the Director shall be supplied to the Board. All data gathered by the Director shall be made available to the Board for use in subsequent hearings.
4. No complaint will be heard unless received by the Board within 90 days after the date on which the discriminatory practice or act is alleged to have occurred. The Board may waive time limitations and may grant extension of the filing date upon receipt of a letter giving reasons for extension request.
5. Complainant may be represented at all stages of the proceedings by legal counsel.
6. Hearing shall be set expeditiously and shall be conducted at such time and place as the Board shall determine. A quorum consists of at least five members.
7. Complainant shall be permitted full opportunity to present witnesses or documents and to cross-examine any witness produced in opposition. Opposition party has the same opportunity.
8. Chairperson of the Board shall preside and make all rulings for orderly conduct of the hearing. Decision by the Board regarding objections to rulings of the chairman shall be by majority vote of members of the Board.
9. Record of the hearing shall be transcribed stenographically or be recorded by tape or other appropriate means and shall be a

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10. At the conclusion of the hearing the Board shall consider all evidence received and render a decision by majority vote of the members present. The decision shall be in the form of a written report to the President (copy to complainant and to the responding department or school) which shall include findings of fact, conclusion, and recommendations for action by the President. Minority views of members may be included at the option of said minority members. The complainant and the school or department involved may submit comments directly to the President pointing out any errors or disagreement with the report which they wish to be considered by the President.
11. President will review file and shall promptly remand the record and file to the Board for further action as appears to be required; accept or reject the Board decision; announce the decision; or otherwise dispose of the complaint. The President shall notify the complainant, School or Department, and the Affirmative Action Office in writing of the action or decision.

If the aggrieved faculty member feels that his/her concerns have not been satisfactorily conciliated at Oregon State University, he or she may seek assistance outside the State System of Higher Education.

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PROCEDURES FOR FILING SEXUAL HARASSMENT COMPLAINTSCLASSIFIED AND MANAGEMENT SERVICE EMPLOYEESInformal Complaints

Classified and management service employees with concerns, problems, and complaints concerning sexual harassment must contact the Director of Affirmative Action immediately. The Affirmative Action Director will request a written report (on an OSU form) from the employee setting forth the allegations of sexual harassment. The Affirmative Action Director, after consultation with the aggrieved employee, will investigate the matter thoroughly, maintaining confidentiality if at all possible. A sincere effort will be made to settle the allegation informally by talking to the people directly involved, talking with the supervisors/employers/Deans or Department Heads of the people involved, and any others who may have knowledge of the incident(s). Following this intensive investigation, the Affirmative Action Director will make a decision regarding whether or not sexual harassment has occurred and suggest or implement a settlement of the allegation. The Affirmative Action Director will consult the President and the Legal Counsel to the President.

Formal Complaints

Formal grievance procedures for classified personnel in collective bargaining units are included in the State Executive Department's agreements with the exclusive bargaining representatives. University classified employees who are members of the Oregon Public Employees Union bargaining unit are to file sexual harassment grievances under provisions of Article 22 of the State of Oregon/OPEU agreement, which provides that such grievances will be submitted directly to the President or his designee, and that unresolved grievances may be later submitted for resolution either to the Bureau of Labor and Industries or to binding arbitration. Employees represented by the Graphic Arts International union are to file sexual harassment grievances under Article 6 of the State of Oregon/GAIU agreement, which provides that such grievances will be submitted to the President, and that unresolved grievances may be submitted for resolution to the Bureau of Labor and Industries. For employees represented by both OPEU and GAIU, the President has designated the Affirmative Action Director to receive and investigate sexual harassment grievances.

The University has adopted a grievance procedure for management service employees which may be used in pursuing sexual harassment grievances through successive consideration at different administrative levels, ultimately to the President, and eventually to the Civil Rights Division of the State Bureau of Labor and Industries. Management service personnel are encouraged to begin their processing of such grievances by contacting the Affirmative Action Director for help.

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Discrimination Complaints

In addition to rights and privileges for review under grievance systems and under pertinent State and Federal laws, the University has established the Equal Employment Opportunity Board as a review procedure for complaints involving discrimination or other violations of the University's Equal Employment Opportunity Policy. Resolution at the University level is encouraged prior to the use of external appeals procedures.

Informal review through administrative channels to the President is the first phase of such complaints.

Formal Complaint Procedures Involve:

1. A written complaint investigated and considered in accordance with a prescribed timetable by successively higher departmental and administrative levels up to, and including, the President.
2. Formal hearings by the University's Equal Employment Opportunity Board.

Collective Bargaining

All classified employees are members of officially recognized collective bargaining units. Members of the units are covered by provisions of labor contracts agreed to by the State of Oregon and the elected employee organizations. Employees are entitled to representation by these organizations in matters pertaining to their employment at the University. Currently, Oregon Public Employees Union Local 503, SEIU, AFL-CIO, CLC is the approved collective bargaining representative for most classified employees at Oregon State University. A small number of Printing Department employees are represented by the Graphic Arts International Union. Current agreements have been signed by the State Executive Department and these unions for statewide application.

PROCEDURES FOR FILING SEXUAL HARASSMENT COMPLAINTS

STUDENTS

Student grievance procedures for sexual harassment are the same as for any other segment of the University. These are outlined in detail in the 1980 Affirmative Action Plan. Student victims also have three avenues of legal recourse under Title IX:

1. Institutional grievance procedures;
2. Appeal to Federal enforcement agencies; and
3. Lawsuit alleging prohibited discrimination.

Students are not limited to these three options unless they elect to pursue their claims under Title IX. Further, students may elect to simultaneously pursue multiple avenues of recourse.¹

The grievance procedures, briefly, are as follows:

Informal Complaints

Any student who considers herself/himself a victim of sexual harassment should contact the Affirmative Action Officer immediately (AdS A600, phone 754-3556.) The Affirmative Action Officer will request a written report (on an OSU form) from the student setting forth the allegations of sexual harassment. The Affirmative Action Officer, after consultation with the student, will investigate the matter thoroughly, maintaining confidentiality if at all possible. A sincere effort will be made to settle the allegation informally by talking to the people directly involved and any others who may have knowledge of the incident(s). Following this intensive investigation, the Affirmative Action Officer will make a decision regarding whether or not sexual harassment has occurred and suggest or implement a settlement of the allegation. The Affirmative Action Officer will consult with the President and the Legal Counsel to the President

Formal Complaints

If a satisfactory resolution to the grievance cannot be reached through the above informal procedures, a formal complaint should be filed with the University Hearing Officer, Dr. Forrest Gathercoal, Education Hall 419A, telephone 754-3648. The Affirmative Action Officer will aid the student in filing the formal complaint. Copies of the complaint will be sent to the President of the University, the Chancellor of the State System of Higher Education, the individuals involved, and the department head.

¹Material re Title IX taken from Miranda Associates, Inc., Participants' Notebook for Workshop entitled "Sexual Harassment: It's Not Academic," page 63.

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An investigation of the complaint will be completed within 30 days. As a result of the investigation, the Hearing Officer will make findings of fact and a recommendation for the resolution of the grievance to the affected parties and to the President. The President will make a decision. If satisfaction is not received from this investigation and decision, the aggrieved student may appeal the decision to the Chancellor of the State System of Higher Education. The Chancellor may choose to hold an open hearing to resolve the complaint or may choose to not hold a hearing and resolve the complaint in some other manner.

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HOW TO FILE A COMPLAINT

Visit the Affirmative Action Office immediately. As soon as you believe there is an incident of sexual harassment you should inform the Director of Affirmative Action.

The Oregon State University Complaint Form must be used. The following information must be included:

1. Name of Complainant
2. Addresses--campus and home
3. Telephone number(s)
4. Succinct statement of the facts with appropriate dates and times
5. Names of any witnesses
6. Statement of your actions

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
GUIDELINES ON SEXUAL HARASSMENT

Section 1604.11 Sexual Harassment.

a.) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b.) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the records as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.

c.) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

d.) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

e.) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and other legal responsibility which the employer may have with respect to the conduct of such non-employees.

*The principles involved here continue to apply to race, color, religion or national origin.

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f.) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

g.) Other related practices. Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied the employment opportunity or benefit.

These sexual harassment guidelines are one section of the Equal Employment Opportunity Commission's Sex Discrimination Guidelines, which are codified as 29 CFR 1604.

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C O P Y

OFFICE OF THE GOVERNOR
STATE OF OREGON

SEAL

EXECUTIVE ORDER EO - 81 - 7

SEXUAL HARASSMENT

The State of Oregon through its public policy is dedicated to a work environment free from discrimination based on race, religion, national origin, age, sex, marital status or a physical or mental handicap.

Personnel policy, practices, and law requires working conditions to be conducive to the performance of duties in an atmosphere free from discrimination, intimidation or coercion in any form.

Sexual harassment, a form of sex discrimination, is an unacceptable and unlawful practice for which legal remedies are available under Title VII of the Civil Rights Act of 1964 and ORS 659.030.

For the purpose of this Executive Order, sexual harassment is defined as any sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

IT IS ORDERED AND DIRECTED THAT:

1. The Executive Department develop and disseminate personnel policy prohibiting sexual harassment in the workplace;
2. State agencies disseminate such policy to all state employees;
3. The Executive Department develop training and educational programs for the purpose of assisting agencies to eliminate any sexual harassment in state government service;
4. State agencies inform their employees of the internal complaint process.

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EO-81-7

5. State agencies inform their employees that sexual harassment complaints will be received by the Governor's Affirmative Action Office, Bureau of Labor-Civil Rights Division or EEOC.

6. The Governor's Affirmative Action Office be available to counsel complainants on their more appropriate procedures and remedies (160 State Capitol, Salem, telephone 378-6868); and

7. This order takes effect immediately.

Done at Salem, Oregon, this 23rd day of September, 1981.

/S/ V. Atiyeh
Governor

SEAL

ATTEST:

/S/ Norma Paulus

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OREGON STATE UNIVERSITY**SEXUAL HARASSMENT POLICY**

PURPOSE: The purpose of this policy is to set forth Oregon State University's commitment to maintaining a University environment free from sexual harassment. The University realizes its moral and legal obligations to ensure that all employees and students are provided a discrimination free environment to realize their goals and to function effectively at the University.

POLICY: In accordance with federal and state laws, Oregon State University prohibits discrimination on the basis of race, color, national origin, religion, sex, age, marital status, disability, or veteran status. In addition, the University prohibits discrimination on the basis of sexual orientation. Sexual harassment is one form of sex discrimination that is prohibited.

Any person who believes that he or she has been sexually harassed at the University may file either a formal or informal complaint in the Affirmative Action Office. Confidentiality will be maintained to the fullest extent permitted.

DEFINITION: Sexual harassment is defined as: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment or education-related decisions affecting such an individual, or;
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or learning environment.

CONSENSUAL RELATIONSHIPS

Oregon State University policy requires that all employees conduct themselves in a professional manner. With regard to consensual sexual or romantic relationships, it should be noted that when they occur between teacher and student, or supervisor and supervisee, there is a concern that they may involve an abuse of power. Even when negative consequences to the participants do not result, such romantic liaisons potentially can create a conflict of interest or use of academic or supervisory leverage to maintain or promote the relationship. Another area of potential trouble or liability involves perceptions of a "third-party" who may feel that the only way to succeed is to engage in a sexual liaison because they feel they have lost equality in terms of assignments, promotions, etc.

All employees should recognize the possible negative consequences of sexual or romantic liaisons in the workplace and academic program.

HARASSMENT-FREE ENVIRONMENT

To maintain an environment free from sexual harassment is very important. To provide this environment, the following actions should be taken:

1. Deans, directors, department heads and supervisors should inform all employees that sexual harassment is prohibited.
2. The Sexual Harassment Policy should be emphasized by the deans in school meetings and explained by departmental chairs to academic staff, and classified and management service employees. Directors should discuss the issue in staff meetings. Those who have questions, concerns, or feel victimized by sexual harassment should be referred to the Affirmative Action office immediately.
3. The pamphlets, Sticks and Stones Can Break My Bones but Words Can Never Hurt Me, and Understanding Sexual Harassment, as well as any other such materials for display provided by the Affirmative Action office, should be widely disseminated and displayed in every department, school and college office.
4. All head residents and resident advisors should display the posters, distribute the pamphlets, and discuss the rules with residents in their living groups.
5. Deans, department chairs, directors, head residents and resident advisors should be encouraged to invite the director of Affirmative Action to talk to their staffs concerning this very important issue.
6. Information regarding sexual harassment specifically for students is contained within the student code of conduct (Fall Schedule of Classes).

OREGON STATE UNIVERSITY
AFFIRMATIVE ACTION OFFICE

COMPLAINT PROCEDURES

BASIS: Sexual Harassment

INFORMAL

DEFINITION: The process of gathering information to either establish a suspicion of sexual harassment or to attempt to resolve a disagreement without following a formal complaint procedure.

WHO MAY FILE: Students, employees, applicants for employment, and others, where appropriate.

- PROCEDURE:**
1. The complainant completes the "Complaint of Discrimination or Harassment" form; the AAO advises the complainant of her/his rights to file with state and/or federal agencies.
 2. The AAO may notify the appropriate administrator, dean, or director that an informal complaint has been initiated.
 3. The AAO contacts the individual/entity (respondent) accused of sexual harassment to discuss the alleged harmful act.
 4. The AAO develops a proposed resolution, if appropriate within fifteen (15) calendar days of acceptance of the informal complaint. If appropriate, the complainant is advised that she/he may file a formal complaint.
 5. The AAO may notify the appropriate administrator, dean, or director of the final status of the complaint.

FORMAL

DEFINITION: The process of investigating a case of alleged sexual harassment and making a determination as to whether or not sexual harassment occurred and, where appropriate, providing a resolution to the complaint.

WHO MAY FILE: Students and Student employees
(undergraduate and graduate)

APPLICABLE BOARD RULE, Division 15 Students may appeal a decision to the Chancellor's Office in a written format within two weeks of the determination.

- PROCEDURES:**
1. The complainant completes the "Complaint of Discrimination or Harassment" form. The complaint must be filed within 365 days of the alleged harmful act.
 2. The AAO acknowledges in writing the receipt of the formal complaint; the letter includes information on the complainant's right to file with state and/or federal agencies. Copies of the letter are sent to the respondent, the appropriate administrator, dean, or director, the University legal advisor, and the Chancellor of the Oregon State System of Higher Education.
 3. AAO shall conduct a thorough investigation of the complaint.
 4. Within thirty (30) calendar days of the receipt of the formal complaint, AAO shall inform the complainant and all persons who were copied in #2 above, of the final status and a resolution, where appropriate. The 30-day period may be extended for an additional 30 days with the approval of the Chancellor. The letter of determination identifies the available appeal procedures for the complainant.

WHO MAY FILE: Classified and management service employees, and applicants for employment.

COLLECTIVE BARGAINING AGREEMENT,
Article 22 (NOT RELEVANT FOR APPLICANTS)

- PROCEDURES:**
1. The complainant completes the "Complaint of Discrimination or Harassment" form. The complaint must be filed within 180 days of the alleged harmful act.
 2. The AAO acknowledges in writing the receipt of the formal complaint; the letter includes information on the complainant's right to file with the Union (for classified employees), and/or state and federal agencies. Copies of the letter are sent to

respondent, the appropriate administrator, dean, or director, the University legal advisor, and the director of the Department of Human Resources.

3. AAO conducts a thorough investigation of the complaint.
4. Within fifteen (15) calendar days of the receipt of the formal complaint, AAO informs the complainant and all persons copied in #2 above of the final status and a resolution, where appropriate. If an extension of the 15-day time period is required, AAO shall notify the complainant of the anticipated date of completion of the investigation. The letter of determination identifies the appeal procedures available to the complainant.
5. A classified employee has the right to file a grievance through the Union alleging sexual harassment without filing a Report of Discrimination/Harassment with AAO. Such a grievance will be submitted within 30 days of the date the grievant or the Union knows, or by reasonable diligence, should have known of the alleged grievance, directly to the President or his designee. The President or his designee will respond within 15 calendar days after the receipt of the grievance. Assistance in the investigation of the alleged grievance may be provided by AAO and the Department of Human Resources.

WHO MAY FILE: Applicants for Academic Staff Positions

APPLICABLE BOARD RULE, Division 21

- PROCEDURE:**
1. The complainant completes the "Complaint of Discrimination or Harassment" form. The complaint must be filed within 180 days of the alleged harmful act.
 2. The AAO acknowledges in writing the receipt of the formal complaint; the letter includes information on the complainant's right to file with state and/or federal agencies. Copies of the letter are sent to the respondent, the appropriate administrator, dean, or director, and the University legal advisor.
 3. AAO conducts a thorough investigation of the complaint.
 4. Within twenty (20) calendar days of the receipt of

the formal complaint, the AAO informs the complainant, and all persons copied in #2 above, of the final status and a resolution, where appropriate. If an extension of the 20-day time period is required, the AAO will notify the complainant in writing of the anticipated date of completion. The letter of determination states the appeal procedure available to the complainant.

WHO MAY FILE: Faculty employees (instructor, senior instructor, faculty research assistant, research associate, assistant professor, associate professor, professor, no rank).

Initiation of Formal Procedures, 576-50-025

1. If a grievance is not resolved to the satisfaction of the grievant at the informal stage, or if the grievant chooses to bypass the informal stage, the grievant may file a formal written grievance. A grievance shall be filed with the dean, director, or the appropriate administrator in charge of the administrative unit, except a) where the grievant is a department chair in which case the grievance shall be filed with the Provost and Executive Vice President, or b) where the grievant alleges sexual harassment against the person in charge of the administrative unit, in which case the grievance shall be filed with the next higher administrator. The grievant shall file a copy of the written grievance with the Legal Advisor in the Office of the President. The formal grievance must be filed within sixty (60) days of the time the faculty member knew or by reasonable diligence should have known, of the acts which gave rise to the grievance. Therefore, discussion or mediation at the informal stage should be initiated as soon as possible. The University shall extend the sixty-day filing requirement if the grievant is pursuing the complaint at the informal level and it appears that additional time would be beneficial in resolving the grievance. Extension by the University shall be in writing by the Legal Advisor.
2. The written grievance must contain the grievant's name and address, the date and nature of the act or omission which gave rise to the grievance, any rule, policy or procedures alleged to have been violated or misapplied, and the remedy requested by the grievant.

3. The dean, director, administrator, or the respective designee shall send a written decision to the grievant within twenty (20) days of receipt of the grievance.

Appeal to the Faculty Grievance Committee, 576-50-030

1. If the decision of the dean, director, or administrator is not satisfactory to the grievant, the grievant may file a written appeal with the Faculty Grievance Committee within ten (10) days of receipt of the written decision, stating why the response at the previous level is deficient. This step is optional with the grievant. The grievant may bypass the committee and file the appeal directly with the President.
2.
 - (a) The committee shall send to the grievant a written notice of the time and place of the hearing at least seven (7) days prior to the hearing.
 - (b) At the committee hearing, the faculty member shall present his or her case first, followed by the person or persons who are the object of the grievance. Thereafter, the faculty member shall have an opportunity to respond.
 - (c) Each party shall have a right to call and examine witnesses, to introduce exhibits or other documents. The members of the committee may question any witness and may call additional witnesses.
 - (d) If the grievant so chooses, he or she may be accompanied or represented at the hearing by any other person.
 - (e) Either party may provide for and obtain a sound recording of the hearing.
 - (f) The hearing shall be open to the public at the option of the grievant to the extent allowed by law. However, deliberations of the Hearing Committee shall not be open to the public or the parties.

Decision by the Committee and Appeal to the President, 576-50-035

- (1) The committee's decision shall be made in the form of a written recommendation to the President. It shall be based upon evidence presented at the hearing. The recommendation shall include a description of the complaint, the evidence the committee collected, and its conclusions and recommendations for disposition of the case. The recommendations shall be sent to the grievant, to

the President, and to the dean, director, or administrator in charge of the unit out of which the grievance arose within sixty (60) days of receipt of the appeal to the committee.

- (2) The President or his or her designee shall review the decision of the committee and the President shall deliver a written decision to the grievant, to the Grievance Committee, and to the dean, director, or administrator in charge of the unit out of which the grievance arose within thirty (30) days of receipt of the committee recommendation. Prior to issuing a decision, the President or designee may interview any person concerning the grievance to supplement the record whether or not the person testified at the hearing, provided that the decision shall list each person so interviewed. In addition, the President or designee may review any document, provided that the decision shall identify any such documents that were not introduced at the committee hearing. The grievant shall be informed of any additional information obtained by the President and given seven (7) days to respond. If the President rejects or modifies the recommendations of the committee, the reasons shall be stated in the decision.
- (3) If the grievant chooses to appeal the decision of the dean, director, or administrator directly to the President, the President shall proceed to review the matter and reach a decision as set out in 576-50-035(2) provided that all persons interviewed and all documents reviewed must be identified in the decision. The President shall issue a decision within thirty (30) days of receipt of the grievant's appeal.

Appeal to the State Board, 576-50-040

If the decision of the President is not satisfactory to the grievant, the grievant may appeal to the State Board of Higher Education within ten (10) days of receipt of the President's decision in accordance with OAR 580-21-050.

Effects of Time Limits, 576-50-045

If the University fails to respond within the time limits at any step in this grievance process, the grievant may appeal to the next step.

Non-Retaliation, 576-50-050

An individual filing a grievance in good faith or otherwise participating in any of the actions authorized under these grievance rules shall not be subject to retaliatory action of any kind by any employee of the University, the Oregon State System of Higher Education, or the State Board of Higher Education.

Two-Year Review, 576-50-055

Not later than two years from the adoption of these rules, the Provost and Faculty Senate Executive Committee shall jointly appoint a faculty committee to review the effectiveness of this grievance procedure and to recommend any changes.

APPLICABLE BOARD RULE, DIVISION 21**SANCTIONS****ACADEMIC EMPLOYEES**

Academic employees found to have engaged in sexual harassment may be subject to an oral or written warning or reprimand in accordance with OAR 580-21-320. Sanctions more severe than an oral or written warning or reprimand, such as removal from an assigned post and reassignment, suspension or termination shall be imposed in accordance with OAR 580-21-325 through 580-21-385.

CLASSIFIED AND MANAGEMENT SERVICE EMPLOYEES

Classified employees found to have engaged in sexual harassment may be subject to disciplinary action in accordance with current collective bargaining agreements. If a proven incident of sexual harassment occurs, sanctions in accord with the progressive discipline concept shall be instituted, including written reprimand, suspension, reductions of pay, demotion, and finally, termination of service.

Management service employees found to have engaged in sexual harassment may be subject to disciplinary action in accordance with provisions of the University Policy Against Discriminatory Harassment, including possible written reprimand, suspension, reduction of pay, demotion or dismissal.

STUDENTS

Students found to have engaged in sexual harassment may be subject to sanctions under the Student Conduct Code, OAR 576-15-030. These sanctions may include a warning, required educational activities, restrictions, disciplinary probation, suspension and/or expulsion.

COMPLAINT OF DISCRIMINATION OR HARASSMENT
Affirmative Action Office
Oregon State University
Adm. Serv. A526 phone 737-3556

Date: _____

Name: _____ Signature _____

Dept. or Address _____ Phone _____

Faculty ____; Staff ____; Student ____; Other (Specify) ____:

-
1. NAME OF PERSON OR GROUP THE COMPLAINT IS AGAINST: _____
 2. Dept. or Address _____ Phone _____
 3. Faculty ____; Staff ____; Student ____; Other (Specify) _____
 4. DATE AND TIME: _____
 5. PLACE: _____
 6. WITNESSES: _____
 7. WHAT HAPPENED: _____

NOTE: Please use back of form if additional space is needed.

8. Basis of Complaint: Race ____; Color ____; Religion ____; Sex ____; Age ____;
Sexual Orientation ____; National Origin ____; Marital Status ____;
Disability ____; Veteran Status ____; Retaliation ____; Sexual Harassment ____;
Other ____.
9. Type of Complaint: Informal ____ Formal ____.
10. What would you like to see happen (for you, for others) with respect to the
alleged incident(s) of harassment or discrimination?

Person Accepting Report: _____ Date: _____

LEGISLATION AND POLICIES PERTAINING TO SEXUAL HARASSMENT

Title VII of the 1964 Civil Rights Act, Sec 703

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681,
et seq.)

Department of Education (34 C.F.R. Part 106)
Department of Energy (10 C.F.R. Part 1040)
Department of Agriculture (7 C.F.R. Part 15a)

Executive Order EO - 81 7 State of Oregon, 1981

OAR 580 - 21 - 310 to 580 - 21 - 470

Equal Employment Opportunity Commission: Guidelines on
Discrimination Because of Sex (29 C.F.R. Part 1604.11 (a)
November 10, 1980)

Oregon State University Policy Against Discriminatory Harassment
September 1992

Oregon State University Student Conduct Code, OAR 576

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
GUIDELINES ON SEXUAL HARASSMENT**

Section 1604.11 Sexual Harassment.

a.) Harassment on the basis of sex is a violation of Sec. 703 of Title VIII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or conditions of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b.) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the records as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.

c.) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

d.) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can be shown that it took immediate and appropriate corrective action.

e.) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing,¹ these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

f.) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

g.) Other Related Principles: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

These sexual harassment guidelines are one section of the Equal Employment Opportunity Commission's Sex Discrimination Guidelines, which are codified as 29 C.F.R. 1604

¹The principles involved here continue to apply to race, color, religion or national origin.

OFFICE OF THE GOVERNOR
STATE OF OREGON

EXECUTIVE ORDER EO - 81- 7

SEXUAL HARASSMENT

The State of Oregon through its public policy is dedicated to a work environment free from discrimination based on race, religion, national origin, age, sex, marital status or a physical or mental handicap.

Personnel policies, practices, and laws require working conditions to be conducive to the performance of duties in an atmosphere free from discrimination, intimidation or coercion in any form.

Sexual harassment, a form of sex discrimination, is an unacceptable and unlawful practice for which legal remedies are available under Title VII of the Civil Rights Act of 1964 and ORS 659.030.

For the purpose of this Executive Order, sexual harassment is defined as any sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made, either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

IT IS ORDERED AND DIRECTED THAT;

1. The Executive Department develop and disseminate personnel policy prohibiting sexual harassment in the workplace;
2. State agencies disseminate such policy to all state employees;

3. The Executive Department develop training and educational programs for the purpose of assisting agencies to eliminate any sexual harassment in state government service;
4. State agencies inform their employees of the internal complaint process;
5. State agencies inform their employees that sexual harassment complaints will be received by the Governor's Affirmative Action Office, Bureau of Labor-Civil Rights Division, or EEOC.
6. The Governor's Affirmative Action Office be available to counsel complainants on more appropriate procedures and remedies (160 State Capitol, Salem, telephone 378-5336); and
7. This order takes effect immediately.

Done at Salem, Oregon, this 23rd day of September, 1981

/S/ V. Atiyeh

Governor

ATTEST:

/S/ Norma Paulus

STAFF NEWSLETTER
Pearl S. Gray
Affirmative Action
May 10, 1982

SEXUAL HARASSMENT IS ILLEGAL, UNACCEPTABLE CONDUCT AND IS PROHIBITED AT OREGON STATE UNIVERSITY. ALL COMPLAINTS WILL BE THOROUGHLY INVESTIGATED.

Sexual harassment has been defined in several ways by the American Association of Colleges Project on the Status and Education of Women to include actions such as verbal harassment or abuse; subtle pressure for sexual activity; sexist remarks about a person's clothing, body or sexual activities; unnecessary physical contact; and soliciting sexual favors accompanied by implied or overt threats. Any individual who uses his or her power or position to extort sexual gratification or to verbally degrade a person in a subordinate position and, but for that person's sex would not have done so, has sexually harassed the subordinate.

With respect to employment, sexual harassment has been deemed a violation of Section 703 of Title VII of the 1964 Civil Rights Act. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a requirement of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

In matters relating to non-employment such as academic and student affairs activities, the same principle on non-coercion and not using status or authority to exact sexual favors is equally prohibited.

Maintenance of an environment free from sexual harassment is very important. To provide this environment, the following procedures are advised:

1. All Deans, Directors, Department Heads and supervisors must inform all employees that sexual harassment is prohibited behavior.
2. It should be emphasized by the Deans and explained to the faculty and students that those who feel victimized by sexual harassment should be referred to the Affirmative Action Office.
3. The poster "It's Against the Law" must be widely disseminated and displayed in every Departmental and School or College office. Also, a copy of the poster and the official memorandum of the

Page 2 - Sexual Harassment

President must be posted in every Dean's office, in the office of every Department and in every Director's office.

4. The Dean is to discuss this memorandum and the poster with every Department Head, who is to discuss it with faculty.

Any individual, whether faculty, staff or student, who feels that he/she is the victim of sexual harassment should report the situation to the University Affirmative Action Officer immediately. All allegations are to be made in writing and will be investigated. Every attempt will be made to maintain confidentiality.

Sexual harassment is much more prevalent than most people realize. It is a serious offense in that it violates the basic civil rights of the victim and robs that person of dignity.

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COPY FOR STUDENT HANDBOOK
PEARL S. GRAY
May 11, 1982

X. STATEMENT ON SEXUAL HARASSMENT

Sexual harassment is illegal, unacceptable conduct and is prohibited at Oregon State University. All complaints will be thoroughly investigated. Any student who perceives she/he has been subjected to sexual harassment should contact the Director of Affirmative Action immediately, Administrative Services Building A600, telephone 754-3556.

Sexual harassment includes such actions as verbal harassment or abuse; subtle pressure for sexual activity; sexual remarks about a person's clothing, body or sexual activities; unnecessary physical contact; and soliciting sexual favors accompanied by implied or overt threats. Any person who uses his or her power or position to extort sexual gratification or to verbally degrade a person in a subordinate position and, but for that person's sex would not have done so, has sexually harassed the subordinate.

To establish an environment free of sexual harassment, the University has implemented the following procedures and policies:

1. All faculty, staff, and management service employees have been advised that sexual harassment is prohibited behavior under State Board of Higher Education Administrative Rules and under Oregon State University policies and procedures. This applies to both educational programs and to student employment.
2. Confidentiality for victims and alleged respondents is provided to the extent possible.
3. Prompt action is taken by the Director of Affirmative Action on initiating an investigation, and, if pertinent, remedial action when a complaint is made.
4. Grievance procedures relating to sexual harassment are published

Page 2 - Sexual Harassment

and available in the Affirmative Action Office or in the office of any Dean or Director on campus. Briefly, procedures are as follows:

Procedures for Complaints of Sexual Harassment

1. A student who perceives he/she has been subjected to sexual harassment should contact the Affirmative Action Office immediately, Administrative Services Building A600, telephone 754-3556.

2. Informal Complaint. The student will be required to complete a written report on an OSU form setting forth the allegations of sexual harassment. The Affirmative Action Officer, after consulting with the student, will investigate the matter thoroughly, maintaining confidentiality if at all possible. A sincere effort will be made to settle the allegation informally by talking to the people directly involved, supervisors/employers/Deans or Department Heads of the people involved and any others who may have knowledge of the incident(s). Following this intensive investigation, the Affirmative Action Officer will make a decision regarding whether or not sexual harassment has occurred and suggest or implement a settlement of the allegation. The President and the Legal Counsel of the University will be consulted.

3. Formal Complaint. A formal complaint/grievance is filed with the University Hearings Officer, Dr. Forrest Gathercoal, Education Hall 419A, telephone 754-3648.

Copies of your complaint/grievance will be sent to the President of the University, the Chancellor of the State System of Higher Education, the individuals involved, and any appropriate agency or department head.

An investigation of your complaint will be completed within 30 days.

As a result of the investigation, the Hearings Officer will make findings of fact and a recommendation for the resolution of the grievance to the affected parties and to the President. The President will make the decision.

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If the President's decision is not acceptable, the complaint may be appealed to the Chancellor of the State System of Higher Education.

The Chancellor may choose to hold an open hearing to resolve the complaint or not hold a hearing and resolve the complaint in some other manner.

Remember

No individual filing a complaint or otherwise participating in any of the actions will be subject to reprimand or retaliatory action.

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POLICY NO. 830-89**RICE UNIVERSITY
SEXUAL HARASSMENT POLICY**

Rice University is committed to providing an environment that is free from sexual harassment.

The determination of what constitutes sexual harassment will vary with the particular circumstances, but it may be described as unwelcome sexual advances, requests for sexual favors, and other verbal or physical behavior of a sexual nature where:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's education or employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile, or demeaning educational or working environment.

Any person at Rice University who believes that he or she has been the victim of sexual harassment is strongly encouraged to bring the matter to the attention of a designated official, with assurance that confidentiality and impartiality will be maintained.

COUNSELLING, ADVICE AND INFORMAL RESOLUTION

Problems, questions and grievances should normally be brought to the attention of the Director of Equal Employment Opportunity Programs (EEOP). Students may, however, if they wish, consult with their College Master or the Director of Student Advising and Activities or the Director of Graduate Programs. Throughout this advising process, information will be held in confidence unless and until the initiating individual agrees that additional people must be informed to facilitate a solution. No person will be reprimanded or discriminated against in any way for initiating an inquiry or complaint in good faith. It is also the policy to protect the rights of any person against whom a complaint is lodged and, when appropriate, this person shall be notified. Prompt reporting is strongly urged, as it is often difficult to verify the facts of an incident long after it has occurred.

FORMAL COMPLAINT PROCEDURES

Those wishing to bring a formal complaint of sexual harassment should so inform the Director of E.E.O.P. who will inform the respondent, conduct an inquiry and prepare a report summarizing the relevant evidence. A draft of the report will be provided to the complainant and to the

respondent to enable them to respond before a final report is made to the appropriate administrative official(s). At any time after a complaint is made, but prior to formal disposition, the complainant or the respondent may request that the Director of E.E.O.P. refer the matter to a Panel which will be appointed by the President as follows:

Panel of Inquiry

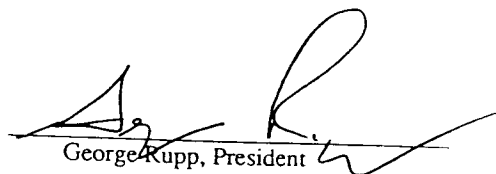
At the beginning of each academic year a pool of faculty, staff and students will be created on the basis of nominations from the Student Association, the Graduate Student Association, the Personnel Office and the Faculty Council. Each panel will comprise a chair plus four members, two male and two female, to be drawn from the pool as follows:

1. When both parties in an alleged incident are students, the panel will comprise a faculty chair plus two faculty and two student members.
2. When both parties are members of the faculty, the panel will be made up of faculty members.
3. When both parties are members of staff, the panel will be made up of members of staff.
4. When the parties are from different constituencies, the panel will have a faculty chair plus two members from each of these two constituencies.

The chair will normally be non-voting but will cast the tie-breaking vote when necessary.

The reports from the Director of E.E.O.P. and from the Panel will be submitted to the appropriate administrator for final resolution. Specifically in case (1) above they will be forwarded to the Vice President for Student Affairs, in case (2) to the Provost, and in case (3) to the Vice President for Finance and Administration. In all other cases, the reports will be forwarded to the two appropriate administrators.

Any disciplinary action subsequently taken will be consistent with University policies, and may range from a warning to dismissal depending upon the circumstances. Furthermore, persons who engage in sexual harassment may be subject to prosecution and criminal or civil liability.


George Rupp, President

1981
Revised: February 17, 1989

POLICY NO. 830-92

RICE UNIVERSITY SEXUAL HARASSMENT POLICY AND PROCEDURES

I. POLICY

A. Policy Statement

It is the policy of Rice University to provide an environment that is free from sexual harassment because such conduct seriously undermines the atmosphere of trust and respect that is essential to a healthy work and academic environment.

This policy applies to all members of the university community, who are encouraged to report promptly complaints about sexual harassment. Persons found to be in violation of this sexual harassment policy shall be subject to disciplinary action which may include, but is not limited to, written warning, demotion, transfer, suspension or dismissal.

B. Legal Authority

Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the Civil Rights Act of 1964, by Title IX of the Education Amendments of 1972, and by the Texas Commission on Human Rights Act. Rice University's Equal Opportunity/Affirmative Action Policy also prohibits sex discrimination.

C. Definition

Sexual harassment may involve the behavior of a person of either sex against a person of the opposite or same sex, and occurs when such behavior constitutes unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical behavior of a sexual nature where:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting the individual's welfare; or
3. Such conduct has the purpose or effect of substantially interfering with an individual's welfare, academic or work performance, or creates an intimidating, hostile, offensive, or demeaning education or work environment.

A third party may also file a complaint under this policy if the sexual conduct of others in the education or work environment has the purpose or effect of substantially interfering with the third party's welfare, academic or work performance.

D. Examples of Prohibited Behavior

Prohibited acts that constitute sexual harassment may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

1. Unwelcome sexual propositions, invitations, solicitations, and flirtations.
2. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances.
3. Unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene phone calls.
4. Sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed in the work or study area, that may embarrass or offend individuals. Such material if used in an educational setting should be related to educational purposes.
5. Unwelcome and inappropriate touching, patting, or pinching; obscene gestures.
6. Consensual sexual relationships where such relationships lead to favoritism of a student or subordinate employee with whom the teacher or superior is sexually involved and where such favoritism adversely affects other students and/or employees.

E. Responsibility

Individuals who are aware of or have experienced an incident of sexual harassment should promptly report the matter to one of the officials designated to receive informal or formal complaints. These officials are listed in Section II. Procedures.

F. Non-Reprisal

No faculty, administrator or staff, applicant for employment, student, or member of the public may be subject to restraint, interference, coercion or reprisal for action taken in good faith to seek advice concerning a sexual harassment matter, to file a sexual harassment complaint, or to serve as a witness or a panel member in the investigation of a sexual harassment complaint.

G. Malicious, False Accusations

A complainant whose allegations are found to be both false and brought with malicious intent will be subject to disciplinary action which may include, but is not limited to, written warning, demotion, transfer, suspension, or dismissal.

II. PROCEDURES

An initial course of action for any faculty, staff, or student who feels that he or she is being sexually harassed is for that person to tell or otherwise inform the harasser that the conduct is unwelcome and must stop. However, in some circumstances this course of action may not be feasible, may be unsuccessful, or the individual may be uncomfortable dealing with the matter in this manner. To encourage persons experiencing alleged sexual harassment to come forward, the University provides several channels of communication and both informal and formal complaint resolution procedures.

A. Information, Counseling, and Informal Resolution

Anyone may seek advice, information or counseling on matters related to sexual harassment without having to lodge a formal complaint. Persons who feel they are being harassed, or are uncertain as to whether what they are experiencing is sexual harassment, are encouraged to talk with whomever they feel comfortable. Such informal discussions can be handled departmentally by deans, department chairs, heads of administrative departments, or by the Co-Directors of Equal Employment Opportunity Programs, Director of Human Resources, College Masters, the Dean of Students, the Director of Multicultural Affairs, or the Director of International Services.

At this stage of the informal resolution process, the person seeking information and advice will be counseled as to the options for action available under this policy. To the extent possible, information disclosed through this advising process will be held in confidence, unless and until the initiating individual agrees that additional people must be informed in order to facilitate a solution. The aim of informal complaint resolution is not to determine whether there was intent to harass but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the lowest possible level. No disciplinary action is taken in resolving informal complaints.

B. Formal Complaint Resolution

The filing of a written complaint is required for the matter to be formally investigated and a determination made as to whether a violation of the University policy prohibiting sexual harassment has occurred.

Formal complaints of sexual harassment against a member of the faculty or staff are filed with the Office of Equal Employment Opportunity Programs (EEOP). Those wishing to bring a formal complaint of sexual harassment against a student should inform the Dean of Students who will either refer the case to the University Court or, with the concurrence of the Chair of the University Review Board, will assume original jurisdiction. The Co-Director of EEOP or the Dean of Students receiving the complaint will conduct a full, impartial, and timely investigation.

The Co-Director of EEOP or the Dean of Students, if she/he assumes original jurisdiction, will provide the respondent with a written statement of the allegations, to which that individual will be required to respond in a timely manner. During the course of the investigation the Co-Director or the Dean of Students will hear the complainant, the respondent, and witnesses identified by each party. To the extent possible, complaints will be handled confidentially, with the facts made available only to those who have a compelling need to know for purposes of investigation or resolution.

At the conclusion of the investigation of a complaint against a faculty or staff member, the Co-Director of EEOP will present to the appropriate administrative official(s) a written report which will include the allegations, the investigatory process, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses. The university administrator(s) will make a determination as to whether there was a violation of policy, will take necessary action, and will inform the complainant and the respondent of the final disposition of the complaint. In a case involving a complaint against a student, the Dean of Students will prepare a written report and will take appropriate administrative action.

At any time after filing a formal complaint, but before the Co-Director's report is submitted, or the Dean of Students has taken action, either the complainant or respondent, if either person is an employee or student of the University, may request that the Co-Director of EEOP or the Dean of Students refer the matter to a panel of inquiry.

C. Panel of Inquiry

At the beginning of each academic year, a pool of faculty, staff, and students will be created on the basis of nominations from the Student Association, the Graduate Student Association, the Office of Human Resources, and the Faculty Council. The panels of inquiry are selected from this pool by the President of the University, each panel comprising a chair and four members, two male and two female. The chair will normally be non-voting, but will cast the tie-breaking vote when necessary. Panel membership will be dependent on the status of the parties involved in the complaint as follows:

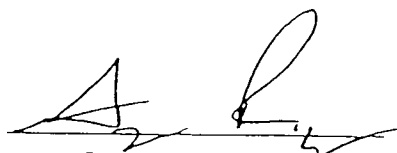
1. When both parties in an alleged incident are students, the panel will comprise three faculty and two student members, undergraduate and/or graduate as appropriate.
2. When both parties are members of the faculty, the panel will be made up of faculty members.
3. When both parties are members of staff, the panel will be made up of members of staff.
4. When the parties are from different constituencies, the panel will have a faculty member plus two members from each of the two constituencies.
5. With respect to complaints brought by third parties, it is not the status of the third party but rather the status of the subjects of the complaint that will determine the composition of the panel.

The purpose of the panel of inquiry is to determine, to the best of its ability, the facts regarding the alleged sexual harassment. Prior to the hearing, the panel will meet to determine procedures for the conduct of the hearing in consultation with the parties involved. The panel will hear the complainant, the respondent, and witnesses identified by each party, and will examine all evidence it deems necessary. The rights of both parties will be observed and privacy and confidentiality will be protected to the extent possible.

At the conclusion of its investigation, the panel, will issue a written report to the appropriate administrator(s). Specifically in case 1) above, the report will be forwarded to the Dean of Students, in case 2) to the Provost, and in case 3) to the Vice President for Finance and Administration. In all other cases the reports will be forwarded to the two appropriate administrators. The panel's report will detail the allegations, the evidence in the

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case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses. The appropriate administrator(s) will determine whether there has been a violation of the University's policy prohibiting sexual harassment, and will take whatever disciplinary action is indicated.



George Rupp, President

1981

Revised: February 17, 1989

July 21, 1992