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An investigation of the legal parameters of policies dealing with sexual relationships in academe

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AN INVESTIGATION OF THE LEGAL PARAMETERS OF POLICIES DEALING WITH SEXUAL RELATIONSHIPS IN ACADEME

A DISSERTATION SUBMITTED TO THE GRADUATE DIVISION OF THE UNIVERSITY OF HAWAII IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

DOCTOR OF EDUCATION

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BY

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It is with deep gratitude that I acknowledge the support of my chairman, John Thompson, my committee members, my colleagues, my friends and my family. Most importantly, I wish to acknowledge those women and men who have had to endure sexual harassment in the workplace and in the academic community prior to Title VII, the EEOC Guidelines, the court decisions, sexual harassment policies and codes of ethics.

ABSTRACT

The purpose of this study was to determine the current parameters of sexual harassment law as it is developing in the courts and, on the basis of the legal analysis, to assess the extent to which the academic community is responding to that law by developing policies which deal with teacher/administrator-student sexual relationships.

This study involved two sets of data (1) 67 court decisions regarding sexual harassment claims including the Supreme Court decision in Meritor Savings Bank v. Vinson, June 1986 and (2) thirty-two policies dealing with faculty-student sexual relationships obtained from 87 doctoral and 103 baccalaureate institutions.

The questions for study were sequential. First, court cases were examined to determine what legal principles judges had applied in making decisions. Second, legal principles were reviewed to determine whether they were in conflict with other legal principles. The third step was to assess the impact of the legal decisions upon policies dealing with sexual relationships in academe. Next, policies were reviewed to determine whether they addressed the salient issues raised by the courts. Finally, chi-square tests were conducted to examine differences in the

various components and strength of the policies in regard to doctoral versus baccalaureate institutions.

The legal analysis found that court decisions are impacting the collegiate community. Two issues have particular impact: the "unwelcomeness" standard in deciding if a case is actionable and the professional expectations of teachers and administrators in their relations with their students.

The policy analysis found that on four of the five categories analyzed, doctoral and baccalaureate policies did cover the legal issues and were remarkably similar. The one category where there was a statistically significant difference was the term used to caution or condemn the faculty; doctoral institutions had stronger terms than baccalaureate institutions.

This study points to a need for colleges to adopt a policy or code of ethics dealing with sexual relationships in academe. The analysis indicates that, while a policy may not need to be strong to be effective, an institution with no policy is apt to have difficulty dealing with unethical sexual relations.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURE

CHAPTER I

INTRODUCTION AND RESEARCH PROBLEM

This chapter contains the introduction to this study and the research problem which was investigated. The introductory material includes the background information, the principles and the theoretic basis of the study. The research problem section includes the specific questions which were studied, the hypothesis which was tested and the definitions and limitations of the study.

INTRODUCTION

This dissertation is concerned with determining the current parameters of sexual harassment law as it is developing in the courts and with assessing the extent to which universities and colleges are responding to that law in developing policies which deal with teacher/administrator-student sexual relations. The fact that colleges and universities in the United States are currently addressing this very issue was expressed in a front page article appearing in the December 17, 1986 issue of The Chronicle of Higher Education. The author stated in the first three paragraphs that:

> Prompted in part by a recent Supreme Court decision, colleges and universities are

> re-examining their policies on sexual harassment and in many cases they do not like what they see.
>
> In the process, administrators and faculty members find themselves enmeshed in difficult ethical and civil liberties questions.
>
> The goal: to write guidelines that will identify and weed out harassing behavior without jeopardizing academic freedom or employee's due-process rights.[1]

The article went on to highlight two institutions that have adopted rules or policies which declare sexual relationships between faculty members and students unethical, the University of Michigan and the University of Iowa. Two institutions which attempted to adopt such policies but have had difficulty were also discussed, the University of California at Berkeley and the University of Texas at Arlington. The issue clearly is not an easy one for the academic community.

The Supreme Court decision which was referred to in the Chronicle article was the first sexual harassment case heard by the highest court. It was decided in June of 1986 and entitled Meritor Savings Bank v. Vinson, 106 S. Ct. 2399 (1986). The Meritor case may have caused university administrators and faculty some increased concern because it determined that: an offensive environment is a legitimate sexual harassment claim; based upon a totality of the circumstances an institution could face strict liability or lesser common law agency standards of liability; the fact that the victim voluntarily submitted to the sexual requests

does not protect the institution and finally, a policy and prompt attention may help protect an institution but they do not serve as guarantees against a sexual harassment claim.

Some institutions had adopted policies several years prior to the Meritor decision. The most widely disseminated was that of Harvard University which was written in 1983 in a letter by Dean Henry Rosovsky of the College of Arts and Sciences to his faculty. A sexual harassment update published by the College and University Personnel Association credits the Harvard letter with an increased interest in policies addressing teacher/administrator-student sexual relationships.[2] Whatever their motivation, whether a response to the developing law or concern with ethics, university administrators, faculty and students involved in developing sexual harassment guidelines have come to realize that they must balance their legal concerns with ethical and civil rights concerns and, in the process, preserve and protect the teacher/administrator-student relationship that is unique to the academic setting--a difficult undertaking.

BACKGROUND

Although the issue of sexual harassment on campus was first discussed formally and initially investigated in the late 1970's as the courts began hearing cases on sexual harassment, policies appear not to have been developed and implemented on college and university campuses until after

the November 10, 1980 publication of the Equal Employment Opportunity Commission's (EEOC) legal guidelines. These guidelines recognized sexual harassment as sex discrimination under Title VII of the Civil Rights Act of 1964.

The policies which were subsequently developed were based, in large part, upon the definition of sexual harassment presented in the EEOC guidelines which stated that sexual harassment is:

> "Unwelcome sexual advances, requests for sexual favors and other verbal and 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 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 work environment."[3]

This definition of sexual harassment and the guidelines issued by the EEOC were not laws. They have become the law as they have been interpreted and utilized in the courts.

Sexual harassment cases have been heard in state and federal courts in increasing numbers. Employees have claimed sexual harassment based upon violations of the Fourteenth Amendment to the U.S. Constitution (equal protection clause), four federal statutes: Title VII of the Civil Rights Act of 1964, Title IX of the Education

Amendments of 1972, the Equal Pay Act of 1963 and the Executive Order No. 11246 and state statutes and constitutions. Students have filed complaints based upon violations of the Fourteenth Amendment to the U. S. Constitution (equal protection clause), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its regulations (34 C.F.R. 106) as well as their state statutes and constitution.

There are two principal federal statutes which apply to institutions of higher education and protect faculty, staff and students from discrimination in the form of sexual harassment. First, Title VII of the Civil Rights Act of 1964 made it an unlawful employment practice for an employer to act in any way which would "deprive or tend to deprive any individual an employment opportunity or otherwise adversely affect his status as an employee" because of the individual's sex. Except for a narrowly defined exemption, applicable to employment of faculty teaching religious courses (42 U.S.C. Sect. 2000 E-1), this law covered all institutions of higher education and requires equal opportunity in employment settings regardless of sex.

Second, Title IX of the Education Amendments of 1972 provides that "no person....shall on the basis of sex....be subjected to discrimination under any educational program or activity receiving federal financial assistance..." (20 U.S.C. Sect. 1681 [A]). While Title IX was initially viewed

as applying only to students, the Supreme Court has interpreted it to apply to employees as well (North Haven Board of Education v. Bell, 456 U. S. 512,1982). This statute only affects those "programs or activities" which are recipients of federal funds and does not have an institution wide application (Grove City v. Bell, 104 S. Ct. 1211, 1984).

It is not solely state legislatures, the Congress, EEOC and the courts which have addressed the issues of sexual harassment and have provided academic institutions with the means to deal with the problem. The need of the university community of a valid, useful sexual harassment policy and an educational campaign against sexual harassment on campus was highlighted in the December 1986 report of the American Council on Education (ACE) which stated in part:

> The entire collegiate community suffers when sexual harassment is allowed to pervade the academic atmosphere through neglect, the lack of a policy prohibiting it or the lack of educational programs designed to clarify appropriate professional behavior on campus and promote understanding of what constitutes sexual harassment.[4]

In a letter accompanying the report, ACE President Robert H. Atwell noted that the results of a recent survey done at Harvard University (1985) corresponded with several other surveys.[5] Namely, the surveys found that substantial numbers of women in academia reported they had experienced sexual harassment. Atwell reported that the Harvard study found "thirty-two percent of tenured female professors, 49

percent of those without tenure, 41 percent of female graduate students and 14 percent of undergraduate women reported encountering sexual harassment from a person in authority at least once while at the university." In summary, surveys, such as that at Harvard, indicate that we do have a sexual harassment problem on campuses in the United States. The Chronicle of Higher Education highlighted the concern of administrators and faculty regarding addressing this problem noting a new concern about teacher/administrator-student sexual relationships. The American Council on Education has recently issued a report which urges campuses to pay prompt attention to the problem of sexual harassment on campus. The report specifically suggests that campus policies and educational programs be reviewed with the goal of clarifying appropriate professional behavior.

This study will address this problem of sexual harassment on campus by analyzing recent sexual harassment court decisions and by examining university policies which directly discuss teacher/administrator-student sexual relationships in light of the legal analysis. The goal of the study will be to determine whether the policies are reflective of the law and of the rights of the academic community.

UNDERLYING PRINCIPLES

There are three underlying principles which are concerned with the unique institutional needs of the academic community and which are basic to a discussion of the university's responsibilities regarding sexual harassment. They are merit, institutional integrity and academic freedom.

Principle of Merit

Institutions of higher education base their existence on the principle of merit. Thus, they have a moral obligation to ensure that an unrelated criterion, sex, is not utilized as a basis for employment and/or learning decisions.

Principle of Institutional Integrity

Thomas Bender, a Samuel Rudin Professor in the Humanities at New York University, in a review of Derek Bok's 1982 book entitled Beyond the Ivory Tower: Social Responsibilities of the Modern University writes that "a university worth affirming must have an ethos, a sense of its own integrity." The integrity of the institution, an important factor in sexual harassment court decisions, is reflected in the credibility of the institution's policies and procedures and the track record of their implementation. It is also reflected in the credibility of the university staff and students as witnesses.

Principle of Academic Freedom

This principle, which is derived in part from the nineteenth century German university concepts of "lehr freiheit"--freedom to teach--and "lern freiheit"--freedom to learn--serves to provide the academic community with a guarantee of intellectual liberty in academic pursuits.[6] The modern American concept of academic freedom of the professor to teach and the student to learn, enunciated in the "1940 Statement of Principles of Academic Freedom and Tenure of the American Association of University Professors", serves as an underlying basis for institutions of higher education to provide a learning environment free from sexual harassment.

Merit, institutional integrity and academic freedom must all be taken into account in the development and implementation of a university's sexual harassment policy which deals with teacher/administrator-student relationships. These underlying principles serve to protect the faculty member, the student and the institution. They are unique and special to academia. The next section presents two legal theories which apply to all citizens and which provide the very core of this issue of protection from sexual harassment.

UNDERLYING THEORETIC BASIS

Two legal theories, the right of equality of treatment and the right of privacy, form the basis of the legal issues

raised in sexual harassment discussions. These two theories are cited by judges in making sexual harassment court decisions and by members of the university communities who are considering adopting a policy which constrains teacher-student relationships. The legal theory of equality of treatment provides the foundation of the individual's right to freedom from sexual harassment. Policies which universities have developed to protect that freedom, especially in teacher-student relationships, have been said to be in conflict with an individual's right of privacy. The bases of these two theories will be presented separately.

The Legal Theory of Equality of Treatment Under the Law

The concept of the equality of men under the law was developed in ancient Greece where it was a means of maintaining social order. Aristotle described justice as a condition in which each individual is afforded equality within the class to which he is assigned according to his worth.[7] This concept of equality within one's class was maintained until the Sixteenth Century when the Spanish jurist-theologians wrote of a natural equality. They saw this new equality as an opportunity to work and live without traditional class restrictions.[8]

Thomas Paine, in his Rights of Man published in 1792, explained that while equality of man may be regarded as

divine authority "it is at least historical authority and shows that equality of man, so far as being a modern doctrine, is the oldest upon record." Paine enunciated the theoretic basis for equality of treatment under the law when he described how civil rights originate from natural rights as follows:

> Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.
>
> From this short view it will be easy to distinguish between that class of natural rights which man retains after entering into society and those which he throws into the common stock as a member of society.[9]

According to Paine, because all men have "equal natural rights" all men have equal civil rights as well.

It must be noted at this point that, while the Anglo-American legal tradition purported to value equality of treatment under the law, blacks and women were not guaranteed many of those rights in the adoption of the constitution. Blacks were legally recognized as having equal rights with the passage of the Thirteenth, Fourteenth and Fifteenth Amendments after the Civil War. According to

Leo Kanowitz, in his pioneering text, Women and the Law, 1963 was the turning point for women.[10]

From 1963 on, courts began to hear sex-based challenges more frequently and the federal legislature began to pass laws to prohibit sexual discrimination. Kanowitz believes that this action was prompted by the report of the committee on Civil and Political Rights of the President's Commission on the Status of Women. The report included the following recommendation:

> ... Notwithstanding doubts generated by some earlier decisions, the Committee believes [the] principle of equality [of rights under the law for all persons, male or female] is implicit in the Fifth and Fourteenth Amendments to the United States Constitution which guarantees to all persons due process and equal protection of the laws without arbitrary discrimination. It is confident, in the light of recent developments, that they will be interpreted by the courts today to give full recognition to this principle.
>
> The Committee.....urges interested groups to give high priority to uncovering and challenging by court action [existing] discriminatory laws and practices....

In summary, sexual harassment is now recognized in the United States as a form of sex discrimination. In 1987, discrimination on the basis of sex is legally regarded as unequal treatment under the law. Thus, the theoretic basis for this study is the right of equal treatment under the law or the right of all persons to equal civil rights.

The Legal Theory of Privacy

Judges rendering a decision which is based upon an American theory of the right to privacy frequently refer to a Harvard Law Review article written in December of 1890 by Samuel D. Warren and Louis D Brandeis.[11] Brandeis and Warren stated that "Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing for the individual....the right 'to be let alone'." Later, after becoming a Supreme Court Justice, Brandeis called the right to be let alone "the most comprehensive of rights and the most valued by civilized men."[12]

A constitutional right of privacy was not announced until 1965, when it formed the basis of the decision in the case of Griswold v. Connecticut, 381 U. S. 479 (1965). Justice Douglas, in writing the majority opinion in the Griswold case stated that:

> [S]specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance....Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one....The third Amendment in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The

> Ninth Amendment provides: "The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people"....

Justice Douglas went on to state that the case under consideration, dealing with the use of contraception in marriage, "concerns a relationship within the zone of privacy created by several fundamental constitutional guarantees."

The recognition of the Supreme Court of the value of a right of privacy in the twentieth century has grown to encompass the institution of marriage and the family, contraception and abortion. Whether it will be interpreted further to protect the sexual freedom of consenting adults is yet to be determined. It may be that the critics of this right, within and without the court, may prevail and the right to privacy may be declared no longer a valid legal right. The arguments as to the validity of this right, enunciated in court decisions and scholarly works, promise to be ongoing.[13]

As far as this study is concerned, the two legal theories just discussed are in opposition. The theory of equality of rights under the law necessitates policies against sexual harassment. All members of the university community, administrators, faculty, students and staff, must be allowed to conduct their academic or professional pursuits without discrimination on the basis of sex in the

form of sexual harassment. The sexual harassment policies designed to protect the equality of rights of individuals in the college community may condemn teacher/administrator-student relationships. When such relationships are condemned, those who are disciplined claim abuses of the right of privacy. In this study, the relationship and balance of the theories of equality and privacy are discussed.

THE RESEARCH PROBLEM

This study was concerned with the court decisions made in sexual harassment cases and the implications of those decisions for sexual harassment policies which specifically address teacher/administrator-student relationships. The following are the four specific questions studied followed by the hypothesis which was tested:

1. What legal factors and principles have been applied in sexual harassment decisions?
2. Are these principles in conflict with other established legal principles?
3. What impact do these legal decisions have upon sexual harassment policies which discuss teacher/administrator-student relationships at institutions of higher education?
4. Do the policies which cover teacher/administrator-student relationships address the salient issues raised by the court decisions?

5. Is there a significant difference between the strength of the various components of the sexual harassment policies covering teacher/administrator-student relationships of doctoral-level universities and baccalaureate colleges?

DEFINITIONS

The term legal issues, as employed in this study, refers to any disputed point of law submitted for resolution to a court or other body appointed for the express purpose of settling such point.

Sexual harassment may be broadly defined as repeated and unwanted advances or liberties of a sexual nature by one holding some degree of power over another, so that submission to such advances is either implicitly or explicitly a term or condition of status as a student or employee.

Generally, the courts require more than an isolated or trivial incident to have occurred in order to establish a case. The trend in the cases heard thus far dictates that the agencies and courts consider the totality of the circumstances and, where the court finds that the conduct involved unreasonably interferes with the person's work performance or creates an intimidating, hostile or offensive work environment (the so-called "poisoned"

atmosphere syndrome), unlawful sexual harassment is likely to be found to exist.

Policy in this study, refers to written sexual harassment policies which define the term and spell out the procedures to be followed by student, faculty and staff to either file a complaint or defend oneself from a complainant. A policy-maker is any official employed by an institution to formulate, supervise or review policy.

Teacher/administrator-student relationships refers only to those instances where an instructor or other officer is in a position to determine a student's grade or otherwise affect the student's academic performance or professional future. This does not apply to teacher-student relations where there is no supervisory role involved.

LIMITATIONS

This study was an initial step in examining legal issues pertaining to sexual harassment, and thus, was general in tone as it investigated the legal parameters. Its purpose was to present and analyze all pertinent cases and rulings, to classify them according to major issues, to weigh the underlying legal principles and to suggest implications for institutional policy-makers. Cases which have been overruled, not published or were heard below the state supreme court level, were not considered.

Another limitation to this study deals with the sampling of sexual harassment policies. Sampling was limited to two

classifications of four year institutions--doctoral-level institutions and baccalaureate colleges. Because preliminary investigations had shown that four year rather than two year institutions were writing policies that dealt with teacher-administrator-student relationships, two year institutions were not surveyed.

Comprehensive academic institutions, which according to the classification of the federal government's Center for Educational Studies, are "characterized by diverse post-baccalaureate programs but do not engage in significant doctoral-level education," were also not surveyed. The reason for their exclusion was their similarity to the doctoral institutions sampled.

SUMMARY

Many universities and colleges in the United States are in the process of developing, implementing and/or revising sexual harassment policies which are reflective of the current state of the law. In doing so, academic institutions must keep in mind three underlying principles which are significant in the academic community: merit, institutional integrity and academic freedom.

As a basis for any discussion of the legal issues involved in sexual harassment, two legal theories which may be in conflict must be weighed: the right of equality of treatment under the law and the right of privacy.

This study provides an analysis of the current state and federal court decisions regarding sexual harassment and an examination of policies which address teacher/administrator-student relationships in light of the legal findings. Court decisions heard at the state supreme court level and higher which have not been overruled were analyzed. The sampling of policies was limited to two classifications of four year institutions, doctoral-level institutions and baccalaureate colleges.

NOTES

[1] Liz McMillen, "Many Colleges Taking a New Look at Policies on Sexual Harassment," The Chronicle of Higher Education, (17 Dec. 1986): 1, 16.

[2] Nancy H. Deane, et al, Sexual Harassment Issues and Answers (Washington, D. C.: College and University Personnel Association, 1986): 2.

[3] 29 CFR Sect. 1604.11.

[4] Guidelines on Sexual Harassment Policies," American Council on Education (December 1986).

[5] "ACE Issues Sex Harassment Guide," Higher Education and National Affairs 35 (December 1, 1987): 1.

[6] "Developments in the Law; Academic Freedom," Harvard Law Review 81 (March 1968): 1048-1049.

[7] Roscoe Pound, An Introduction to the Philosophy of the Law (New Haven: Yale University Press, 1974), 35.

[8] Pound, 38.

[9] Thomas Paine, The Rights of Man (New York: Dutton, 1966), 44.

[10] Leo Kanowitz, Women and the Law; The Unfinished Revolution (Albuquerque: University of New Mexico Press, 1968), 150.

[11] Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy." Harvard Law Review 4 (December 15, 1890): 193-220.

[12] Robert Ellis Smith, Privacy; How to Protect What's Left of It (Garden City, New York: Anchor Press, 1979), 4.

[13] Thomas C. Grey, The Legal Enforcement of Morality (New York: Barzoi Book, 1983); Edmond Cahn, The Moral Decision; Right and Wrong in the Light of American Law (Bloomington: Indiana University Press, 1981).

CHAPTER II

REVIEW OF THE LITERATURE

This chapter will present a review of the relevant literature on the subject of sexual harassment and the law. The material will be divided into three primary sections--surveys, studies and legal research dealing with sexual harassment. Each section will be further divided into research in general and research in academia.

INTRODUCTION

The literature on sexual harassment is, for the greatest part, less than a decade old. It has been said that the problem of sexual harassment has a long past but a short history. That is, while sexual exploitation is by no means new, the term "sexual harassment" was selected as recently as 1974 by Lin Farley when teaching a field-study course on Women and Work at Cornell University.[1] Farley's group, the "Women's Section at Cornell's Human Affairs Program", distributed the first questionnaire ever devoted solely to this topic in 1975. The efforts of this group were followed closely by efforts in the legal domain which culminated with Catharine MacKinnon's text, Sexual Harassment of Working Women, published in 1979.[2]

Surveys, studies and new legal interpretations followed Farley and MacKinnon's pioneering investigations. Although literature on the subject of sexual harassment is relatively recent, the rapidly increasing interest in the topic has made it abundant. This review will report on three relevant areas of research: surveys, studies and the law. Each area will be divided into two categories--investigations in general and investigations focusing on academia.

SURVEYS

General

One of the first surveys concerning employees was conducted in 1975 by Lin Farley and the Working Women's Institute which surveyed a small group of women in upstate New York and found that 70 percent of the sample group have experienced sexual harassment at least once.[3] In 1976, Redbook magazine published a questionnaire entitled "How Do You Handle Sex on the Job?" and received over 9,000 responses. Nearly 90 percent of those surveyed said they had experienced one or more forms of unwanted sexual attention on the job.[4] Of course, as the magazine pointed out, women who have been harassed were more likely to respond to the questionnaire.

A survey at the United Nations in 1977 found that of the 875 men and women surveyed, 50 percent of the women and 31 percent of the men reported that they had either experienced sexual pressure or knew of its existence within

the organization[5]. In 1980, the Merit System Protection Board, at the request of a House of Representatives committee, undertook the first comprehensive survey of sexual harassment in the federal government. The Board sent questionnaires to 23,000 male and female employees and received a 95 percent return. Nearly half of the women (42%) and 17 percent of the men responding indicated they had experienced sexual harassment on the job.[6] These data subsequently have been re-examined in several doctoral dissertations.[7]

In 1981, all of the Harvard Business Review subscribers were surveyed and 1,846 responded. The major findings included: a supervisor's harassing behavior was seen as more serious than that of a co-worker, most subscribers favored having company policies and sensitizing employees, yet only 29 percent had a sexual harassment policy statement and only 10 percent provided training on the subject. Women felt sexual harassment occurred more often than men did.[8]

A 1983 program of research by B. A. Gutek and her colleagues encompassed several surveys conducted in the Los Angeles area in which over 1,900 working males and females were interviewed by telephone. The findings revealed that 42 percent of the women and 15 percent of the men had been harassed in the past twenty-four months. Gutek found that,

in addition to being female, being young and unmarried increased the possibility of harassment.[9]

The surveys presented here represent the major ones undertaken in an examination of the world of work. While these surveys are not without flaw and there must be some concern regarding the representativeness of their respective samples, the results consistently show that sexual harassment exists and primarily affects women.

With an increased awareness of the problem, the number of incidents reported appears to be rising. In 1985, Chris Roggerson, District Director of the Equal Opportunities Commission, in a speech in Honolulu, Hawaii on September 26, 1985, estimated that employee claims of sexual harassment are increasing at an annual rate of 5-20 percent.[10] There is little reason to suspect that this trend will not continue into the future.

Academia

Sexual harassment within academe has recently been the subject of numerous surveys. Until 1985, there had been no national survey of the frequency of sexual harassment of students, although the National Advisory Council on Women's Education Program, which was established under the 1974 Women's Educational Equity Act, circulated a "call for information on the sexual harassment of students in 1979." The report, subsequently published, claimed not to be definitive.[11]

However, many individual universities and educational organizations conducted surveys using different research techniques and different definitions of sexual harassment. Billie Wright Dziech and Linda Weiner, in their 1984 text entitled, The Lecherous Professor; Sexual Harassment on Campus, report on eight major campuses which conducted surveys of their students during the years 1979-1981.[12] Despite the variations in the surveys, the results were remarkably similar. Repeatedly, 20 to 30 percent of women students reported they have been sexually harassed by male faculty during their college years.

A somewhat different survey was undertaken in 1979 by the Division of Psychotherapy of the American Psychological Association. This survey of psychology professionals revealed that of a random sample of 481 women, 10 percent had had sexual contact with their professors. Of those who received their degrees within the last seven years, 25 percent reported having had sexual contact while they were students of psychology educators.[13]

In a follow-up study by Robert D. Glaser and Joseph S. Thorpe of the University of Missouri at Columbia, 464 anonymous respondents, all female members of the American Psychological Association, indicated that sexual contact between psychology educators and female graduate students was quite prevalent overall (17%), among recent doctoral recipients (22%) and among students divorcing or separating

during graduate training (34%).[14] Sexual advances were reported by 31 percent and were judged by most to be overwhelmingly negative.

In 1982, sexual harassment at the University of California at Davis was studied. A total of 1,399 students and employees responded to the questionnaire. About 20 percent of faculty and staff, 17 percent of graduate/professional students and 7 percent of undergraduate women respondents reported having been sexually harassed at the University. In 71 percent of the cases, the harasser was in a higher status position than the victim.[15] Pennsylvania State University also surveyed students in 1982 to determine whether they had been harassed by school employees. From a random sample of 515 female students, one in four reported some form of sexual harassment.[16]

A 1983 survey by Harvard University, in which a substantial number of women across the academic spectrum responded, found that sexual harassment was a problem affecting 29 percent of the women and 6 percent of the men on that campus.[17] Other surveys in 1983 included a sample of 1,000 at Iowa State University and a sample of 334 at East Carolina University. Results of both surveys revealed that sexual harassment does occur on the campus surveyed and in a proportion similar to other surveys.

In 1985, the University of Pennsylvania surveyed its campus for sexual harassment incidences and found that it compared with the Harvard study as follows:[18]

	University of Pennsylvania	Harvard
Harassment by persons in authority		
Undergraduates	26%	34%
Graduates	30%	41%
Harassment by peers		
Undergraduates	71%	73%
Graduates	31%	41%

Overall, there were no surveys of educational institutions that did not report at least one quarter of the students as having had experienced sexual harassment. In part because the problem had been validated and in part because the Equal Employment Opportunity Commission (EEOC) published legal guidelines in 1980 which recognized sexual harassment as sex discrimination under Title VII of the Civil Rights Act of 1964, most colleges and universities in the United States have adopted sexual harassment policies and procedures.

In order to discover how American colleges and universities have responded to the problem of sexual harassment, the Office of Women's Affairs at Indiana University, Bloomington, funded by the Department of Education, Women's Educational Equity Act Program, surveyed 568 randomly sampled schools and 100 schools selected to include the two

largest state universities in each state.[19] This survey confirmed all the previously reported ones when it found that between 20 to 30 percent of all female students experienced some sort of sexual harassment in college. It found, further, that only 2 to 3 percent are apt to report their harassing experience. The survey determined that approximately one third of the nation's universities lack a formal grievance procedure by which women can report instances of harassment.

In addition, survey respondents reported that, when they file complaints with university officials, they are seeking an end to the harassing behavior or protection from the offender. D'Ann Campbell, Indiana University's Dean of Women Affairs, reported that, while fewer than 10 percent of all college faculty members take improper advantage of teacher-student relationships, those few tend to be habitual offenders.

Further, this national survey was the first to report on action that colleges and universities have taken to deal with teacher-student sexual relations. The survey stated that:

> A handful of institutions have defined sexual harassment as a breach of professional ethics and ask their faculty to assume responsibility for providing an academic environment free of discrimination--not because it is the law, but because anything less is inconsistent with the highest standards of professional excellence.[20]

In summary, this review of surveys, both those of the world of work in general and those in the academic community, indicates that sexual harassment exists in both communities. Despite varying survey techniques and flaws in those techniques, 20 to 30 percent of the work force and of the academic community report some form of sexual harassment.

STUDIES

General

To date, there have not been as many studies as there have been surveys of sexual harassment. A likely reason being that, until a problem has been confirmed, it is not studied. With the confirmation by numerous surveys that sexual harassment is a problem at work and at school has come an increase in the number of studies.

A study conducted in 1977 by Robert E. Quinn dealt with organizational romance.[21] Subsequent findings, including that of the Supreme Court in the Meritor case, might lead one to conclude that at least some of the "romance" studied could be properly termed "sexual harassment."

Using third party reports, Quinn analyzed 130 cases of men and women co-workers who became romantically involved. He found that in 10 percent of the cases, the romance was felt to have a positive impact on the work or the workers in the department. In a third of the cases, the impact was felt to be negative but not severely so. In another third,

the romance was reported to have lowered morale and production and resulted in job loss.

Out of the 130 reported romances, twelve women lost their jobs as opposed to five men. The report stated:

> The female is twice as likely to be terminated as is the male. Because the male is usually in a higher position, he apparently is seen as less dispensable as the female. The female is also thought to be much less likely to benefit from an open discussion or from counseling by superiors. The latter two conditions, however, are mediated by the fact that the female's superior is often the other participant in the relationship.[22]

Five years after the Quinn study of perceptions of office "romances", researchers have begun investigating perceptions of sexual harassment. Studies which examined the perceptions of people who had been harassed were conducted by G. N. Powell in 1983 and by B. Schneider in 1982.[23] Powell found that victims of sexual harassment felt it to be a more serious problem than those who had not been harassed. Schneider found that, while lesbians reported more sexual harassment than heterosexual women, both groups disliked sexual behaviors at work, with advances by superiors being reported as having the most negative effect.

To ascertain third party perceptions of sexual harassment, a number of researchers presented their subjects with situational scenarios. S. L. Littler-Bishop, D. Seidler-Feller and R. E. Opaluch investigated perceived reactions to victims who were harassed by higher, equal and

lower status initiators.[24] Their results showed that victims were perceived as reacting more negatively to lower status harassers, even when the higher status harasser was more aggressive. B. A. Gutek, B. Morasch and A. G. Cohen presented scenarios that varied the sex, status and sexual behavior of the harasser.[25] They found that male subjects interpreted the incident more positively than female subjects. In this study, the higher the status, the less favorable was the reaction.

I. W. Jensen and B. A. Gutek determined that both gender and sex roles play a part in perception of sexual harassment.[26] More specifically, men tended to blame women for causing harassment by other men. The least likely to blame the victim was another female victim.

In 1985, Laura M. Milner, who wrote that studies of third party perception of sexual harassment lacked realism, presented her subjects with multiple incidents of sexual harassment involving male and female in a business setting.[27] The result of this more varied scenario was a more varied response. Subjects took the seriousness of the incident, the responsibility of the male, the perceived motivations of the male and the lack of romantic interest of the female into account in making a determination of whether the incident was sexual harassment.

A different approach to the study of sexual harassment was offered by S. S. Tangri, M. R. Burt and L. B. Johnson in

1982.[28] These researchers presented two models which served as attempts to explain the motivation behind sexual harassment. The models were the natural-biological model, which suggested that the motivation behind sexual harassment was sexual interest, and the socio-cultural model which offered a power explanation; that is, sexual harassment is a display of aggression. They found that men tend to prefer the natural-biological model and women, the socio-cultural model.

In his 1985 dissertation dealing with attributions of responsibility for sexual harassment grievances, Daniel Thomann found that "any sexual advance in a work place is likely to be considered sexual harassment."[29] While Thomann found this conclusion to be "somewhat surprising", it may well illustrate how aware employees have become of sexual harassment and that this awareness has caused them to believe that such harassment has no accepted place in the work setting.

Studies dealing with sexual harassment in the world of work have not been many. Taken chronologically, the results seem to be moving toward stronger condemnation of sexual harassment in the work place. The next section of this chapter will review studies in academe.

Academia

As in studies in the world of work, studies in the educational community have begun to examine perceptions of

sexual harassment. A study in 1982 by D. J. Benson and G. E. Thomson reported on the response of victims of sexual harassment.[30] Their findings showed that of 269 female students who had been the victims of one or more incidents of sexual harassment in college, one third reported feelings of self-doubt and loss of confidence in their academic ability as a result. General disillusionment with male faculty was a common response to sexual harassment.

Several studies dealing with third party responses to sexual harassment were conducted in the early 1980's. Each presented scenarios and requested a variety of responses. T. Reilly and others studied the responses of 232 students and 23 faculty at the University of California at Santa Barbara to vignettes of sexual encounters between female students and male faculty.[31] Reilly et al reported that, while all agreed on what constituted harassment, females were more likely to assign higher levels of harassment to the encounters than were their male counterparts.

In a replication of the Reilly study, E. Weber-Burdin and P. H. Rossi surveyed 180 undergraduate students at the University of Massachusetts.[32] This study pointed out that students regarded sexual harassment as a serious offense and only the most suggestive behavior by students or the most blatant actions by the instructors would alter the perceptions of the participants.

With an interest toward determining whether lay people use a legal model of attribution in determining what constitutes sexual harassment, D. A. Thomann surveyed 196 undergraduate students at Saint Louis University.[33] His findings, like those of the previous two, were that every case of sexual harassment includes unique combinations of situational/contextual factors. Specifically, he reported that:

> Subjects appeared to use criteria similar to those specified by the legal community when adjudicating a sexual harassment case. For instance, as expected an alleged harasser was held responsible for an incident to the extent that the subjects believed his behavior constituted sexual harassment (psychological causality). Inferences regarding the thoughts and emotions of the alleged harasser appeared to be most relevant to attributions of responsibility under conditions where subjects were uncertain the event constituted harassment. Furthermore, attributions of victim and harasser responsibility influenced subjects' subsequent decisions regarding appropriate disciplinary actions.[34]

Martin Sherman and Robert Smith examined the influence of two contextual variables (status of the initiator and age of the victim) on perceptions of sexual harassment allegations.[35] One finding, as in those cases cited previously, was that females attributed less responsibility than males to the victim. Another finding was that, if a victim were young, claims against a supervisor were more believable than claims against a co-worker.

A study by Natalie Malovich in 1985 of 113 female and 111 male university students found that both sexes blamed

the perpetrator of the harassment more than the victim.[36] Females, however, endorsed greater perpetrator blame and more confrontive victim responses than did males and felt that sexual harassment had more severe emotional and educational effects than did males.[37]

Studies in academia had results remarkably similar to those in the world of work. Generally, the findings indicated that females find instances of sexual harassment more harmful and tend not to blame the victim. Based upon the studies in both areas, it would appear that judgments of sexual harassment are based upon the totality of the circumstances, a finding made by the Supreme Court in the Meritor case.

LEGAL RESEARCH

Despite the passage of Title VII of the Civil Rights Act in 1964, it was not until 1976 in the case of Williams v. Saxbe, 413 Fed. Supp. 654 (D. D. C. 1976), that a claim of sex harassment was first sustained as sex discrimination in violation of the Act. Four years later in 1980, the EEOC adopted guidelines (see Chapter I) defining sexual harassment. Legal developments since 1976, both before and after the Guidelines, have been largely in accord with the Guidelines' essential principles. The Supreme Court's Meritor decision in June of 1986 served to confirm most of the guidelines and the direction that the courts had been

deciding. This section of the review, like the previous two, will be divided into general and academic sections. In addition, each section will comment on the nature of writings before and after the Meritor decision.

General

The first and still most significant text on sexual harassment from a legal viewpoint, written by Catharine MacKinnon in 1979, presents the argument that there are two bases upon which sexual harassment should be considered sex discrimination: its role in women's inequality and its use as an arbitrary differentiation.[38] Joan Abramson also argued that sexual harassment was sex discrimination in chapter twelve of her 1979 text on sex discrimination.[39] During this same period, the lower federal courts were moving toward developing a doctrine of sex harassment as sex discrimination with the District of Columbia Court of Appeals consistently leading the way.

One year after the district court decision in William v. Saxbe, the District of Columbia Court of Appeals became the first to uphold a claim of sex harassment under Title VII, ruling that an employer's conditioning a female employee's job on her acquiescence in her male supervisor's sexual advances constituted sex bias, Barnes v. Costle, 561 F. 2d 983 (D. C. Cir. 1977). Similar cases by the Third and Fourth Circuits were issued that year.[40]

In 1981, in deciding the case of Bundy v. Jackson, 641 F. 2d 934 (D. C. Cir. 1981), the D. C. Circuit Court, specifically noting the EEOC guidelines which had been issued the previous year, became the first court to uphold the Title VII claim of a woman complaining only of pervasive on-the-job sex harassment by her supervisor, with no alleged loss of tangible job benefits. The court also declined to hold that a woman must prove resistance to such sexual advances to establish her claim--a women's voluntary submission to sex harassment was determined to be irrelevant to the central inquiry which was whether the employer made the female employee's toleration of sex harassment a condition of her employment. The Eleventh Circuit followed suit in 1982 in Hensen v. City of Dundee, 29 FEP 787 (11th Cir. 1982).

A summary of the case law in 1981 by the United States Merit Systems Protection Board concluded that sex harassment case law was still in the process of development.[41] While it was firmly established that Title VII covered sexual harassment as sex discrimination when compliance was made a condition of employment, what constituted a term or condition of employment was not fully established. The Board found that the courts had generally established that employers were liable for the acts of their supervisors but had not fully defined their responsibilities for co-workers and others.

The Bureau of National Affairs reported, in 1981, an analysis it had made of thirty federal court decisions involving sexual harassment.[42] It showed that most cases involved suggestive remarks, not overt sexual contact. In other words, harassment litigation under Title VII had primarily been concerned with coercive sexual propositions rather than physical contact.

By 1982, employers in the public and private sector were in the process of developing policies to protect themselves against the emerging sexual harassment law. Numerous booklets were produced to assist employers in this development. Two which received wide distribution were published by the American Bankers Association and Anderson-Davis and Associates.[43]

In 1982, the courts began increasingly to recognize that actionable sexual harassment included not only actions in which a supervisor demands sexual consideration in exchange for job benefits (quid pro quo) but also harassment that creates an offensive environment (condition of work). The Bundy v. Jackson case, cited earlier, was the seminal offensive environment sexual harassment case. Since then, Circuit Courts have been split on whether "respondeat superior" (the supervisor knew or should have known of the harassment) or strict liability should apply in offensive environment cases.

A Harvard Law Review article in 1984 and a Washburn Law Journal article in 1985 addressed this issue of liability and recommended that Title VII should be amended by Congress to allow for comprehensive remedies, including compensatory damages tailored to injuries suffered. In addition, the authors stated that the courts should adopt clear standards defining abusive environmental sexual harassment.[44]

Lynn Rubinett in a pre Meritor 1986 article in the Journal of Law and Inequality took the recommendations a step further. She argued that the courts must understand that abuse of power is at the heart of sexual harassment and that the following matters should be considered in weighing such abuse: 1) the harasser's position in the workplace, economically and personally; 2) the victim's status and history at work; 3) the treatment of women workers generally at that workplace; and 4) the history and policies regarding all types of employee grievances in the workplace.[45]

The fact that Title VII does not provide compensatory damages has been of concern to many in the legal community. This concern was expressed in detail in 1986 by K. J. Schoenheider in a University of Pennsylvania Law Review article which presented a theory of tort liability for sexual harassment in the work place.[46] Her recommendation, like that of the two articles cited previously, was that statutory reform is needed to solve the problem.

A somewhat different concern was expressed when W. B. Nelson presented an argument in the Arbitration Journal in 1985 for having arbitrators settle sexual harassment cases.[47] He discussed several studies which showed that arbitrators decided cases using the same criteria and coming to the same conclusions as judges. Because arbitration offers a speedier resolution to the problem, he argued that arbitration deserves a much larger role than it now occupies.

Shortly before the Supreme Court was to hear the Meritor case, an article appeared in the Iowa Law Review discussing the "consent" defense.[48] The article concluded by saying that, while each case must be judged on its individual facts, "when coercion is present the supposition that harassment victims have welcomed conduct because they fail to complain or that they in some way engaged in the conduct, is an inaccurate gauge of a victim's willingness."[49]

On June 19, 1986, the Supreme Court of the United States issued its landmark decision in Meritor Savings Bank, FSB v. Vinson, a case which came to it from the District of Columbia Court of Appeals. In deciding this case, the Supreme Court declared that both "quid pro quo" sexual harassment and "hostile environment" sexual harassment are prohibited forms of sex discrimination. In addition, the Court focused on whether conduct of a sexual nature was "unwelcome" in defining whether the conduct

constituted sexual harassment. This was an important concept because it was chosen instead of the concept of "voluntariness" as the litmus test of sexual harassment. In making this choice, the Supreme Court recognized that a woman may be the victim of sexual harassment even though she may have voluntarily participated in acts of a sexual nature and was not forced.

The Court also ruled that merely having a policy against sexual harassment was not enough to protect against a company against a sexual harassment charge. In an article discussing the Meritor Case, D. S. Bradshaw suggested that the "key is to have a policy and a set of procedures that allow victims of sexual harassment to complain to appropriate employer officials about the conduct they have been subjected to."[50]

Although the Supreme Court issued rulings on the matters discussed above, it did not choose to resolve the subject of liability. As a result, numerous articles have been written in an attempt to interpret the liability issue, based upon the Meritor decision. An article in the Employee Relation Journal presented a summary of the Court's references to employer liability:

> -Title VII's application is not limited to economic loss.
>
> -"Minor" sexual harassment does not constitute a violation of Title VII. Rather, the harassment must be sufficiently severe or pervasive to alter

the conditions of the victim's employment and create an abusive working environment.

-"Voluntariness" does not shield the employer from liability.

-While the Court declined to issue a rule on employer liability for supervisory acts, the Court did note that Congress intended agency rules to apply to the determination of liability and that the employer is not always liable for acts of supervisors.[51]

Another article which focused on employer liability appeared in the April 1987 issue of the Illinois Bar Journal.[52] As in the previous article and those appearing in recent issues of The Journal of Contemporary Law, The Law Journal and Trial Magazine, all writers warn that sexual harassment cases will be on the increase and that employers have a great need to protect themselves by having policies, effective grievance systems, and a program designed to educate their employees.[53]

A succinct review of the Supreme Court Meritor decision was prepared for arbitrators in a December 1986 article.[54] These authors pointed out that, according to the rationale in Meritor, arbitrators must consider: the conduct of the grievant, the "severity" or "pervasiveness" as well as the "unwelcomeness" of the sexual harassment, and, since the Court seems to have backed away from strict liability, the minimum and maximum actions the employer may take. Arbitrators appear to be preparing for their role in deciding sexual harassment cases.

In summary, prior to the Meritor decision, legal researchers wrote of the growing sexual harassment law. This grew out of Title VII, albeit slowly, was reinforced by the EEOC Guidelines in 1980, was developed by the Federal District and Circuit Courts led by the District of Columbia Court of Appeals and was confirmed for the most part by the Supreme Court's Meritor decision in 1986. The one major area left open for further development was that of the liability for sexual harassment charges of the employer. It is this area that has received the most attention in the literature since the Meritor decision and will continue to cause legal minds to speculate until a more definitive Supreme Court decision is handed down.

Academia

The publicity which attended the case of Alexander v. Yale University, 459 F. Supp., D. Conn. (1977), caused campus communities across the country to recognize that they must deal with the sexual harassment issue. This case, the first filed under Title IX and the first to address faculty-student harassment, was ultimately dismissed by the U. S. Court of Appeals (2nd Circuit) which held that the student had failed to prove her case and that Yale had addressed her main concern which was for Yale to establish a sexual harassment grievance procedure.[55]

The ruling of significance which resulted from the case of Alexander v. Yale University was that the District Court

decision maintained that, if sexual harassment does occur, it may constitute sex discrimination prohibited under Title IX. The ruling stated:

> It is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment.[56]

Some universities, such as the University of Washington, the University of Louisville and Tulane University, reacted by developing policies which they shared with other academic institutions in 1979 when the American Council on Education held a series of national seminars on sexual harassment policies. These pioneering institutions were quickly joined by many others when the EEOC Guidelines were published in 1980.

In 1981, the College and University Personnel Association produced a seventy-two page document designed to help their members understand the EEOC guidelines and the case law as well as to offer suggestions for developing policies and procedures.[57] Linda Koch Lorimer, Associate General Counsel of Yale University, prepared a paper entitled "Sexual Harassment: Overview of the Law" which received wide distribution the same year.[58]

One year later, another attorney, Estelle A. Fishbein, General Counsel for Johns Hopkins University produced a

twelve page document entitled "Sexual Harassment: Practical Guidance for Handling a New Issue on Campus."[59] This article was subsequently distributed by the National Association of College and University Attorneys who, due to its popularity, had to reprint it in booklet form.

The interest of academic institutions in the topic of sexual harassment and the law in higher education can be further illustrated by the appearance of two annotated bibliographies in 1982. The University of Wisconsin Centers produced an annotated guide for mediators and other interested person which included articles, books, films and support groups.[60] Phyllis M. Crocker's annotated bibliography on "Sexual Harassment in Education" was published by the Women's Rights Law Reporter.[61]

In 1984, two texts were published which made detailed references to the legal responsibilities of institutions of higher education regarding the problem of sexual harassment. The Dziech and Weiner text, introduced previously, provides anecdotal discussions of the variety of forms that sexual harassment may take on campus. In the ASHE-ERIC Research Report on sex discrimination law in higher education, a section is devoted to sexual harassment and the law on campus.[62]

The U. S. Supreme Court's Meritor Savings Bank v. Vinson decision in June of 1986 provoked new interest in

sexual harassment law at the college and university level. Less than one month after the ruling, two university attorneys spoke at the annual conference of the National Association of College and University Attorneys as to the means by which colleges could protect themselves against harassment suits.[63]

Shortly thereafter, the College and University Personnel Association, which had produced a seventy-two page document on sexual harassment in 1981 (discussed previously), issued a thirty-nine page sequel with one chapter devoted to an update in the law since Meritor.[64] Of particular interest to this investigation is the introduction, in this sequel, of a discussion of relationships between students and faculty. The CUPA article cited the now famous letter to the faculty, dated April 1983, written by Dean Henry Rosovsky of Harvard as the reason behind the new interest in teacher-student relationships. It does not mention the Meritor ruling that "voluntariness" will not serve as an employer's defense in sexual harassment cases as a possible reason for the increased concern. In Rosovsky's letter, the Dean made clear that there are appropriate and inappropriate relationships between students and faculty members and that "amorous" relationships are wrong.

In support of their statement that many institutions have taken action regarding teacher-student relationships,

the CUPA authors provide a paragraph from the University of Minnesota's policy as an example:

> Consenting romantic and sexual relationships between faculty and student, or between supervisor and employee, while not expressly forbidden, are generally deemed very unwise. Codes of ethics for most professional associations forbid professional-client sexual relationships. In the view of the Senate, the professor-student relationship is one of professional and client...[65]

The authors go on to explain that institutions balance their policies by placing teacher-student sexual relations into policies on professional conduct and maintain a statement on academic freedom by indicating that "sexual harassment and intimidation are inconsistent and inimical to the exercise of that academic freedom."

Finally, Elsa Kircher Cole, one of the two attorneys who spoke at the NACUA convention discussed previously, wrote an article for the Winter 1986 issue of the Journal of College and University Law entitled "Recent Developments in Sexual Harassment."[66] In addition to discussing the Meritor decision, Cole presented information dealing with damages recoverable, actionable conduct, adequacy of corrective action, alternative theories used to recover damages, the effect of State Worker's Compensation Statutes, the adequacy of damages received and sexual harassment as grounds for discipline in academic cases. Like all employers, universities are concerned and interested in all the aspects of sexual harassment law.

In sum, academic institutions became aware of their need for concern regarding sexual harassment with the publicity of the Alexander v. Yale University case in the late 1970's. The EEOC Guidelines in 1980 prompted most colleges to develop policies and procedures. The Meritor case in 1986 seems to have created a renewed interest in sexual harassment policies and procedures and a relatively new interest in the ethics of teacher-student sexual relations.

SUMMARY

Numerous surveys of the extent of sexual harassment in the world of work and on the college campus have reported that 20 to 30 percent of the members of both of those groups have said they have experienced sexual harassment. While the surveys were varied in terms of numbers, representativeness and the definition of sexual harassment, the results were so similar that there can be little doubt that both the academic and professional communities have a sexual harassment problem.

Studies of sexual harassment have examined the feelings of the victims, third party perceptions of the harassment and the motivation behind the harassment. Overall findings indicate that women tended to be more sympathetic to victims and to believe the harassing conduct more harmful than men. Judgments by third parties were found to vary, based upon

the individual circumstances of each case. It seems that, with more awareness, sexual harassment has been viewed increasingly negatively.

Legal research prior to the United States Supreme Court's decision in 1986 in the case of Meritor Savings Bank v. Vinson was speculative and based upon the growing number of decisions at the District and Circuit Court level. The issuance of the EEOC guidelines in 1980 provoked interpretive articles. After the Meritor decision, articles have primarily dealt with the unresolved issue of liability, an item of great concern to employers inside and outside of academia.

Materials written about sexual harassment have evolved from the early writings which were argumentative and speculative in nature to those since the 1986 Supreme Court decision which seem to be largely interpretive and advisory. The problem of sexual harassment, while far from being resolved, has moved in the last ten years from being an issue of concern primarily to small groups of feminist women to an issue of considerable concern to almost all employers and academic administrators in the United States.

NOTES

[1] Lin Farley, Sexual Shakedown; the Sexual Harassment of Women on the Job (New York: McGraw-Hill Book Co., 1978), xi-xiii.

[2] Catharine A. MacKinnon, Sexual Harassment of Working Women (New Haven: Yale University Press, 1979).

[3] Ibid, 26.

[4] Claire Safran, "What Men Do to Women on the Job," Redbook (November 1976): 6.

[5] M. Kelber, "Sexual Harassment....The U. N.'s Dirty Little Secret, Ms. (November 1977), 51.

[6] House of Representatives Committee on Post Office and Civil Service, Sexual Harassment in the Federal Government. (April 1980).

[7] Valencia L. Campbell, "Social Structure and Sexually Harassing Behavior", DAI 46 (1984): 1104; Freada R. Klein, "Sexual Harassment in Federal Employment: Factors Affecting its Incidence, Severity, Duration and Relationship to Productivity," DAI 45 (1984): 3766; and Joy A. Livingston, "A Theory of the Sexual Harassment Dynamic in the Workplace: Resources, Actions and Outcomes," DAI 43 (1982): 1661.

[8] E. Collins and T. Blodgett, "Sexual Harassment....Some See It....Some Won't," Harvard Business Review (March-April 1981): 76-95.

[9] B. A. Gutek, B. Morasch and A. G. Cohen, "Interpreting Social-Sexual Behavior in a Work Setting," Journal of Vocational Behavior 22 (1983): 30-48.

[10] Chris Roggerson, District Director of EEOC, San Francisco (1985).

[11] Billie Wright Dziech and Linda Weiner, The Lecherous Professor: Sexual Harassment on Campus (Boston: Beacon Press, 1984), 12.

[12] Ibid, 13-14.

[13] K. S. Pope, H. Levenson, and L. R. Schover, "Sexual Intimacy in Psychology Training: Results and Implications of a National Survey," American Psychologist 34 (1979): 682-89.

[14] Robert D. Glaser and Joseph S. Thorpe, "Unethical Intimacy; A Survey of Sexual Contact and Advances Between Psychology Educators and Female Graduate Students," American Psychologist 41 (1986): 43-51.

[15] Robin L. Whitmore, Sexual Harassment at U. C. Davis, University of California, Davis: Women's Resources and Research Center, n. d.

[16] Michael P. Johnson and Susan Shuman, "Sexual Harassment of Students at the Pennsylvania State University," September 1983.

[17] "Report of the Committee to Survey Harassment at the University of Pennsylvania," Penn State Almanac Supplement, (September 24, 1985): iii.

[18] Ibid, v.

[19] Claire Robertson, Constance Dyer and D'Ann Campbell, "Report on Survey of Sexual Harassment Policies and Procedures," Indiana University, Bloomington: Office for Women's Affairs, (September 1985).

[20] Ibid, 17.

[21] Robert E. Quinn, "Coping With Cupid: The Formation, Impact, and Management of Romantic Relationships in Organizations," Administrative Science Quarterly 22 (March 1977): 30-45.

[22] Ibid, 44.

[23] G. N. Powell, "Definition of Sexual Harassment and Sexual Attention Experienced," The Journal of Psychology, (1983) 113-117; B. Schneider, "Consciousness About Sexual Harassment Among Heterosexual and Lesbian Workers," Journal of Social Issues 38 (April 1982): 75-98.

[24] S. L. Littler-Bishop, D. Seidler-Feller and R. E. Opaluch, "Sexual Harassment in the Workplace as a Function of Initiator's Status: The Case of Airline Personnel," Journal of Social Issues 38 (April 1982): 137-148.

[25] B. A. Gutek et al: 30-48.

[26] I. W. Jensen and B. A. Gutek, "Attributions and Assignment of Responsibility in Sexual Harassment," Journal of Social Issues 38 (April 1982): 121-136.

[27] Laura M. Milner, Factors Influencing the Perception of Sexual Harassment, Ph. D. Diss., University of Missouri, Saint Louis, 1985 (Ann Arbor: UMI, 1985).

[28] S. S. Tangri, M. R. Burt and L. B. Johnson, "Sexual Harassment at Work: Two Explanatory Models," Journal of Social Issues 38 (1982): 33-54.

[29] D. A. Thomann, The Utility of a Legal Model of Attributions of Responsibility for Sexual Harassment Grievances, Ph. D. Diss., Saint Louis University, 1985 (Ann Arbor: UMI,1985), pp. 109-110, 120.

[30] D. S. Benson and G. E. Thomason, "Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratification," Social Problems 29 (March 1982): 236-251.

[31] T. Reilly, S. Carpenter, V. Dull and K. Bartlett, "The Factorial Survey Technique: An Approach to Defining Sexual Harassment on Campus," Journal of Social Issues 38 (1982): 99-110.

[32] E. Weber-Burdin and P. H. Rossi, "Defining Sexual Harassment on Campus: A Replication and Extension," Journal of Social Issues, 38 (1982): 111-120.

[33] D. A. Thomann, 1-144.

[34] Ibid, 2.

[35] Martin F. Sherman and Robert Smith, Was She Really Sexually Harassed? The Effect of a Victim's Age and the Job Status of the Initiator. (ERIC, ED 248 743, 1983), 16.

[36] Natalie J. Malovich, Sexual Harassment on Campus: A Study of Students' Attitudes and Beliefs, Ph. D. Diss., University of Missouri-Saint Louis, 1985 (Ann Arbor: UMI, 1985).

[37] Ibid.

[38] MacKinnon, 223.

[39] Joan Abramson, Old Boys, New Women; the Politics of Sex Discrimination, New York: Praeger, 1979, 166-175.

[40] Garber v.Saxon Business Products, inc., 552 F. 2d 1032 (4th Cir. 1977); and Tomkins v. Public Service Electric and Gas Co., 16 FEP Cases 22 (3rd Cir. 1977).

[41] U. S. Merit Systems Protection Board, Sexual Harassment in the Federal Workplace; Is it a Problem? Washington, D. C., 1981.

[42] Bureau of National Affairs,"Sexual Harassment Seen Affecting Productivity in Federal Workplace," Government Employee Relations Report, November 19, 1979.

[43] Anderson-Davis and Associates, "Sexual Harassment Facts vs. Myths; Employer's Legal Responsibilities and financial Liabilities," San Francisco, 1982; and American Bankers Association, "Sexual Harassment: The Issues and the Law," Washington, D. C., 1982.

[44] Note, "Sexual Harassment Claims of Abusive Work Environment Under Title VII," Harvard Law Review 97 (April 1984): 1467; and Matthew C. Hesse and Lester J. Hubble, "The Dehumanizing Puzzle of Sexual Harassment: A Survey of the Law Concerning Harassment of Women in the Workplace," Washburn Law Journal 24(1985): 614.

[45] Lynn Rubinett, "Sexual Economics: The Tie that Binds; Judicial Approaches to Sexual Harassment as a Title VII Violation," Journal of Law and Inequality 4 (1986): 290.

[46] Krista J. Schoenheider, "A Theory of Tort Liability for Sexual Harassment in the Workplace," University of Pennsylvania Law Review 134 (July 1986): 1461-1495.

[47] W. B. Nelson, "Sexual Harassment, Title VII and Labor Arbitration," Arbitration Journal 40 (December 1985): 55-56.

[48] Mary Jo Shaney, "Perceptions of Harm: The Consent Defense in Sexual Harassment Cases," Iowa Law Review 71 (May 1986): 1109-1135.

[49] Shaney, 1135.

[50] David S. Bradshaw, "Sexual Harassment: Confronting the Troublesome Issues," Personnel Administrator 32, (January 1987): 52.

[51] Susan Oglebay and Sue Ella Kobak, "Predicting Employer Liability for Sexual Harassment," Employer Relations Journal 12 (Winter 1986): 415.

[52] George L. Lenard, "Employer Liability for Sexual Harassment," Illinois Bar Journal 75 (April 1987): 430-435.

[53] Janie Kennevick, "The Significance of the Vinson Decision on Corporate Employees," Journal of Contemporary Law 12 (Winter 1986): 163-176.

[54] Jonathan S. Monat and Angel Gomez, "Sexual Harassment: The Impact of Meritor Savings Bank v. Vinson on Grievances and Arbitration Decisions," The Arbitration Journal 41 (December 1986): 24-29.

[55] Alexander v. Yale University, 459 F. Supp., D. Conn. (1977), reversed by Alexander v. Yale University, Civil Action No. 177-277, D. Conn. (July 2, 1979) and affirmed No. 79-7547, 2nd Cir. (September 22, 1980).

[56] Ibid.

[57] Nancy H. Deane and Darrel L. Tillar, "Sexual Harassment: An Employment Issue," Washington, D. C.: College and University Personnel Association, 1981.

[58] Linda Koch Lorimer, "Sexual Harassment: Overview of the Law," Yale University, February 1981.

[59] Estelle A. Fishbein, "Sexual Harassment: Practical Guidance for Handling a New Issue on Campus," Special Pamphlet, West's Education Law Reporter, September 23, 1982.

[60] University of Wisconsin Affirmative Action Office, "An Annotated Guide to Materials on Sexual Harassment," University of Wisconsin Centers, June 1982.

[61] Phyliss L. Crocker, "Annotated Bibliography on Sexual Harassment in Education," Women's Rights Law Reporter, Rutgers Law School, 7, No. 2 (Winter 1982).

[62] J. Ralph Lindgren, Patti T. Ota, Perry A. Zirkel and Nan Van Gieson, Sex Discrimination Law in Higher Education: The Lesson of the Past Decade, ASHE-ERIC Higher Education Research Reports, No. 4 (Washington, D. C.: Association for the Study of Higher Education, 1984).

[63] "Colleges Can Protect Themselves Against Harassment Suits," Equal Opportunity in Higher Education (July 3, 1986): 8.

[64] Nancy H. Deane, et al, Sexual Harassment: Issues and Answers (Washington, D. C.: College and University Personnel Association, 1986).

[65] Deane, 2.

[66] Elsa Kircher Cole, "Recent Legal Developments in Sexual Harassment," Journal of College and University Law, 13 1986): 267-284.

CHAPTER III

METHODOLOGY

This chapter includes a description of the population and the sampling technique which was used to obtain the policies. Data gathering procedures and the methods of analyses are explained.

This study involves two sets of data--court decisions regarding sexual harassment claims and university and college sexual harassment policies which specifically discuss teacher/administrator-student relationships. These two sets of data were analyzed as follows: first, the court decisions were analyzed for their legal findings and second, the policies were reviewed based upon the results of the legal analysis. Finally, on the basis of results of the analysis of the policies, differences between policies were assessed utilizing a statistical technique.

POPULATION AND SAMPLE OF POLICIES

The population to whom this study may be generalized includes all four year and advanced study institutions of higher education in the United States. For purposes of this study, two groups were sampled to obtain sexual harassment policies which dealt with teacher/administrator-student relationships: doctoral-level institutions and baccalaureate colleges.

It must be acknowledged that sexual harassment policies specifically discussing teacher/administrator-student sexual relationships are a relatively recent development. Therefore, there is not an abundance of them. A review of the recent literature on the subject identifies several institutions which have adopted such policies.[1] Because the institutions identified in this review were doctoral-level institutions, doctoral institutions were chosen as one of the two groups to be sampled. The other group sampled, baccalaureate colleges, was chosen because these institutions comprise the largest group of four-year collegiate institutions in the United States, are smaller in student population and are often privately funded.

The institutions sampled for this study were selected from the National Center for Educational Statistics' (NCES) classification structure for institutions of higher education. It should be noted that the NCES used six institutional levels of classification from 1981 to 1984. The levels were identified as: doctoral-level, comprehensive institutions, general baccalaureate institutions, specialized institutions, two-year institutions and institutions newly admitted to HEGIS. Currently, the NCES has reverted to its pre-1981 system of three broad categories.[2] Because this study examined the more defined categories of "doctoral-level" and "general baccalaureate institutions", the 1983-1984 directory was utilized.

The 1983-1984 Education Directory of Colleges and Universities published by the Office of Educational Research and Improvement of NCES lists 171 institutions in doctoral-level category. The NCES describes such institutions as follows:

> Doctoral-level Institutions--These are institutions characterized by a significant level and breadth of activity in and commitment to doctoral-level education as measured by the number of doctorate recipients and the diversity in doctoral-level program offerings. Included in this category are institutions that are not considered specialized schools and that grant a minimum of 30 doctoral-level degrees. These degrees must be granted in three or more doctoral-level program areas or, alternatively, have an interdisciplinary program at the doctoral level. Included in the counts of doctoral degrees for classification purposes are the following first-professional degrees: M.D., D.D.S, D.O., and D.V.M. All of these are in a single program area, health professions. One other type of institution is also classified as doctoral: any institution that meets all other criteria for being so classified, except for the number of doctorates, and grants only doctorates, is classified as doctoral-level.

The other group which was sampled is labeled "General Baccalaureate Institutions" by the NCES. This group, utilized by the American Association of University Professors in its "Annual Report on the Economic Status of the Profession" in 1983-1984 listed 571 institutions.[3] The NCES has characterized this group as follows:

> General Baccalaureate Institutions--These institutions are characterized by their primary emphasis on general undergraduate, baccalaureate-level education. They are not significantly engaged in postbaccalaureate education. Included are institutions not considered as specialized and

> those in which the number of postbaccalaureate degrees granted is less than 30 or in which fewer than 3 postbaccalaureate level programs are offered and which either (a) grant baccalaureate degrees in 3 or more program areas, or (b) offer a baccalaureate program in interdisciplinary studies.

This sampling of both universities and baccalaureate colleges not only served to provide policies for examination but was a means of determining whether universities were, in fact, pioneers in developing sexual harassment policies which specifically address teacher/administrator-student relationships. Using a table for determination of sample size from a given population which was developed by the research division of the National Education Association, a random sample was drawn. Out of a total of 171, 118 doctoral-level institutions were surveyed and out of a total of 571, 230 baccalaureate colleges. This table allows for generalization at the 95 percent level of confidence.[4]

DATA GATHERING PROCEDURES

Data from Court Decisions

In conducting this study, the first set of data to be collected were the pertinent sexual harassment court cases. According to G. J. Mouly in his text, Educational Research: The Art and Science of Investigation:

> Legal research is subject to the same general requirements as other forms of research. The task is to summarize pertinent statistics, to trace further legal developments through related court decisions, and finally to analyze the decisions in the light of the problem under investigation. The last step is the writing of

the report to convey legal information to people who are not themselves legally trained.[5]

The appropriate case law was gathered by using three legal research systems:

1. The National Reporter System, published by West Publishing Company, was a primary means of identifying relevant cases. In this service, the full text of the decisions of the courts are provided. The editors prepare headnotes which are then key-numbered to the American Digest classification system.
2. Shepard's Citations was used to determine whether any reported cases (cited decisions) were used by subsequent courts in deciding cases. This is was an especially important means of determining if a ruling had been reversed or overruled. In addition, this system served as a means of determining whether a case had been followed, distinguished, limited or questioned by subsequent courts. It was thus, a vital means of determining the present value of a given case.
3. Employment Practice Decisions published by the Commerce Clearing House was utilized as an additional means of identifying relevant cases. This service provides a full text report of decisions rendered by federal and state courts

throughout the United States on federal and state employment practices problems.

Data from Sample of Higher Education Institutions

In order to obtain sexual harassment policies that discuss teacher/administrator-student relationships, a letter was written to the Equal Opportunity Officer and/or Personal Director at the 118 doctoral-level institutions and 230 baccalaureate colleges selected in the random sample. The EEO officer was asked whether his or her institution has a policy or code of ethics which deals with sexual relationships between teacher/administrators and students. If the answer was "yes", a copy was requested. The importance of a response, even if negative, was emphasized.

DATA ANALYSIS

The analysis used in this dissertation involved a legal analysis of cases on the subject of sexual harassment utilizing a framework developed by the author, (see Appendix 1) and an application of the results of that analysis to university sexual harassment policies which deal with teacher/administrator-student relationships.

Legal Analysis

The framework for the legal analysis was designed so that the researcher could examine the basic nature of the case (quid pro quo v. hostile or offensive environment) and the level of the ruling (state supreme court through federal supreme court) with the judges' rulings on factors which

include: the totality of the circumstances, harm, liability, remedies and the legal principles involved. Only cases which were currently valid (not overruled or reversed) were examined.

Because the Supreme Court's 1986 Meritor Savings Bank v. Vinson decision ruled that sex discrimination is a form of sex discrimination for which employers can be held responsible, cases which address this or other issues settled by Meritor were not examined. However, because Meritor did not specifically define when an employer is or isn't liable, cases before Meritor which discuss liability were examined.

Terms and abbreviations which are utilized in the framework for legal analysis and which need definition or explanation are found in Appendix 2.

Policy Analysis

Once the legal analysis was completed, the sexual harassment policies which dealt with teacher/administrator-student sexual relationships of institutions selected in the random sample of doctoral institutions and baccalaureate colleges were evaluated in light of the court rulings. The format for this evaluation is presented in Appendix 3. All categories were examined and, where appropriate, were rated as inadequate (no mention of a circumstance considered by the courts), adequate (circumstance is mentioned but not discussed) and strong (circumstance is mentioned and

discussed thoroughly). An overall rating of each policy as weak, adequate or strong was based upon the individual category analysis.

Statistical Technique

Finally, the results of the evaluation of the policies were tested to determine whether the policies of the doctoral-level institutions and baccalaureate colleges differed in strength on the rateable categories and on the overall ratings. These determinations were made with chi-square tests of difference in proportions.

The chi-square test is based on a crosstabulation of two variables. The cell frequencies which would be expected if no relationship were present are computed, based on the row and column totals. The expected cell frequencies then are compared to the observed frequencies. The formula is:

$$X^2 = \sum_i \frac{(f_o^i - f_e^i)^2}{f_e^i}$$

where: f_o^i is the observed frequency

f_e^i is the expected frequency

The greater the discrepancy between the observed and expected frequencies, the larger the value derived for chi-square. A large chi-square value implies a systematic

relationship between the variables. A small chi-square indicates statistical independence.[6]

SUMMARY

The population to whom this study may be generalized includes all four-year and advanced study institutions of higher education in the United States. Two groups were sampled to obtain sexual harassment policies which deal with teacher/administrator-student relationships: doctoral-level institutions and baccalaureate colleges.

The methodology of this dissertation is sequential in nature. First, pertinent court cases at the state supreme court level and higher were examined to determine what legal factors and principles have been applied in making decisions in sexual harassment cases. Next, using sexual harassment policies which discuss teacher/administrator-student relationships drawn from a sample of doctoral and baccalaureate institutions, policies were analyzed for differing strengths based upon the legal analysis. Finally, a statistical technique was undertaken to examine the strengths of the various policies in relation to the two groups, doctoral and baccalaureate, in the sample. The statistical test which was conducted served as a means of determining the probability that the results obtained by the analysis of the policies of the institutions in the sample

could be generalized to the population of schools from which they were drawn.

NOTES

[1] Liz McMillen, "Many Colleges Taking a New Look at Policies on Sexual Harassment," The Chronicle of Higher Education 17 (Dec. 1986): 1,16; Nancy H. Deane, et al, Sexual Harassment: Issues and Answers (Washington, D. C.: College and University Personnel Association, 1986).

[2] Rosa Fernandez, United States Department of Education, Letter to Author, April 27, 1987.

[3] "The Annual Report on the Economic Status of Profession 1983-1984," Academe (July-August 1984): 1-64

[4] "Small-Sample Techniques," The NEA Research Bulletin 38 (December, 1960): 99.

[5] G. J. Mouly, Educational Research: The Art and Science of Investigation (Boston: Allyn and Bacon, 1977): 173.

[6] W. Mendenhall, Introduction to Probability and Statistics (Belmont,CA.: Wadsworth Publishing Company, Inc., 1979).

CHAPTER IV

ANALYSIS OF THE DATA

This chapter presents the results of the legal analysis, the policy analysis and the statistical study. The four questions are presented in their sequential order. The chapter concludes with the results of the investigation of the hypothesis.

QUESTION NUMBER ONE

"What legal factors and principles have been applied in sexual harassment decisions?"

An analysis of the legal factors and principles which have been applied in sexual harassment court decisions must begin with the findings of the United States Supreme Court in the case of Meritor Savings Bank, FSB v. Vinson 106 S. Ct. 2399 (1986), the only sexual harassment case heard by the Highest Court thus far. The syllabus prepared by the Supreme Court's Reporter of Decisions provides the following headnotes:

1. A claim of "hostile environment" sexual harassment is a form of sex discrimination that is actionable under Title VII.
    a. The language of Title VII is not limited to "economic" or "tangible" discrimination. EEOC guidelines fully support the view that sexual

harassment leading to non-economic injury can violate Title VII.

b. The "voluntariness" of the respondent's participation in the claimed sexual episode does not dispose of the "hostile environment" claim. The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her participation in them was voluntary.

c. While "voluntariness" in the sense of consent is no defense in sexual harassment claim, it does not follow that evidence as to sexually provocative speech and dress is irrelevant as a matter of law in determining whether the complainant found particular sexual advances unwelcome.

2. Employers are not always automatically liable for sexual harassment by their supervisors. While common-law agency principles may not be transferable in all their particulars to Title VII, Congress' decision to define "employer" to include any "agent" of an employer evinces an intent to place some limits on the acts of employees for which employers under Title VII are to be held responsible. The mere existence of a grievance procedure, a policy against discrimination and

> respondent's failure to invoke the procedure, does not necessarily insulate the employer from liability.[1]

In summary, the Meritor decision provided some factors which courts will henceforth follow in deciding sexual harassment cases: both requests for sexual favors in exchange for job benefits (quid pro quo) and a hostile or offensive environment are forms of sex discrimination under Title VII, the "voluntariness" of the complainant does not protect the employer, nor does having a sexual harassment policy and a grievance procedure. The "character" of the complainant is used as admissible evidence to determine "unwelcomeness" and, although liability is not always strict, the broad delegation of responsibility to supervisory employees is likely to cause employers to be liable in the event of a sexual complaint against the supervisor.

The principles decided by the Supreme Court in Meritor do not cover the range of factors that arise in sexual harassment cases and, in the case of liability, do not even attempt to be definitive. Therefore, a legal analysis must go beyond this case and examine those cases that have preceded and followed it in the federal courts.

The results of the legal analysis in this dissertation are based upon both a reading and a descriptive analysis, utilizing the framework in Appendix 1, of sixty-seven sexual

harassment cases, fifty decided before Meritor and seventeen after. The findings of this legal analysis are presented in two sections, those in general and those pertaining particularly to academia. The general findings section is organized according to the five headings of the framework for analysis: Factors Which Make Up the Totality of the Circumstances, Harm, Liability of Employer, Remedies and Legal Principles.

General

Factors Which Make Up the Totality of the Circumstances

The Meritor analysis, like those which preceded and followed it, emphasized the importance of a consideration of the totality of the circumstances in sexual harassment cases. An examination of the framework results indicated that the thirteen factors listed under the totality of the circumstances were reviewed by the courts in three broader categories as follows:

1. Extent of sexual harassment (Was it severe and pervasive?)
   -Nature of conduct
   -Frequency and duration
   -Effect on work performance
2. Credibility (Which side is believable?)
   -Character of complainant and accused
   -Unwelcomeness

3. Liability (Was the employer liable?)

-Relationship of complainant and accused

-Notice given

-Constructive knowledge

-Past violations of employer

-Authority delegated to supervisory employees

-Action of employer upon notification

-Sexual harassment policy in place

-Grievance procedure in place

Additional confirmation of this grouping by the courts was presented in a review of the impact of Meritor by Monat and Gomez which stated that:

> The Court addressed in Vinson three basic issues common to almost all sexual harassment cases: (1) credibility (whose version of the facts to believe); (2) degree (how much sex-related conduct will be tolerated); and (3) employer responsibility (what employer actions are necessary and appropriate).[2]

The Totality of the Circumstances section of this analysis presents the legal factors and principles which were decided in these three areas in the following order: extent, credibility and liability.

A determination of the extent of the sexual harassment is essential in determining whether an offensive environment case has merit. It is not requisite to a quid pro quo case (one in which a supervisor demands sexual consideration in exchange for job benefits) where a single incident is now

considered sufficient to sustain a charge against an employer.[3]

In the Meritor decision, the Supreme Court agreed with Rogers v. EEOC, 454 F. 2d 234 (CA 5 1971) and Henson v. Dundee, 682 F. 2D 897 (11th Cir. 1982), in finding that not all workplace conduct may be described as "harassment" which affects a "term, condition or privilege" of employment within the meaning of Title VII. The court ruled that "for sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."

What constitutes "severe or pervasive"? A substantial body of state supreme court, federal court and EEOC decisions pertaining to "offensive environment" sexual harassment provides guidance in determination of whether sexual harassment is actionable. The Washington State Supreme Court in deciding Glasgow v. Georgia Pacific, 639 P. 2d (Wash. 1985), cited Barrett v. Omaha National Bank, Katz v. Dole, Henson v. Dundee, and Bundy v. Jackson when it presented a discussion of each of the elements that must be proven in an offensive environment case. The court in Glasgow v. Georgia Pacific stated that in a determination of whether the harassment affected the terms and conditions of employment, the following elements are to be considered:

> Casual, isolated or trivial manifestations of a discriminatory environment do not effect the

> terms or conditions of employment to a significant degree to violate the law. The harassment must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. Whether the harassment at the workplace is sufficiently severe and persistent to seriously effect the emotional or psychological well being of an employee is a question to be determined with regard to the totality of the circumstances.

Cases of offensive environment may range from unwelcome sexual advances to suggestive language. In many cases, Title VII violations have been found where employees were subjected to unwelcome physical contact amounting to sexual advances.[4] EEOC guidelines also refer to "other verbal or physical conduct of a sexual nature." Because of the number of cases, which involve no physical contact at all, one is lead to the conclusion that words alone, if considered by the courts to be severe and pervasive as well as psychologically debilitating, may be sufficient basis for a sexual harassment claim.[5]

A determination of "severe and pervasive" clearly rests upon the nature of the conduct, the frequency and duration of the conduct and the effect of the conduct on work performance. Three cases decided since Meritor offer insight into the reasoning in recent court decisions. In all three, the ruling was that the harassment was not severe and pervasive.

The case of Volk v. Coler, 638 F. Supp. 1555 (C. D. Ill. 1986), the U. S. District Court examined previous decisions and found that acts of harassment cannot be

isolated or sporadic nor can they be merely a part of a casual conversation. Instead, this court concluded that a Title VII violation for sexual harassment requires more than occasional foul language or gestures directed at an employee. The court wrote:

> Unfortunately, human nature being what it is, this kind of conduct will, on occasion, occur. While such conduct is certainly to be discouraged, every instance of bad judgment on the part of a supervisor does not constitute a Title VII violation.
>
> Nonetheless, when the conduct reaches the point to where an employee is continually subjected to demeaning and offensive language before his colleagues by a supervisor "such activity necessarily has the effect of altering the conditions of his employment within the meaning of Title VII." Weiss v. United States, 595 F. Supp. 1050, 1056 (E. D. Va. 1984).

In the Volk case, the court ruled that the offensive language was "occasional" misconduct and, while such conduct was unprofessional, it was not serious enough to satisfy the legal standard under Title VII. More specifically, four witnesses testified to the sexual harassment in this case and eleven denied any knowledge of it. Most significantly, according to the court, no complaints were ever made to the authorities.

In a case decided in the Fall of 1986, Highlander v. K. F. C. National Management Co., 805 F. 2d 644 (6th Cir. 1986), the court affirmed the reasonable person's perspective that it had adopted in a few months earlier in Rabidue v. Osceola Refining Co., 805 F. 2d 611 (6th Cir. 1986). That is,

the court stated that the plaintiff must satisfy the burden of proving that the defendant's conduct would have interfered with the work performance of a reasonable individual and would have affected seriously the psychological well being of that reasonable employee.

In Highlander, the court ruled that the terminated female employee failed to establish an unlawful sexually hostile work environment because she had stated that she did not think alleged advances of the training manager were "that big a deal," she had failed to report her supervisor's harassment for three months and her husband had characterized the supervisor's alleged harassing statement as "having been made only in jest."

In the final example, Scott v. Sears, Roebuck and Co., 798 F. 2d 210 (7th Cir. 1986), the court ruled that the conduct complained of was not actionable. This decision was based upon the fact that the plaintiff had only one example of being propositioned (asked to join her supervisor in a mall restaurant after work) and the "hints" made by the supervisor were not so pervasive or psychologically debilitating as to affect the plaintiff's ability to perform on the job. Further, the plaintiff admitted that she considered the allegedly harassing employee her friend.

In review, to be "severe and pervasive" sexual harassment, the nature of the conduct must be sexual but may vary from physical touches to repeated sexual

conversation. It must be frequent and persistent. It must be psychologically debilitating and must affect the plaintiff's ability to perform on the job.

The next item to be discussed is the most subjective and yet one of the most critical elements in a sexual harassment case--the credibility of the witnesses. A review of the sixty-seven cases showed credibility to be an element emphasized in one of the earliest cases, discussed in Meritor and repeatedly emphasized to the present.

In 1978, in one of the landmark sexual harassment cases, Heelan v. Johns-Manville Corp., 20 FEP 251 (D. Colorado, 1978), the court began its "Facts and Conclusions" statement, which has been cited in several subsequent cases, as follows:

> Much of the testimony in this case is conflicting, not only in pivotal areas but in areas of marginal relevance as well. This case is based largely upon the court's view of the credibility of the witnesses, i.e. their worthiness of belief.
>
> We have carefully scrutinized all testimony and the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. For example, we have taken into account each witness' motive and state of mind, strength of memory and demeanor and manner while on the witness stand. We have considered factors which affect the witness' recollection and his or her opportunity to observe and accurately relate to the matters discussed. We have considered whether a witness' testimony has been contradicted, and the bias, prejudice, and interest, if any, of each witness. In addition, we have considered any relation each witness may bear to either side of the case; the manner in which each witness might be affected by a decision in the case; and the

> extent to which, if at all, each witness is either supported or contradicted by other evidence.
>
> With these factors in mind we find the following as facts and enter our conclusions of law.

Another more recent example of the importance of credibility in a sexual harassment case is found in the case of Moire v. Temple University School of Medicine 613 F. Supp (D. C. Pa 1985). The court ruled in this pre Meritor case that:

> Based on the appearance and demeanor of all the witnesses, their bias or interest in the outcome,the inherent consistency of their testimony in the circumstances, as well as their contemporaneous actions and writings, the court finds that plaintiff's trivial version of the first private meeting with Dr. Crabtree lacked credibility. Her inconsistency may not necessarily have resulted from intentional misstatement but from her admitted inability correctly to perceive men's attitudes and intentions toward her.

In the Meritor case, the court discussed credibility as the key to determining whether a particular conduct is "unwelcome, the gravaman of any sexual harassment claim," 29 C.F.R. Sect. 164.11 (a) (1985). The court stated that the District Court erroneously focused on "voluntariness" to determine "unwelcomeness." The court went on to state that while "voluntariness" in the sense of consent is not a defense,

> it does not follow that a complainant's sexually provocative speech or dress is irrelevant as a matter of law in determining whether he or she found particular sexual advances unwelcome. To the contrary, such evidence is obviously relevant.

In a case decided after Meritor, the Sixth Circuit of the U. S. Court of Appeals in Rabidue v. Osceola Refining Co. was very detailed in explaining how objective and subjective factors were necessary in making proper assessment in an offensive environment case. The Court stated that such a claim would:

> invite consideration of such objective and subjective factors as the nature of the alleged harassment, the background and experience of the plaintiff, her coworkers, and supervisors, the totality of the physical environment of the plaintiff's work area, the lexicon of obscenity that pervaded the environment of the workplace both before and after the plaintiff's introduction into its environs, coupled with the reasonable expectation of the plaintiff upon voluntarily entering that environment. Thus, the presence of actionable sexual harassment would be different depending upon the personality of the plaintiff and the prevailing work environment and must be considered and evaluated upon an ad hoc basis.

A final example of the significance of credibility in deciding a case can be found in Grier v. Casey, 643 F. Supp. (W. D. N. C. 1986). In this finding, the Court stated that it "simply did not believe the plaintiff's testimony, unsupported by corroborating evidence." The Court continued by saying that "this testimony by the plaintiff is the result either of her illusions or intentional untruth in an attempt to win at any cost, even if the reputations of persons she came in contact with may be damaged in the process".

Credibility is an important element to the Courts in deciding both quid pro quo and offensive environment cases.

However, it is an absolutely essential means of determining whether conduct is "unwelcome" in offensive environment cases. This review found the credibility of the witnesses to be a factor in almost every case at the trial court level.

The third factor which the courts must weigh in deciding whether a sexual harassment case is actionable is whether the employer was liable. Previous to the Meritor decision, courts had ruled that quid pro quo sexual harassment resulted in strict liability. The courts were divided as to whether the theory of respondeat superior or strict liability was the required standard for determining an employer to be liable for the acts of supervisory employees in offensive environment cases.[6] The legal community was hopeful that the Supreme Court would settle the issue.

The Supreme Court "declined the parties' invitation to issue a definitive rule on employer liability." However, it agreed with the EEOC that the courts should look to agency principles employing the doctrine of respondeat superior for guidance. The court stated that such principles "place some limits on the acts of employees for which employers under Title VII are to be held responsible." Thus, the Supreme Court held that the D. C. Court of Appeals "erred in concluding that employers are always automatically liable for sexual harassment by their supervisors." The Court said that the same agency principles mean that "absence of notice

to an employee does not necessarily insulate that employer from liability." Further, the existence of a grievance procedure, a sexual harassment policy and failure of the complainant to use the procedure, does not "insulate the petitioner from liability."

A review of the sixty-seven cases in regard to liability requires a discussion of the courts' use of the agency principle of respondeat superior. One component of this common law principle is that the employee must be acting within his/her legitimate scope of authority. This factor was used in earlier cases to rule that the complainant did not have an actionable case. In later cases, the scope of authority has been interpreted very broadly.[7]

Another component of respondeat superior is that the employer had to know or should have known of the action to be liable. This factor has been considered in the majority of the cases reviewed. The ruling in Meritor is not definitive on this matter although the court has said that lack of knowledge alone does not protect the employer.

The framework for this analysis included eight items which fell under the broader category of liability. The "relationship of the complainant and the accused" is used in every case because the court must rule on the extent of liability depending upon whether the accused is a non-employer, a co-worker, a supervisor or a supervisor with

fully delegated authority. In the case of the "supervisor with fully delegated authority" in personnel matters, the court is likely to find the employer strictly liable while the other categories are apt to be dealt with less strictly.

The items "notice given" and "constructive knowledge" were frequently utilized in determining respondeat superior liability. The "past violations of employer" did not arise in the cases reviewed. Three items which Meritor has ruled are important but do not serve alone to protect the employer are the "action of the employer upon notification", "sexual harassment policy in place" and "grievance procedure in place." On at least one occasion, the court has ruled that prompt and appropriate action on the part of employer absolved the employer of liability, Barret v. Omaha Nat. Bank 726 F. 2d 426 (8th Cir. 1984).

The liability issue, upon which the Supreme Court chose not to make a definitive ruling, is a difficult one for employers. A summary of the steps an employer can take to guard against sexual harassment claims was prepared for the Personnel Administrator and includes the following:

> 1. Publish a policy prohibiting sexual harassment in workplace. Be sure to clearly prohibit both types of sexual harassment (i.e. "quid pro quo" sexual harassment and "hostile environment" sexual harassment").
>
> 2. Develop procedures whereby employees who feel they are victims of sexual harassment can state their complaints in confidence. These procedures must have a mechanism so that employees

are not forced to complain to the very person who is harassing them.

3. Educate both employees and supervisors about sexual harassment and about the employer's policy and procedures to combat it.

4. Take swift action against harassers. Get the word out that this conduct will not be tolerated and back up the policy against sexual harassment.[8]

A review of the three broad categories, extent, credibility and liability, which encompass the totality of the circumstances will serve as a summary of this section of the legal analysis. When the courts consider the extent of the sexual harassment, they have considered as actionable sexual conduct varying from physical harm to verbal abuse. Regardless of the type, the conduct must be frequent and persistent, must be psychologically debilitating and must affect the plaintiff's ability to perform on the job.

A determination of the credibility of the witnesses is essential in all sexual harassment cases, but is particularly important in determining "unwelcomeness" in offensive environment cases. The liability ruling in quid pro quo cases is strict but varies in offensive environment cases. In order to protect themselves employers must have a sexual harassment policy, must have a grievance procedure and must take prompt action upon notification of harassment.

Harm

The next item reviewed in the Framework for Analysis was the issue of "harm". The courts considered the harm to

the complainant in every case which the court found meritorious. Economic harm was found in quid pro quo cases only. Psychological and emotional harm were determined in offensive environment cases. Because complainants were not compensated for such harm under Title VII, many have filed a tort complaint or have filed under Workers' Compensation.[9] Some federal courts have ruled that if there was no psychological or emotional harm then the harassment must not have been severe and pervasive.[10]

Liability of the Employer

The question of the liability of the employer, which in the framework is divided into respondeat superior and strict liability, has been discussed in the totality of the circumstances section. Basically, strict liability has been used for quid pro quo cases only. The line of cases which had ruled that strict liability should apply in all offensive environment cases was said to be in error by the Supreme Court. Some courts, before and after Meritor, have combined the respondeat superior component of the employer acting within the scope of his/her employment with strict liability in quid pro quo cases.[11]

The reason it is difficult to apply the respondeat superior agency principle to offensive environment cases is that no specific employment decision by the supervisor is involved and it is not the exercise of supervisory authority which harms the victim. On the other hand, it is

often argued that the supervisor's authority always aids the commission of offensive environment sexual harassment because fear that the supervisor will use his/her authority to retaliate against the victim aids the supervisor in committing the unwelcome harassment by preventing the victim from complaining.

When sexual harassment is not by a supervisor but by a fellow employee, the employer is liable only if it knew or should have known of the action and failed to take immediate and appropriate corrective action.[12] The respondeat superior principle of knowledge applies here because the fellow employee, having no authority over the victim, is not aided in committing sexual harassment by the existence of the agency relationship.

It is unlikely that the Supreme Court will make a decision specifying the liability for offensive environment cases because each sexual harassment case involves a range of different circumstances which the court must weigh. What the Supreme Court has done by referring courts to agency law is to give each court the power to consider the totality of the circumstances and decide upon liability within the boundaries of applicable agency law.

Remedies

As for remedies, the review disclosed that the complainant, if found to be meritorious, will recover little under Title VII. The quid pro quo complainant may recover

only actual damages incurred, such as back pay, lost wages and benefits. The offensive environment complainant will not recover for mental suffering, emotional distress or lost wages.[13] Both types may recover attorney's fees and court costs, receive injunctive relief or reinstatement, or may result in the employer being required to adopt a grievance procedure.

Many plaintiffs seek a remedy under state laws which provide monetary damages for intentional infliction of emotional distress. Judicial analysis in these cases has varied, partially because elements of this tort vary from one state to another.

In two cases reviewed, plaintiffs have been awarded damages by filing a sexual harassment claim under the equal protection clause of the Fourteenth Amendment.[14] These plaintiffs claimed that they were denied equal protection because their employer allowed the harassing incidents to occur. Actually, the proof is somewhat easier in an equal protection case because the plaintiff has only to prove that intentional discrimination (a harassing environment) was allowed by the employer and not that the offensive environment altered the conditions of employment as is necessary in Title VII.

In sum, remedies for sexual harassment claims under federal law are not lucrative. Plaintiffs must file state tort complaints to receive large monetary damages.

Legal Principles

Because the legal principles of privacy and equal protection are applicable to both the community in general and the academic community, and are the focus of the next question in this analysis, these principles will be discussed in that section.

Academia

The preceding discussion of the courts' decisions in cases of sexual harassment in the traditional workplace may be applied to the academic setting. In addition, a review of the recent cases which have dealt with sexual harassment on the college campus revealed that the courts appeared willing to defer to the disciplinary decisions of college administrators in sexual harassment cases. Historically, courts have deferred to the academic judgment of collegiate administrators and faculty in decisions that affect the academic community. They have chosen to intercede only if the decision is clearly arbitrary and capricious and not academic in nature.[15]

Several cases heard since 1984 attest to the courts' deference to academic judgment in higher education. The United States District Court in Pennsylvania decided a case, Moire v. Temple University School of Medicine, 613 F. Supp. 1360 (D. C. Pa. 1985), which involved a sexual harassment charge under Title IX and a due process charge under the Fourteenth Amendment, (42 U. S. C. A. Sect. 1983, 1985). In

this case, a female medical student brought civil rights action against the medical school and the supervisor of the psychiatric clerkship program alleging that her supervisor sexually harassed her, sanctioned a harassing environment and gave her a failing grade based on her sex.

The court ruled that there was no credible evidence that the supervisor had sexually harassed the plaintiff or had sanctioned a harassing environment. The testimony upon which the court based its decision was that of the academicians and the plaintiff. In addition, the court found that the failing grade the student received for her clerkship was not arbitrary and capricious. Thus, her claims against her supervisor and the medical school, supported by her testimony against theirs, failed.

In 1985, two cases were heard in which instructors were dismissed by their institutions for sexual harassment. Both instructors claimed due process violations and both were denied by the court. In the case of Cockburn v. Santa Monica Community College District, 207 Cal. Rptr. 589 (Cal. App. 2 Dist. 1984), the court found no violation and stated that:

> Community college district personnel commission did not abuse its discretion by dismissing an instructor who embraced and kissed his student laboratory assistant once, and attempted to do so again, despite her resisting his attempts to do so again, notwithstanding psychologist's opinion that the instructor could be rehabilitated without presenting a danger to himself and others.

The court stressed the "grave responsibility (of the commission) to the appellants and their personnel, the professors, instructors and students they embrace and to the general public."

In the case of Levitt v. University of Texas at El Paso, 759 F. 2d 1224 (5th Cir. 1985), the court ruled that the notice and hearing which Levitt received met constitutional due process standards. Whether he was entitled to more by virtue of the University's own rules was a matter of state law, not constitutional law.

In the case of Naragon v. Wharton, 737 F. 2d 1403 (5th Cir. 1984), the consent of a student to a lesbian relationship with her music teaching assistant did not prevent the court from approving the University's decision to change the assistant's duties. The court held that the University did not violate the assistant's constitutional rights to equal protection when it did not reinstate her to a teaching position, but reappointed her with the same compensation to a non-teaching position. Although the discipline meted by the institution in this case is not as severe as that of the other cases discussed in this section, the court's reasoning makes its inclusion worthwhile.

The court stated that it would be very reluctant to reject the reasoning of the educators or to overrule their decision. Specifically, the Vice Chancellor had said that he "considered intimacy between a teacher and a student a

breach of professional ethics on the part of the teacher, and thought it undermined the proper position and effectiveness of the teacher because of the perceptions of other students." The Dean of Music said that it is "an obvious criterion for being a professional teacher to avoid intimate relationships with students." The Dean of Students recommended against giving the assistant teaching duties because her conduct had been "unprofessional and a neglect of responsibility to students, faculty and alumni."

The District Court which heard Naragon v. Wharton, 572 F. Supp. 1117, 1121 (M. D. La. 1983), supported the administrators reasoning and explained their decision by declaring:

> (A) University has a right, and indeed a duty, to take all reasonable and lawful measures to prevent activities which adversely intrude into the teaching process or which might adversely affect the University's image and reputation. It has a right to expect and demand the highest standards of personal behavior and teaching performance from its teachers and professors. It does not have to settle for less.

A final example of the courts' view of sexual harassment in the academic community may be found in Korf v. Ball State University, 726 F. 2d 1222 (7th Cir. 1984). In this case, Korf claimed lack of due process, a right to privacy and a consensual sexual relationship. Because of the significance of each of these claims to this study, particularly the last two, each will be discussed separately.

As in the two claims discussed previously, the professor alleged that his due process rights were violated in his dismissal. Korf claimed that the District Court abused its discretion in denying his motion for further discovery before making a summary judgment. The court ruled that he had had ample time to prepare his case and that, since his discharge was not predicated upon his engaging in "private sexual relations" but on unethical conduct by exploiting students for his private advantage, additional discovery time would be "completely irrelevant and would amount to no more than a fishing expedition."

Professor Korf claimed he had a right to have private sexual relations with his students. At the hearing he requested, one student said that he received money and gifts and promises of good grades for his sexual acts. Testimony from seven students told of sexual advances Korf made to them while or after they were his students. Based upon this testimony, the Committee of his peers found that Dr. Korf engaged in unethical conduct as described in paragraph 2 of the American Association of University Professors (AAUP) Statement on Professional Ethics adopted by Ball State University in 1967 and published in its Faculty Handbook.

The AAUP paragraph which formed the basis of the dismissal read as follows:

> As a teacher, the professor encourages the free pursuit of learning in his students. He holds before them the best scholarly standards of his discipline. He demonstrates respect for the

> student as an individual and adheres to his proper role as intellectual guide and counselor. He makes every reasonable effort to foster honest academic conduct and to assure that his evaluation of his students reflects their true merits. He respects the confidential nature of the relationship between professor and student. He avoids any exploitation of students for his private advantage and acknowledges significant assistance from them. He protects their academic freedom.

The administration agreed with the investigating committee that Korf's conduct was sexual exploitation and, thus, whether public or private, was unethical. The court, too, ruled that private exploitation was still exploitation.

Another argument put forth by Professor Korf was that the student with whom he had sexual relations consented to those relations. In responding to this argument, the court made reference to one of the witnesses who said he had to be "very assertive to get away from Dr. Korf's amorous advances." The court stated that "such conduct certainly cannot be characterized as consensual sexual activity." It is abundantly clear that the court places high professional standards on the educator in his/her relationships with students and on the role of the University administration and faculty in maintaining and preserving those standards.

Another issue which may arise out of consensual teacher-student relationships is that such a relationship might place other students at a disadvantage and result in unequal treatment should the professor favor the consenting student in class or in related academic activities and

evaluations. The courts have addressed this issue in the workplace. It arises out of the EEOC Guidelines, 29 C.F.R. Sect. 164.11(g) (1986), which state:

> 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.

In four cases heard in the 1980's only one court, in the case of Decintio v. Westchester County Medical, did not rule that a voluntary relationship which resulted in some employment benefit was discriminatory toward others seeking that benefit, regardless of sex.[16] The reason the court gave in Decintio for not ruling in favor of the seven male plaintiffs was that the woman who received the higher salary "consented" to the sexual relationship rather than "submitted" to it. The other three courts did not interpret the term "submit" as being forced to accede. Although this issue has not been addressed in the case involving college students as yet, it is included in this review because of its potential relevance to this study.

Summary

The Supreme Court of the United States in rendering its decision in the case of Meritor Savings Bank, FSB v. Vinson established the following principles in sexual harassment cases:

- A claim of "hostile environment is a form of sex discrimination that is actionable under Title VII.

- Sexual harassment leading to non-economic injury can violate Title VII.

- The "voluntariness" of the respondent's participation in the claimed sexual episode does not dispose of the "hostile environment" claim. The correct inquiry is whether the advances were unwelcome.

- Sexually provocative dress and speech are relevant in determining unwelcomeness.

- There are some limits on the liability of employers under Title VII. The courts should look to agency law. The existence of a sexual harassment policy, a grievance procedure and prompt action, while important, do not afford total protection to the employer.

In deciding the totality of the circumstances in sexual harassment cases, the courts review the extent of the harassment, the credibility of the witnesses and the liability of the employer. To be actionable, offensive environment harassment must be severe and pervasive, that is, not casual, isolated or trivial, and must affect the emotional or psychological well being of the employee.

The credibility of the witnesses is the means by which courts determine whether action is unwelcome. Courts determine credibility by the witnesses' demeanor, consistency and other indicators of their worthiness of belief.

As for liability, the courts use strict liability in quid pro quo cases. The determinations in offensive environment cases vary but generally adhere to the principle of respondeat superior.

Remedies in sexual harassment cases under federal law are assigned to make the complainant "whole" again. Damages are not allowable. Victims of sexual harassment must use tort law if monetary damages are desired.

Recent decisions involving faculty-student sexual relations in the academic community show the courts to be supportive of the discipline chosen and procedures followed by the institution. Many institutions have been able to discharge offending employees on professional grounds and have not had to utilize federal law. The behavioral standards for faculty in relations with their students is high.

A final item in this section deals with consensual relationships. In all the cases reviewed, with one exception, courts found that benefits received by an employee because of a sexual relationship with a supervisor served to discriminate against fellow employees of either sex.

QUESTION NUMBER TWO

"Are these principles in conflict with other established legal principles?"

This research question was posed in anticipation of the conflict between the right of privacy and the right of equal treatment under the law. The legal background of these two rights was presented in detail in Chapter 1. The process of this review revealed that, in addition to the potential conflict between the legal theories of privacy and equal

treatment, justices have given conflicting interpretations of Title VII in regards to the impact of consensual relations and employment benefits. Further, a potential conflict was indicated by the dissenting opinion of Circuit Justices Bork, Scalia and Starr in the case of Vinson v. Taylor, 760 F. 2d 1330 (D. C. Cir. 1985). These three issues will be discussed in this section.

Because sexual harassment is a form of sex discrimination which is a violation of civil rights and because civil rights are guaranteed to Americans by virtue of the theory of equal treatment under the law, every case reviewed for this study was ultimately based upon unequal treatment under the law. On the other hand, an individual's right to privacy was raised in only one case, Korf v. Ball State University, 726 F. 2d 1222 (7th Cir. 1984).

In this case, Professor Korf alleged violations of his constitutional rights to substantive and procedural due process, equal protection, free speech, freedom of association and privacy. The court granted the defendants in Korf a summary judgment of the constitutional law claims and concluded that the University was immune from suit under Sect. 1983, that there was no evidence presented of bad faith on the part of the defendants and that, further, the defendants were immune from 1983 liability under the doctrine of qualified or "good faith" immunity. There was, therefore, no discussion of the privacy issue. However, it

seems highly likely that the issue will be raised again as a defense against a sexual harassment charge.

Another area of conflict involves the interpretation of the EEOC Guidelines, 29 C. F. R. 164.11 (g) (1986), discussed in the previous section. The Second Circuit Court of Appeals has interpreted "submission" to sexual advances to be a "forced surrender." Other federal courts who have interpreted this section appear to have interpreted the term more broadly utilizing its meaning "to comply". The issue is whether employees who were denied benefits or employment opportunities because their supervisor granted them to an employee who had given him/her sexual favors have a Title VII complaint. The Second Federal Circuit of Appeals has ruled that this is true only if the employee in question was forced to submit. The judgment of the various federal courts who have ruled on this issue appears to be in conflict on this point.

Finally, the review of cases for this analysis revealed that a conflict at the Supreme Court level may have arisen had Justice Robert Bork's appointment to the court been confirmed. There still exists a possibility of a problem in the area of sexual harassment at the Supreme Court level which is apparent in a reading of the Vinson v. Taylor dissent, cited earlier.

Three justices of the D. C. Circuit Court of Appeals heard the case of Vinson v. Taylor, 758 F. 2d 141 (1985), in

February of 1982 and decided on it in January of 1985. In their decision, the judges strongly supported the complainant in the case and remanded the case to the District Court with directions that its "proceedings be consistent with this hearing." This decision was one of the strongest offensive environment decisions and carried with it strict liability for the employer.

Following the decision, the employer asked for a rehearing "en banc", of the entire court. Because a majority of the judges of the court, in regular active service, did not vote in favor of such a hearing, it was denied. A dissenting opinion was filed by Circuit Judge Bork and was joined by Circuit Judges Scalia and Starr.

This dissenting opinion written by Justice Bork shows that Justice Bork, a rejected nominee to the Supreme Court, joined by Justice Scalia, a new member of the Supreme Court, supported the concept of "voluntariness" as an employer's defense in sexual harassment cases, contrary to the Supreme Court's decision, and, even more contrary, the justices questioned the classification of sexual advances as "discrimination."

In the Meritor Savings Bank v. Vinson, the Supreme Court ruled that "unwelcomeness" rather than "voluntariness" was the essential factor in deciding whether a sexual harassment case had merit. Bork, joined by Scalia, wrote that this ruling at the Circuit Court of Appeals level

seemed "plainly wrong." Bork argued that the majority had rigged the rules of evidence so that "dalliance is automatically harassment because a defendant is not able to prove that the victim is .... but a willing participant."

It is the footnote on the last page of this dissent which holds the greatest potential for conflict should the issue arise at the Supreme Court level. Justice Bork stated his concern as follows:

> Perhaps some of the doctrinal difficulty in this area is due to the awkwardness of classifying sexual advances as "discrimination." Harassment is reprehensible, but Title VII was passed to outlaw discriminatory behavior and not simply behavior of which we strongly disapprove. ....If it is proper to classify harassment as discrimination for Title VII purposes, that decision at least demands adjustments in subsidiary doctrines.

This reasoning questions the entire concept of sexual harassment as sex discrimination under Title VII.

Sexual harassment law is an emerging legal concept. It is being developed daily in the courts as cases are decided. Even with the Meritor decision at the Supreme Court level, the potential for conflict continues. The three areas of conflict cited in this study are among the most obvious. There are others more minor and there will be others arising. This is the process of a developing legal concept.

QUESTION NUMBER THREE

"What impact do these legal decisions have upon sexual harassment policies which discuss teacher/administrator-student relationships at institutions of higher education?"

The legal analysis of this study brought out two major impact areas, "unwelcomeness" as the most important factor in determining if a sexual harassment case has merit and the high standard of conduct placed upon the academic profession. "Unwelcomeness" as a key factor was a result of the Meritor decision and the high standards of those who teach and administer in academia was evident by decisions in recent cases arising from the academic community. These two areas of concern should not be discussed separately. It is because they are inter-related that their potential impact is so great.

The inter-relationship of the "unwelcomeness" standard and the professional expectations of the academic community will be discussed as these two forces impact upon sexual harassment policies which deal with teacher/administrator-student relationships. Then, a review of the legal analysis as a whole and the impact upon collegiate sexual harassment policies will be presented.

When the Supreme Court in the Meritor decision ruled that whether a particular conduct was unwelcome was the gravaman of any sexual harassment claim, the University community had to take notice.[17] This was even more

significant when the court stated that credibility was the key to a determination of "unwelcomeness."

The reason that this had potential impact on the University community was that in determining that "unwelcomeness" was the gravaman, the Supreme Court decided that "voluntariness" was no longer a defense. Therefore, a faculty member or administrator accused of harassment could no longer use the fact that the complainant went along with the harassment as a defense.

As a matter of fact, the courts have, in the past, given deference to the decision-making of the academic community as they concomitantly held the professionalism of the academic administrators and faculty in high regard. Because of this high regard, it seems that the behavior of academicians toward their students must be exemplary. The cases which were reviewed in this study and which dealt with higher education institutions all have shown both the deference and the expectations required of the faculty and administrators by the courts.

Thus, with the Meritor decision and the decisions involving institutions of higher education in mind, the administrators at colleges and universities in the United States must have an increased concern for the sexual relationships between teacher and administrators and the students they teach and supervise. This concern has been expressed in revised sexual harassment policies and in

codes of ethics. These will be discussed in the next section of this chapter.

In previous years, academicians may have felt an element of security, or at least an element of defense, in a consensual relationship with a student. Today, with the Meritor decision and the EEOC guidelines, the element of defense in consensuality is no longer viable.

How may an institution be held liable in what began as a consensual relationship between an administrator or a faculty member and a student? There are at least three ways. First, what started out as welcome conduct can become unwelcome and the student can claim sexual harassment as in Korf v. Ball State University. The excuse of equal choice in the sexual relationship does not exist when one half (the teacher or administrator) has power over the other (the student).

Second, the parents of the student may complain to the institution about a "consensual" relationship as in Naragon v. Wharton. In this case, both the institution and the court viewed this relationship as unprofessional. Third, classmates of a student having a sexual relationship with an instructor may claim unequal treatment as a violation of the EEOC guideline discussed earlier. In all three cases, the institution and the administrator or faculty member are vulnerable .

What does the legal analysis of the sexual harassment cases suggest for the policies which deal with teacher/ administrator-student sexual relationships? In regard to the totality of circumstances, the cases involving collegiate institutions evidenced an expectation of professional behavior on the part of academicians which suggests that the behavior of faculty and administrators toward their students should be more circumspect than that of supervisors in the workplace. The requirement that harassment be severe and pervasive in offensive environment cases does not appear to be as applicable to the professional members of an academic community. Therefore, it is also likely that the courts would not place as much importance on the documentation of emotional and psychological harm as is necessary in the workplace.

As far as credibility is concerned, the credibility of the institution and the individuals involved is examined. It was the academic peers as well as the courts who decided on the credibility issue in the collegiate sexual harassment cases reviewed. Whether through a collectively bargained grievance procedure or through administrative procedures, academic peers usually have a role in faculty discipline and dismissal cases. This is generally not the case in the workplace where the court alone decides. Here, too, there often exists a higher standard of evaluation in academia.

Given the higher standard expected of the academic community in its professional relationships, how may the institution and its administrators and staff avoid liability? The same advice offered to all employers is applicable. The collegiate institution must have a sexual harassment policy, a grievance procedure and must educate its entire community to report sexual harassment and provide means by which reporting may be done.

In order to protect the academic institution against charges arising from "consensual" relationships in which there is unequal power, policies or codes of ethics should inform academicians of behavior which is considered unprofessional. The grievance procedure should be readily accessible, should be confidential initially and should not require the complainant to report harassment to the person doing the harassing. As an academic institution, a lack of education about the sexual harassment policies and procedures can never serve as an excuse. In fact, such an excuse reflects most negatively on the credibility of the institution.

Because of the potential of strict liability, the sexual harassment education should stress the importance of the reporting of any incident. In addition, faculty and administrators need to be on the alert for those who through ignorance or lack of judgment enter into a consensual relationship. Such faculty need to be reminded that, while

there may be a mutual sexual attraction, in a matter of months when the grades in the course are turned in, there will no longer be an unequal power relationship. Administrators should look outside the area they supervise for sexual relationships.

To review, legal decisions in sexual harassment cases have had an impact on the collegiate community. With the factor of the "unwelcomeness" of the behavior being the key to determining whether a suit is actionable, the university community needs to re-examine its policies in regard to consensual sexual relationships. An added concern to the academic community is the importance the court places on the professionalism of the educator in relation to his/her students.

The next question to be addressed in this analysis requires an examination of the policies academic institutions have adopted dealing with teacher/administrator-student relationships. The analysis in this next section consists of a review of various components of the policies that have been adopted and, based upon the review, an overall rating of the strength of the policy in relation to its coverage of the legal issues.

QUESTION NUMBER FOUR

"Do the policies which cover teacher/administrator-student relationships address the salient issues raised by the court decisions?"

The answer to this question begins with a report of the characteristics of the sample. This discussion includes both descriptive data and a chi-square analysis of the policies for differences in the proportions of returns. Next, an analysis of the policies by each category in the framework for analysis was undertaken with the goal of determining the extent to which academic institutions addressed the salient issues raised by the court decisions. Policies were first analyzed by means of a chi-square for differences in proportions of responses by category. This statistical analysis was followed by a descriptive analysis of each of the categories of the policies received. This discussion concludes with an analysis of the policies for inclusion of the two issues raised in Question Three: unwelcomeness and professional expectations.

Characteristics of the Sample

Sexual harassment policies or codes of ethics which include teacher/administrator-student sexual relationships were requested from a randomly selected sample of 118 doctoral level institutions and 230 baccalaureate level institutions. Replies were received from eighty-seven doctoral institutions, 74 percent of the sample, and 103 baccalaureate institutions, 45 percent of the sample. The combined return was 54 percent of the total sample. See Appendix 4 and 5 for a tabular presentation of the return.

Of these responses, sixteen institutions in both groups had policies or codes of ethics which discussed teacher/administrator-student relationships. The thirty-two responses were also divided into groups based upon governance (public v. private) and size (large v. small). There were fifteen public and seventeen private institutions which had policies and seventy-two public and eighty-five private institutions which did not.

In order to divide the responses into large and small groups, it was necessary to ascertain an appropriate division. The American Council on Education's text American Universities and Colleges, 12th edition, lists institutions by control and size by enrollment.[18] The number 5,000 was used as the divider because it was the median number in the listing of all the academic institutions by enrollment. The returns showed fourteen large and eighteen small institutions to have policies and seventy-two large and eighty-six small to be without.

Each of these three groupings, doctoral and baccalaureate, public and private and large and small, were analyzed by means of a chi-square test to determine whether the difference in the proportion of the return (between the frequencies observed and those expected) was statistically significant at $P = .05$.

Table 1 presents the test for difference in proportion

of doctoral and baccalaureate institutions with policies dealing with sexual relationships on campus.

Table 1

Chi-Square Test for Difference in Proportions with Respect to Institutions With and Without Policies

	With	Without	X^2	Significance
Doctoral	16	71	.109	.7416
Baccalaureate	16	87		

The chi-square test showed no significant difference between the numbers of schools with policies based upon the type of institution sampled.

The test for difference in proportions of public and private institutions with policies is presented in Table 2.

Table 2

Chi-Square Test for Difference in Proportions With Respect to Funding of Institutions With and Without Policies

	With	Without	X^2	Significance
Public	15	72	.008	.9286
Private	17	85		

This test showed no significant difference between the numbers of schools with policies based upon the type of governance.

Table 3 presents the chi-square test for difference in proportions of large and small institutions with policies.

Table 3

Chi-Square Test for Difference in Proportions With Respect to Size of Institutions With and Without Policies

	With	Without	X^2	Sig.
Large	14	72	.0001	.9951
Small	18	86		

The chi-square test showed there to be no significant difference between the numbers of schools with policies based upon the size of the institution.

The findings that the returns from the sample of those institutions which have policies dealing with sexual relationships on campus did not differ significantly in the three groupings tested supports the generalizibility of the findings to the population as a whole. Since there was no significant difference by type, governance or size of institution, a decision was made to conduct further analyses on only the division of doctoral versus baccalaureate institutions.

A further analysis of the responses revealed that policies dealing with teacher/administrator-student relationships were written in one of three forms: (1) included in a sexual harassment policy, (2) included in a code of ethics or (3) presented in a separate letter or statement to the campus community. The responses from the doctoral institutions came in the form of eight sexual harassment policies, three codes of ethics and five letters

or statements. The baccalaureate responses were equally varied with seven sexual harassment policies, six codes of ethics and three letters or statements. For purposes of succinctness, all responses will be referred to as policies in the following discussion.

Table 4 presents the results of a chi-square test to determine whether there was a significant difference between the proportions of baccalaureate and doctoral institutions with policies, codes of ethics or letters or statements.

Table 4

Chi-Square Test for Difference in Proportions With Respect to Form of Response

	Policy	Code	Letter	X^2	Sig.
Doctoral	8	3	5	1.567	.4569
Baccalaureate	7	6	3		

The chi-square test revealed no significant difference between the three forms of responses based upon the institutions sampled.

Analysis by Categories

The previous question under consideration, Number Three, was directed toward the impact of the legal decisions dealing with sexual harassment on the collegiate community. The question at hand was posed to determine whether collegiate institutions have responded to the legal decisions in developing policies dealing with teacher/administrator-student sexual relationships.

Specifically, the Analysis of Policies Framework provided six categories which the courts may consider in reviewing a sexual harassment case that has arisen out of a consensual relationship between a faculty or administrator and a student. The categories are: Who is Prohibited, Nature of the Relationship, Relationship Specified, Grievance Procedure, Rights Protected Specified and Terms Used to Caution or Condemn. Each of the six categories in the thirty-two policies received was analyzed for its individual strength, by chi-square analysis when possible, as a means of determining the overall strength of each policy. A discussion of the results of this analysis is presented next, by category and by doctoral or baccalaureate institution. Summaries of the responses in each category by the type of institution are located in Appendices 6 through 12.

Who is Prohibited

The category of Who is Prohibited, see Appendix 6, can be divided into two broad types: those that limit the prohibition to faculty and those that included supervisors and others. The stronger policies were those that were more inclusive and specified faculty, administrators and supervisors. There was not enough differentiation to individually rate the policies on strength. However, a chi-square was conducted, see Table 5, to determine whether the

personnel prohibited were proportionally different between doctoral and baccalaureate institutions.

Table 5

Chi-Square Test for Difference in Proportions With Respect to Who is Prohibited

	Faculty	Fac. and Superv.	X^2	Sig.
Doctoral	12	4	1.200	.2733
Baccalaureate	8	8		

The findings were that the institutions did not vary significantly at P = .05.

An internal examination of the policies shows that the number of policies directed at faculty only was the same for doctoral and baccalaureate institutions. Baccalaureate institutions included a few more supervisors while doctoral institutions specified other kinds of instructors. The policy which was most specific addressed its concerns to teachers, officers, graduate students, tutors and teaching fellows.

Nature of Relationship

As in the category above, the nature of the relationship category was not varied enough to merit an individual rating for strength. The weakest relationship was described as "personal" and the strongest as "fornication." Most were referred to as "amorous" or "sexual." See summary in Appendix 7.

In order to determine whether doctoral or baccalaureate institutions differed as to those which specifically mentioned sex, e.g. sexual, amorous or romantic relationships, and those who did not, e.g. personal relationship and exploitation for private advantage, a chi-square test was conducted and is displayed in Table 6.

Table 6

Chi-Square Test for Difference in Proportions With Respect to the Nature of the Relationship

	Sex	No Sex	X^2	Sig.
Doctoral	14	2	1.500	.2207
Baccalaureate	10	6		

The results of the chi-square indicate that, although both groups used terms that related to sex more often than other less specific terms, the difference between the proportions of institutions using the differing terms did not vary systematically.

An internal examination of the policies of doctoral institutions revealed that the relationship ranged from "a personal relationship" to "sexual or romantic advances or involvement." The weaker descriptions did not specify sex such as "exploitation for private advantage" or "personal relationship." The strongest, although simply stated, were inclusive and specific, such as "consensual sexual relationships."

There was a wider range in the "Nature of the Relationship" terms among the baccalaureate policies. Five

institutions used the weak description "personal relationships." With the exception of one, the rest referred to sexual, amorous or romantic relationships. The one exception was a college with a strong religious commitment which described the nature of the prohibited relationship as "fornication, adultery and homosexuality."

Relationship Specified

In both groups of this category, the relationship specified most often was that of faculty to student. In this category, the broader the scope, such as "those in power, authority or control", the stronger the policy. The items in this category, as in the preceding two, were too similar to be rated. See Appendix 8 for summary.

A chi-square test was conducted to determine whether the Relationship Specified in the policies differed in proportion between doctoral and baccalaureate institutions and is presented in Table 7.

Table 7

Chi-Square Test for Difference in Proportions With Respect to the Relationship Specified

	Superior to Subordinate	Faculty to Student	X^2	Sig.
Doctoral	7	9	.660	.7188
Baccalaureate	6	10		

The results of the chi-square test showed no significant difference between the proportions of broad and narrow

relationships specified and the type of institution at P = .05.

An internal examination of doctoral policies revealed that the relationship specified most often was that of faculty to student. The seven faculty-student relationships descriptions varied from the most inclusive "those faculty in authority" to the most specific "faculty with those students who are in their course; if the relationship started before the coursework, it was acceptable." In this category, the specificity weakened the policy. The institution had more discretion to respond to a complaint with broader relationships such as "faculty-student", "superior-subordinate" or "position of authority"; all of which were utilized.

As in the doctoral category, the "Relationship Specified" category of the baccalaureate policies had seven which specified "faculty-student." Unlike the doctoral category, there were no elaborations or restrictions on the faculty members. The remaining eight were more comprehensive. Several included employer-employee relationships and one, the religion-based institution, applied the prohibition to all members of the college community.

Grievance Procedure

In reviewing the totality of the circumstances in sexual harassment cases, the courts look to see that grievance procedures are in place. There are fourteen

policies without grievance procedures in this review. A possible explanation of this phenomenon is that institutions who warn faculty about consensual relationships but do not consider such relationships to be harassment may not include such consensual relationships in their grievance procedures. The items in this category were rated inadequate (none or weak), adequate (standard procedures) and strong (thorough discussion). A summary and the ratings are presented in Appendix 9.

Table 8 presents a chi-square test which examined the proportions of institutions with and without grievance procedures.

Table 8

Chi-Square Test for Difference in Proportions with Respect to Institutions With and Without Grievance Procedures

	With	Without	X^2	Sig.
Doctoral	7	9	1.143	.2850
Baccalaureate	11	5		

The results of the chi-square test show there to be no significant difference between the number of schools with grievance procedures and the type of institution.

The internal examination of the doctoral policies found that nine doctoral institutions failed to discuss the grievance process. Of the seven who did, five referred to standard grievance procedures and two of those five prefaced the standard procedures with procedures unique to sexual

harassment cases. Two specified the sanctions to be applied in addition to the procedure. The existence of a grievance procedure and a mention of the sanctions involved constituted a strong policy.

Only five baccalaureate policies failed to include mention of the grievance procedure. Another five were detailed, had formal and informal procedures and followed standard procedures. One, included in a code of ethics, referred the reader to policies and guidelines dealing with moral turpitude. The remaining five were weak and subject to question as to their effectiveness. Included in these weak procedures was one in which the president of college alone decided if the behavior was impermissible. In another, the students were given two options: to write to the harasser or to complain. The weakest told the female students how to avoid it, how to handle it and, if all else fails, suggested she contact her advisor. Finally, two weak procedures named one or two individuals to call if there is a problem and explained nothing else.

Rights Protected Specified

The category of the "Rights Protected Specified" was included in the anticipation that the courts would emphasize this issue. However, the findings in regard to Question No. Two, reported previously on pages 93 and 94 revealed that equal treatment under the law was implied or discussed in almost every sexual harassment case but privacy was

mentioned in only one case. A review of the policies found that these rights were seldom specified. Equal treatment under the law was mentioned in six doctoral policies and protection of privacy in three. One baccalaureate policy included equal treatment and none specified protection of privacy. This category was not included in the overall evaluation of the policies because of its infrequent use and the Question No. 2 findings. Appendix 10 presents the rights which were specified.

Term Used to Caution or Condemn

The "Term Used to Caution or Condemn" consensual sexual relationships was the final category reviewed and was the most important in the determination of the strength of the policy. The strength of the term provides the college community and the court with a gauge of the commitment of the institution toward freeing faculty/administrator-student relationships of sexual complications. A summary of the terms used in the policies received is presented in Appendix 11 as well as the ratings for strength assigned the terms. The terms in this category were so varied that they were not grouped for a descriptive chi-square analysis but were tested for differences in strength in the next section.

On the whole, the internal examination found that the terms used in the policies of doctoral institutions were adequate to strong and this was reflected in the overall ratings of the policies. Strong terms utilized by doctoral

institutions were "always wrong", "shall not", "any sexual relation is a violation" and "no faculty member shall." Weak terms used by this group included "such relationships raise questions","no legitimate place", "responsibility to avoid conflict" and "should be avoided."

The terms used to caution or condemn the baccalaureate administrators and faculty were, on the whole, not very strong and, as a result, the overall ratings of these policies were, with two exceptions, adequate to weak. Five baccalaureate colleges used the weakest term in the study, "be sensitive to." Other weak terms included "resolve to abstain", "deemed unwise", "avoid exploitation" and "may be violation of ethics." The religion-based institution used the only strong term, "fornication."

Overall Ratings

All of these categories were considered in the overall ratings except for "Rights Protected Specified." The grievance procedures category and the terms to caution or condemn category were rated individually and figured more heavily in the overall ratings. The overall ratings are listed in Appendix 12. A discussion of the overall ratings is located in the next section, Hypothesis One, under sub-hypothesis three.

Analysis of Other Issues

In addition to the analysis utilizing the Framework for Analysis, the policies were examined with respect to the two

major issues discussed in Question Three, the "unwelcomeness" standard and the professionalism expected of faculty and administrators. Both issues were addressed in the policies. The thirty-two policies obtained repeatedly discussed the unequal relationship between faculty/ administrators and students, and warned that the "unwelcomeness" of such a relationship is always subject to question. The policies also emphasized the importance of a professional relationship between academicians and their students.

To determine whether discussion of these two legal issues was proportionate in respect to baccalaureate and doctoral institutions, a chi-square test was conducted and is presented in Table 9.

Table 9

Chi-Square Test for Difference in Proportions With Respect to Legal Issues

	Unwelcomeness	Professionalism	X^2	Sig.
Doctoral	7	14	.586	.4439
Baccalaureate	10	10		

The results of the chi-square test showed there to be no significant difference between the proportions of legal issues discussed in policies of doctoral and baccalaureate institutions.

The internal review of the policies of the doctoral institutions revealed that fourteen discussed the professional expectations of faculty while seven discussed

the power differential that makes "welcomeness" questionable. The policies of baccalaureate institutions mentioned both issues ten times in various combinations. Only two baccalaureate policies mentioned neither. It appears that the policies were written, at least in part, in response to the legal decisions.

Summary

Sixteen policies which discussed teacher/administrator-student sexual relationships were received from both doctoral and baccalaureate institutions. Chi-square tests were conducted to determine whether the returns of those with and without policies dealing with sexual relationships were in the same proportion. The response of doctoral and baccalaureate institutions, public and private, large and small were examined. Chi-square analyses between the various groupings found no significant difference in the proportions of responses.

The thirty-two policies were analyzed on six categories which courts have considered in deciding sexual harassment cases. One of these categories, rights specified, was seldom cited and was not included in the overall rating. Two categories were individually rated for strength, grievance procedure and the term used to caution or condemn, and figured decisively in the overall ratings. The terms used in four categories, Who is Prohibited, Nature of Relationship, Relationship Specified and Grievance

Procedures were grouped and analyzed by means of chi-squares and found to be proportionate with respect to their inclusion in policies of doctoral and baccalaureate institutions.

The overall rating of strength, weak, adequate and strong, was based upon the five categories: Who is Prohibited, Nature of Relationship, Relationship Specified, Grievance Procedure and Term Used to Caution or Condemn. A discussion of these ratings is presented in the next section under sub-hypothesis three.

An examination of the policies for indications of the institutions' responses to the courts' rulings on unwelcomeness and the professional expectations of faculty which was discussed in Question Three found that the majority of the policies reviewed discussed the dangers of the inherent asymmetrical relationship between faculty and students and the importance of the professionalism of the collegiate administrators and faculty. The results of a chi-square which examined the difference in proportion found that there was no significant difference in the mention of these two legal issues by doctoral and baccalaureate institutions.

The final section, which presents the results of Hypothesis One, examines the strength of the grievance procedure, of the term which was used to caution or condemn and of the overall ratings of the policies of doctoral and baccalaureate institutions.

HYPOTHESIS NUMBER ONE

"Is there a significant difference between the strength of the various components of the sexual harassment policies covering teacher/administrator-student relationships of doctoral-level universities and baccalaureate colleges?"

Of the six categories in the Analysis of Policies Framework, two categories were diverse enough to be rated individually for strength. These were the "Grievance Procedure" and the "Term Used to Caution or Condemn" categories.

Therefore, tests were conducted to determine whether there was a difference between the policies dealing with teacher/administrator-student sexual relationships of doctoral and baccalaureate institutions in regard to the strength of their grievance procedures, the term used to caution or condemn and their overall rating.

The following null hypotheses were tested:

There is no significant difference between doctoral and baccalaureate institutions in respect to the strength of their grievance procedures.

There is no significant difference between doctoral and baccalaureate institutions in respect to the strength of the terms used to caution or condemn sexual relationships.

There is no significant difference between doctoral and baccalaureate institutions in respect to the overall strength of their policies dealing with teacher/administrator-student sexual relationships.

A chi-square test for difference in proportions was used to test the above hypotheses. The two groups which were tested were doctoral and baccalaureate institutions.

For the purpose of obtaining adequate cell sizes in the chi-square tests, the ratings were collapsed into two categories: strong (made up of strong and adequate) and weak. The data of the first variable, grievance procedures, are displayed in Table 10.

Table 10

Chi-square Test for Difference in Proportions With Respect to Grievance Procedures

	Strong	Weak	X^2	Sig.
Doctoral	7	9	0.0	1.00
Baccalaureate	7	9		

At P = .05, there was no significant difference between the strength of the grievance procedures of doctoral and baccalaureate institutions. There was a failure to reject the null hypothesis.

The next category to be tested for strength was the term used to caution or condemn. The results of this test are presented in Table 11.

Table 11

Chi-Square Test for Difference in Proportions With Respect to Terms Used

	Strong	Weak	X^2	Sig.
Doctoral	13	3	8.571	.0126
Baccalaureate	5	11		

The chi-square test revealed a statistically significant difference between the strength of the term used to caution or condemn sexual relationships of faculty/administrators

and students of doctoral and baccalaureate institutions. The hypothesis was rejected in this case.

Finally, the difference of proportions chi-square test was conducted on the overall ratings of doctoral and baccalaureate institutions. Table 12 presents the results of this test.

Table 12

Chi-Square Test for Difference in Proportions With Respect to Overall Ratings

	strong	weak	X^2	Sig.
Doctoral	10	6	.00	1.0
Baccalaureate	11	5		

The chi-square test found that there was no significant difference between the proportions of overall ratings of doctoral and baccalaureate institutions. There was a failure to reject the null hypothesis.

While the strength of the policies of doctoral and baccalaureate institutions was not statistically different, individual policies were rated strong, adequate or weak on the basis of their differing characteristics. A discussion of the bases of these ratings is presented next, beginning with the ratings of the doctoral institutions and concluding with the ratings of the baccalaureate colleges.

Six policies of doctoral institutions were rated weak. Two of the institutions which were rated weak had no grievance procedure and used a weak term to caution of condemn. Other doctoral policies rated weak had, in

addition to these two characteristics, defined the nature of the relationship as "personal" or had defined the relationship as "exploitation for private advantage."

Four doctoral policies were rated adequate. One had adequate strength in all categories except the term which was "exploit unfairly." Two were expressed well but did not mention the grievance process. A final one characterized the behavior as "inappropriate" and did not discuss grievance procedures.

Six policies of doctoral institutions were rated strong. These policies had strong entries in all categories and, most importantly, had a strong term condemning teacher and, frequently, administrator sexual relationships with students. One covered all the categories and specified both the right to equal treatment and the right to privacy under the law.

Six policies of baccalaureate institutions were rated weak. Three of these defined the nature of the relationship as "personal" and did not mention sex, had weak grievance procedures and had weak terms to caution. Although two of these institutions had a grievance procedure, they described the nature of the relationship simply as "personal" and the term they used was the weakest, "be sensitive to." The final weak policy had a weak grievance procedure which put the onus on the student and used the term "avoid exploitation" which was equally weak.

Of the eight policies which were rated adequate, three had no grievance procedure but had moderate terms to caution, "held accountable", "should not" and "must resolve to abstain." Three had adequate coverage in the categories but had weak terms including "may be violation", "inappropriate" and "inappropriate and not tolerated." Two had weak grievance procedures and weak terms of caution, "deemed unwise" and "avoid exploitation", but were otherwise strong.

The two baccalaureate institutions which received a strong rating were the religion-based institution which obviously tolerated no sexual relations on campus other than between married couples, and an institution which included faculty and administrators in their policy, covered romantic relationship involving students or staff, had a detailed grievance procedure and used the term "should be aware that the administrator and faculty is liable." While this is not a strong term, the rest of the policy was strong enough to merit an overall strong rating.

In summary, there was one finding of a statistically significant difference between the various components of the sexual harassment policies covering teacher/administrator-student relationships in doctoral level universities (large and public) and baccalaureate colleges (small and private). The term used to caution or condemn was significantly stronger in the policies of doctoral (large

and public) institutions. The results of the test for difference in the strength of the overall ratings of the policies and in the strength of the grievance procedures showed no statistical difference between those of doctoral and baccalaureate institutions.

SUMMARY

Chapter Four has presented the analysis of the data in the sequential order in which it was studied and analyzed. The response to Question One involved a legal analysis of sixty-seven pertinent court cases at the state supreme court level and higher. The discussion of the results of this analysis began with an enumeration of the principles established by the Supreme Court in its only sexual harassment decision, Meritor Savings Bank, FSB v. Vinson, 1986. Then, the sixty-seven cases were analyzed by the major categories of the Framework for Analysis of Sexual Harassment Court Decisions found in Appendix 1.

The "Totality of the Circumstances" section encompassed twelve items which were analyzed in three groupings--the extent of the harassment, the credibility of the witnesses and the liability of the employer. In essence, the court review the extent of the harassment to determine if it was severe and pervasive, the witnesses to determine which are more credible, and the relationships and circumstances to determine liability. An analysis of the courts' decisions in

regard to "harm", "liability" and "remedies" was also presented.

An analysis of decisions involving the collegiate community followed the general analysis. On the basis of the decisions reviewed, the courts appear to be supportive of the academic administrators' actions, usually in consultation with a faculty committee, in sexual harassment cases.

Finally, this analysis looked at cases dealing with consensual relationships. With one exception, the courts found that benefits received by an employee who has a romantic relationship with a supervisor can discriminate against other employees desiring the same benefits.

Question Two dealt with conflicts in the decisions in sexual harassment cases. Although the major conflict anticipated, between the right of equal treatment under the law and the right to privacy, did not materialize, two minor conflicts were discussed.

The analysis required by Question Three dealt with the impact of decisions in sexual harassment cases on the collegiate community. With the factor of "unwelcomeness" being the key to a determination of the viability of a suit, the university community can no longer engage in sexual relationships with the thought that the voluntariness of their partner will serve as a defense. The academic community needs to be aware that the professional level of

judgment which the court expects of members of academia carries with it an expectation of professional conduct in relationships with students.

Question Four began with an analysis of the return of policies dealing with faculty/administrators-student sexual relationships. Those with and without the policies under investigation were tested for difference in proportions with respect to doctoral versus baccalaureate, public versus private and large versus small institutions.

A chi-square analysis of each of the three categories disclosed no significant differences between the proportions of schools with and without policies. Since no significant differences were found between the expected and the actual frequencies of the sample, this permitted an analysis of the policies which were actually in place with a good probability that the results could be generalized to a larger population.

The thirty-two policies were analyzed on six categories which the courts have considered in deciding sexual harassment cases. The terms of three categories, Who is Prohibited, Nature of Relationship and Relationship Specified were too close in meaning to be analyzed for strength but the terms of each were grouped into headings which were analyzed for proportion of inclusion in policies of doctoral and baccalaureate institutions. They were found to be proportionate. One category, rights specified, was

seldom cited and was not included in the overall rating. Two categories were individually rated for strength, grievance procedures and the term used to caution or condemn, and figured decisively in the overall ratings. Policies received an overall rating of either strong, adequate or weak based upon the five major categories.

The final analysis was of Hypothesis One. This analysis utilized the chi-square technique to determine whether the policies and policy components of doctoral and baccalaureate institutions differed in strength. The findings were that overall the policies of the two groups of institutions were not statistically different in strength. The one category that was found to be statistically different in strength was that of the term used to caution or condemn. In this case, the terms used in the policies of doctoral institutions, which are made up predominately of large, public universities, were found to be stronger than those of baccalaureate colleges, which are small and, primarily, privately funded.

NOTES

[1] Syllabus, Meritor Savings Bank, FSB v. Vinson, 106 S. Ct. 2399 (1986).

[2] Jonathan S. Monat and Angel Gomez, "Sexual Harassment: The Impact of Meritor Savings Bank v. Vinson on Grievances and Arbitration Decisions," The Arbitration Journal 41 (December 1986): 25.

[3] See, for example, Downes v. Federal Aviation Administration, 775 F. 2nd 288, 291 Fed. Cir. 1985); Joyner v. AAA Cooper Transp., 597 F. Supp. 537 (D. Ala. 1983), aff. 749 F. 2d 732 (11th Cir. 1984).

[4] For example, Priest v. Rotary, 40 FED 208 (N. D. Calif. 1980); Ambrose v. U. S. Steel Corp., 39 FEP 30 (N. D. Calif. 1985), Davis v. Western Southern Life Ins. Co., 34 FEP 97 (N. D. Ohio 1984).

[5] See, for example, Zabkowicz v. West Bend Co., 589 F. Supp. 780 (E. D. Wisc. 1984); Morgan v. Hertz Corp., 27 FEP 990 (W. D. Tenn. 1981).

[6] Henson v. City of Dundee and Katz v. Dole were the leading federal court cases which held respondeat superior applied; Vinson v. Taylor and Jeppsen v. Winnicke held that strict liability was the appropriate standard.

[7] See Meritor Savings Bank FSB v. Vinson, 106 S. Ct. at 2410 (1986); Henson v. City of Dundee, 682 F. 2d Note 13 at 802 (11th Cir. 1982).

[8] David S. Bradshaw, "Sexual Harassment, Confronting the Troublesome Issue," Personnel Administrator 32: 52 January 1987.

[9] See, for example, Miller v. Lindenwood Female College, 616 F. Supp. 860 (E. D. Mo. 1985); Zabkowicz v. West Bend Co., 589 F. Supp. 780 (E. D. Wis. 1984). White v. Benedict College, Inc., 344 S. E. 2d 147 (S. C. 1986); Studstill v. Borg Warner Leasing, 806 F. 2d 1005 (11th Cir. 1986) and Ford v. Revlon, Inc., 734 P. 2d 580 (Ariz. 1987).

[10] See, for example, Howard University v. Best 484 A. 2d 958 D. C. App. 1984; Volk v. Coler 638 F. Supp. 1555 (C. D. Ill. 1986); Rabidue v. Osceola Refining Co. 805 F. 2d 644 (6th Cir. 1986).

[11] For example, Henson v. City of Dundee. 682 F. 2d 897 (11th Cir. 1982); Miller v. Bank of America, 600 F. 2d 211 (9th Cir. 1979); Katz v. Dole, 709 F. 2d 251 (4th Cir. 1983)

and Highlander v. K. F. C., National Management Co. 805 F. 2d 644 (6th Cir. 1986).

[12] C. F. R. Sect. 1604 11(d) (1985); see Barrei v. Omaha National Bank, 726 F. 2d 424 (8th Cir. 1984).

[13] See Bundy v. Jackson, 641 F. 2d 934 (D.C. Cir. 1981); Henson v. City of Dundee, 682 F. 2d 897 (11th Cir. 1982) and Scott v. Sears Roebuck and Co., 605 F. Supp. 1047 (N. D. Ill. 1985).

[14] Estate of Scott by Scott v. de Leon, 603 F. Supp. 1328 (E. D. Mich.1985); Bohen v. City of East Chicago, 799 F. 2d 1180 (1986).

[15] Connelly v. University of Vermont and St. Ag. College, 244 F. Supp. 156, Board of Curators of the University of Missouri v. Horowitz, 98 S. Ct. 948 (1978).

[16] King v. Palmer, 778 F. 2d 878 (D. C. Cir. 1985); Kersul v. Skulls Angels Inc., 495 N.Y.S. 2d 886 (Sup. 1985); Toscanno v. Nimmo 570 F. Supp. 1197 (1983).

[17] Webster's Third International Dictionary defines "gravamen" as the "material or significant part of a grievance or complaint."

[18] American Council on Education, American Universities and Colleges, 12th ed. (New York: Walter deGruyter, 1983), 7.

CHAPTER V

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

This chapter will provide a summary of the problem studied, the review of the literature and the methodology used in the study. This overview will be followed by a review of the findings resulting from the four questions for study and the hypothesis. Conclusions relating to each question and to the hypothesis will be presented. Finally, recommendations for action by the collegiate community and for further research will be given.

SUMMARY

Introduction to the Problem

Since the issuance in June of 1986 of the Supreme Court's first decision on a sexual harassment case, colleges and universities have begun to re-examine their sexual harassment policies. The policies, developed in the early 1980's in response to the EEOC guidelines on sexual harassment, are currently being reviewed in light of recent court decisions, especially that of the Supreme Court in Meritor Savings FSB v. Vinson, 106 S. Ct. 2399 (1986). According to The Chronicle of Higher Education, December 17, 1986, the court decisions have caused colleges and

universities to have a new interest in the professionalism of teacher/administrator-student sexual relationships.

This dissertation is concerned with a determination of the current parameters of sexual harassment law as it is developing in the courts and with assessing the extent to which universities and colleges are responding to that law in developing policies which deal with teacher/administrator-student sexual relations. Academic institutions should, in developing and rewriting policies, be ever aware of three principles which are significant to the academic community: merit, institutional integrity and academic freedom.

Two legal theories, with a potential for conflict, are basic to a discussion of the legal issues involved in sexual harassment. The historical development of these two theories, the right of equality of treatment under the law and the right of privacy, is presented in Chapter One.

The questions for study in this dissertation are sequential in nature. First, court cases involving sexual harassment were examined to determine what legal factors and principles judges had applied in making their decisions. Second, these legal principles were reviewed to determine whether the principles were in conflict with other established legal principles. The third step was to assess the impact of the legal decisions upon sexual harassment policies which discuss teacher/administrator-student relationships at institutions of higher education. After

the impact was assessed, policies which cover teacher/administrator-student relationships were reviewed to determine whether they addressed the salient issues raised by the court. Finally, the various components of the policies were reviewed to determine whether there was a difference between the strength of those of doctoral and of baccalaureate institutions.

This study focused on the policies of four-year academic institutions, specifically those of doctoral level universities and baccalaureate colleges. Preliminary investigations found no policies dealing with consensual faculty/administrator-student relations at the two-year college level, so this group was not studied. Comprehensive academic institutions, with characteristics very similar to doctoral level institutions, were also not studied.

Review of the Literature

A review of the literature on the subject of sexual harassment found that there were numerous surveys of the extent of sexual harassment in the world of work and on the college campus. Surveys of both communities reported that 20 to 30 percent of the members of those groups said they had experienced sexual harassment. Although the surveys varied in terms of numbers, representativeness and the definition of sexual harassment, the similarity of all the results left

little doubt that both the academic and business community have a problem with sexual harassment.

Studies of the problem of sexual harassment have focused on the feelings of the victims, third party perceptions of the harassment and the motivation of the harassers. Overall findings indicated that women tended to be more sympathetic to victims than men and believed that the harassing conduct was more harmful than men did. Judgments by third parties were found to vary, depending on the individual circumstances in each case. Overall, increased awareness of sexual harassment appears to result in increased negativity toward it.

Prior to the United States Supreme Court's decision in 1986 in the case of Meritor Savings Bank, FSB v. Vinson, legal research was speculative and was based upon the increasing number of decisions at the Federal District and Circuit Court level. In 1980, the EEOC issued its "Guidelines on Sexual Harassment" which provoked many interpretive articles. Following the Meritor decision, articles have dealt primarily with the unresolved issues, especially that of liability.

A review of the breadth of materials written about sexual harassment indicates that sexual harassment articles have evolved from the early writings which were argumentative and speculative to those since the 1986 Meritor decision which are largely interpretive and

advisory. While the problem of sexual harassment is far from resolved, it appears to have moved in the last ten years from being an issue of concern primarily to small groups of feminist women to an issue of considerable concern to nearly all employers and academic administrators in the United States.

Methodology

This study involved a legal analysis, a policy analysis and a statistical technique. The population to whom this study may be generalized includes all four-year and advanced study institutions in the United States. Policies for the study were obtained from a randomly drawn sample of doctoral and baccalaureate institutions chosen from the National Center for Educational Statistic's classification structure for institutions of higher education.

Policies which discuss teacher/administrator-student sexual relationships were requested from the Equal Opportunity Officer or the Personnel Director of the 118 doctoral-level institutions and 230 baccalaureate colleges in the random sample. Officers were asked whether their academic institution had a policy or code of ethics which deals with sexual relationships between teacher/administrators and students. If the answer was "yes", a copy was requested. The importance of a response, even if negative, was emphasized.

The first step in this study was an examination of pertinent court cases at the state supreme court level and higher in order to determine the legal factors and principles which have been applied in making decisions in sexual harassment cases. Once that determination was made, the information was analyzed for conflicts in principles and for impact on policies dealing with sexual relationships of academic institutions. Next, the sample of doctoral and baccalaureate institutions with sexual harassment policies which discuss teacher/administrator-student relationships was analyzed for differing strengths based upon the legal analysis. Finally, a statistical technique was undertaken to examine the strengths of the policies in relation to the two groups, doctoral and baccalaureate institutions, in the sample.

Findings

The answers to the first three questions of this investigation were determined on the basis of the results of the legal analysis. The fourth question and the hypothesis combined the policy analysis and the statistical technique. The findings were successive in nature with each question dependent upon the findings of the question or questions which preceded it.

The findings in regard to Question One involved a legal analysis of sixty-seven pertinent court cases at both the State Supreme Court level and at the federal court

level. The discussion of this analysis began with an enumeration of the principles established by the Supreme Court in Meritor Savings Bank FSB v. Vinson. Then, the sixty-seven cases were analyzed by the major categories of the Framework for Analysis of Sexual Harassment Court Decisions: the Totality of the Circumstances, Harm, Liability and Remedies.

The "Totality of the Circumstances" section was divided into three sub-groupings: the extent of the harassment, the credibility of the witnesses and the liability of the employer. The section is crucial in a sexual harassment case because judges decide if a case is actionable based upon the totality of the circumstances. Specifically, the extent of the harassment is reviewed to determine if it was severe and pervasive, the witnesses are examined in order to determine credibility and the relationship and circumstances of the situation are reviewed to determine whether there is liability.

The investigation of the category of harm disclosed that in the case of economic harm, judges viewed these cases as quid pro quo, cases where sexual favors are demanded as a condition of employment in return for job benefits, and with that designation came strict liability, liability which is not dependent upon knowledge of the incident. Emotional and psychological harm are very often key factors in offensive

environment cases. Liability in sexual harassment cases is, as discussed above, strict in quid pro cases. In offensive environment cases, the principle of respondeat superior is generally applied. That is, the accused employee was, in some measure, acting within the scope of his/her authority and the employer knew or should have known of the action complained about. Remedies in sexual harassment cases are designed to make the complainant "whole" again. Under federal law "damages" are not allowable. Victims of sexual harassment use tort law if damages are desired.

Of the sixty-seven cases reviewed, several involved faculty-student sexual relations in the higher education community. In these cases, judges seemed to support the institution in both the discipline chosen and the procedures followed. In fact, many cases were decided on professional grounds and federal laws were not invoked.

Question Two looked for conflicts in the principles decided in sexual harassment cases. The conflict anticipated, between the right of equal treatment under the law and the right to privacy, was scarcely mentioned. Two lesser conflicts were discussed. One dealt with consensual relationships. At the federal court level, in all the cases reviewed except one by the Second Circuit Court of Appeals, the courts found that benefits received by an employee because of a sexual relationship with a supervisor served to

discriminate against fellow employees of either sex who desired such benefits.

The other area of conflict discussed was directed at the basis of the now established legal principle that sexual harassment is sex discrimination. District of Columbia Court of Appeals Justice Robert Bork, in a dissent to the Vinson v. Taylor decision, 758 F. 2d 141 (1985), questioned that principle. He was joined by Justice Scalia, now serving on the Supreme Court, and by Justice Starr. This conflict was presented because it is the only serious objection to the principle that sexual harassment is sex discrimination and because Justices Bork and Scalia are both better known today and perhaps more influential than they were in 1985.

Question Three dealt with the impact of legal decisions in sexual harassment cases on the collegiate community. The findings were that there is considerable impact. As in the world of work, academic communities must have sexual harassment policies, grievance procedures and must act promptly when presented with complaints.

In addition, when the Meritor decision stated that "unwelcomeness" was the gravaman a sexual harassment suit, the university community was faced with a need to re-examine its policies in regard to consensual sexual relationships. The inherent power differential in teacher-administrator-student relations made both the staff member and the

institution liable in a charge that an action was tolerated but unwelcome. Further, the high standard the court appears to place on the professional behavior of academicians requires circumspect sexual behavior in regard to students supervised or taught.

Question Four examined the policies which addressed consensual relations in the academic community. The analysis of the policies began with an examination of the returns to determine whether there was a difference in the proportion of those who had and did not have policies with regard to doctoral v. baccalaureate, public v. private and large v. small institutions. Chi-square analyses between the various groupings found there to be no significant differences with respect to any of the groupings described above.

The thirty-two policies which dealt with teacher/ administrator-student sexual relationships (sixteen were from doctoral institutions and sixteen from baccalaureate colleges) were analyzed for strength on six categories which courts have considered in deciding sexual harassment cases. The categories were: Who is Prohibited, Nature of Relationship, Relationship Specified, Rights Specified, Grievance Procedures and Terms Used to Caution or Condemn.

While the terms used to specify the people or behavior in the first three categories listed above were too close in

meaning to rate for strength, these terms were reviewed and then grouped into headings which were analyzed to determine whether the proportions varied significantly between doctoral and baccalaureate institutions. None of the grouping were found to be significantly different.

One category, rights specified, was seldom cited in the policies and was not included in the overall ratings. The categories which had terms diverse enough to be individually rated for strength, grievance procedures and the term used to caution or condemn the behavior, were rated. Both of these categories figured decisively in the overall ratings. Policies received an overall rating of either strong, adequate or weak based upon each of the categories in the framework except for "rights specified."

The final analysis in the sequence was of Hypothesis One. This analysis employed a chi-square technique to determine whether the policies and policy components of doctoral and baccalaureate institutions differed in strength. Overall, the policies of the two groups of institutions were not statistically different in strength. The one category that was found to be statistically different in strength was that of the term used to caution or condemn. In this study, the terms used in the policies of doctoral institutions which are predominately large and public were found to be stronger than those of baccalaureate colleges which are small and primarily privately funded.

CONCLUSIONS

Because each of the analyses in this study is separate and sequential, there are conclusions appropriate to the results of each as well as to the overall findings. Conclusions will, therefore, be presented by question and hypothesis in successive order.

Question Number One

The consideration which is of primary concern to judges in deciding sexual harassment cases, "the totality of the circumstances", should be an issue of great concern to employers who wish to avoid such cases. This study divided the circumstances into three categories: extent of sexual harassment, credibility and liability.

Each category should be weighed by the employer for means of preventing suits and by employees who wish to determine if their situation is actionable. To be actionable, sexual harassment must be severe and pervasive, psychologically debilitating and interfere with work performance. In other words, a complainant who is able to tolerate harassment well and continues to perform well on the job may not have an actionable case. In the academic community, this could be translated to mean that a student's grades are indicators of psychological health.

While the examination of credibility focuses on the characteristics of the complainant, defendant and other

witnesses, the past record of the employer also comes into consideration. The extent to which the employer has educated its employees, has developed a policy and procedures and has taken quick action all become part of the assessment of credibility. In the case of academia, the integrity of the educational institution, discussed in Chapter One, is important.

The issue of liability should be handled from the employer's perspective as though every case would result in strict liability. Although strict liability is, at this time, assigned in all quid pro quo cases, it has and can still be used in offensive environment cases. If an employer believes he/she may be strictly liable, a strong program of education should be undertaken. A strong educational program with administrative support appears to be the best means available to avoid liability in sexual harassment cases.

In four of the five cases reviewed which dealt with faculty-student sexual relationships in higher education, the means by which the faculty member was disciplined was the academic institution's own rules of professional conduct. The case which was discussed most extensively was the case of Korf v. Ball State University. Ball State used a paragraph from the AAUP Statement on Professional Ethics, which it had adopted and published in its Faculty Handbook, as the means of discipline. Because it appears that the

academic community is able to deal with sexual harassment cases by using its own rules, development of such rules may be the direction in which college administrators should proceed.

Finally, the results of this analysis section dealt with consensual relationships which had resulted in benefits to the employees involved romantically with their supervisors. It would seem that the same charges of discrimination could be made of professors who favor a student with whom they are amorously involved. This issue, as with the totality of circumstances, requires education of supervisors and employees, faculty and students as a means of avoiding sexual harassment accusations.

Question Number Two

The central purpose behind the investigation of this question, which was directed at finding conflicts in legal principles, was to see how the courts had handled the conflict between the right to equal treatment under the law and the right to privacy. The finding was that this conflict was argued by a complainant in only one case and was not addressed by the court.

The discussion of these two rights, equal treatment under the law and privacy, in Chapter One of the study offers some enlightenment should this issue develop in the future. The concept of equal treatment under the law began

in classical Greece. It is one of the principles of the United States Constitution and was extended to members of all colors and races in the Thirteenth, Fourteenth and Fifteenth Amendments of the Constitution. Women are still advocating an Equal Rights Amendment at the federal level but this type of guarantee has been enacted in most states. In sum, the theory of equality of treatment under the law dates from antiquity and is written into the Bill of Rights and into federal law.

On the other hand, the right to privacy was first discussed in a Harvard Law Review article in 1890. A constitutional right to privacy was not announced until 1965. This right was based upon a penumbra of several of the Bill of Rights; none of which specifically mentioned privacy. While this right has grown to encompass the institution of marriage and the family, contraception and abortion, it has frequently been questioned as a concept by constitutional conservatives.

If the right to equal treatment under the law were weighed against the right to privacy based upon the historical development and the existing written law, it would appear that equal treatment would prevail. An individual accused of sexual harassment is not likely to find the right to privacy a sound defense.

The other two possible areas of conflict which were discussed in this section are not apt to become major

issues. The possibility of a reversal of the principle that sex harassment is a form of sex discrimination does not appear likely with Justice Bork's defeat for nomination. It would not seem probable that Justice Scalia could muster support for such a concept at the Supreme Court level without a colleague in agreement.

The other area of conflict, dealing with consensual relationships, has only been espoused at the Second Circuit Court of Appeals level. It would appear that the weight of the other federal conflicting decisions would minimize the effect of the Second Circuit decision.

Question Number Three

The analysis in this section dealt with the impact of the legal decisions on policies dealing with teacher/administrator-student sexual relationships in academia. The relevant findings in this section were two: the unwelcomeness standard in determining actionable sexual harassment cases and the professional expectations of collegiate administrators and faculty. These two, taken together, send a message to the collegiate community. The message is that behavior between administrators and faculty, faculty and students, supervisors and employees should not include sexual relationships.

Given the inherent asymmetrical relationship of faculty and students, the possibility of a consensual sexual relationship is always subject to question and, therefore, a

charge of unwelcomeness. The administrator, supervisor or faculty member who engages in sexual relations with someone over whom he/she has power places him/herself and the institution in line for a possible sexual harassment charge.

The other finding in this question dealt with the professional expectations of the academic community. The fact that the legal community gives deference to academic decisions, unless proven to be arbitrary and capricious, carries with it an expectation of professional behavior in the academic role. The principles of merit, institutional integrity and academic freedom, all of which are essential to the professionalism of the academic community, were introduced in Chapter One of the study.

These three principles can serve as the basis of an academic institution's policy against sexual relationship between faculty/administrators and students. Academic decisions must be based upon academic merit and not personal considerations. The integrity of the institution requires it to protect the academic freedom of the student to learn, free of sexual exploitation, as well as to protect the faculty member's right to teach.

Question Number Four and Hypothesis One

The analysis of this question and hypothesis dealt with a review of the thirty-two policies which discussed teacher/administrator-student sexual relationships. Each policy was

examined for the strength of five categories which made up the policy: Who is Prohibited, the Nature of the Relationship, the Relationship Specified, the Grievance Procedure and the Term Used to Caution or Condemn. This discussion will present the range of responses which may be used to determine the relative strength of each category.

If a collegiate institution wishes a policy to be strong in regard to the law, it will prohibit all of those in a supervisory position, faculty, administrators and staff supervisors, from sexual relationships with those whom they supervise. The more the term is narrowed and exclusive, as in full-time faculty only, the weaker the effect of the policy.

As far as specifying the nature of the relationship, the stronger policy will mention the term "sex." Weaker policies may refer to "personal relationships" or "exploit for private advantage." These weaker terms which imply sex but do not state it may prove sufficient if a case goes to court but may not.

In regard to specifying the relationship which is prohibited, the broader the scope, such as "those in power, authority or control", the stronger the policy. If a policy is narrowed, such as faculty-student only, then other persons in power are not prohibited from sexual relationship with those whom they supervise and the policy is less effective.

The courts have placed importance on having grievance procedures in place. For this reason, a code of ethics or sexual harassment policy with a grievance procedure is preferable to a letter or position statement which normally does not cover the grievance mechanism. If the institution wants a strong grievance procedure, it will adopt one that begins with procedures unique to sexual harassment cases with informal and formal options. It will proceed to the standard grievance procedures specified by the various union contracts and, in the absence of collective bargaining, by faculty senate statements. Finally, it will identify the sanctions that may be invoked in the case of guilt.

A final issue of critical importance in deciding the strength of a policy is the choice of the term which is used to caution or condemn the person in authority. Some terms are clearly only warnings to proceed cautiously such as "be sensitive to." Others take a middle ground such as "have a responsibility to avoid conflict of interest." Still others condemn sexual relationships by saying "any sexual relation is a violation" or "shall not." The term chosen by an institution is a clear indication to the court and the campus community of the degree of commitment the institution has to their policy dealing with sexual relations.

Overall

One may conclude from the statistical analyses of the schools with policies that the smaller four-year institutions do not vary in their treatment of the issues just cited from those of the larger (doctoral) campuses except in the case of the term used to caution or condemn the relationships. This is an interesting conclusion since one might expect that smaller and/or private schools would take a less formal approach to these matters. Further, the analysis did not substantiate a difference in approach by size or by form of governance. While doctoral institutions have not been the pioneers in this area as suggested by the literature on the subject, they have adopted stronger terms in censuring teacher/administrator-student sexual relationships.

This study points to a need for institutions of higher education to adopt a policy or code of ethics dealing with sexual relationships in the academic community. The legal analysis found that decisions involving academic sexual harassment cases were based upon the rules of the academic institutions. In the case of Korf v. Ball State University, the AAUP Statement on Professional Ethics adopted by Ball State was sufficient to justify dismissal. It can be concluded, therefore, that a policy need not be strong to be effective and useful. If an institution has no policy or code of ethics, it is apt to find itself unable to take

action against an employee (faculty, administrator or supervisor) who has behaved unprofessionally in his/her sexual relations with those over whom he/she has power.

RECOMMENDATIONS

For Action

Academic institutions should adopt a policy addressing sexual relations on campus as a means of insuring professional conduct and avoiding sexual harassment charges. The findings in this investigation indicate that the strength of the policy probably is not as important as simply having one.

To facilitate development of policies dealing with sexual relationships on campus, a guide was developed. This guide is arranged so that the user may select the strength desired across five categories. The individual policy that suits an academic institution is dependent upon the unique characteristics of the institution and its faculty and student population. This guide should make development of a policy on sexual relations more feasible and practicable. See Figure 1.

For example, if an institution wished to adopt a policy simply cautioning their faculty about the sexual exploitation of their students, their policy could be developed from the terms at the top of the chart. A moderate policy would be selected from terms in the middle

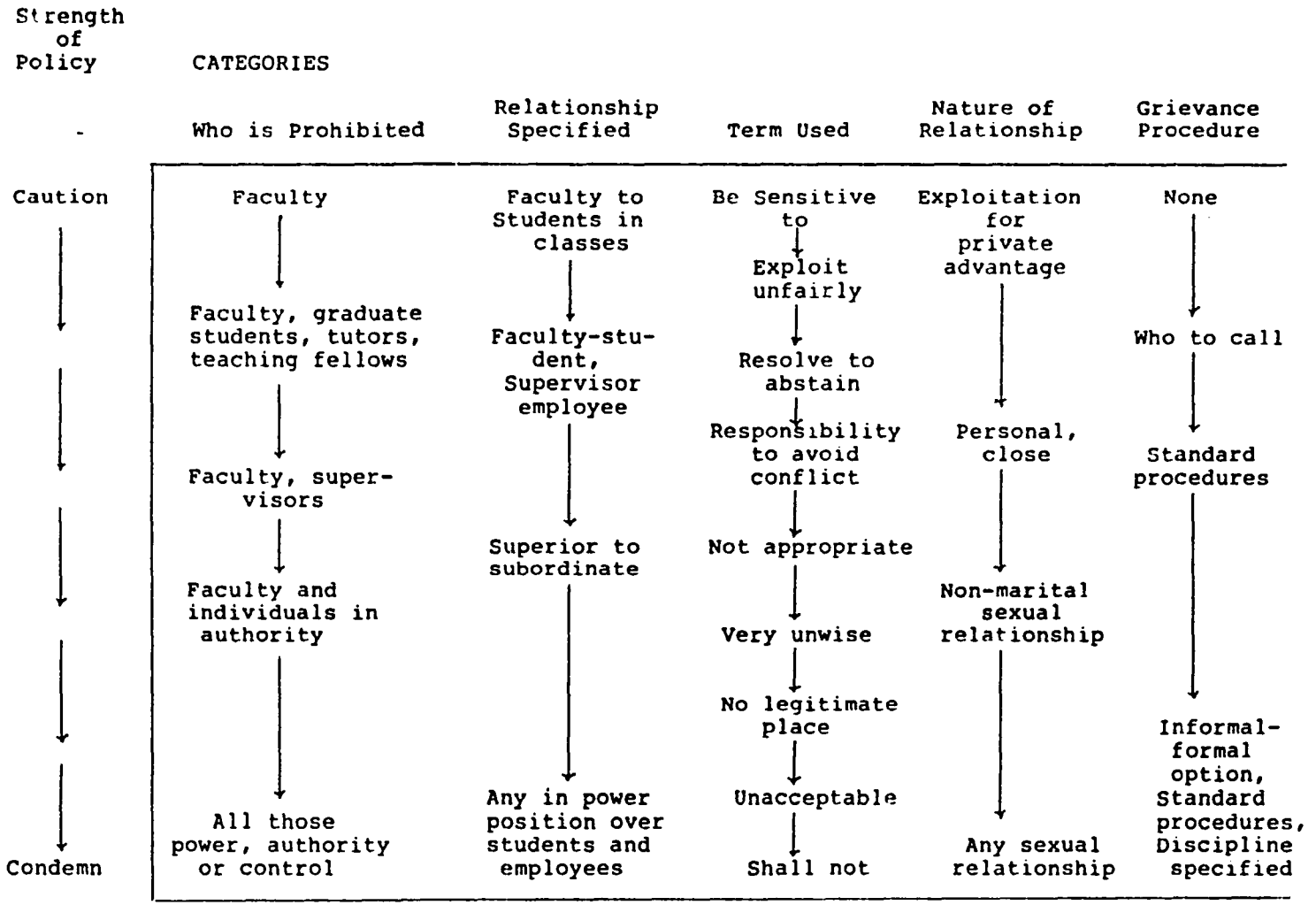

Figure 1

A GUIDE FOR DEVELOPMENT OF A POLICY DEALING WITH SEXUAL RELATIONSHIPS IN ACADEME

area. A strong policy would come from the bottom row. If an institution wished to mix strong and weak categories, that, too, could be done by an examination across the various possibilities by category.

For Further Research

This study was a first step in examining the legal parameters of sexual harassment decisions. It provides a base to the summer of 1987. Further analysis is needed as sexual harassment decisions continue to be made and, with them, the law continues to develop.

This study was also a first attempt to solicit and analyze policies dealing with teacher/administrator-student sexual relationships. As policies are developed in increasing numbers, this study will need to be updated. In addition to future analyses such as this one, direction for further research on policies includes:

1. A study of comprehensive universities and two year colleges.
2. A study of the process of policy selection. Policy selection often involves compromise. The reasons why institutions ultimately select a strong, weak or moderate policy should prove worthwhile. Part of this study might include the decision-making involved in calling the policy just that or including it in a Code of Ethics.

3. A study of the policies and procedures of academic institutions which confine their policy dealing with sexual relationships to faculty and students. Such a study might reveal the decision-making employed and the manner in which the institution deals with the sexual relationships of administrators and other employees.
4. A study of the differences between the policies of academic institutions which have collective bargaining and those that do not.
5. A study of the policies or lack of policies of religious-based baccalaureate institutions. Some of these institutions have guidelines for behavior that are so strict that they do not consider policies necessary, while others publish their moral principles.

APPENDIX NO. 1

A FRAMEWORK FOR ANALYSIS OF SEXUAL HARASSMENT COURT DECISIONS

CASE:

Type:	Quid Pro Quo				Hostile or Offensive Environment			
Level:	SSC	FD	FA	SC	SSC	FD	FA	SC
RULINGS:								
Factors which Make up the Totality of Circumstances								
-Nature of conduct								
-Frequency of conduct								
-Duration of conduct								
-Character of complainant and accused								
-Relationships of complainant and accused								
-Voluntariness								
-Notice given								
-Constructive Knowledge								
-Action of employer upon notification								
-Grievance procedure in place								
-Sexual harassment policy in place								
-Past violations of employer								

	Type:	Quid Pro Quo				Hostile or Offensive Environment			
	Level:	SSC	FD	FA	SC	SSC	FD	FA	SC
Harm									
-Economic (Quid Pro Quo only)									
-Psychological									
-Emotional									
Liability of Employer									
-Strict									
-Respondeat Superior									
Remedies									
-Injunction									
-Establish grievance procedure									
-Back pay									
-Reinstatement									
-Attorney's fee									
-Court costs									
Legal Principles									
-Equality									
-Privacy									

Key:

SSC--State Supreme Court
FD--U. S. District Court
FA--U. S. Court of Appeals
SC--Supreme Court of the U. S.

APPENDIX NO. 2

Terms Utilized in Framework for Analysis of Sexual Harassment Court Decisions

Quid Pro Quo:	Sexual favors are demanded as a condition of employment in return for a promotion, raise or favorable evaluation.
Hostile or Offensive Environment	An environment which is not free from sexually discriminatory intimidation, ridicule and insult.
SSC:	State Supreme Court
FD:	United States District Court
FA:	United States Court of Appeals
SC:	Supreme Court of the United States
Notice Given:	Complainant notified superior of sexual harassment.
Constructive Knowledge:	The sexual harassment was so widespread that a reasonable employee should know about it.
Strict Liability:	The employer is liable whether informed of harassment or not.
Respondeat Superior:	The employer is liable for acts of his employees committed in the course and scope of their employment. He/she must know or should have known of the sexually hostile act or environment and failed to implement prompt and appropriate corrective action.

APPENDIX NO. 3

A FRAMEWORK FOR ANALYSIS OF POLICIES WHICH DISCUSS TEACHER/-ADMINISTRATOR-STUDENT RELATIONSHIPS

NAME OF UNIVERSITY:

Factors Which Make up the Totality of Circumstances	STRENGTH OF POLICY		
	O (Inadequate)	A (Adequate)	S (Strong)
Who is prohibited			
-Administrator			
-Teacher Fulltime Part time			
-Teaching Assistant			
Nature of relationship			
Coercive			
-Sexual propositions			
-Sexual remarks			
-Dating			
-Intimacy			
Consensual			
-Dating			
-Intimacy			
Relationship specified			
-Student in class			
-Advisee			
-Supervised or evaluated			
-Superior-subordinate			

	0 (Inadequate)	A (Adequate)	S (Strong)
Grievance Procedure			
-Notification of other than supervisor			
-Informal/formal option			
-Protection specified of complainant and accused			
-Discipline .Based on nature of relationship .Progressive .Dismissal is possible			
Rights Protected Specified			
-Equal treatment			
-Privacy			
Strength of Term to Caution or Condemn			

NOTE: The strength of each category of the policy will be measured by the following indications:

Inadequate: No mention of the circumstance

Adequate: Circumstance mentioned but not discussed. No guidelines given.

Strong: Circumstance discussed thoroughly with guidelines given.

The overall strength of each policy will be measured by:

Weak: Categories not mentioned
Faculty/administrators cautioned

Adequate: Categories mentioned but not discussed
Faculty/administrators warned

Strong: Categories discussed thoroughly
Faculty/administrators prohibited

APPENDIX NO. 4

DESCRIPTIVE DATA
DOCTORAL INSTITUTIONS

Institutions	Public	Private	Large	Small	Letter or Statement	Code of Ethics	Sexual Harassment Policy
#1	X		32,000				X
#2	X		31,007		X		
#3	X		16,158				X
#4	X			6,817			X
#5	X		12,500		X		
#6		X	19,997		X		
#7	X		30,798				X
#8	X		26,994			X	
#9	X		27,704			X	
#10	X		34,467		X		
#11	X		62,266				X
#12		X	22,065				X
#13	X		28,772				X
#14		X		4,400			X
#15	X		15,230				X
#16	X		17,000			X	

APPENDIX NO. 5

DESCRIPTIVE DATA
BACCALAUREATE INSTITUTIONS

Insti-tutions	Public or Private		Large or Small	Letter or Statement	Code of Ethics	Sexual Harassment Policy
#1		X	1,900	X		
#2		X	1,077			X
#3		X	850			X
#4		X	1,400			X
#5		X	1,932	X		
#6		X	1,200		X	
#7	X		4,350		X	
#8	X		3,000			X
#9		X	1,600			X
#10		X	404		X	
#11		X	1,400			X
#12		X	2,300		X	
#13		X	800		X	
#14		X	1,330	X		
#15		X	1,850			X
#16		X	350		X	

Appendix 6

Summary
Who is Prohibited

Doctoral	Baccalaureate
#1 Those in power/authority/ control	#1 Faculty, supervisor
#2 Faculty	#2 Faculty, individuals in position of authority
#3 Teacher	#3 Faculty, individuals in position of authority
#4 Instructor, student, peer	#4 Faculty, individuals in position of authority
#5 Faculty, administrators supervisors	#5 Faculty members, employees
#6 Teachers, officers, graduate students, tutors, teaching fellows	#6 All members of college community
#7 Faculty, graduate student, instructional personnel	#7 Faculty, associate instructors
#8 Faculty	#8 Faculty
#9 Faculty	#9 Administrators and faculty
#10 Faculty, teaching assistants	#10 Faculty
#11 Faculty, supervisors	#11 Faculty, supervisors
#12 Faculty, graduate students	#12 Faculty
#13 Faculty	#13 Faculty
#14 Faculty	#14 Faculty
#15 Teacher or officer	#15 Faculty and individuals in authority
#16 Faculty	#16 Faculty

Appendix 7

Summary
Nature of Relationship

Doctoral	Baccalaureate
#1 Consensual sexual relationships	#1 Coerced sexual relations
#2 Romantic or sexual	#2 Consenting personal relationships
#3 Sexual favors	#3 Consenting personal relationships
#4 Sexual advances or favors	#4 Consenting personal relationships
#5 Amorous relationships Romantic involvement	#5 Amorous or sexual relationships
#6 Amorous relationships Romantic involvement	#6 Fornication, homosexuality, adultery
#7 Amorous	#7 Sexual or amorous relationships
#8 Personal relationships	#8 Close, personal
#9 Sexual,personal	#9 Romantic relationships
#10 Sexual relationships	#10 Seduction, abusing bodies sexual relationships
#11 Sexual favors and relationships	#11 Romantic and sexual relationships
#12 Sexual relations	#12 Exploitation for private advantage
#13 Sexual or romantic advances or relationship	#13 Sexual exploitation
#14 Any sexual relationship	#14 Amorous relationships
#15 Persistent attempts, romantic liaison	#15 Personal relationships
#16 Exploitation for private advantage	#16 Non-marital sexual relationships

Appendix 8

Summary
Relationship Specified

Doctoral	Baccalaureate
#1 Those in power /authority/ control	#1 Power position over students and employees
#2 During period of course-work; if relationship started before coursework, it is OK	#2 Faculty-student
#3 Superior-subordinate	#3 Faculty-student
#4 Superior-subordinate	#4 Faculty-student employer-employee
#5 Superior-subordinate	#5 Faculty and employees, student
#6 Position of authority	#6 All members of college community
#7 Enrolled in course or supervised; caution those outside the instructional context	#7 Faculty, associate instructors-students
#8 Faculty-student	#8 Faculty-student
#9 Faculty-student	#9 Administrators & faculty student & staff
#10 Faculty to students, junior colleagues and teaching assistants	#10 Faculty-student
#11 Professor-student	#11 Faculty-student, supervisors-employees
#12 Teacher-student in course	#12 Faculty-student
#13 Teacher-student in course or supervised or evaluated	#13 Faculty-student
#14 Faculty-student	#14 Faculty-student
#15 Teacher or officer	#15 Professional and Educational relationship
#16 Teacher-student	#16 Faculty-student

Appendix 9

Summary
Grievance Procedure

	Doctoral	Rating		Baccalaureate	Rating
#1	0	I	#1	Standard procedure	A
#2	0	I	#2	Brief, president decides	I
#3	0	I	#3	Standard procedure	A
#4	Very detailed informal & formal procedures precede standard procedures	S	#4	Informal, formal	S
#5	0	I	#5	0	I
#6	0	I	#6	0	I
#7	Very detailed	S	#7	0	I
#8	0	I	#8	Who to call	A
#9	Procedures specified; sanctions specified	S	#9	Informal, formal	S
#10	0	I	#10	0	I
#11	Standard procedures	A	#11	Two options: letter to harasser or complaint	I
#12	0	I	#12	0	I
#13	Standard procedures	A	#13	Ways to avoid, how to handle it, if all else fails, tell advisor	I
#14	Standard procedures; disciplinary action	S	#14	Policies & guidelines dealing with moral turpitude	S
#15	Formal, informal sanctions	S	#15	One person for all students, another for all employees	I
#16	0	I	#16	Suspension or dismissal for cause, standard procedures	S

Appendix 10

Rights Protected Specified

Doctoral		Baccalaureate	
#1	0	#1	0
#2	Equal treatment	#2	0
#3	0	#3	0
#4	Privacy	#4	0
#5	Equal treatment	#5	0
#6	Equal treatment	#6	0
#7	Privacy	#7	0
#8	0	#8	0
#9	Equal treatment	#9	0
#10	Equal treatment	#10	0
#11	0	#11	0
#12	0	#12	0
#13	0	#13	0
#14	0	#14	Equal treatment
#15	Equal treatment and privacy	#15	0
#16	0	#16	0

Appendix 11

Summary
Terms Used to Caution or Condemn

	Doctoral	Rating		Baccalaureate	Rating
#1	"Such relationships raise questions"	W	#1	"Inappropriate, not tolerated"	A
#2	"Unacceptable, harmful, breach of ethics"	A	#2	"Sensitive to"	W
#3	"No legitimate place"	A	#3	"Sensitive to"	W
#4	"Exploit unfairly"	A	#4	"Sensitive to"	W
#5	"Always wrong"	S	#5	"Held accountable; avoid conflict of interest"	A
#6	"Always wrong"	S	#6	"Forbidden"	S
#7	"No faculty member shall"	S	#7	"Shall not, generally unacceptable"	W
#8	"Responsibility to avoid conflict"	A	#8	"Sensitive to"	W
#9	"Responsibility to avoid conflict and sexual exploitation"	A	#9	"Should be aware, makes administrator & faculty liable"	A
#10	"Should be avoided"	W	#10	"Resolve to abstain"	W
#11	"Very unwise"	A	#11	"Deemed unwise; warned against"	W
#12	"Inappropriate"	A	#12	"Avoid exploitation"	W
#13	"Shall not"	S	#13	"Avoid exploitation"	W
#14	"Any sexual relation is a violation"	S	#14	"Violations are contrary to values; inappropriate"	A
#15	"Not appropriate; responsibility to withdraw"	A	#15	"Sensitive to"	W
#16	"Avoid exploitation"	W	#16	"May be violation of professional ethics"	W

W = Weak
A = Adequate
S = Strong

Appendix 12

Overall Ratings

	Doctoral		Baccalaureate
#1	Weak	#1	Adequate
#2	Weak	#2	Weak
#3	Weak	#3	Weak
#4	Adequate	#4	Weak
#5	Adequate	#5	Adequate
#6	Adequate	#6	Strong
#7	Strong	#7	Adequate
#8	Weak	#8	Weak
#9	Strong	#9	Strong
#10	Weak	#10	Adequate
#11	Strong	#11	Adequate
#12	Adequate	#12	Adequate
#13	Strong	#13	Adequate
#14	Strong	#14	Adequate
#15	Strong	#15	Weak
#16	Weak	#16	Adequate

TABLE OF CASES

Fisher v. Flynn. 598 F. 2d 663 (1st Cir. 1979).

Ford v. Revlon, Inc. 734 P. 2d 580 (Ariz. 1987).

Gan v. Kepro Circuit Systems Inc. 28 FEP 639 (E. D. Mo. 1982).

Garber v. Saxon Business Products, Inc. 552 F. 2d 1032 (4th Cir. 1977).

Glasgow v. Georgia-Pacific Corp. 693 P. 2d 708 (D. Wash. 1985).

Glezos v. Amalfi Ristorante Italiano, Inc. 651 F. Supp. 1271 (D. Md. 1987).

Gmuer v. Garner. 426 So. 2d 972 (Fla. App. 2 Dist. 1982).

Grier v. Casey. 643 F. Supp. 298 (W. D. N. C. 1986).

Griswold v. Connecticut. 381 U. S. 479 (1965).

Grove City v. Bell. 104 S. Ct. 1211 (1984).

Harris v. Bolger. 599 F. Supp. 1414 (C. D. Cal. 1984).

Harrison v. Reed Rubber Co. 603 F. Supp. 1457 (E. D. Mo. 1985).

Heelan v. Johns-Manville Corp. 20 FEP 251 (D. Colo. 1978).

Hensen v. City of Dundee. 682 F. 2d 897 (11th Cir. 1982).

Highlander v. K. F. C. Nat. Management Co. 805 F. 2d 644 (6th Cir. 1986).

Horn v. Duke Homes, Div. of Windsor Mobile Homes. 755 F. 2d 599 (7th Cir. 1985).

Hosemann v. Technical Materials, Inc. 554 F. Supp. 659 (D. C. R. I. 1982).

Howard University v. Best. 484 A. 2d 958 (D. C. Cir. 1984).

Jenkins v. Orkin Exterminating Co., Inc. 646 F. Supp. 1274 (E. D. Tex. 1986).

Jeppsen v. Wunnicke. 611 F. Supp. 78 (D. C. Alaska, 1985).

Joyner v. AAA Cooper Transp. 597 F. Supp. 537 (D. Ala. 1983). Aff'd 749 F. 2d 732 (11th Cir. 1984).

Katz v. Dole. 709 F. 2d 251 (4th Cir. 1983).

Kersul v. Skulls Angels, Inc. 495 N. Y. S. 2d 886 (Sup. 1985).

King v. Palmer. 778 F. 2d 878 (D. C. Cir. 1985).

Korf v. Ball State University. 726 F. 2d 1222 (7th Cir. 1984).

Levitt v. University of Texas at El Paso. 759 F. 2d 1224 (5th Cir. 1985).

Lewis v. Oregon Beauty Supply Co. 733 P. 2d 430 (Or. 1987).

McKinney v. Dole. 765 F. 2d 1129 (D. C. Cir. 1985).

Mays v. Williamson and Sons, Janitorial Services, Inc. 591 F. Supp. 1518 (E. D. Ark. 1984).

Meritor Savings Bank, FSB v. Vinson. 106 S. Ct. 2399 (1986).

Micari v. Mann. 481 N.Y.S. 2d 967 (Sup. 1984).

Miller v. Bank of America. 600 F. 2d 211 (9th Cir. 1979).

Miller v. Lindenwood Female College. 616 F. Supp. 860 (E. D. Mo. 1985).

Moire v. Temple University School of Medicine. 613 F. Supp. 1360 (D. C. Pa. 1985).

Morgan v. Hertz Corp. 542 F. Supp. 123 (W. D. Tenn. 1981).

Naragon v. Wharton. 572 F. Supp. 1117 (M. D. La. 1983).

Naragon v. Wharton. 737 F. 2d 1403 (5th Cir. 1984).

North Haven Board of Education v. Bell. 456 U. S. 512 (1982).

Patton v. J. C. Penny Co., Inc. 719 P. 2d 854 (Or. 1986).

Phillips v. Smalley Maintenance Services, Inc. 711 F. 2d 1524 (C A 11 Ala. 1983).

Porta v. Rollins Environmental Services (NJ), Inc. 654 F. Supp. 1275 (D. N. J. 1987).

Priest v. Rotary. 40 FEP 208 (N. D. Calif. 1980).

Rabidue v. Osceola Refining Co. 805 F. 2d 611 (6th Cir. 1986).

Rogers v. EEOC. 454 F. 2d 234 (CA 5 1971).

Sand v. George P. Johnston Co. 33 FEP 716 (D. Mich. 1982).

Scott v. Sears Roebuck & Co. 798 F. 2d 210 (7th Cir. 1986).

Skelton v. Balzano. 424 F. Supp. 1231 (D. D. C. 1976).

State University of N. Y. v. State Human Rights App. Bd. 26 EPD 21, 777 (New York S. C. 1981).

Studstill v. Borg Warner Leasing. 806 F. 2d 1005 (11th Cir. 1986).

Tomkins v. Public Service Electric and Gas Co. 16 FEP Case 22 (3rd Cir. 1977).

Toscano v. Nimmo. 570 F. Supp. 1197 (D. Delaware, 1983).

Vinson v. Taylor. 753 F. 2d 141 (D. C. Cir. 1985).

Vinson v. Taylor. 760 F. 2d 1330 (D. C. Cir. 1985).

Volk v. Coler. 638 F. Supp. 1555 (C. D. Ill. 1986).

Weiss v. United States. 595 F. Supp. 1050, 1056 (E. D. Va. 1984).

White v. Benedict College, Inc. 344 S.E. 2d 147 (S. C. 1986).

Williams v. Bell. 587 F. 2d 1240 (D. C. Cir. 1978).

Williams v. Saxbe. 413 F. Supp. 654 (D. D. C. 1976).

Wright v. Cayan. 642 F. Supp. 947 (N. D. N. Y. 1986).

Zabkowicz v. West Bend Co. 589 F. Supp. 780 (E. D. Wis. 1984).

BIBLIOGRAPHY

Abramson, Joan. Old Boys, New Women; The Politics of Sex Discrimination. New York: Praeger, 1979.

"ACE Issues Sex Harassment Guide." Higher Education and National Affairs 35 (December 1, 1987): 1.

American Bankers Association. "Sexual Harassment: The Issues and the Law." Washington, D. C. 1981.

American Council on Education. American Universities and Colleges, 12th ed. New York: Walter deGruyter, 1983.

Anderson-Davis and Associates. "Sexual Harassment Facts vs. Myths: Employer Legal Responsibilities and Financial Liabilities." San Francisco, 1982.

Benson, D. J. and G. E. Thomson. "Sexual Harassment on a University Campus: The Confluence of Authority Relations, Sexual Interest and Gender Stratifications." Social Problems, 29 (March 1982): 236-251.

Bok, Derek. Beyond the Ivory Tower; Social Responsibilities of the Modern University. Cambridge, Mass.: Harvard University Press, 1982.

Bradshaw, David S. "Sexual Harassment: Confronting the Troublesome Issues." Personnel Administrator, 32, January 1987: 51-53.

Bureau of National Affairs. "Sexual Harassment Seen Affecting Productivity in Federal Workplace." Government Employee Relations Report, November 19, 1979.

Cohn, Edmond. The Moral Decision; Right and Wrong in the Light of American Law. Bloomington: Indiana University, 1981.

Cole, Elsa Kircher. "Recent Legal Developments in Sexual Harassment." The Journal of College and University Law, 13, No. 3, (Winter 1986): 267-284.

Crocker, Phyliss L. "Annotated Bibliography on Sexual Harassment in Education." Women's Rights Law Reporter. Rutgers Law School 7, No. 2 (Winter 1982).

Deane, Nancy H. and Darrel L. Tillar. "Sexual Harassment: An Employment Issue." Washington, D. C.: College and University Personnel Association, 1981.

"Developments in the Law--Academic Freedom." Harvard Law Review 81, No. 5 (March 1968): 1044-1159.

Dziech, Billie Wright and Linda Weiner. The Lecherous Professor: Sexual Harassment on Campus. Boston: Beacon Press, 1984.

Farley, Lin. Sexual Shakedown; the Sexual Harassment of Women on the Job. New York: McGraw-Hill Book Co.,1978.

Fernandez, Rosa. Letter to Author. April 27, 1987.

Fishbien, Estelle A. "Sexual Harassment: Practical Guidance for Handling a New Issue on Campus." Special Pamphlet, West's Education Law Reporter, September 23, 1982.

Glaser, Robert D. and Joseph S. Thorpe. "Unethical Intimacy; A Survey of Sexual Contact and Advances Between Psychology Educators and Female Graduate Students," American Psychologist 41 (1986): 43-51.

Grey, Thomas C. The Legal Enforcement of Morality. New York: Borzoi Book, 1983.

"Guidelines on Sexual Harassment Policies." American Council on Education, December 1986.

Gutek, B. A.; Morasch, B.; and Cohen, A. G. "Interpreting Social-Sexual Behavior in a Work Setting." Journal of Vocational Behavior 22 (1983): 30-48.

Hess, Matthew C. and Lester S. Hubble. "The Dehumanizing Puzzle of Sexual Harassment: A Survey of the Law Concerning Harassment of Women in the Workplace." Washburn Law Journal, 24, 1985: 574-614.

House of Representatives Committee on Post Office and Civil Service, Sexual Harassment in the Federal Government, April 1980.

Jensen, I. W. and B. A. Gutek. "Attributions and Assignment of Responsibility in Sexual Harassment." Journal of Social Issues, 38, April 1982: 121-136.

Johnson, Michael P. and Susan Shuman. "Sexual Harassment of Students at Pennsylvania State University." September 1983.

Kanowitz, Leo. Women and the Law; the Unfinished Revolution. Albuquerque: University of New Mexico Press, 1968.

Kelber, M. "Sexual Harassment.....The U. N.'s Dirty Little Secret." Ms. November 1977.

Kennevick, Janie. "The Significance of the Vinson Decision On Corporate Employees." Journal of Contemporary Law 12 (Winter 1986): 163-176.

Langevin, Judith B. "Sexual Harassment; Vinson is Just the Beginning." Trial (December 1986): 35-38.

Lenard, George L. "Employer Liability for Sexual Harassment." Illinois Bar Journal 75 (April 1987): 430-435.

Littler-Bishop, S. L., D. Seidler-Feller and R. E. Opaluch. "Sexual Harassment in the Workplace as a Function of Initiators Status: The Case of Airline Personnel." Journal of Social Issues 38 (April 1982): 137-148.

Lorimer, Linda Koch. "Sexual Harassment: Overview of the Law." Yale University, February 1981.

MacKinnon, Catharine. Sexual Harassment of Working Women. New Haven: Yale University Press, 1979.

Malovich, Natalie J. Sexual Harassment on Campus: A Study of Students' Attitudes ands Beliefs. Ph. D. Diss., University of Missouri, Saint Louis, 1985. Ann Arbor: UMI, 1985.

McMillen, Liz. "Many Colleges Taking a New Look at Policies on Sexual Harassment." The Chronicle of Higher Education, 33, No. 16, December 17, 1986.

Mendenhall, W. Introduction to Probability and Statistics. Belmont, CA.: Wadsworth Publishing Company, Inc., 1979.

Milner, Laura M. Factors Influencing the Perception of Sexual Harassment. Ph. D. Diss., University of Missouri, St. Louis, 1985. Ann Arbor: UMI, 1985.

Monat, Jonathan S. and Angel Gomez. "Sexual Harassment: The Impact of Meritor Savings Bank v. Vinson on Grievances and Arbitration Decisions." The Arbitration Journal 41 (December 1986): 24-29.

Mouly, G.J. Educational Research: The Art and Science of Investigation. Boston: Allyn and Bacon, 1977.

Nelson, W. B. "Sexual Harassment, Title VII and Labor Arbitration." Arbitration Journal 40 (December 1985): 55-65.

Note. "Sexual Harassment Claims of Abusive Work Environment Under Title VII." Harvard Law Review 97 (1984): 1449-1467.

Oglebay, Susan and SueElla Kobak. "Predicting Employer Liability for Sexual Harassment." Employer Relations Journal 12 (Winter 1986): 412-423.

Paine, Thomas. The Rights of Man. New York: Dutton, 1966.

Pope, K. S., H. Levenson and L. R. Schover. "Sexual Intimacy in Psychology Training: Results and Implications of a National Survey." American Psychologist 34 (1979): 682-89.

Pound, Roscoe. An Introduction to the Philosophy of Law. New Haven: Yale University Press, 1974.

Powell, G. N. "Definition of Sexual Harassment and Sexual Attention Experienced." The Journal of Psychology, 113 (1983): 113-117.

Quinn, Robert E. "Coping with Cupid: the Formation, Impact, and Management of Romantic Relationships in Organizations." Administrative Science Quarterly 22 (March 1977): 30-45.

Reilly, T., S. Carpenter, V. Dull and Bartlett. "The Factorial Survey Technique: An Approach to Defining Sexual Harassment on Campus." Journal of Social Issues 38 (1982): 99-110.

"Report of the Committee to Survey Harassment at the University of Pennsylvania," Penn State Almanac Supplement, September 24, 1985.

Robertson, Claire, Constance Dyer and D'Ann Campbell. "Report on Survey of Sexual Harassment Policies and Procedures." Indiana University, Bloomington: Office for Women's Affairs, September 1985.

Robinson, R. K., Delaney J. Kirk and Elvis C. Stephans. "Hostile Environment: A Review of the Implications of Meritor Savings Bank v. Vinson." Labor Law Journal 38 (March 1987): 179-183.

Roggerson, Chris. District Director of EEOC, San Francisco, Speech in Honolulu, September 16, 1985.

Rubinett, Lynn. "Sexual Economics: The Tie That Binds. Judicial Approaches to Sexual Harassment as the Title VII Violation." Journal of Law and Inequality 4 (1986): 245-293.

Safran, Claire. "What Men Do to Women on the Job", Redbook, November 1976.

Schneider, B. "Consciousness About Sexual Harassment Among Heterosexual and Lesbian Workers." Journal of Social Issues 38 (April 1982): 75-98.

Schoenheider, Krista J. "A Theory of Tort Liability for Sexual Harassment in the Workplace.: University of Pennsylvania Law Review 134 (July 1986): 1461-1497.

Shaney, Mary Jo. "Perceptions of Harm: The Consent Defense in Sexual Harassment Cases." Iowa Law Review 71 (May 1986): 1109-1135.

Sherman, Martin F. and Robert J. Smith. Was She Really Sexually Harassed? The Effects of a Victim's Age and the Job Status of the Initiator. ERIC, 1982. ED 248-743.

"Small-Sample Techniques." The NEA Research Bulletin 38 (December 1960): 99.

Smith, Robert Ellis. Privacy; How to Protect What's Left of It. Garden City, New York: Anchor Press, 1979.

"Symposium--Women and the Law", Valparaiso Law Review 5 (1971).

Tangri, S. S., M. R. Burt and L. B. Johnson. "Sexual Harassment at Work; Two Explanatory Models." Journal of Social Issues 38 (1983): 33-54.

"The Annual Report on the Economic Status of the Profession 1983-1984." Academe, July-August 1984.

Thomann, Daniel A. The Utility of a Legal Model of Attributions of Responsibility for Sexual Harassment Grievances. Ph. D. Diss., St. Louis University, 1985. Ann Arbor: UMI, 1985.

University of Wisconsin Affirmative Action Office. "An Annotated Guide to Materials on Sexual Harassment." University of Wisconsin Centers, June 1982.

U. S. Merit Systems Protection Board. Sexual Harassment in the Federal Workplace: Is It a Problem? Washington, D. C., 1981.

Warren, Samuel D. and Louis D. Brandeis. "The Right to Privacy." Harvard Law Review 4 (December 15, 1890): 193-220.

Weber-Burdin, E. and P. H. Rossi. "Defining Sexual Harassment on Campus: A Replication and Extension." Journal of Social Issues 38 (1982): 111-120.

White, G. Edward. Patterns of American Legal Thought. Indianapolis: The Bobbs-Merrill Co., Inc., 1978.

Whitmore, Robin L. "Sexual Harassment at U. C. Davis." University of California, Davis: Women's Resources and Research Center, n.d.

Working Women's Institute, "Sex Harassment on the Job, Results of a Preliminary Survey." 1975.