NOT "PART OF THE JOB": SEXUAL HARASSMENT POLICY IN THE U.S.,
THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, AND
WOMEN'S ECONOMIC CITIZENSHIP, 1975-1991

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This project examines the history of federal sexual harassment policy in the United States between 1975 and 1991. It considers the origins of sexual harassment policy in the mid-1970s and its addition to the Equal Employment Opportunity Commission’s (EEOC) anti-discrimination policy in 1980. Two questions direct this study: Why and how did sexual harassment policy originate in the 1970s? How did policymakers then re-frame it once feminist activists no longer controlled the issue’s definition? This dissertation argues that sexual harassment policy originated in the 1970s because working women and second-wave feminists succeeded in framing the problem as one of women’s economic citizenship rights, or women’s right to work without being sexually harassed. Once feminists lost this influence in the 1980s, conservatives including Reagan administration officials, members of Congress, and anti-feminist activists challenged the EEOC’s policy and altered its enforcement by lessening its protections for working women in favor of employers.

Several sources inform this study, including EEOC records, legal cases, congressional hearings, government documents, and scholarship on second-wave feminism and economic citizenship. It finds that, after defining sexual harassment, feminists argued for public policy to stop it. It further finds that once the EEOC implemented its policy, feminists encountered resistance to how they defined the problem by male workers, employers, and newly empowered conservatives. Finally, this project concludes that these events left questions about employer liability for sexual harassment unanswered by 1991 when the Anita Hill-Clarence Thomas scandal put the issue at the forefront of American political thought and culture.
This dissertation contributes to current literature on the history of women’s inclusion in the workplace, the legacies of second-wave feminism in the U.S., and the rise of the New Right. By identifying how women argued for sexual harassment policy based on perceptions of economic citizenship, this project illuminates one of the many ways second-wave feminists struggled for equality. It also changes our understandings of the New Right by illustrating how the New Right’s backlash against second-wave feminism shaped sexual harassment policy and, ultimately, led to where the EEOC’s policy stands today in not protecting working women as it had originally.
For Mom, Dad, and Shelly and

in memory of Robbie
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INTRODUCTION

Working Women, Feminist Activists, and Policymakers Define and Implement Sexual Harassment Policy, 1975-1992

Before 1975, the term “sexual harassment” was nonexistent in American culture to describe the forced sexual coercion of women in the workplace. Today, countless men and women in the United States learn about sexual harassment in employee training seminars where they often hear that it is an illegal form of sex discrimination under Title VII of the Civil Rights Act, as amended. Some may even see a copy of the Equal Employment Opportunity Commission’s (EEOC) Guidelines on Discrimination Because of Sex, which explains the type of sexual harassing behavior prohibited by Title VII. Fewer still may understand that the sexual harassment training they are participating in is a product of 1970s feminist activism and may even take for granted that what is now a household term was an unnamed, undefined problem just over 30 years ago. When feminists coined the term sexual harassment in 1975, they framed a problem that had been affecting working women’s economic opportunities in modern American workplaces for several decades. In giving the problem of sexual harassment a name, they offered a framework to protest how it limited women’s workforce participation which was quickly accepted. Just five years later, the EEOC, as the federal agency responsible for enforcing Title VII, issued its first sexual harassment guidelines stating that it constituted illegal sex discrimination. Only a mere decade after the problem was named, the Research Department of the Service Employees International Union (SEIU) wrote in the introduction to its guidebook on sexual harassment, “Sexual harassment is one of the most widespread problems facing women in the workforce today.”1 SEIU acknowledged that the problem had previously been an

1 Research Department, Service Employees International Union, AFL-CIO, CLC, “Sexual Harassment: Your Rights,” circa 1986, 1, the SEIU District 925 Collection, Box 6, Folder 1, Archives of Labor and Urban Affairs,
unrecognized and therefore permissible part of the work experience when stating, “It is not just a part of the job, and it can be deterred and prevented.”\(^2\) The union’s remarks encapsulated the key point to how and why feminists and working women defined sexual harassment: they argued that women have a right to earn a living and to do so without sexual harassment on the job. This makes the fact that SEIU insisted that it is “not just a part of the job” all the more significant. It points to the ways in which working women viewed sexual harassment in the U.S. until the mid-1970s. Many considered it a natural phenomenon that women had to face because of their mere presence working alongside men. Sexually harassing behavior was also widely perceived as an individual problem, one that did not happen to decent women, or one that women needed to overcome or ignore in order to keep their jobs.\(^3\) Early activists who publicized the issue battled against this idea and sought to make sexual harassment not “part of the job.” For these reasons, the SEIU guidebook is an important legacy of feminist activism regarding sexual harassment. Without a name and a framework through which to identify and correct the problem, sexual harassment would have remained “part of the job” indefinitely.

Instead, working women and feminists fought to have the problem recognized in federal anti-discrimination policies, particularly Title VII. The EEOC made this goal a reality with its 1980 policy, which was then followed six years later by the landmark Supreme Court decision, *Meritor v. Vinson*. This decision upheld the EEOC guidelines outlining sexual harassment as an unlawful employment practice. Despite these successes in having sexual harassment recognized as a social problem and included in public policy, the problem did not go away. It persisted in

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Wayne State University. This publication is not dated, but the guidebook references the 1986 Supreme Court decision, *Meritor Savings Bank v. Vinson*, the first sexual harassment case to reach the Supreme Court.

\(^2\) Ibid.

part because policymakers and many American workers, including both men and women, remained unsure about what constituted sexual harassment, when the behavior was illegal, and whether or not it was a serious issue in the first place. Because of this, sexual harassment was not widely discussed until the Anita Hill-Clarence Thomas scandal in 1991. In the years between 1975 and 1991, feminist activists were thus fighting an uphill battle to continue to frame the problem as a violation of women’s rights as they faced challenges from employers and policymakers who protested the EEOC’s policy definitions and protections for working women at the expense of employers.

This project examines why and how sexual harassment was first defined as a working women’s problem in the late 1970s and the process through which it became part of federal anti-discrimination policy in 1980. It also investigates how the issue of sexual harassment changed as working women and feminists were joined by others in framing and reframing it throughout the 1980s, an era dominated by the conservative presidency of Ronald Reagan. During that time, policymakers and employers began to re-frame the problem for their own purposes, often at odds with the aims of those who had originally defined sexual harassment. With the weight of the Reagan administration behind them, these policymakers and employers made sexual harassment a high priority for the Administration, with the goal of rolling back the Carter administration’s changes until 1991 when Anita Hill’s accusations expanded debates about the problem. In doing so, this dissertation asks: Why and how did sexual harassment policy originate in the late 1970s in the United States? Then, once the problem was identified and addressed by public policy, how was it re-framed and further developed by policymakers and the courts after feminist activists no longer controlled how the issue was defined? Finally, how does this explanation of

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the development of sexual harassment policy change our understanding of second-wave feminism?

This dissertation argues that sexual harassment policy originated in the late 1970s because of the success working women and feminists had in framing the problem as an issue of women’s economic citizenship rights. Their efforts were facilitated by the fact that women were working outside of their homes in unprecedented numbers in the U.S.—there were 36 million women in the workforce in 1974 and over a third of them were working mothers with children under the age of 18 at home. In addition, they could turn to existing civil rights legislation such as Title VII’s provision regarding sex discrimination and previous feminist organizing which had already resulted in employment policies on behalf of working women. By 1975, the feminist movement was a legitimate, organized social movement intent on ending sex discrimination through the creation of public policies on behalf of the 46 percent of all American women above the age of 16 who were in the American workforce. Once sexual harassment had a name, many of these women described how they had suffered from this problem in silence, often quitting their jobs, and not realizing that it affected many more women other than themselves. Just as the feminist movement had named other “problems without a name,” it successfully made the personal issue of sexual harassment a political one. That success was evident in important policy changes that feminist activism wrought, such as the EEOC guidelines. As these new policies were proceeding to implementation, however, they encountered resistance by male workers, employers, and newly powerful conservatives including Reagan administration officials,

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5 Women’s Bureau, U.S. Department of Labor, 1975 Handbook on Women Workers (Washington, D.C.: U.S. Department of Labor, 1975), 7, 25. The Women’s Bureau compares the 36 million women workers in 1974 to the 1950 figure which was about half that number, or 18 million. They also explained this increase as due to the increased workforce participation of married women.

6 The evidence does not suggest that sexual harassment was framed during this period because it was on the increase because of changes brought by the sexual revolution.

7 Women’s Bureau, 1975 Handbook on Women Workers, 7.
conservative members of Congress, and activists outside the Administration. Feminist activists no longer had the same influence over how it was perceived, and conservative opposition effectively altered the enforcement of the EEOC guidelines throughout the 1980s. These events also left important questions about employer liability for sexual harassment unanswered at the beginning of the 1990s when the Hill-Thomas scandal put the issue at the forefront of American political thought and culture.

In presenting these arguments, this project uses records from the EEOC, Congressional hearings, and working women’s and feminist organizations in order to examine the efforts of feminist activists and federal policymakers, especially members of Congress and the EEOC. Each of these actors was instrumental either in defining sexual harassment as a social problem or in designing and implementing sexual harassment policy. This study also draws from contemporary newspaper, magazine, and journal articles as well as court documents from the precedent-setting sexual harassment cases that reached federal district courts and the Supreme Court in the timeframe outlined here, approximately 1975-1991. Because the EEOC guidelines and activities under review are primarily national in scope, this project focuses on policymakers who implemented sexual harassment policy from the EEOC’s headquarters in Washington, D.C. and regional offices throughout the country. This dissertation is a case study that employs social movement theory and the policy history process model in order to understand how the EEOC’s sexual harassment originated and how it was altered by the political changes of the 1980s, namely the rise of the New Right and the associated backlash against American feminism. The New Right’s victories brought the EEOC and its anti-discrimination policies under question while the anti-feminist backlash not only weakened the feminist movement’s effectiveness in publicizing the problem but conflated it with such controversial feminist issues as the Equal
Rights Amendment (ERA), abortion rights, and gay rights, instead of with economic citizenship rights.

Working women’s citizenship rights as they relate to the problem of sexual harassment are the subject of this study. Student experiences of sexual harassment lie beyond its scope because sexual harassment in education is enforced by separate legislation from sexual harassment in the workplace. Sexual harassment in education became a political issue at nearly the same time it grew as a concern for working women. The first appellate court case on sexual harassment in education, *Alexander v. Yale*, was decided in 1980, the same year the EEOC issued its sexual harassment guidelines. Sexual harassment in education, just like sexual harassment at the workplace, was framed as an issue of sex discrimination within the purview of federal civil rights legislation. Where the two differ is that sexual harassment in education falls under Title IX of the Education Amendments of 1972 and the jurisdiction of the U.S. Department of Education’s Office of Civil Rights (OCR), and not Title VII and the EEOC. Where educational institutions are relevant to this study is when they act like or are considered as employment institutions. In situations of sexual harassment between employees or supervisors and employees of educational institutions, the institutions must abide by EEOC anti-discrimination policies and will be treated here in this context. In fact, this project shows that, in significant ways, educational institutions responded to the EEOC guidelines on sexual

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8 *Alexander v. Yale University*, 631 F.2d 178 (2d Cir. Conn. 1980). This case originally involved five plaintiffs who alleged that their complaints of sexual harassment by male faculty and administrators were not taken seriously by the University. Only one of their claims made it to trial where the judge found in favor of Yale. The appellate court upheld the ruling because the women had already graduated. Even though this case proved unsuccessful for the plaintiffs, it paved the way for others to use Title IX to protest sexual harassment in education.

harassment as many other public and private employers did and unlike that of the social
movement organizations who argued in favor of the EEOC’s position on employer liability.10

Specifically, this work draws from Sidney Tarrow’s *Power in Movement: Social
Movements and Contentious Politics*.11 Tarrow offers a framework for studying how social
movements identify and politicize an issue through the use of collective action frames which
then become part of a cycle of contentious politics that challenge previous ways of thinking
about that same issue. He defines social movements as “collective challenges, based on common
purposes and social solidarities, in sustained interaction with elites, opponents, and
authorities.”12 Tarrow also discusses how movements not only involve disputes with institutions
but with accepted cultural codes, and that the way members disrupt these forms of control is
through individual confrontations and by adopting new values.13 When feminists first defined
sexual harassment, they were most definitely trying to disrupt a cultural code that allowed such
treatment of working women for so long, making his description of framing and the creation of
new social values to solve the problem relevant to this study. Tarrow credits the women’s
movement’s success with its success in creating what he calls “collective action frames.”

10 Readers may notice that a separate discussion of race does not appear in this project. This was a deliberate action
based on the records at hand. The second-wave activists, policymakers, and theorists to discuss sexual harassment
did not often discuss the relationship between race and sexual harassment in the years after the term was coined.
One scholar who has criticized scholars and legal theorists for not doing so until after the Hill-Thomas scandal is
Elsa Barkley Brown. Brown argues that sexual harassment was discussed within Black communities as a collective
problem long before it was framed by middle-class white women in the mid-1970s to describe a perceived
individual problem. See Elsa Barkley Brown, “‘What Has Happened Here’: The Politics of Difference in Women’s
(discussed below) suggests that the movement against sexual harassment was more diverse than originally
described. However, recent research by Danielle McGuire supports Brown’s claims and indicates that an entirely
different story of the history of sexual harassment activism and policy could be told if researchers look within Black
communities for protest against sexual violence. See Danielle McGuire, “At the Dark End of the Street: Sexual
Violence, Community Mobilization, and the African American Freedom Struggle,” (PhD diss., Rutgers University,
2007).
11 Sidney Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge: Cambridge
12 Ibid., 4.
13 Ibid., 5.
Collective action frames are “shared understandings or identities” which “justify, dignify, and animate collective action,” even as the act of framing “defines the ‘us’ and ‘them’ in a movement’s conflict structure.” He cites this as one of the movement’s strengths when writing that women’s rights activists realized “that ‘naming’ subjects goes a long way toward changing them.”

The collective action frame in which feminists understood sexual harassment was as a problem of women’s economic citizenship rights. Borrowing from the work of Alice Kessler-Harris, this dissertation defines economic citizenship as “the independent status that provides the possibility of full participation in the polity.” Because this status is also about access to jobs that afforded women both financial security and a sense of achievement, this definition also draws from Nancy MacLean’s discussion of women’s fight for inclusion in the workplace as “the fight to secure access to good jobs” which was viewed as “an essential element of full citizenship and of individual and group determination.” In protesting against the sexual harassment of working women, feminists were arguing for the same kind of participation in the workforce that men had—where they would not be pressured to comply with sexual demands or other types of sexually demeaning behavior in order to receive promotions, keep their jobs, or have an identity as workers. They fought for their right to belong in the workplace. The argument that sexual harassment is about economic citizenship and that economic citizenship is about the right to make a living and that our identities as workers are important to our identities as citizens reveals

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14 Ibid., 21.
15 Ibid., 173.
the significance of the fight for sexual harassment policy as women sought for recognition of their individual talents and worth during the last quarter of the twentieth century.

Even though they did not use the term, feminists argued that sexual harassment deprived women of the right to earn a living free of sexual indignities, coercion, and reprisals. They understood that women were being harassed at work because they were women and that such women forfeited economic benefits because sexual harassment victims often had to quit, remain in low-status and low-paying jobs, or lose promotions in order to avoid the harassment. The problem became a question of citizenship rights in the early 1970s after individual women began to bring court cases and argue that the problem, then without a name, constituted sexual discrimination and was prohibited by Title VII of the Civil Rights Act of 1964. Feminists then drew from these individual court decisions to frame the problem as a violation of women’s civil rights, leading to the recognition of sexual harassment by the EEOC as such in its 1980 guidelines.

Drawing from recent scholarship in women’s history, in which Alice Kessler-Harris, Eileen Boris, Nancy MacLean, Dorothy Sue Cobble, and others illustrate the relationship between women’s paid employment and civil rights, this dissertation explains how the argument for sexual harassment policies parallels other cases in which women demanded rights as equal citizens to men.18 In the early 1970s, just a few years before feminists coined the term “sexual harassment,” women’s rights activists fought to attain equality through the use of Title VII’s sex discrimination provision in arguing for equal pay, access to credit, and pregnancy benefits. Alice

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Kessler-Harris’s *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America* recounts some of these struggles as women sought independence and recognition as full citizens.\(^{19}\) In a time in which women were working outside the home in greater numbers than ever before, work also took on a much more meaningful role in women’s lives beyond their paychecks—it also contributed to their self-worth and identity, as MacLean outlines. Both of these factors, earnings and self-worth, are part of the independent status that Kessler-Harris describes. After 1975, as women not only worked in greater numbers but in many industries and occupations which had previously employed only men, some women recognized sexual harassment as a form of discrimination that prevented them from achieving equality in the workplace by depriving them of the opportunity to work in jobs that both paid well and occupied higher status. Kessler-Harris and MacLean help explain how women framed sexual harassment as an issue of citizenship rights along these lines. Their research is also very relevant here because the first women who brought civil lawsuits, who protested at speak-outs, and who organized feminist groups to protest sexual harassment were workers. They were participating in the workforce or were standing up for the rights of other women to do so, and were therefore a part of the polity that was the American labor force.

An analysis of what Tarrow calls the “cycles of contention” of social movements also applies to the study of how sexual harassment was framed and contributes a useful organizational structure for this dissertation. According to Tarrow, cycles of contention explain the dynamics and structure of a social movement—its rise and decline—and are characterized by distinct phases of mobilization and demobilization.\(^{20}\) The mobilization phase begins the cycle, and is characterized by “heightened conflict, broad sectoral and geographic diffusion, the expansion of

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\(^{19}\) Kessler-Harris, 5.
\(^{20}\) Tarrow, *Power in Movement*, 143-144.
the repertoire of contention, the appearance of new organizations and the empowerment of old ones, the creation of new ‘master frames’ linking the actions of disparate groups to one another, and intensified interaction between challengers and the state.”

In other words, it includes how a movement takes an idea, outlines its goals, acts on them, and works with others for recognition from the state. Tarrow’s demobilization phase accounts for the possible processes through which cycles of contention begin to decline: “exhaustion and factionalization, institutionalization and violence, and repression and facilitation.” This includes how a movement is challenged by others and faces backlash against its goals. Once the cycle declines, Tarrow then describes how to measure the changes brought by the movement or its outcomes by identifying any political reform to which it contributed.

Cycles of contention broadly trace how a social movement frames a problem and then how it becomes part of public debate. They explain how a movement—or in this case an aspect of one—ebbs and flows, yet these cycles alone cannot demonstrate how sexual harassment joined the EEOC’s anti-discrimination policy and how it evolved. Tarrow’s social movement theory leaves unanswered questions about policy origins before collective action frames are defined, about how policies are adopted and implemented, and about how these policies and their consequences—intended and unintended—are evaluated. In order to answer such questions, this dissertation also utilizes the policy process model outlined by Hugh Davis Graham and fills in the gaps that Tarrow’s discussion of framing and cycles of contention leaves open.

Graham outlines these six stages in the policy process: “the agenda-setting phase of policy origins,” “the design stage of policy formulation,” “the adoption or legislative enactment of policy,” the

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21 Ibid., 144.
22 Ibid., 147.
23 Ibid., 161.
implementation of policy by executive agencies, the evaluation of policy programs, and the feedback of these programs.\textsuperscript{25} Graham’s policy process model looks much like that of another policy history scholar, Julian Zelizer, who outlined it more generally as “the emergence, passage, and implementation of policy.”\textsuperscript{26} Because Graham’s definition better describes what happens to policy after its implementation, his explanation of the policy process is used here. This project applies it to the study of how the EEOC became the government agency charged with regulating sexual harassment in the federal government and in private businesses, the two main sectors that the EEOC regulated by 1980. Then, it is used to analyze how the EEOC enforced its policy during the 1980s.

Combining Tarrow’s and Graham’s theoretical frameworks does not mean that they fit perfectly together or that they follow the same pattern. Tarrow’s model takes a cyclical route with some phases beginning before others have ended, whereas Graham’s appears more linear, with each part of the policy process leading to the next. Because sexual harassment policy is so closely tied to the outcomes of the feminist movement, it cannot be understood in the linear framework alone. Nor can Tarrow’s cycles fully explain the policy’s history. Some of Tarrow’s cycles may not even be relevant at all given that they are based on studies of a larger social movement and not on how a social movement defined a single issue. Due to these factors, pertinent aspects of each theory are used in the most logical order throughout this dissertation as it recounts the history of sexual harassment policy from 1975 to 1991. The combined Graham-Tarrow model of feminist activism and sexual harassment policy used here is as follows:

1. Agenda-setting phase of policy origins
2. Conflict and diffusion
3. Repertoires and frames

\textsuperscript{25} Ibid., 34.
4. Old and new movement organizations
5. Increased information and interaction; design stage, adoption, or legislative enactment of policy
6. Implementation of policy by executive agency
7. Polarization and institutionalization
8. Facilitation and repression
9. Program evaluation and policy feedback

Merging the two theoretical frameworks also provides a coherent way to organize this history in the chapters that follow. The chapters correspond broadly to the combined Graham-Tarrow model. They proceed in order, with some overlap, in tracing the history of sexual harassment policy from its origins in the feminist framework of working women and rights, to the implementation of the EEOC’s policy, and then to the program evaluation, including judicial review, stage.

Chapter One, “Women, Work, and Employment Law before 1975,” lays the ground work for the first stage of the model by offering a background of women’s employment history after World War II and how sex discrimination became an important women’s rights issue. This chapter answers the question of why sexual harassment was defined as a working women’s problem in 1975, when it had not been before, by analyzing the history of women and employment law, particularly the 1963 Equal Pay Act and Title VII of the 1964 Civil Rights Act, in addition to the growth of the second-wave feminist movement as a response to these policies. In addition, Chapter One also uses employment statistics to illustrate that more women were working than ever before in U.S. history. After combining all of these factors, this chapter argues that the mid-1970s was a significant period in American women’s history which produced a framework for sexual harassment in which the preconditions for an effective effort to combat it were being put into place. Specifically, these include the possibility that more women were affected by sexual harassment due to the millions of women working outside the home, the
existing context of race and sex discrimination in employment law—including women’s labor rights policies—in which to place sexual harassment, and the presence of a cohesive feminist movement intent on ending sex discrimination in the workplace.

Chapter Two, “Sexual Harassment Framed as an Issue of Economic Citizenship Rights,” begins the analysis of the history of sexual harassment policy through the use of social movement and policy process theory. Chapter Two recounts much of the combined model by illustrating how the policy originated in individual case law, how there was increased conflict or agitation as women began to believe that they should no longer have to deal with this problem, how these women then came together as part of the feminist movement and framed the issue as sexual harassment, then, finally, how they formed new movement organizations and interacted with old feminist organizations in framing this issue and bringing attention to their argument for policies recognizing sexual harassment as a violation of their economic citizenship. Chapter Two asks: How did sexual harassment reach the feminist agenda in the mid-1970s? How did victims and activists frame the problem when arguing for public policies? Why did older feminist organizations need to be convinced about the importance of the issue before joining newer women’s groups in protesting the sexual harassment of working women? Chapter Two argues that the women’s movement had, by 1975, laid the foundations for activism in which women named sexual harassment and worked to put a stop to it, that this activism spread quickly beyond those who first framed the problem, that those activists ultimately framed it as a problem of economic citizenship rights, and that older feminist organizations believed other issues to be more important at first and thus did not join in sexual harassment activism until two years after the problem was first framed.
Chapter Three, “The Federal Government Responds to the Problem of Sexual Harassment,” considers how the problem of sexual harassment became even more diffused—as the feminist frame and acknowledgement of it spread—in the U.S. when the federal government first responded to it in the form of congressional hearings in 1979. This chapter applies Tarrow’s increased information and interaction stage, along with the design stage, adoption, or legislative enactment of the policy process model. Chapter Three inquires how Congress used the feminist frame of the problem as a violation of economic citizenship rights throughout these hearings, what options were considered to remedy the problem, how Title VII became the policy most closely associated with remedying sexual harassment, and why Congress charged the EEOC with writing the first widespread public- and private-sector sexual harassment policy. Chapter Three argues that, in hearing testimony from a number of groups and individuals who were committed to improving the economic livelihood of working women, Congress accepted the feminist frame of sexual harassment as a serious problem of sex discrimination that was rooted in the unequal power relations between men and women in American workplaces. Throughout the hearings, many witnesses explained sexual harassment as a violation of Title VII and this argument went virtually unchallenged. Therefore, Congress also accepted this understanding of sexual harassment and charged the EEOC, as Title VII’s enforcement body, with writing a sexual harassment policy for both the federal government and the private business sectors under its jurisdiction. Alternatives to Title VII were mentioned at the hearings, such as unemployment compensation, however, they were dismissed because they were perceived as being too difficult to have much success and because lower courts had already begun to uphold that sexual harassment was a violation of Title VII.
Chapter Four, “Sexual Harassment is Sex Discrimination: The EEOC Designs and Implements Federal Sexual Harassment Policy,” further considers the design stage and also the implementation of sexual harassment policy by an executive agency. Chapter Four examines how the EEOC accomplished Congress’s charge to write and implement a sexual harassment policy that would affect American workers throughout the federal government and in private businesses. This chapter also takes into account the framework in which the EEOC wrote the guidelines and whether or not it met the feminist agenda for federal sexual harassment policy by looking at the process in which the agency wrote the guidelines and how its constituents reacted to the policy. Chapter Four argues that the EEOC, under the leadership of civil rights activist and feminist Eleanor Holmes Norton, recognized the severity of the issue and viewed this task as a way to improve the agency’s record on sex discrimination. In turn, Norton and the EEOC’s Office of Policy Implementation (OPI) wrote a policy that was highly supportive of the feminist frame of the problem and unsupportive of American business interests who argued that sexual harassment was impossible to regulate. Norton and OPI’s position on strict employer liability for sexual harassment, as opposed to relaxed measures that lessened employer responsibility for the problem, later led to mixed reactions to and criticism of their policy.

Chapter Five, “EEOC Measures Reaction to its Sexual Harassment Policy,” continues the examination of how the EEOC implemented the first federal sexual harassment policy by examining the public comments the agency received in response to its interim sexual harassment guidelines. This chapter also looks at Tarrow’s phases of polarization and institutionalization as the feminist movement’s sexual harassment frame became public policy. Chapter Five asks the following questions: How did government agencies and the American public (including feminist organizations, private corporations, individuals, educational institutions, and unions) react to the
EEOC’s interim guidelines? How did each perceive of or frame sexual harassment? How did these opinions shape implementation of the guidelines in their final form? Chapter Five shows how representatives of each of these groups reacted to the guidelines based on their own self-interests. While the majority of respondents who represented government agencies, feminist organizations, themselves, and unions, supported the guidelines, an overwhelming number of the businesses and educational institutions who commented on the guidelines expressed dissatisfaction with them. As Tarrow’s theory of polarization suggests, the new actors who entered the scene and voiced opposition to the policy (and also to feminist activists) framed sexual harassment in new ways by arguing that it was not a serious problem, that it was not sex discrimination, and therefore that it was not a problem for the EEOC to regulate or attempt to solve. Under Eleanor Holmes Norton’s leadership, the EEOC did not change its guidelines based on the concerns of these new interests but instead upheld the original feminist frame and issued the guidelines in their final form, making sexual harassment a violation of Title VII. While the EEOC continued to frame sexual harassment along feminist lines, this chapter also explains how the institutionalization that comes with a government agency regulating a social problem nevertheless alters how the issue is perceived once social movement actors are no longer in control of framing an issue.

Chapter Six, “Competing Voices: Political Contests over the EEOC’s Sexual Harassment Policy,” continues the examination of the demobilization part of Tarrow’s model by analyzing in more detail the polarization and institutionalization phases as well as the facilitation and repression cycles following the enactment of the EEOC’s sexual harassment policy. This chapter considers the downside of institutionalization and the consequences of leaving business interests out of earlier discussions of the guidelines by revealing how this policy fared during the political
changes that took place during the early 1980s. The description of these changes begins with Ronald Reagan’s election to the presidency in the same month that the EEOC issued its final guidelines. Chapter Six poses this question: How was sexual harassment policy, activism, and awareness affected by the Reagan administration and the associated backlash against American feminism? This chapter argues that conservatives worked to reframe the issue of sexual harassment not as one of economic citizenship but as one of working women’s lax morals, defiance of gender roles, and threat to the conservative American family ideal. The issue of sexual harassment then became co-opted by the New Right’s political agenda, including its antagonism to feminism, its opposition to the Equal Rights Amendment (ERA), and its commitment to American business interests. These factors contributed to the repression of feminist arguments and the facilitation of anti-feminist claims about sexual harassment by the Reagan administration. Most importantly, they led to the contesting of the framing of sexual harassment as an issue of economic citizenship. As a result, these political developments threatened the existence of the EEOC guidelines after Reagan’s policymakers sought to eliminate the policy, limited the EEOC’s ability to enforce its guidelines when the Reagan administration cut its budget and questioned its authority, and obscured the overall public awareness of the problem throughout the 1980s.

Chapter Seven, “EEOC Policy Shifts and New Questions Raised by Meritor v. Vinson,” further considers the effects of the Reagan administration’s repression and facilitation of sexual harassment frameworks and also examines the program evaluation, including judicial review, and policy feedback stages of Graham’s policy process model. This chapter analyzes the direction of the EEOC’s anti-discrimination efforts and enforcement, or implementation, of its sexual harassment policy under the Reagan administration and Clarence Thomas’s tenure as
EEOC Chairman. This set the stage for the biggest step in sexual harassment legal history to that point, the Supreme Court’s 1986 *Meritor v. Vinson* decision, which comprises the program evaluation section of this chapter. As a judicial review of the EEOC’s policy, the Court’s decision in *Meritor* upheld the EEOC guidelines and stated definitively that sexual harassment was sex discrimination under Title VII. This case also provides a good point for the final phase in the model, the policy feedback phase, by using it to measure the state of sexual harassment policy in the years just before the Anita Hill-Clarence Thomas scandal changed the landscape of sexual harassment awareness. Chapter Seven asks: How did changes in the 1980s political climate affect EEOC policy enforcement? Related to that, how did they shape the *Meritor v. Vinson* decision and what was its impact on the EEOC’s sexual harassment policy? This chapter argues that the legal climate of the early- to mid-1980s was embroiled in the politics of that era which influenced sexual harassment policy as the EEOC, under new leadership, sided with the Reagan administration in the case. In doing so, the EEOC argued against its earlier stance on employer liability for sexual harassment that specified that employers would be strictly liable for it. These changes affected the EEOC’s position on the *Meritor* case when it broke away from this stance and agreed with the government in a friend of the court brief which stated that employer liability should be weakened. Even though the outcome of the case upheld the EEOC’s guidelines stating that sexual harassment was illegal, the EEOC’s shift influenced sexual harassment policy when the Supreme Court declined to rule on employer liability in this case, leaving the decision up to future courts to decide. Consequently, this led to the EEOC later changing its guidelines and removing its section on strict liability in 1998. Chapter Seven illustrates how the EEOC had changed from its earlier interest in protecting working women’s
economic citizenship rights regarding sexual harassment to where the agency was more concerned with protecting employers by the close of the 1980s.

This dissertation concludes by outlining the new questions raised by the Hill-Thomas scandal in terms of how the issue was framed after 1991 and illustrates the many changes that had taken place regarding sexual harassment activism and policy between 1975 and 1991. Now no longer an issue solely important to feminists and working women, sexual harassment policy touches the lives of countless workers—women and men—and students in ways that even the first feminist activists did not envision. Because Thomas’ nomination hearings raised the public’s awareness of sexual harassment to levels not seen before, this event serves as a fitting end point to this project’s examination of how feminists first framed the issue and how the EEOC created and implemented its sexual harassment policy. Hill’s testimony, Thomas’s response to it, and the American public’s divided reaction to it diffused the issue even further, moving it further away from the feminist activists who first framed it. As a final indication of how perceptions of women’s economic citizenship rights changed over the course of the period under consideration, the conclusion also offers a look at the current status of the EEOC guidelines and then closes by offering suggestions for further research on sexual harassment activism and policy. In addition, it also explains how this story affects our understanding of second-wave feminism by showing how research on sexual harassment can help identify women’s activism even before a visible movement takes up an issue.

Review of Relevant Literature

In addition to Graham’s policy process model and Tarrow’s cycles of contention theory of social movements, this dissertation draws from a wealth of scholarship regarding the history of sexual harassment as a political issue and covers topics relevant to second-wave feminism and
the broader politics of the period between the late 1970s and the early 1990s. Studies in the history of sexual harassment activism, policy, and law; the relationship of second-wave feminism to sexual harassment; the rise of the New Right and the growth of an anti-feminist movement led by Phyllis Schlafly; and the nature of U.S. women’s economic citizenship in the post-World War II era, serve as points of departure from which this project contributes to the history of women and work in the U.S.

Historical treatments of sexual harassment including Mary Bularzik’s “Sexual Harassment at the Workplace: Historical Notes,” shape the first part of this dissertation in tracing the problem from the beginnings of industrialization in the U.S. and offering useful context for how women workers perceived sexual harassment before this term was coined. Bularzik’s was one of the first published articles about sexual harassment to appear after feminists named the problem in 1975. When she wrote this essay in 1978, she was a member of Boston’s Alliance Against Sexual Coercion (AASC), one of only two feminist organizations founded in the late 1970s that was devoted solely to sexual harassment activism. Bularzik presents a useful analysis of white, urban, working class women from the beginning of modern industrialization in the U.S. in the 1840s to the 1940s. She draws from newspaper accounts and early literature on women and work at the turn of the twentieth century and provides a rich documentation of how this problem, still several decades away from its naming, was nonetheless an everyday occurrence for many women in the labor force. Echoing her activist colleagues, she argues that “the license to harass women workers, which many men feel they have, stems from notions that there is a ‘woman’s place’ which women in the labor force have left, thus leaving behind their

27 Bularzik, “Sexual Harassment at the Workplace,” 25-44.
28 The AASC is described in Chapter Two.
personal integrity.” Bularzik explains that sexual harassment, or the threat of it, is also “a mechanism of social control” that “functions on two levels: the group control of women by men, and personal control of individual workers by bosses and co-workers.” Moreover, she also highlights the economic implications of sexual harassment by applying a Marxist feminist approach. Bularzik writes, “The economic aspect of sexual harassment in the workplace differentiates it from other forms of violence against women. A rationalized capitalist order tended to separate spheres of sexual power (in the family) and economic power (in the workplace). Sexual coercion in the workplace reasserts the connection between the two. While the women involved did not see sexual favors as a right of their employers and male co-workers, their fear of losing jobs often stifled effective protest.” Bularzik’s article is valuable to this study because she identifies sexual harassment as a problem after the U.S. became industrialized and because she describes issues of women and separate spheres that, while, rooted in the late 1800s, become relevant in the 1980s when conservatives challenge feminist definitions of sexual harassment.

In “The Transformation of Sexual Harassment from a Private Trouble into a Public Issue,” Elaine Lunsford Weeks, Jacqueline M. Boles, Albeno P. Garbin, and John Blount examine how women began to speak publicly and effectively to protest the sexual harassment of working women in the mid-1970s. They reveal that “a process of redefinition [of the “invisible” problem of sexual harassment] had to occur before a large segment of the general public recognized sexual harassment as problematic.” My project looks at this process a bit differently by considering this process as an original framing of the problem of sexual

29 Bularzik, 26.
30 Ibid.
31 Ibid.
33 Ibid., 432.
harassment and not one of redefinition, meaning that, if sexual harassment was an unnamed problem before 1975 it was also an undefined problem until feminists named (and framed) the issue. Admittedly, the behavior was not new and had been recognized, but without a commonly defined term, it would be difficult to know the degree of similarity with which all women perceived of the problem. Therefore, the naming of sexual harassment is considered here as an original definition of the problem and not a change to an earlier definition. Yet this does not discount the contribution of Weeks, et al. to the study of sexual harassment. Their efforts provide a concise analysis of the major factors that made sexual harassment a public issue when it had previously been considered only a private problem. They argue that “at least three interwoven elements” were “responsible for bringing sexual harassment into the public arena: the popular media, court cases, and the actions of interest groups.”34 Their article covers the efforts of feminist groups and the importance of collective action to the development of sexual harassment policy, the role of litigation, the recognition of the problem by the federal government, and the reaction of the general public and of employers to federal sexual harassment policy.35 Their work provides an outline for studying these forces based on Tarrow’s social movement theory and Graham’s policy process model that accounts for additional reasons as to why (and how) the three elements that they identify were important in bringing sexual harassment to the public and what happened once it became institutionalized. For instance, they only mention the impact of Ronald Reagan’s election in 1980 on sexual harassment policy but do not fully articulate how the political climate of the Reagan years, especially the anti-feminist backlash which ensued, impacted sexual harassment discourse. This dissertation will expand on

34 Ibid., 449.
35 Ibid., 435-446.
their work to include such forces and other key events that followed their article’s publication in 1986.

The use of social movement theory combined with the policy history process model also distinguishes this project from that of Carrie N. Baker who has published the most comprehensive work on sexual harassment activism, law, and policy to date. Baker asks how the movement against sexual harassment originated in the U.S. and then enacted change. She contends that the fight against sexual harassment brought women together across differences to fight a common problem and illustrates that a diverse group of women brought social and political change through grassroots efforts against sexual harassment. Baker employs an expansive scope by tracing the development of sexual harassment as a social problem in areas beyond that of its effects on working women. This dissertation utilizes Baker’s work in explaining the history of sexual harassment activism in the U.S., but employs a narrower lens which focuses on working women, sexual harassment policy, and the EEOC. By combining this history with the Tarrow-Graham model outlined above, this project offers a way to examine not only how activists were successful in framing the issue, which Baker recognizes, but also answering how they were overcome by institutional factors that diminished their control over sexual harassment discourse, on which Baker comments in her closing paragraphs. By putting the policy history—of the EEOC sexual harassment guidelines—at the center of this story, instead of the feminist movement, this project magnifies the evolution of sexual harassment policy through institutional networks and the consequences of crafting a policy based solely on women’s interests without including employers in discussions during its development.

37 Baker, The Women’s Movement against Sexual Harassment, 4-6.
38 Ibid., 190-191.
Turning to sexual harassment law, Catharine MacKinnon has been one of the leading legal theorists on this issue since the 1979 publication of her first book, *Sexual Harassment of Working Women*. MacKinnon became aware of sexual harassment while finishing her law degree at Yale University when the university was involved in its own legal dispute over accusations of sexual harassment by a student who claimed she had been harassed by her professor in the first federal court case of sexual harassment in education, *Alexander v. Yale*. MacKinnon then reviewed all of the sexual harassment cases that had come before the courts prior to 1979. In *Sexual Harassment of Working Women*, she analyzed these cases and related the problem of sexual harassment to the inferior place women held in the workforce in general during that time. She discussed the American workplace in the mid-1970s as a gendered system that kept women in “women’s jobs,” such as low-paying secretarial and factory work, where they were always the subordinates to men. She explained that this power dynamic, in which women were dependent on male authority in the workplace in terms of hiring, promoting, and receiving raises, etc., made women vulnerable to sexual harassment. Furthermore, this relationship was central to MacKinnon’s overall argument that sexual harassment constituted sex discrimination under Title VII and represented the inequality between men and women in the workforce which served to exploit women.

MacKinnon also shaped the development of sexual harassment law by identifying two forms of sexual harassment, quid pro quo and condition of work. The quid pro quo incidents were easier to identify since there was usually a negative consequence if a woman failed to comply, such as the loss of her job or failure to be promoted. On the other hand, condition of

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42 Ibid., 4-6.
work harassment was more difficult to prove because it dealt with all facets of the relations between men and women in the work environment and the less objectively defined ideas of appropriate behavior. For all of these reasons, MacKinnon’s *Sexual Harassment of Working Women* was a groundbreaking analysis of sexual harassment and sex discrimination law and of gender relations in the workplace. As this dissertation illustrates, the two forms of sexual harassment she identified were codified in the EEOC’s 1980 guidelines and continue to be relevant to sexual harassment law today.

Despite the success feminists saw in the creation of the EEOC’s sexual harassment policy in 1980, the issue of sexual harassment was met with a downturn throughout the 1980s. A backlash against the feminist movement developed during the decade that made it difficult for feminists to make gains in popularizing the issue for the American public. In a sense, the legislation meant very little if the women’s movement could not effectively reach working women and increase awareness that sexual harassment was indeed a problem and that women now had a legal basis for action to stop or prevent it. In 1987, MacKinnon published *Feminism Unmodified: Discourses on Life and Law* and provided insight into these issues. She responded to anti-feminist claims that only non-virtuous women are sexually harassed by further articulating the sex differences between women and men that led to this behavior. MacKinnon also criticized the way that claims of sexual harassment as sex discrimination had been handled as insufficient because of their personal nature, meaning that courts were interested in very specific details about the parties involved in order to discern if the harassment was based on sex and not just a personal conflict between two individuals. As such, she revealed how this

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43 Ibid., 32 and 40.
diminished the agency of women who made claims because they were interrogated to the point where they were portrayed as deviants and accused of making up their claims of sexual harassment. MacKinnon theorized that this threat of a diminished reputation was the reason more women did not come forward with sexual harassment complaints.46

MacKinnon later published an essay on the status of Title VII sexual harassment legal claims, after the first ten years in which they came before the judicial system and noted that the law against sexual harassment was “one test of sexual politics as feminist jurisprudence, of possibilities of social change for women through law.”47 She articulated how sexual harassment law had benefited society by giving name to a widespread problem and by making the behavior illegal. MacKinnon argued, “The existence of a law against sexual harassment has affected both the context of meaning within which social life is lived and the concrete delivery of rights through the legal system.”48 She therefore viewed sexual harassment law as a success for feminist jurisprudence because, and as the second chapter of this dissertation shows, women defined the injuries. MacKinnon asked the question of “whether a law designed from a woman’s standpoint and administered through this legal system can do anything for women” and concluded that sexual harassment law provided an affirmative answer. She never wavered from her original claim that sexual harassment was sex discrimination, however, she pointed out that as it had been legitimized in the court system, sexual harassment law faced the possibility that it would “be taken away from us or turn into nothing or turn ugly in our hands.”49 Here, she referred to the possibility that women could lose the ability to define the problem for themselves and speak for their own injuries. Using the policy process and cycle of contention model

46 Ibid., 103-116.
48 Ibid., 145.
49 Ibid., 146.
described above, this project explains how MacKinnon’s prediction turned into reality as sexual harassment became institutionalized in federal policy and feminist activists no longer had control over how it was framed.

In 2004, MacKinnon, along with Reva Siegel, further considered the creation and development of sexual harassment law when they published an anthology, *Directions in Sexual Harassment Law*. The collection included essays from several scholars who attended a 1998 Yale Law School symposium held to commemorate the twentieth anniversary of the publication of MacKinnon’s *Sexual Harassment of Working Women*. MacKinnon and Siegel organized the essays around the themes of contexts, unwelcomeness, same-sex harassment, accountability, speech, extensions, and transnational perspectives. In these essays, the contributing scholars illustrated how sexual harassment law has evolved since the mid-1970s and offered much that this dissertation will consider, including how questions of employer liability have been resolved since the EEOC introduced its 1980 Guidelines and, in the concluding chapter, how analyses of race and sexual harassment have increasingly shaped the scholarship on sexual harassment.

My project draws on this rich history of the issue of sexual harassment as a working women’s problem based on gendered power relationships between men and women in the workplace and how sexual harassment then became part of legal discourse. In doing so, it also relies upon scholarship that relates the development of sexual harassment law and policy to studies of citizenship. One scholar who ties the role of plaintiffs to acts of citizenship is Anna-Maria Marshall, who has studied the plaintiffs in the first sexual harassment cases at length. In her article, “Closing the Gaps: Plaintiffs in Pivotal Sexual Harassment Cases,” Marshall made this distinction clear by drawing from the work of Herbert Jacob who, as she wrote, argued that

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“litigants were political actors” and “showed that their social identities and communications networks influenced their decisions to use the power of the law to vindicate their interests.”

She uses Jacob’s model to study the plaintiffs in the first sexual harassment cases. In doing so, Marshall analyzed “the interaction of class, gender, and race that created social distance between the women and their harassers and employers.” She argued, “This distance made informal resolution of their disputes impossible, requiring the intervention of third parties. In addition, their communications networks led them to attorneys able to generate and expand the new claim for sexual harassment.” Finally, she claimed that her analysis “reveals the potential political significance of private litigation.”

Her research helps to inform the study of how sexual harassment was framed by plaintiffs who were activists in their own right in joining other working women and feminists who also argued that sexual harassment should be recognized as sex discrimination.

Recent literature on the second-wave feminist movement reveals an absence in the history of sexual harassment anti-discrimination policy by only skimming the time period covered by much of this dissertation. Within the last few years a number of historians, who have recognized both the feminist campaign for sexual harassment policies and the EEOC’s guidelines, leave out the story of the early 1980s after the EEOC guidelines were issued. Because sexual harassment is a feminist term and many feminist associations spoke out against it, including some of the most familiar organizations such as the National Organization for Women (NOW) and other lesser-known groups, such as the Alliance Against Sexual Coercion (AASC) and the Working Women’s Institute (WWI), the issue has a prominent place in narratives that recount the many ways in which feminist activism improved the lives of

52 Ibid.
American women. Among the most notable successes mentioned along with sexual harassment are policies that deal with rape and domestic violence as well as those that provide equal opportunities for women in employment, education, and sports. Regarding sexual harassment, scholars point out that it took over a decade and a half of activism and a nationally publicized event to bring the issue to the greater American public. In doing so, these authors start in the late 1970s-early 1980s when the problem was framed and then they skip to the early 1990s when it was fully politicized as Anita Hill’s testimony during Clarence Thomas’s Supreme Court nomination hearings captivated American television audiences. This project illuminates the gray area that lies in between these events by relating sexual harassment policy to the larger history of the 1980s and connecting it to the rise of the New Right and its challenge to liberal politics and feminism.

Ruth Rosen’s *The World Split Open: How the Modern Women’s Movement Changed America* is one example of this body of literature. In outlining the women’s movement’s campaigns against various forms of violence against women, including rape, incest, and spousal abuse, Rosen explains how feminists named sexual harassment. She then notes the gap between when the term was coined and the Clarence Thomas hearings and offers one possible explanation for it in the confusion of appropriate workplace behavior. In other words, she argues that once sexual harassment was named, men were unsure of how to behave in the workplace and when “no” really meant “no.”53 This study explains that the situation was much more complicated than Rosen’s claim that Americans just misunderstood and demonstrates that one important reason for this misunderstanding was the Reagan administration’s attack on EEOC sexual harassment policy.

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Similar to Rosen, Sara Evans also links sexual harassment to the issue of rape in *Tidal Wave: How Women Changed America at Century’s End*. She does this by mentioning how the two issues were part of the feminist drive in the late 1970s to bring formerly unspoken issues to the forefront of political change. In doing so, Evans views the institutionalization of feminism, in the fact that feminists were successful in bringing strict rape laws and sexual harassment policies to the American legal system, as a success of the movement. Where she differs from Rosen is in the fact that she outlines how sexual harassment activists were directly linked to the anti-rape movement with feminist attorneys working on both causes.54 Because of this relationship, Evans’s work magnifies the experiences of sexual harassment activists in earlier campaigns and seemingly complicates this study’s analysis of Tarrow’s old and new movement organizations phase which stipulates that new sexual harassment organizations had to convince older feminist organizations to add sexual harassment to their agendas. Evans’s explanation here assumes that there was one brand of feminist organizing at this time which would mean that the old and new organizations were one and the same. On this point, Evans’s analysis of the women’s movement differs from that of Alice Echols, who argues that there was a distinctly radical arm of the feminist movement from 1967 to 1975.55 As this dissertation demonstrates, the activists who formed the first sexual harassment groups had been a part of the radical branch of the feminist movement. Taking this into consideration, this project explains how these activists then had to convince the presumably more mainstream organizations such as NOW and *Ms.* magazine to tackle the issue.

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55 Alice Echols, *Daring to Be Bad: Radical Feminism in America, 1967-1975* (Minneapolis, MN: University of Minnesota Press, 1989), 3-5. Evans interprets the feminist movement differently and chooses not to make radical feminists a distinct group by claiming that they “were not as unique as they believed themselves to be at the time.” See Evans, *Tidal Wave*, 260n22.
Evans also leaves the issue of sexual harassment in the late 1970s-early 1980s and returns to it again in her book when describing feminism in the 1990s and the Hill-Thomas scandal. She does this in order to explain that feminist activism “crested” in the period when sexual harassment policies became institutionalized and then dipped down during the political climate of the 1980s when the women’s movement was less successful. In her view, the early 1990s saw a “resurgence” of feminist activism and events such as Anita Hill’s nationally televised testimony spurred not only a greater awareness of the problem of sexual harassment but more activism around the issue. She offers the steep increase in sexual harassment complaints to the EEOC after 1991 as evidence of this impact.\(^{56}\) While EEOC records do indicate such an increase and likely raised awareness of the problem of sexual harassment, her recounting the ways in which the politics of the 1980s impacted the women’s movement and the history of sexual harassment activism and policy is incomplete because she only offers the beginning and end of the picture. In doing so, Evans leaves out the middle part of the story and any specific political attack on sexual harassment policies during the Reagan years by only hinting that something happened when the feminist wave receded in the 1980s. Using literature on the New Right and EEOC records, this project will fill in this narrative.

Estelle B. Freedman raises the issue of sexual harassment in *No Turning Back: The History of Feminism and the Future of Women* and introduces the problem a bit differently than Rosen and Evans by placing it in the context of gender roles and women’s work before she explains how feminists named sexual harassment and domestic violence as major problems for women.\(^{57}\) Freedman offers a little more detail than Rosen and Evans by describing Catharine MacKinnon’s two different types of sexual harassment, quid pro quo and hostile environment,

\(^{56}\) Evans, 225-226.
both of which are represented in the EEOC guidelines. Freedman treats the issue of sexual harassment as Rosen and Evans do by immediately following this discussion with an analysis of the impact of Anita Hill’s accusations. She also cites the rise in EEOC complaints along with other evidence that women became more active in feminist organization than they had been in the 1980s. Even though Freedman highlights the difficulties feminists faced before 1991 and also describes some of the major legal victories in sexual harassment cases, similar to Rosen and Evans, she spends little time in explaining how sexual harassment policy survived in the 1980s.58

As these three writers suggest by leaving such space between 1980 and 1991, something significant happened in this decade, but they do not offer concrete theories as to why or as to how sexual harassment policy was considered in the 1980s. The only indication they offer regarding the status of sexual harassment policy is their mention that sexual harassment complaints to the EEOC increased after 1991, meaning that the EEOC was still charged with handling sexual harassment cases by the 1990s. If the women’s movement, using Evans’s wave metaphor, receded during the 1980s, did the issue of sexual harassment and its importance to feminists and politicians also recede or experience any backlash? The easiest explanations for these changes are the rise of the New Right and its associated feminist backlash, the election of Ronald Reagan in 1980, and the failure of the ERA’s ratification in 1982. This dissertation connects all of these developments to the issue of sexual harassment in order to enrich the body of literature on sexual harassment and the feminist movement and present a fuller account of this history. In considering the political changes of the 1980s, this project explains how awareness of sexual harassment did not decrease between 1980 and 1991 but that the framework of it was challenged—the same way feminism itself was challenged during this time. These challenges

58 Ibid., 290-292.
led to important consequences for the EEOC’s sexual harassment policy that are otherwise invisible without taking stock of 1980s politics and America’s shift to the right.

Several recent studies offer explanations for how the conservative New Right grew to dominate American politics in the latter half of the twentieth century, culminating in Reagan’s election to the presidency. Many of them illustrate how the New Right criticized liberalism and faulted the New Left for all of the nation’s problems in the decades before 1980. Recent publications by Sean Wilentz and Gil Troy recount Reagan’s rise in politics and the values of his administration, such as limited government and capitalism.59 Reagan applied these principles to deregulating the federal government, cutting many programs and reducing federal funding for others, including the EEOC.60 Scholarship by Thomas Sugrue, Kevin M. Kruse, and Lisa McGirr contribute to this narrative by illustrating how the New Right grew from virtual obscurity and drew in constituents by opposing many liberal reforms, including civil rights legislation on behalf of African Americans such as fair housing.61 Turning to how the New Right viewed feminism, McGirr and Matthew Lassiter outline how conservatives viewed the feminist movement as a threat to the traditional family values they espoused.62 More provocatively, Catherine Rymph and Marjorie J. Spruill credit the anti-feminist movement, whose rise mirrors the New Right’s, with reviving the Right and contributing to its success. They, along with

60 See Chapter Six.
Wilentz, Donald Critchlow, and Godfrey Hodgson credit Phyllis Schlafly, as the most visible anti-feminist leader, with applying conservative ideals of womanhood and femininity—which viewed women as wives and mothers and not workers—to her successful campaign against the ERA and in building a backlash against feminism in general. 63

This body of literature helps greatly to fill in the pieces about how the New Right’s efforts to undo some of the important civil rights legislation of the 1960s also led to a downturn in efforts to improve the employment lives of women. The Reagan administration’s commitment to deregulation served its interest in promoting corporate interests and in limiting federal funding for social programs. That the New Right was revived by anti-feminists who viewed women as homemakers and mothers also explains how Reagan’s leading policymakers—beyond their focus on employers’ rights—shared this vision and sought to cut the EEOC guidelines in the first months of Reagan’s term. Sexual harassment policy was implemented within this context, including the New Right’s backlash to feminism and debate over women’s roles, a fact which neither anthologies of the second-wave women’s movement nor the histories of the New Right fully explain. Scholars of the second-wave focus a great deal on the ERA’s defeat along these lines but do not clearly link sexual harassment to this history whereas studies on the New Right spotlight other hot-button issues of the Reagan administration such as affirmative action and foreign policy. This dissertation brings the two stories together and highlights the issue of sexual harassment as key to understanding how the politics of the 1980s affected women’s economic citizenship. Magnifying this problem goes a long way to fully understanding how Reagan-era

policies limited women’s employment opportunities and illustrates that the rollbacks at the EEOC in the 1980s had lasting implications on sexual harassment policy of which the effects continue to be felt today.

The current literature on economic citizenship also encapsulates debates over gender politics and women’s rights in order to measure the success or failure of social policies in improving women’s opportunities. In particular, Alice Kessler-Harris’s *In Pursuit of Equity* offers the study of sexual harassment policy not only a definition of economic citizenship but also a way to examine the mindset behind such policies. Her analysis of how understandings of gender and race relate to the origins of social policy is central to this dissertation, especially her argument regarding their implications for women’s economic citizenship. When examining how the social tradition that assumed women’s role was in the home and not in the workforce operated throughout the twentieth century, Kessler-Harris argues that “gender—racialized gender—constitutes a central piece of the social imaginary around which social organization and ideas of fairness are constructed and on which social policies are built.”\(^6^4\) She analyzes how this imaginary impacted social policies in the form of protective labor legislation, unemployed and old age insurance, income tax policy, and equal employment policy. In doing so, Kessler-Harris stipulates how early policies such as protective labor legislation and unemployment benefits upheld the family wage ideal that considered men as breadwinners and women as dependent housewives. With the civil rights movement and subsequent equal employment legislation, Kessler-Harris examines how this ideal began to break down when women argued against sex discrimination in the same manner that civil rights activists had fought for policies against race discrimination. Throughout her study, Kessler-Harris illustrates how the power of what she terms “the gendered imagination” operated in determining what men and women could achieve as

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\(^6^4\) Kessler-Harris, 5.
economic citizens.\textsuperscript{65} Important to this dissertation is Kessler-Harris’s discussion of both how official policies regarding wage work as well as day-to-day actions served to limit women’s economic freedom. In this vein, Kessler-Harris mentions sexual harassment: “When employers’ devices like differential wages and occupational segmentation by sex have proved insufficient, workers have resorted to more informal strategies to enforce customary understandings of sex boundaries. These include refusing to mentor female trainees, negative job assessments, and sexual harassment on the job.”\textsuperscript{66} Because her focus is on formal policies that affect women’s status as economic citizens, Kessler-Harris does not study the effect of informal interactions such as sexual harassment at length. Even so, her conceptualization of economic citizenship and its relationship to race and gender serves as an important model for how this dissertation considers sexual harassment as a violation of working women’s economic citizenship rights.

Eileen Boris considers and further draws upon Kessler-Harris’s discussion of race, gender, and economic citizenship in her article, “On the Importance of Naming: Gender, Race, and the Writing of Policy History.” Boris outlines the ways in which policy history has benefited from a recent turn toward examinations of social issues, particularly those that come from women’s history, such as studies of welfare and reproductive rights policies. She then traces the transition from maternalist paradigms in women’s history to studies of citizenship. Here, Boris notes Kessler-Harris’s contribution to this school of thought as well as the usefulness of Kessler-Harris’s concept of “economic citizenship” to understanding the ways in which perceptions of women’s right to work has changed.\textsuperscript{67} Similar to Kessler-Harris, Boris uses the phrase “racialized gender” and articulates the importance of intersectional analyses—those that consider race, gender, class, and sexuality in conjunction with one another and not separately—

\textsuperscript{65} Ibid., 6.
\textsuperscript{66} Ibid., 11.
\textsuperscript{67} Boris, “On the Importance of Naming: Gender, Race, and the Writing of Policy History,” 79-80.
to this new scholarship. She argued that "gender, queer, and new racial studies can enrich a policy history that has moved from considering gender and race apart to thinking of each of those categories as integral to the other." Boris stipulates that one benefit of this method is that it helps to reveal the underlying power relations that operate within society. Seen in light of how feminists defined the problem of sexual harassment from the very beginning when they argued that it resulted from the uneven balance of power between women and men in the workplace, Boris’s work is quite instructive and this dissertation examines sexual harassment and its impact on women’s economic citizenship based on this understanding that it is about power.

Boris’ claim, “Citizenship is about exclusion as well as inclusion,” is echoed in Nancy MacLean’s Freedom is Not Enough, in which she analyzes the implications of race, class, and gender in order to consider how the politics of exclusion served to limit access to the best-paying jobs to white men in America throughout the period following World War II. She places ideas of fairness as central to her analysis of how specific groups and social movements, namely the civil rights movement and the women’s movement, produced change by fighting for inclusion in the American workplace. MacLean also takes into account the impact of the family wage system in determining the nature of segregation in the workforce, either in how it prevented African-American men from having access to well-paying jobs or in the ways it limited both white women and women of color from having them as well. Of much importance to this project, MacLean discusses the economic benefit of having jobs that pay a decent wage; however, she also reveals that a sense of belonging is part of this economic citizenship and claims, “Americans have looked to their jobs for meaning and connection—for companionship, feelings of

68 Ibid., 75.
69 Ibid., 85.
70 Ibid.
achievement, and a sense of who they are.”\textsuperscript{71} In doing so, she describes the coalitions that civil rights activists formed in order to promote the passage of Title VII of the Civil Rights Act of 1964 which prohibited discrimination in employment. In line with other scholars of the women’s movement, MacLean illustrates the ways in which civil rights activism sparked the activism of white women to fight against their own discrimination in employment.\textsuperscript{72}

Because of these factors, MacLean’s interpretation of how work has changed as a result of social movements is instructive in the context of sexual harassment and citizenship rights in two significant ways. First, her analysis of sex discrimination in employment illuminates how sexual harassment became an illegal form of sex discrimination under Title VII of the Civil Rights Act of 1964. She noted the 1986 Supreme Court decision, \textit{Meritor Savings Bank v. Vinson}, which upheld the EEOC guidelines stipulating that sexual harassment violated Title VII. MacLean explains how sexual harassment served as a form of exclusion in which men exerted their power over women in the workplace. She writes, “Insisting that women be taken seriously as workers proved to be the best ground for fighting an age-old problem: men’s use of power to coerce sex. Because such behavior was legal, women had risked being blamed and losing their jobs if they complained. But Title VII helped some feminists to name the problem and imagine solutions.”\textsuperscript{73} MacLean identifies the construction industry as one place where the problem was particularly acute and where men sexually harassed women in order to keep them out of trades that had formerly been all-male. Her contention that an underlying “gender anxiety and not just fear of job loss drove the men’s reactions” to women’s entrance into the construction industry shows how feminists also viewed this anxiety when naming the issue when MacLean claims that “men’s sexual attention to women in the workplace, such activists contended, aimed to drive

\textsuperscript{71} MacLean, 6.
\textsuperscript{72} Ibid., 4.
\textsuperscript{73} Ibid., 144.
women from desirable jobs, affirming these workplaces as men’s exclusive terrain.”\textsuperscript{74} Her point here relates to the second chapter of this study which recounts how the victims of sexual harassment who spoke out about the problem understood that men sexually harassed women because men felt threatened by women’s presence in the workplace. These women then protested this behavior because it violated their right to work in these trades without suffering this behavior.

Second, MacLean names an aspect of employment that many scholars do not, the fact that employment is not just economically beneficial to Americans, but emotionally gratifying as well. Along with her observation that employment is important to Americans’ sense of meaning and connection she identifies it as “a key site in determining personal well-being and communal power.”\textsuperscript{75} She explains, “So important is labor to self-definition and social relations that Americans routinely ask, ‘What do you do?’ on first meeting someone, a habit that strikes visitors from other countries as strange. Yet since our society’s distinguishing promise is that through hard work its citizens can achieve as much as their talents enable them to, that preoccupation makes sense.”\textsuperscript{76} This kind of self-definition by one’s occupation that MacLean identifies relates to how sexual harassment was framed as a problem for working women. Victims expressed that they were being denied full economic autonomy in their jobs because of the fact that their only means of escape from the behavior was to quit. After quitting, they also missed the satisfaction of working in a job where they felt that they had value. Just as women told of how being harassed in trades like construction made them aware of how men felt threatened by women, the first victims who went public about the problem also spoke of this phenomenon. They recounted the psychological trauma that they experienced after being

\textsuperscript{74} Ibid., 279.  
\textsuperscript{75} Ibid., 6.  
\textsuperscript{76} Ibid.
sexually harassed because it led to a low opinion of their own self-worth and a diminished sense of confidence in what they could achieve in the American workforce.

Dorothy Sue Cobble’s work on women and unions, *The Other Women’s Movement: Workplace Justice and Social Rights in Modern America* is also useful to this project. Similar to the scholars noted above, Cobble examines the position of women in post-World War II workplaces. Yet, her account of how issues of class shaped working women’s realities goes beyond what Kessler-Harris, Boris, and MacLean offer as they dealt primarily with race and gender and only secondarily with class. Cobble accomplishes this by placing pink- and blue-collar women and their activism for equality at the center of her story. She calls these women “labor feminists” and argues that they were “at times, the dominant wing of feminism.” To Cobble, these women earned the latter half of their name “because they recognized that women suffer disadvantages due to their sex and because they sought to eliminate sex-based disadvantages.” As to why she chose the former half of the term, she writes, “I call them ‘labor feminists’ because they articulated a particular variant of feminism that put the needs of working-class women at its core and because they championed the labor movement as the principle vehicle through which the lives of the majority of women could be bettered.”77 Aside from the importance of the activism of labor feminists to this study is the way in which Cobble analyzes how their struggles against sex discrimination and for such benefits as equal pay for comparable work and childcare were part of a larger campaign for economic citizenship. Cobble explains that the women themselves worked toward the goal of, in their words, “full industrial citizenship,” meaning “gaining the right to market work for all women” and “securing social rights, or the social supports necessary for a life apart from wage work, including the right to

77 Cobble, *The Other Women’s Movement*, 3, her emphasis.
care for one’s family.” In addition, she notes that labor feminism flourished between the late 1940s and the early 1970s, thus their accomplishments will be relevant to the period undertaken by this dissertation. For all of these reasons, Cobble’s work is beneficial to the study of sexual harassment and economic citizenship. Even though Cobble does not mention sexual harassment specifically, the nature of labor feminism and how union women organized and built coalitions in general will serve as useful background material and may reveal the ways in which they would confront the problem of sexual harassment in the late 1970s and early 1980s.

In a related manner, Cobble’s work helps to change how scholars have viewed feminist activism in the twentieth century. She is aware throughout her analysis of women and unions that she was adding a different piece to the puzzle that complicates the “waves” metaphor that has long been associated with modern American feminism. While many scholars assume that the period between the end of the suffrage movement and the explosion of feminist activism in the 1960s is a rather dormant period, Cobble asserts that labor feminists constitute an important wave in the middle, especially since many of their challenges to sex discrimination came before the more mainstream women’s liberation movement even got off the ground. In fact, she argues, “Labor feminism helped inspire the birth of a new movement in the 1960s.” Here, Cobble joins other scholars such as Susan Hartmann and Dennis Deslippe who have studied women and unions and who also argue for the rightful recognition of union women, both blue-collar and pink-collar, for their achievements through feminist activism.

This dissertation contributes to this body of literature by asking: If sexual harassment was defined by feminists and working women as a problem of women’s economic citizenship and inclusion in U.S. workplaces, how does this story change our understanding of second-wave

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78 Ibid., 4.
79 Ibid., 10.
80 Hartmann, The Other Feminists and Deslippe, “Rights, Not Roses.”
feminism? This study illustrates that understanding sexual harassment as an issue of women’s economic citizenship reveals the limits of feminist activism in overcoming rooted understandings of women’s roles in society. How women defined sexual harassment was based on their understanding that a women’s place was in the workforce—at least that is where they viewed their place based on their own economic needs and social desires. Because this was fundamentally different from anti-feminists and conservative policymakers who viewed women’s place as in the home, understanding objections to sexual harassment policy reveals how ideologies of gender determined the success of the second-wave feminist movement in framing public policy. Despite the number of women in the workforce and their expressed economic need of employment, separate spheres ideology continued to determine women’s citizenship and inclusion in U.S. society.
CHAPTER ONE: WOMEN, WORK, AND EMPLOYMENT LAW BEFORE 1975

The sexual harassment of working women is an example of an issue that was without a name until feminist activists framed the problem and fought for its recognition in public policy. Yet the phenomenon had been a factor of working women’s lives well before the problem had a name. If it had existed for so long, why did sexual harassment remain unnamed and undefined until the mid-1970s? This chapter answers this question by examining U.S. women’s workforce participation throughout the post-World War II era as well as women’s fights for equal employment rights. Chapter Two argues that feminists defined sexual harassment in 1975 because a number of factors came together at this time and provided the context in which activists understood and presented the problem as a political, not personal issue that needed public policy solutions. These include the record-setting numbers of women participating in the U.S. workforce, the legal context in which sexual harassment could be considered sex discrimination, and the existence of a feminist movement intent on pressuring the federal government and especially the Equal Employment Opportunity Commission (EEOC) to enforce the law.

When feminists coined the term “sexual harassment” in 1975, they identified a problem that had afflicted working women for as long as women have worked. It ranged from lewd comments and petting to forced intercourse and pressure to provide sexual favors in exchange for promotions. In fact, many scholars argue that sexual harassment was present in America in some form or another even in colonial days. However, they also recognize that a better starting point when considering sexual harassment in its modern form is beginning with industrialization in the mid-1800s when the prevailing belief was that women who worked outside of the home were

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“loose” or “fallen” women, on par with prostitutes. There is much historical evidence explaining how, despite prevailing ideologies dictating that women should remain in the private sphere, they have been working outside the home in the U.S. since the mid-1800s and have been experiencing sexual harassment since then. For example, there was a rumor that a young woman who worked in the textile mills in Lowell, Massachusetts in the 1840s fathered her supervisor’s child and he gave her “hush money” so that she could purchase a farm and leave the city. Such stories offer a glimpse of the embedded, pervasive nature of sexual harassment in American culture and illustrate the importance of understanding why the problem went without a name until over a hundred years later. Yet they also reveal the limits of comparing working women in the early industrial U.S. with women in the post-World War II era because it is impossible to know if they would have defined sexual harassment in the same way.

Given such circumstances, this dissertation must consider the problem as it was most relevant to the individual working women and feminists who framed it in the early 1970s in the context of existing employment law. Because these efforts resulted in the first federal sexual harassment policy at the EEOC, this story’s roots lie in two important events of the post-World War II era. The first is the passage of anti-discrimination legislation such as the 1963 Equal Pay Act and Title VII of the 1964 Civil Rights Act. Title VII banned discrimination in employment on the basis of race, color, religion, sex, or national origin, and created the EEOC to enforce this policy. The second is the growth of the second-wave feminist movement which brought this issue, and many others, to the forefront of American politics. When and how working women, and later feminists, argued for and reacted to these policies and to the EEOC’s efforts is an

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important part of the narrative of why sexual harassment was first considered a form of sex discrimination. Notably, the founding of one major feminist organization, the National Organization for Women (NOW), was directly related to the EEOC’s failure to enforce Title VII.

Recent scholarship has traced the origins of the modern working women’s struggle for equality in the workplace to the years just after World War II. Despite the popularity of the story that tells of the thousands of “Rosie the Riveters” who kept American factories running during the war and who later returned to their homes and housewife duties after it ended, this is not an accurate account of the reality of many working women’s lives. A great number of “Rosies” did not actually leave the workforce for good after the war. Dennis Deslippe observes that “3.25 million quit or were fired between September 1945 and November 1946 but this reduction was partially offset by the nearly 2.75 million women who assumed new jobs, this making the net decline only 600,000 positions.” Many of them, above all minority women, could not afford to stop working. When looking at the number of women in the workplace before, during, and after the war, the fluctuation of women into the labor force during wartime was quite minimal. In other words, women had been working outside the home before the war and they continued to do so after the war.” What had changed during the war was the types of jobs women performed, most of which had earlier been reserved for men. As a result, women who had previously been “protected” from these types of jobs came to learn that they were capable, despite any supposed differences between men’s and women’s abilities, of working in factories and in other higher-paid, higher-skilled jobs. This altered the landscape of the workplace to the point where, as

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Dennis Deslippe argues, “gender relations had been altered significantly by the war.”\(^7\) He continues: “The practice of assigning specific jobs to men and women by gender was undermined most significantly by the wholesale recruitment of women as war plant workers, which revealed the artificiality of job-typing by sex.”\(^8\)

Nevertheless, after the war, the jobs that women had been recruited to do as part of their patriotic duty to their country were given back to returning male veterans. Instead of just going back to unpaid labor in the home, many women stayed in the industrial workforce in lower-paying jobs while others went to work in service or clerical jobs. Dorothy Sue Cobble explains that this phenomenon occurred along racial lines, as minority women took industrial jobs and white women worked in the service, retail, and clerical sectors.\(^9\) Overall, the number of women in the workforce grew during the late 1940s from 25 percent of all workers and throughout the 1950s so that the percent of women in the total labor force was 34 percent by 1961. Historically, women had comprised just over 20 percent of the workforce in 1910. By 1920, the figure was 25 percent where it stayed until the 1940s. In the 1970s, the number of women in the workforce had increased to 43 percent and kept climbing until 1991 when 57 percent of U.S. women were working outside the home.\(^{10}\) Many of these workers in the late 1940s and 1950s were married women supporting husbands who took advantage of the GI Bill to pursue higher education or who were supplementing their husbands’ income so that the family could enjoy the plethora of consumer goods that became available after the war.\(^{11}\) Regardless of their motivations for

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\(^7\) Deslippe, 17. Cobble concurs with this argument on page 14.

\(^8\) Deslippe, 17.

\(^9\) Cobble, 14. Cobble notes that the number of women of color in domestic labor declined during this period.


remaining in or joining the workforce, working women, including those in labor unions, embraced the jobs that had become sex-neutral by that time. Yet, many women workers did not seek to undo protective legislation that limited women’s access to other employment opportunities during the 1950s. As Deslippe illustrates, women did not agree on this subject, as some argued that the laws were still necessary and that it would have been nearly impossible for women unionists to overrule male union leaders—who defended protective legislation for women—on this topic.\textsuperscript{12}

One subject that these women did begin to raise was equal pay. Early advocates for equal pay legislation wanted to fight discriminatory wage policies and argued for what the U.S. Women’s Bureau Director, Mary Anderson, referred to in 1945 as “equal pay for comparable worth.”\textsuperscript{13} Deslippe writes, “The equal pay campaign neither confronted masculine-privileged employment practices nor directly challenged women’s marginalization in unions. Rather, in a period characterized by economic expansion, it promised to confirm the centrality of the family as an economic unit by delivering enhanced consumer power through women’s increased wages. It did this while implicitly acknowledging the rights of wage-earning women as individuals and not on account of their sex.”\textsuperscript{14} Deslippe reveals that, by viewing the problem of unequal wages as an individual problem, labor women followed the democratic rhetoric of the time that protected Americans’ individual rights when they built their campaign for equal pay during the 1950s. Even with this less threatening approach to protesting gender inequality, equal pay advocates saw limited success at the national level, although several states passed equal pay laws, until John F. Kennedy’s election in 1960.\textsuperscript{15} Deslippe notes the efforts of Esther Peterson,

\begin{itemize}
\item\textsuperscript{12} Deslippe, 29-32.
\item\textsuperscript{13} Ibid., 45.
\item\textsuperscript{14} Ibid., 33.
\item\textsuperscript{15} Ibid., 60 and Cobble, 163.
\end{itemize}
head of the Women’s Bureau and President Kennedy’s Assistant Secretary of Labor, in support of this legislation. In 1961, Edith Green, a Congresswoman from Oregon, introduced the Equal Pay bill before Congress.\textsuperscript{16} Despite the fact that women unionists approved of Green’s bill, it stalled until a group of these union women met in Washington in 1962 in order to lobby for its support during committee hearings on the bill. Cobble quotes a woman who testified at these hearings and directly linked women’s unequal wages to discrimination by stating that they represented the “immorality of discrimination on the basis of sex.”\textsuperscript{17}

Alice Kessler-Harris also ties support for the bill to the Kennedy administration and more specifically to the women who had served on his 1961 President’s Commission on the Status of Women (PCSW). She writes that the PCSW’s “crucial impact” was in how “it fostered the political effort that became the 1963 Equal Pay Act” by starting “a dialogue about discrimination that would ultimately help to tie women’s rights to a broader conception of civil rights.”\textsuperscript{18} Kessler-Harris adds that the PCSW sparked state commissions on the status of women that “helped to develop a network of women who provided the political muscle for continuing activity.”\textsuperscript{19} Civil rights activist Pauli Murray described this network as “like-minded women [who] found one another, bonds developed through working together, and an informal network emerged to act as leaven in the broader movement that followed.”\textsuperscript{20}

Because of their efforts, the Equal Pay Act passed on May 23, 1963, becoming the first policy of this era to deal with working women and sex discrimination.\textsuperscript{21} The fact that it passed with a compromise of “equal pay for equal work” instead of the “equal pay for comparable

\begin{flushleft}
\textsuperscript{16} Ibid.
\textsuperscript{17} Quoted in Cobble, 163.
\textsuperscript{18} Kessler-Harris, \textit{In Pursuit of Equity}, 233.
\textsuperscript{19} Ibid., 234.
\textsuperscript{20} Quoted in Kessler-Harris, 234.
\textsuperscript{21} Cobble, 166-167.
\end{flushleft}
work” that Peterson argued for (which would have meant more women would have been paid equal wages) points to the difficulty in the early 1960s of overcoming conservative efforts to weaken the bill.22 The challenge of crafting such policies that would benefit more working women is evident in the fact that these discussions regarding equal pay did not lead to larger talks of discrimination. Kessler-Harris, citing the work of fellow scholar Paul Berstein, explains that “all the discussions of equal pay that occurred throughout the postwar period and came to fruition in the 1963 Equal Pay Act ‘never prompted anyone, even women testifying about sex discrimination, to propose including sex discrimination in the EEO [equal employment opportunity] bill.’”23 Kessler-Harris claims that this issue was never raised given the limited scope of the act and the climate in which it was passed. The point of the act was “to protect women in jobs they already filled, not to open new categories of work for them.”24 Thus begins the “strange” history of how sex discrimination came to be included in the 1964 Civil Rights Act only one year after the Equal Pay Act. If women were not yet making this argument, when did they begin to do so and why?

Nancy MacLean’s Freedom is Not Enough: The Opening of the American Workplace helps to illustrate how this happened. She analyzes the origins of the civil rights bill in African American men’s fight for inclusion in the American workplace during the postwar years through the civil rights movement.25 Just as World War II opened up new opportunities for women, it also broke down barriers that had excluded African American men from various military and civilian jobs. When the war ended, they wanted to keep these positions and when they were barred from doing so, MacLean writes that they joined civil rights organizations such as the

22 Ibid., 167 and Deslippe, 62-63.
23 Kessler-Harris, 235.
24 Ibid.
National Association for the Advancement of Colored People (NAACP) and labor unions such as the Congress of Industrial Organizations (CIO) to fight this injustice. She recounts the experiences of men who, after fighting for their country, were no longer willing to tolerate segregation in general and the racism that kept them in lower-paying, lesser-skilled jobs.\(^{26}\)

While the larger story of the civil rights movement in general is beyond the scope of this project, MacLean explains how activists fought to overcome discrimination by arguing for full employment, which would then lift African Americans up from the “lowest rungs of the labor market.”\(^{27}\) After years of struggle against conservative whites and the violence that occurred during a peaceful demonstration in Birmingham, Alabama, in May 1963, President Kennedy finally proposed a civil rights bill in June 1963.\(^{28}\) When President Kennedy was assassinated later that same year, Lyndon Johnson remained committed to seeing this legislation passed by Congress. The original bill that Kennedy proposed did not include any provision regarding employment discrimination. Title VII accomplished this when it was added to the act in later months, and which Johnson championed after he became president.\(^{29}\) MacLean refers to Title VII as “the most contentious section of the act,” because of the efforts of one conservative, eighty-year-old Virginia representative Howard W. Smith, who attempted to defeat the entire bill by adding “sex” to the list of Title VII prohibitions.\(^{30}\)

Smith’s proposal was met with laughter on the floor of Congress, but one woman, Representative Martha Griffiths of Michigan, stood up and defended the inclusion of the word “sex” in the bill. Kessler-Harris writes that Griffiths, and many other women, were awakening to

\(^{26}\) Ibid., 22-25.
\(^{27}\) Ibid., 58.
\(^{28}\) Ibid., 61-65.
\(^{29}\) Ibid., 65, 69-70.
\(^{30}\) Ibid., 69.
the idea that the civil rights bill should include sex discrimination.31 She outlines Griffiths’ argument as follows: “if the rights of black women were to be protected because of their color…then those of white women would suffer because of their sex.”32 MacLean drives home the same point that Kessler-Harris makes by showing how women were beginning to link sex discrimination and civil rights in ways that they had not when the Equal Pay Act was passed. MacLean also reveals that Smith miscalculated. “What Smith failed to anticipate,” she claims, “is that some women, finding the provision a boon, would persuade the bill’s sponsors to leave it in, in the process laying the groundwork for a feminist movement for inclusion.”33

The Civil Rights Act passed with the sex provision included in Title VII on July 2, 1964. The Act established the EEOC for the purpose of enforcing Title VII by processing individual complaints.34 Even though this victory meant that the conservative efforts to kill the entire bill were thwarted, conservative members of Congress nonetheless found other ways to limit the effectiveness of the act, particularly through the EEOC. The EEOC was designed as a bipartisan agency with five members who would be appointed by the President and, when it opened for business in July 1965, it was prohibited in the enabling legislation from bringing discrimination suits to court on its own and it could not issue cease-and-desist orders to businesses in violation of the law. Because of this lack of enforcement power and authority only to process individual charges, conciliate claims, and file amicus curiae briefs on behalf of private litigants, the EEOC earned the nickname of the “toothless tiger” in Washington.35 Yet, this did not stop American women from looking to the agency to enforce the law. MacLean argues that Title VII “allowed 

31 Kessler-Harris, 241-242.
32 Ibid., 242.
33 MacLean, 70.
women to define themselves as full earner-citizens and to build new alliances.”\textsuperscript{36} In the late 1960s, these new alliances focused their energies on forcing the EEOC to uphold Title VII and on gaining access to better employment for all women.

Obviously, the addition of the word “sex” by Congressman Smith to Title VII as a possible ploy to defeat the entire civil rights bill reflects an environment where sex discrimination was not always taken seriously.\textsuperscript{37} The first years of the EEOC’s history certainly show that this was the case as dissatisfaction with the agency’s enforcement of its own anti-sex discrimination policy led to the founding of one of the major organizations of the second-wave feminist movement. Not long after the EEOC opened its doors in 1965, the EEOC’s first chairman, Franklin D. Roosevelt, Jr., referred to sex discrimination as a “terribly complicated” issue. On one occasion Roosevelt inadvertently answered a reporter’s question about his thoughts on sex discrimination by misunderstanding the reporter and replying that he was “in favor of it,” a mistake that did not make him popular with women’s rights activists.\textsuperscript{38} Even so, when the Civil Rights law went into effect and the EEOC began receiving complaints in July 1965, the Commission received 48 complaints in its first 19 days of business, nine of which were for sex discrimination. Most of the rest were for racial discrimination.\textsuperscript{39}

Despite the fact that the Commission did receive nine complaints of sex discrimination in just under a month, some policymakers still did not believe sex discrimination was a major problem and began to call for the repeal of the law’s “sex provision.” James B. O’Shaughnessy, spokesman for the Illinois Chamber of Commerce, was one of the first to do so. O’Shaughnessy

\textsuperscript{36} MacLean, 118.
justified this step by claiming that the business community found the law too confusing. Later that same month, Roosevelt told the *New York Times* that the Commission was receiving requests from employers, unions, and others for information about the types of actions that would constitute sex discrimination violations. Roosevelt noted that the Commission had received a total of 140 complaints by July 27, 1965 (a number that was up by 92 from just four days prior, as indicated by the *The New York Times*), and again, he stated that most were for racial discrimination and “a number of them were filed by women who said they had not been given an even break with men in business and industry.” In the wake of O’Shaughnessy’s comment, Roosevelt did not indicate whether or not there was any large-scale call for the deletion of the “sex provision.” The statistics that he mentioned offer no indication either way that the EEOC was or was not taking sex discrimination seriously, processing the claims or ignoring them. They reveal only that the agency was receiving complaints for both racial and sex discrimination and that its primary concern was with the former.

Roosevelt, as the Commission’s first Chairman, serves as an interesting example of this mindset. He has been criticized for having “no real interest in the Commission” and for not being “there long enough for his views on women’s rights, whatever they were, to matter” because he spent his time at the EEOC concentrating on running for office as governor of New York, and not on civil rights enforcement. Roosevelt left the Commission in 1966, in only its second year, to pursue this position. Before he left the EEOC, Roosevelt nevertheless set the

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40 Ibid.
42 David Allen Robinson, “Two Movements in Pursuit of Equal Employment Opportunity,” *Signs* 4, no. 3 (1979): 423 and U.S. Equal Employment Opportunity Commission, *The Story of the U.S. Equal Employment Opportunity Commission*, 7. This figure has been cited as low as 25% (in Robinson, 423) and as high as 37% (in Fuentes, 97, see n39 below). The EEOC claims it was 33.5% in its 35th anniversary publication.
44 Ibid.
tone for dismissing the seriousness of sex discrimination, which was exacerbated by the fact that Congress left little guidance with regards to what constituted sex discrimination.\textsuperscript{45} This was evident when Robert K. Berg, the EEOC’s Deputy Counsel referred to sex discrimination as “the bunny problem,” giving rise to the nickname for sex discrimination law as “the bunny law.” The name caught on in an August 19, 1965, meeting held to discuss the issue.\textsuperscript{46} Again, Roosevelt’s response to a question from the press about what the EEOC would do regarding sex discrimination elicited a response that angered feminist activists. As Betty Friedan records it, Roosevelt responded to the question as follows, “Oh, sex discrimination? I guess we’ll have to insist that boys can be Playboy bunnies.”\textsuperscript{47}

The reference to sex discrimination as “the bunny problem” was a play on a supposed complication that could arise under Title VII if a man applied for a “bunny” position at a Playboy club and was not hired because of his gender. Other examples appeared in a New York Times article about this meeting with the headline: “For Instance, Can She Pitch for Mets?”\textsuperscript{48} After apparently coining the “bunny law” nickname, Berg claimed to take the issue seriously and explained that the new sex discrimination policy did raise some questions. For instance, was it unlawful to prevent men from being “bunnies” (in the extreme example), because “bunnies” were essentially wait staff, a job that either men or women could do? Also, was it lawful for employers to specify that they wanted a secretary of a certain sex? In its first year, the EEOC chose to handle these tough questions by placing the burden on employers to make sure that they were in compliance with the law by asking themselves if there was good reason not to hire a

\begin{itemize}
  \item[45] Robinson, “Two Movements,” 422.
  \item[48] Herbers, “For Instance, Can She Pitch for Mets?”
\end{itemize}
woman for a traditionally male job, and when there was not, then to hire that woman. In a similar vein, the EEOC issued guidelines on sex discrimination in newspaper advertising that did not explicitly ban advertisers from listing applications by sex. Instead, these guidelines stated that newspapers had to include a note with the listings stating that they were “not intended to exclude or discourage applicants from persons of the other sex.”

Because the EEOC either ridiculed or only tacitly supported the sex discrimination amendment, many women began to criticize the Commission and demand that it enforce Title VII’s sex provision. This opposition came from actors both inside and outside of the agency and ultimately led to NOW’s founding in 1966. One of the most notable insiders to take issue with the organization was Sonia Pressman Fuentes, the first female attorney to work in the EEOC’s Office of General Counsel. Fuentes was shocked at how little serious attention was paid to sex discrimination as compared to race discrimination. She remembers that when she first started at the EEOC in 1965, her women’s rights speeches were met with laughter and that many Americans were unaware of what sex discrimination meant. Her experience in even getting hired at the EEOC is an interesting story, and one that might easily be interpreted as a near incident of sexual harassment, although Fuentes has not characterized it that way.

In her 1997 article, “Representing Women,” Fuentes recounts how she needed an endorsement from a member of Congress in order to apply for the EEOC position. Since she had previously corresponded with a senator about their common background as the children of immigrants, she contacted his aide, to whom she had also spoken previously and asked him for

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49 Ibid.
50 Quoted in Robinson, “Two Movements,” 424.
help. The aide agreed to meet with her in order to discuss the possibility of obtaining the senator’s endorsement.53 The two met for drinks and danced while they discussed his family (a wife and baby son) and the senator’s reference, which the aide said he would help her to secure. The aide then invited Fuentes up to his room. She declined but remembers how she later questioned this decision, knowing that many women throughout history had advanced their careers by having sex with men in power. Thinking that she had ruined her chances, Fuentes wondered why she was so “straitlaced” and unable to follow that example.54 The senator’s aide, however, followed through on his promise and secured the endorsement for Fuentes.55

Fuentes understood, from personal experience, the trials faced by career-oriented women. Because of her insider status as a former EEOC employee, she also offers a unique perspective on how the agency shared the country’s lack of concern for sex discrimination and the “shock” that it experienced when over 30 percent of the complaints filed in the EEOC’s first fiscal year were for alleged sex discrimination.56 As one of the few EEOC employees to take sex discrimination seriously, a co-worker dubbed her a “sex maniac.”57 She remembers, “I just read the law and thought it prohibited sex discrimination in employment.”58 Many of Fuentes’s colleagues did not share her conviction, a fact that disappointed her. She describes that a few of them were blatantly opposed to women’s rights and tended to downplay the seriousness of Title VII’s sex provision by referring to it as a “fluke” (by executive director Herman Edelsberg) and an “orphan” (by Richard Berg).59 Fuentes recounts how the EEOC reflected the popular belief

53 Fuentes, “Representing Women,” 95 and Fuentes, Eat First, 128-129.
54 Fuentes, “Representing Women,” 96.
55 Ibid. Fuentes recounts the story in a similar manner in her autobiography. See Fuentes, Eat First, 129.
56 Fuentes, “Representing Women,” 97; Fuentes, Eat First, 131-133; and Danovitch, “Humanizing Oral History, 340.
57 Fuentes, “Representing Women,” 98 and Fuentes, Eat First, 132.
58 Fuentes, Eat First, 132.
59 Fuentes, “Representing Women,” 98 and Fuentes, Eat First, 133.
of the time which put women’s place in the home.\textsuperscript{60} She was especially bothered when the Commission’s Vice Chairman, Luther Holcomb, testified before Congress and asked that sex discrimination be removed from the Act.\textsuperscript{61}

Despite all of the individuals who either ridiculed sex discrimination or who did not care about the issue, Fuentes highlights the work of two “ardent feminists,” EEOC Commissioners Aileen Clarke Hernandez and Richard (Dick) Graham, who were committed to women’s rights.\textsuperscript{62} Another Commissioner, Sam Jackson, was “sympathetic to the fight to end discrimination against women” but believed that racial discrimination “deserved the Commission’s greater attention.”\textsuperscript{63} Beyond the “bunny” jokes, this recurring theme—that racial discrimination deserved more attention as well as a larger share of the Commission’s limited staff and budgetary resources—offers a much different explanation for some of the commissioners’ lack of interest in sex discrimination in the agency’s first years.\textsuperscript{64}

When former EEOC employees were interviewed about the agency’s earlier years in recognition of its twenty-fifth anniversary, they offered additional explanations for the Commission’s deficiency regarding sex discrimination.\textsuperscript{65} Sylvia Danovitch, director of the EEOC Oral History Project in 1990,\textsuperscript{66} spoke with Phyllis Wallace, an attorney who worked with the EEOC on its landmark sex discrimination case against the American Telephone and Telegraph Company (AT&T) in the early 1970s. This interview reveals that, in Danovitch’s

\textsuperscript{60} Fuentes, “Representing Women,” 99 and Fuentes, \textit{Eat First}, 133.
\textsuperscript{61} Fuentes, “Representing Women,” 98 and Fuentes, \textit{Eat First}, 132.
\textsuperscript{62} Fuentes, “Representing Women,” 99; Fuentes, \textit{Eat First}, 133; and Danovitch, 340.
\textsuperscript{63} Fuentes, “Representing Women,” 99 and Fuentes, \textit{Eat First}, 133.
\textsuperscript{64} Danovitch, 340.
\textsuperscript{66} Danovitch writes on page 335 that the National Archives and Records Administration (NARA) accepted the EEOC oral history collection in 1992. Per this author’s email correspondence with a NARA librarian in June 2007, this collection currently cannot be located and Danovitch’s article is uncorroborated.
words, Wallace believed some of the problem to be “confusion over the conflict between Title VII and state protective laws” in addition to the “failure of middle class men to recognize that there were middle class, well-educated, married women who would want to work if discrimination based on sex was banished from the workplace.”\(^{67}\) Wallace also told Danovitch that she believed civil rights organizations and the country-at-large “saw the issue as race discrimination, and sex discrimination was just something very difficult for all organizations—unions, civil rights organizations, and employers to deal with. [Black working women]…were at the bottom of the heap, and black males did not see sex discrimination as an issue. [Black men had] the same mind set that white males had.”\(^{68}\) Susan Deller Ross, who worked in the EEOC’s Office of General Counsel in the early 1970s, agreed with Wallace (and also Fuentes) on this last point when she told Danovitch that she blamed the inattention to sex discrimination on “indifference” and a desire to focus on race discrimination more than on “hostility to women’s issues.”\(^{69}\)

Former EEOC attorneys, David Zugschwerdt and Stephen Passek, offered Danovitch two male perspectives on this subject. Zugschwerdt explained that “sex discrimination was not viewed as a socially destructive sort of thing at that time” and that it “wasn’t even on the radar.”\(^{70}\) Based on his perception of the time, he also claimed that the Commission wanted to focus on the more established law of race discrimination and that many EEOC employees did not work on sex discrimination because they felt that Congress was not paying them to do so.\(^{71}\)

Nevertheless, Passek described how young EEOC attorneys did use sex discrimination cases in order to make names for themselves in the developing area of sex discrimination law,

\(^{67}\) Danovitch, 341.
\(^{68}\) Ibid., 341-342.
\(^{69}\) Ibid., 342.
\(^{70}\) Ibid., 343.
\(^{71}\) Ibid.
even if they were not necessarily committed to the issue. These young attorneys looked to how their more senior colleagues had built careers at the forefront of race discrimination law and modeled their own in sex discrimination law after. Danovitch claims that, in this instance, career opportunity outweighed misgivings about sex discrimination. She also explains this as “a natural corrective” to the problem of the EEOC not focusing enough on sex discrimination and notes that Passek described sex discrimination cases as “juicier,” “stronger,” “more egregious,” and “more widespread.” In telling Passek’s story, Danovitch illustrates the importance of bureaucrats in shaping EEOC policy. She also highlights the importance of attorneys who pursued the early sex discrimination cases—which came about through EEOC complaints that were targeted for litigation—to advance their own careers. The by-product of their efforts was increased enforcement of sex discrimination law, albeit one that hinged upon the pro-activeness of individuals.

Despite Danovitch’s claims that young attorneys often pushed sex discrimination cases to trial, women’s rights supporters did not believe that the EEOC was doing its job enforcing sex discrimination during its first years of operation. Individual cases litigated by EEOC attorneys throughout the country would help these plaintiffs (and their attorneys), but would not solve any widespread injustices that working women faced during this time. In other words, without a wider commitment to ending sex discrimination from the EEOC’s top officials, the agency was only tangentially at best or reluctantly at worst focusing on three injustices that working women faced in the late 1960s-early 1970s: the problem of separate classified employment

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72 Ibid., 345.
73 Ibid., 344.
74 Ibid., 344-345. Danovitch highlights one case, *Bowe v. Colgate-Palmolive*, a class-action suit regarding weight lifting restrictions for female factory workers. See *Bowe v. Colgate-Palmolive* 416 F.29 711 (7th Cir. 1969). The case was decided in favor of the plaintiffs who were awarded back pay. Some of the plaintiffs originally filed charges against Colgate-Palmolive with the EEOC and the EEOC also submitted a friend of the court brief on their behalf.
advertisements, the job requirements of airline stewardesses, and the issue of state protective legislation. Fuentes’s summation of the EEOC and sex discrimination in the early years seems to explain this best. She characterized it by asserting that when it came to this issue, “the EEOC moved very slowly and conservatively, or not at all.”

This fact about the EEOC and sex discrimination was evident to many women outside of the agency and it did not sit well with these individuals, some of whom were civil rights activists who wanted the agency to enforce sex discrimination in the same way that it was fighting racial discrimination. One activist who pushed the EEOC to act was Pauli Murray who, as a member of the American Civil Liberties Union’s (ACLU’s) executive board in 1965, along with another board member, Dorothy Kenyon, helped make women’s rights a key issue for the ACLU. Even before that, Murray had campaigned for the addition of sex to Title VII by writing and circulating a memorandum in support of the amendment to her colleagues in Washington, intersecting her efforts with Howard Smith’s on behalf of it. According to historian Susan Hartmann, once the act passed, Murray “elaborated on the ‘integral relation’ between sex and race discrimination” when she challenged the EEOC to enforce the law and take sex discrimination seriously. Hartmann includes a portion of a letter Murray wrote to EEOC Commissioner Richard Graham in March 1966 as an example of her thoughts on race and sex, in addition to her charge to the EEOC, in which she wrote, “Unless the sex provision is vigorously enforced and the relationship between the two types of discrimination, race and sex, fully recognized, only half of the Negro population is protected.”

76 Fuentes, “Representing Women,” 101 and Fuentes, Eat First, 133.
77 Susan M. Hartmann, The Other Feminists: Activists in the Liberal Establishment (New Haven: Yale University Press, 1998), 63 and Graham, 134-139.
79 Quoted in Hartmann, “Pauli Murray,” 75.
When Murray wrote this letter, American women were poised to come together on behalf of women’s rights in lobbying the EEOC. The seeds of the “second-wave” of feminism were planted in the post-World War II years when the prevailing idea of womanhood was the suburban American housewife who married young, had children, and bought all of the consumer goods flooding postwar markets. The reality of the time was that this image did not match the lives of many women who participated in the workforce or who felt constrained by such gender ideology. Regarding the former, much of the earliest postwar feminist protest was by working women who, at times with the help of labor unions, achieved legislation such as the Equal Pay Act. Many of these women also participated in the PCSW and in similar state commissions and, following the PCSW’s report, continued to consider how women confronted discrimination. Much to their dismay, they were discouraged from doing so as the report’s recommendations fell to the bureaucratic wayside and some of the state commissions were dismantled.

In terms of the latter, the late 1950s-early 1960s saw an increase in the number of college-educated women who felt conflicted by the suburban housewife ideal and its limitations on women’s roles. Many of them suffered in silence until 1963 when journalist Betty Friedan published *The Feminine Mystique*. Friedan exposed the “problem that has no name” when writing about the discontent of housewives who felt trapped and undervalued in the privacy of suburbia. By comparison, society seemed to value much more the work of their husbands in the public sphere. Although *The Feminine Mystique* did not capture the lives of many women beyond those who shared Friedan’s white, middle-class background, it struck a chord. By the

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83 Evans, 18-12; Rosen, 34-43; Freedman, 85-86; and Gerhard, *Desiring Revolution*, 88-92.
mid-1960s, women of various backgrounds continued to realize their collective potential in protesting the discrimination they faced at work and the limitations that housewife ideology placed on them and their contributions to American society. The EEOC’s failure to live up to their expectations provided them one opportunity to join together into a recognizable women’s movement.84

Women’s historians and others record how other liberal activists such as Betty Friedan joined Murray in protesting the EEOC’s inactivity regarding sex discrimination and in founding NOW in 1966. By this time it was well-known among these observers that the EEOC was not enforcing the law of sex discrimination. The “bunny problem” was reported as such by major newspapers and magazines, many of whose writers perpetuated the problem by ridiculing the law85 and by recording comments from EEOC staff such as Director Herman Edelsberg’s statement to the press that there were EEOC employees “who think that no man should be required to have a male secretary and I am one of them.”86

As the story goes, Friedan began investigating the EEOC in 1966 by meeting with agency employees and asking questions about how they were going to enforce Title VII with regards to sex discrimination.87 Friedan had expected to hear that the EEOC was forcing countless companies and even whole industries to comply with the law by hiring and promoting women. Instead, she heard that the agency was only really focusing on racial discrimination.88 Friedan explains in her autobiography how Sonia Pressman Fuentes (then Sonia Pressman), took her into her office and behind closed doors told her that she could not stand what was going on at the

84 This does not assume that there were no differences among activists. See Benita Roth, Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave (New York: Cambridge University Press, 2004).
86 Quoted in Rosen, 72.
87 “Friedanisms: ‘I am speaking for the truly silent majority.’ ‘Many people think men are the enemy…man is not the enemy; he is the fellow victim,’” New York Times, November 29, 1970.
88 Ibid. and Friedan, Life So Far, 167.
EEOC because it was “like some secret order” had “been given not to do battle on the sex discrimination part of Title VII” because they were “getting hundreds, thousands of complaints” and were not “supposed to do anything about them.”

Friedan later told the *New York Times* in 1970 that during this exchange Fuentes had been in tears and also persuaded her to “start an NAACP for women.” Another EEOC employee, Commissioner Aileen Hernandez, agreed that such a grassroots-type of effort was necessary and that the EEOC would not act on sex discrimination without such pressure.

MacLean also describes the exchange between Friedan and Fuentes and the feminist organizing that came out of it and writes that Fuentes “became a kind of double agent” by continuing to work for women’s rights at the EEOC by day and by later meeting with feminist leaders by night in order to tell them how to complain about the EEOC’s inaction.

Not long after her meeting with Fuentes, in June 1966, Friedan attended the third meeting of the National Conference of State Commissions on the Status of Women in Washington, DC. There she met other women who were concerned about the EEOC’s inaction toward sex discrimination and who were also worried because Richard Graham, one of the few commissioners who did support women’s rights, was not expected to be reappointed. These delegates to the conference constituted what Ruth Rosen describes as a “national network of

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92 MacLean, 127.
93 Ibid., 128.
women” who were dedicated to ending sex discrimination in employment. During the conference, this group submitted a resolution which insisted that the EEOC enforce Title VII. They were blocked from presenting this resolution by Mary Keyserling, head of the Labor Department’s Women’s Bureau, and Esther Peterson, now Assistant Secretary of Labor for Labor Standards. Friedan claims that Keyserling and Peterson did not want to risk upsetting the Johnson administration by letting such a potentially controversial resolution pass. She refers to these two women as “Aunt Toms” and asserts that they were “on the Government’s side” in telling the group of delegates who wanted to propose the resolution that they “had no authority to pass anything” and “should generate their report and go home.” The women did go home, but not before they met for lunch and discussed their next move. At this historic meeting on June 29, 1966, these women decided to form NOW as an organization that would work on behalf of women. NOW’s founding goal was “to bring women into full participation in the mainstream of American society, now, assuming all of the privileges and responsibilities thereof in truly equal partnership with men.”

Once organized, NOW quickly gathered its resources and began its efforts to push the EEOC toward enforcing Title VII’s sex discrimination provision. Most notably, its members sent telegrams to the agency, pressing the EEOC to outlaw sex-segregated job advertisement, to address the great number of sex discrimination complaints from airline stewardesses that it was

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96 Rosen, 73.
97 Ibid., 75 and Evans, 64.
100 Roth, 27, Rosen, 75, Friedan, 174, Horowitz, Betty Friedan and the Making of the Feminine Mystique, 227, and Evans, 64.
101 Quoted in Freedman, No Turning Back, 85.
receiving, and to clarify its stance on protective legislation. Regarding the issue of “help-wanted ads,” the Civil Rights Act of 1964 included language that made race-specific job advertisements illegal; however, it did not include a similar statement for sex-specific ones. To account for this difference, the EEOC issued guidelines for advertisers in 1965. Feminists were angered when these guidelines did not make separate advertisements for men’s and women’s jobs illegal but only told newspapers that they were required to print an announcement with the ads which read that they did not intentionally exclude applicants of either sex. When it came to the plight of the airline stewardesses, Friedan remembers that the EEOC received thousands of complaints from this group in its first year. These women alleged that the airlines were guilty of sex discrimination by hiring only women, making them resign upon marrying or becoming pregnant, and forcing them to resign after reaching the age of 35.

In 1967, NOW began a lobbying campaign to persuade the federal government to hold hearings on sex discrimination enforcement. Their efforts were successful when, in May of that year, Congress conducting hearings and ruled in women’s favor on the issues of employment qualifications for stewardesses and protective legislation. The fight to change employment advertising did not go as smoothly, reflecting that NOW was still in its infancy stage. Shortly after the congressional hearings, NOW started a drive to force the EEOC to change its stance on employment advertising and to continue to process the stewardesses’ complaints. In what Jo Freeman writes was “perhaps the first contemporary feminist demonstration,” NOW began in

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103 Friedan, 168.
104 Quoted in Robinson, 424.
105 Friedan, 168.
107 Robinson, “Two Movements,” 424. Robinson writes, “It is a fair measure of the feminist movement’s ‘clout’ in the mid-1960s that these guidelines were not changed until 1968.”
December 1967 by picketing the EEOC Headquarters in Washington, D.C. as well as EEOC offices in cities throughout the country. NOW also led petition drives to the agency. NOW did this until, in Friedan’s words, “finally, finally, the EEOC began to mandate the law against sex discrimination.” By the close of 1968, the EEOC reversed its opinion on classified advertising, outlawing separate ads for women and men, and issued key decisions on behalf of airline stewardesses. In 1969, in another move prompted by feminist activism, the agency decided that state protective laws violated Title VII. Here, the EEOC followed the lead of feminists, state court judges, and even union leaders who claimed that these “protections and privileges, such as early retirement, ought to be available for all workers, regardless of sex.” The EEOC “decided that such laws cannot justify the limitations of work opportunities for women.”

In August of that same year, the Commission continued its efforts on behalf of women by updating its Guidelines Against Sex Discrimination. These guidelines were a follow up of the ineffective 1965 guidelines on newspaper advertising and were, in the opinion of one historian, “a landmark in the feminists’ struggle for equal employment opportunity.” One of the two most important parts of the guidelines was the Commission’s stance on bona fide occupational qualifications (BFOQ), or when employers could justify preferential treatment because of sex. The EEOC defined BFOQ narrowly so that an employer could not “refuse to hire or promote a worker because of the characteristics of women in general, stereotypical characterizations, the

109 Freeman, 77. See also Friedan, 180-183, Evans, 25, Rosen, 80, and Fuentes, “Representing Women,” 103.
110 Friedan, 180-183, Evans, 25, Rosen, 80, and Fuentes, “Representing Women,” 103.
111 Friedan, 183.
112 Ibid.
113 Robinson, 427.
115 Robinson, 427-428.
116 Ibid., 428.
preferences of co-workers, or the cost of separate locker rooms, toilets, or lounges."\textsuperscript{117} The second action was that the EEOC deemed protective legislation as irrelevant with modern technology.\textsuperscript{118} The Commission also issued a booklet in 1969 entitled \textit{Job Equality for Women}. In the booklet the EEOC explained facts about Title VII and summarized the employment rights of women, which the agency described as the "availability of jobs for both sexes" and "equality in all conditions of employment." Sexual harassment, or any terminology that could describe such behavior did not appear throughout the brochure. The Commission did discuss myths and stereotypes that underwrote discrimination against women, including that a woman’s place was in the home, which its own leaders had previously espoused.\textsuperscript{119} The EEOC declared this myth and others to have "long ceased to have any validity or relevance in the 20\textsuperscript{th} century."\textsuperscript{120} The booklet also listed key issues about sex discrimination under Title VII, many of which it had just defined for the first time, including job availability for both men and women, conditions of employment, employer and union obligations under Title VII, and classified ads. The Commission also outlined how to file an EEOC complaint and listed other agencies that could also process sex discrimination complaints, such as state or municipal fair employment commissions and the Justice Department.\textsuperscript{121} These actions were followed by the Commission’s focus on pregnancy discrimination, beginning in 1970, when the agency sided with feminists in arguing that pregnant women were entitled to the same benefits as workers who were temporarily disabled, such as keeping their jobs throughout the term of their pregnancy. In 1972,

\textsuperscript{117} Ibid.
\textsuperscript{118} Ibid.
\textsuperscript{119} U.S. Equal Employment Opportunity Commission, \textit{Toward Job Equality for Women}, 1-2, 5-7. The list under "conditions of employment" (6-7) included the following: recruitment, hire, layoff, discharge, recall; opportunities for promotion; participation in training programs; wages and salaries; sick leave time and pay; vacation time and pay; overtime work and pay; medical, hospital, life, and accident insurance coverage; optional and compulsory retirement age privileges and pension benefits; and rest periods, coffee breaks, lunch periods, and smoking breaks.
\textsuperscript{120} Ibid., 2.
\textsuperscript{121} Ibid., 2-10.
responding to feminist pressure, the Commission again updated its sex discrimination guidelines and included a provision on “Employment Policies relating to Pregnancy and Childbirth.”

The year 1972 marked a turning point for the agency in another, much larger way. Despite all of the positive gains for women regarding the EEOC and sex discrimination in the late 1960s and into the 1970s, the agency was still hampered in its overall enforcement efforts because it lacked power and had limited financial resources. While the Commission found “reasonable cause” to suspect unlawful discrimination in over half of its total cases (not just the sex discrimination charges), it did not have the authority to issue cease and desist orders or to take any employers to court. Because of how Congress wrote Title VII, all that the EEOC could do in discrimination cases, including those alleging race discrimination, was recommend them to the Civil Rights Division of the Department of Justice, the only agency with the power to bring such cases before the court after conciliation efforts failed. When the EEOC recommended these cases, they were slowed down by the Justice Department, which processed only a few cases each year. To correct this situation, the agency tried on two separate occasions, in 1966 and in 1969, to have Congress amend Title VII and give the EEOC more enforcement authority.

Finally, by January 1972, according to Hugh Davis Graham, Congress was “weary of seven years of debate over enforcement” and “shared a bipartisan consensus that the equal employment principles of 1964 were sound but the enforcement mechanism was not.” In March of that year, Congress amended the Civil Rights Act of 1964 with the Equal Employment Opportunity Act of 1972. The Equal Employment Opportunity Act gave the Commission litigation authority

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122 Robinson, 426-429. Robinson mentions the feminist movement generally and does not attribute these efforts to any one specific organization, although he does discuss the efforts of NOW and the national Women’s Political Caucus at various points in his essay.

123 Ibid., 421 and 430. Robinson states that the Justice Department did not file its first Title VII suit until 1970 and that it lacked the will to process these cases.

124 Graham, 439.
and expanded its jurisdiction to include educational institutions and state and local governments. The EEOC could then bring its own cases without having to go through the Justice Department. In addition, the EEOC was given the authority to file pattern or practice lawsuits. The Act also expanded the EEOC’s jurisdiction over private employers by decreasing the number of employees that businesses had to have to fall under Title VII from 25 to 15. In an effort to streamline communication between federal agencies enforcing anti-discrimination policies, the Act also created the Equal Employment Opportunity Council, comprised of the EEOC, the Justice and Labor Departments, the Civil Service Commission, and the Civil Rights Commission.

Even with the amendments and what the Commission itself later referred to as “a new era of enforcement,” the EEOC did not move as fast as feminists would have liked in bringing sex discrimination cases before the courts or in exercising its new enforcement authority in general. Again, the Commission’s small budget helps to explain this as does a case backlog of 65,000 complaints. However, in January of 1973, the agency reached a settlement with AT&T in a sex discrimination case that EEOC Chairman, William Brown, referred to as “the most significant achievement of the Commission to date, and indeed perhaps the most significant achievement as far as civil rights is concerned in the employment area.” AT&T was ordered to award $15 million in back pay to 13,000 female employees for its discriminatory policies,

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127 Ibid.
128 Robinson, 430-431.
129 Quoted in Robinson, 431.
including segregating employment positions by sex and wage discrimination.\textsuperscript{130} Yet, as before, this was followed by a period of uncertainty and inaction at the Commission, which was suffering in 1974 from weak leadership and low employee morale after Chairman Brown left and his successor, John H. Powell, was forced to resign because his “erratic behavior was embarrassing to the Commission and distracting to its staff.”\textsuperscript{131} In addition, the Nixon administration dragged its feet in appointing an adequate replacement, a move that has been called “part of a pattern of near hostility for civil rights on the part of the Nixon administration.”\textsuperscript{132}

The EEOC’s internal problems could not have come at a worse time for the growing number of working women in the U.S. According to a 1975 Women’s Bureau report, the number of women in the workforce had doubled in the period between 1950 and 1974, with much of that growth occurring after 1964. With such increasing numbers, the changing demographics of the U.S. workforce illustrate the conditions out of which sexual harassment was defined in terms of working women’s race, educational, marital, motherhood, occupational, and earnings status. By 1974, 36 million women, or 46 percent of all American women over the age of 16, were working outside the home.\textsuperscript{133} The Women’s Bureau attributed this increase to “the changed labor market behavior of married women.”\textsuperscript{134} They observed several trends in family life for why married women, especially those with small children, were entering the labor force: families were having fewer children, families were being headed by women in larger numbers, and women’s life expectancy was rising. The Women’s Bureau also identified occupational

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\textsuperscript{131} Robinson, 431.
\textsuperscript{132} Ibid.
\textsuperscript{134} Ibid.
\end{flushright}
reasons for this increase: the growth in white-collar jobs for women, the availability of more part-time work, and the “changing attitude toward careers for women outside the home.”\textsuperscript{135} Importantly, they also credited the recent anti-discrimination legislation and federal efforts to stop sex discrimination specifically for this growth.\textsuperscript{136}

A somewhat different portrait of what this trend meant for the American family and economy was offered by the Urban Institute in its 1979 report, \textit{The Subtle Revolution: Women at Work}. They predicted that the number of working women in the 1970s would continue growing at a rate of one million women entering the workforce each year between 1979 and 1990.\textsuperscript{137} The Institute’s purpose in writing its report and presenting data about working women and families was to educate policymakers and the public about the potential changes they would mean for families and for working women.\textsuperscript{138} In 1979, the Institute believed that society was not ready to consider these changes and had not fully realized how American life could change given the predicted increase in the number of women in the labor force, which is why it referred to the phenomenon as “the subtle revolution.” The Institute explained it as subtle because the revolution was “at times only dimly perceived—in the traditional relationship of women to work, money, marriage, and family” and that it was “not easily grasped as a whole—not in its origins, nor in the predictability of its course, nor in its consequences.”\textsuperscript{139} Whereas the percentage of women in the workforce was 46 percent in 1974, the Urban Institute predicted that it would reach 55 percent in 1990, and just as the Women’s Bureau discovered, the Institute noted that this growth was most pronounced among married women with young children.\textsuperscript{140} The total

\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{138} Ibid., xi.
\textsuperscript{139} Ibid.
number of women in the workforce as reported in 1978 was 41 million, of the nearly 84 million women in the U.S. population. Throughout the 1980s the number of women employed in the civilian labor force grew steadily from over 42 million (47.7 percent of the population) in 1980, to over 47 million (50.4 percent of the population) in 1985, and to nearly 53.7 million (54.3 percent of the population) in 1990. In 1991, the figure dropped slightly to about 53.4 million (53.7 percent of the population) before increasing again in 1992, when just over 54 million American women (53.8 percent of the population) worked in the civilian labor force. (See Appendix A.)

A snapshot of women workers in the mid-1970s reveals who these women were, why they were working, and where they were working. It also helps to explain why some of them would later protest sexually harassing behavior at work and argue for policies to stop it in ways that expressed their desire for full economic citizenship. In 1974, the highest proportion of women participating in the labor force came from the 20-24 year age group, with 61.4 percent of women in that range participating. They were followed by women ages 45-54 (54.9 percent), ages 35-44 (54.6 percent), ages 18-19 (54.1 percent), and ages 25-34 (51.8 percent). The Women’s Bureau reported that the growth experienced in the 20-24 year age group was different from the growth rate in the 1950s, when women ages 45 to 64 represented the highest increase in participation. Overall, they stated that in 1974 over half of all women ages 18-64 were in the

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141 Ibid., 9.
143 Please note that the graph in Appendix A is based on the 2005 Department of Labor databook which reflects slightly different (at times lower) numbers than what the Women’s Bureau calculated in 1975. For consistency, the graph in the appendix uses only the figures from the 2005 report; however they still reflect the increase in women’s workforce participation between 1975 and 1992.
144 Although a later report would reveal that younger women had experienced sexual harassment at a higher percentage than older women (67 percent of women ages 16-19 and 59 percent of women ages 20-24), the data presented here is used to illustrate women’s labor force participation in general. See U.S. Merit Systems Protection Board, Sexual Harassment in the Federal Workplace: Is it a Problem? (Washington, D.C.: U.S. Government Printing Office, 1981), 43.
145 Women’s Bureau, 1975 Handbook on Women Workers, 12.
workforce. (See Figure 1.)\textsuperscript{146} With such a large and increasing percentage of women in the workforce, the likelihood of their experiencing sexual harassment may have been on the rise throughout this time as well, setting another condition for its definition in 1975.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{fig1}
\caption{U.S. Women's Labor Force Participation, by Age, 1974}
\end{figure}

The Women’s Bureau also studied the breakdown of working women in America according to race. They found that in 1974 the ages of white working women and minority working women were a bit different. While the overall total percentage of white and minority women in the workforce was rather close, with 44.5 percent of white women working and 47.9 percent of minority women working, the highest percentage of white women in the labor force was again in the 20-24 year age group (62.2 percent) and the highest percentage of minority women was in the 25-34 and 35-44 age group (each tied with 60.8 percent apiece). For white women, the second-highest age group represented was younger, with 57.1 percent of women between the ages of 18 and 19 working, whereas for minority women, the second-highest age group was older, with 56.3 percent of women ages 45 to 54 employed outside their homes.\textsuperscript{147}

\textsuperscript{146} Ibid., 12-14.
\textsuperscript{147} Ibid., 41.
The Women's Bureau looked at the family status of working women in order to explain this difference and found that the number of minority families headed by women had increased by a larger margin than the number of white families headed by women, possibly accounting for the higher numbers of older minority women in the workforce.148 While not as pronounced when sexual harassment was first defined as it would be later, this data reveals, in Judy Trent Ellis's words, "the economic vulnerability of black women" that makes them "susceptible to harassment," which she bases on these economic factors as well as the historical conditions of black women's slavery and oppression.149

The data on working women in 1974 can be broken down even further, as the Women's Bureau observed trends in the education level, marital status, and motherhood status of American women. Regarding education, they found that "more than seven out of ten women workers [were] at least high school graduates."150 Of the total number of women in the workforce (36 million), 44.2 percent had completed high school, as compared to 36 percent of the total number of men in the workforce (55 million). Working women were graduating from college at only a slightly smaller rate than working men, with 8.6 percent of women in the labor force having completed four years of college, and 9.1 percent of working men attaining that same level of college experience. Overall, men and women in the workforce had completed the same number of school years on average, at 12.5 years for each.151 The data also reveal that the education levels for white and minority women workers were comparable, with white women having completed an average of 12.5 years and minority women having completed an average of 12.1

148 Ibid., 42.
150 Women's Bureau, 1975 Handbook on Women Workers, 12, 182.
151 Ibid., 183.
years of education. The difference in education level between white and minority working men
was a bit more, with the average number of years completed by white men at about 12.5 and the
number for minority men at about 11.9 years. These numbers are all the more striking and
show why women in the late-1970s were “unhappy about the pace of their economic
progress” when adding the fact that male high-school dropouts or those with only an eighth-
grade education earned more than women high school and even college graduates.

The Women’s Bureau measured the number of married women in the workforce by
analyzing the number of working couples, couples in which both husbands and wives
participated in the labor market. The Women’s Bureau found that the number of families where
both husbands and wives were working grew and that “working couples represented about two-
fifths of all married couples in the population.” They organized these figures according to the
level of education women had attained, their income level, and the ages of their children.
Overall, the highest proportion of working wives in all income classes and school levels were
those with children ages six to 17 years, with over half of women in this group in the labor force.
In fact, for all income levels the number of working wives with children in this age group was
the highest. The Women’s Bureau noted that the number of working mothers with children
aged 18 or younger was 13.6 million in 1974 and 11 million of that number had husbands
present. For the working mothers without husbands present, they claimed that their participation
rate in the labor force was higher, with 62 percent of these women working outside of the

152 Ibid., 185-186.
January 15, 1979, 64.
Box 21, Interdepartmental Task Force on Women, 1/1/79-12/30/79, Jimmy Carter Library.
155 Women’s Bureau, 1975 Handbook on Women Workers, 22.
156 Ibid., 23.
home.\textsuperscript{157} Regarding childcare, the Bureau admitted that relatively little was known about who
cared for the children of working mothers except that the majority of mothers relied on relatives
to care for their children in private homes as opposed to reliance on non-relatives or the use of
childcare facilities.\textsuperscript{158}

With such a high proportion of wives and mothers in the workforce it should not be
surprising that the Women’s Bureau found that women were working outside of their homes
“primarily because they need the income.”\textsuperscript{\textsuperscript{159}} They did note that some wives whose husbands
earned a very high income were also working and that for others, “a primary reason for working
[was] to fulfill a desire to participate in the working community, and to make use of their talents
and skills acquired by long periods of education and training.”\textsuperscript{160} When they measured the
economic status of women, they reported that 23 percent of the women in the labor force were
single and 19 percent were widowed, divorced, or separated. Of married women with husbands
present, they discovered that nine percent had husbands who earned under $5,000 each year, 7
percent had husbands earning from $5,000-6,999, 13 percent had husbands who made $7,000-
9,999, and the husbands of 29 percent of these women earned $10,000 or more.\textsuperscript{161} When
reporting on late-1970s trends in working women’s labor force participation, both the
Department of Labor and \textit{U.S. News \& World Report} claimed that wives’ earnings were
important in order to bring a family out of poverty or to keep pace with inflation.\textsuperscript{162}

In addition to the reasons why women were entering the work force in record numbers,
the Women’s Bureau also researched the occupational breakdown of working women and found

\begin{itemize}
\item\textsuperscript{157} Ibid., 25.
\item\textsuperscript{158} Ibid., 33.
\item\textsuperscript{159} Ibid., 123.
\item\textsuperscript{160} Ibid.
\item\textsuperscript{161} Ibid., 124.
\item\textsuperscript{162} U.S. News \& World Report, “Special Section: Working Women,” 64 and U.S. Department of Labor: 20 Facts on
Women Workers. U.S. News writes, “For the working woman herself, a job means independence, a sense of
accomplishment and—most important—money.”
\end{itemize}
that the majority worked in the private, nonagricultural business sector. Over 24 million women worked in these industries, whereas the second-largest group of employed women, over 6.6 million, worked in government agencies.\textsuperscript{163} Given that the EEOC had jurisdiction over private business and state and local governments, this is a significant portion of women in the workforce that the EEOC had enforcement responsibility for when, as described above, the agency was in the midst of its own internal challenges. Within the private business sector, the number of women employed in white collar work was on the rise as the number of women working in blue-collar and service jobs had declined since the late 1950s. Overall, 62 percent of working women were employed in white collar jobs such as professional, technical workers; managers, administrators; sales workers; and clerical workers, with clerical workers representing the largest share of the female workforce as over half of all women white collar jobs were clericals.\textsuperscript{164} Despite some of these changes, working women still faced barriers in breaking through “women’s work” stereotypes that devalued clerical work and made it harder for women to break into nontraditional occupations such as construction, mining, and the like.\textsuperscript{165} This caused friction between working men and the women who worked outside traditional women’s fields, which, combined with the prevailing belief that women were not supposed to be working outside of the home anyway,\textsuperscript{166} disrupted notions of power in American culture that feminist activists later identified as the reason why men sexually harassed women.

The Women’s Bureau report also broke down the occupations of women according to race and found that white women and minority women were not employed, on average, in the same sectors. Whereas the highest number of white women were working as clerical workers

\textsuperscript{164} Ibid., 83-85.
\textsuperscript{166} Ibid., 68. U.S. News notes society’s ambivalence about women workers and that “the typical American woman is not perceived as a wage earner.”
(about 36 percent of all white women working), the majority of minority women were employed as service workers (about 26 percent). However, the Bureau noted that this gap was narrowing and that the number of minority women employed as clericals was the second-highest category, at just under 25 percent. They also explain that more minority women than white women worked in blue-collar jobs.\textsuperscript{167} Overall, this data reinforces Cobble’s point regarding the employment differences among women of different races in which minority women worked in industrial settings and white women in service, retail, or clerical jobs.

Given that many of these women explained that they worked outside their homes because of economic need, the Bureau’s statistics on women’s earnings are also relevant. They compared the average weekly earnings of men and women and then broke those down according to race. The overall average weekly earnings of full-time workers were $169, with men earning $204 and women $124. When comparing men according to race, white men earned $209 and minority men $160. For women, white female workers earned $125 and minority females took home $117 per week.\textsuperscript{168} These figures illustrate that white men and women earned higher wages when broken according to sex, and minority females were well below the average weekly earnings for both minority men and white women when broken down by race. The Bureau also considered the average yearly incomes of men and women and also divided these figures according to race, with the difference in men’s and women’s earnings just as striking. In 1973, the median income for white women was $6,544 and the median income for minority women was over a thousand dollars less, at $5,772 for the year. White women earned 56.3 percent of what white men earned ($11,633), minority women earned 49.6 percent of what white men earned and 69 percent of

\textsuperscript{167} Women’s Bureau,\textit{ 1975 Handbook on Women Workers}, 102-103.
\textsuperscript{168} Ibid., 126.
what minority race men earned ($8,363).\textsuperscript{169} Again, the figures for white and minority race men are higher overall than for white women and minority women, with minority women earning the lowest yearly income. While the Bureau did not speculate as to why this was the case, they did note that the income of minority women was on the rise.\textsuperscript{170} Such data also drives home the reason why, when working women argued that sexual harassment was a serious problem, they claimed that it was a matter of their economic survival. These figures offer a sense that high-paying, higher-status jobs for women were difficult to come by. If a woman had such a job and was sexually harassed, she would be hard-pressed to give it up and might therefore keep silent about her harassment.\textsuperscript{171} When women sought public policies they therefore sought a form of agency to ameliorate this problem so that they could get on with their working lives.

Since the definition of economic citizenship used in this dissertation assumes participation in the American workforce in the late 1970s, it is also worth noting the Women’s Bureau figures on women who were not in the labor force. Of the 42.7 million women who were not employed, the majority of them (39.6 million) responded that they did not want a job in 1973 because they were in school, were ill or disabled, were homemakers, were retired or too old, or were not looking for other reasons. An overwhelming majority of the group who did not want to work were homemakers, with 31.9 million responding that this was their reason for not seeking employment. The closest figure following homemaker was the number of women who responded that they were in school, just over 3 million. The Bureau also measured the number of women who wanted a job in 1973 but who were not looking. Of the total 3 million who

\textsuperscript{169} Ibid., 136.
\textsuperscript{170} Ibid., 135 and 137.
\textsuperscript{171} Speaking about workplace harassment in general and why public policies are necessary to prevent it, Carroll M. Brodsky writes, “Workers who fear losing their jobs because no others are available will tolerate pressure and harassment until they can no longer do so; the weak will break first.” See Carroll M. Brodsky, \textit{The Harassed Worker} (Lexington, Massachusetts: D.C. Heath and Company, 1976), 154.
represented this category, they claimed that they were not looking because of school attendance, ill health or disability, home responsibilities, they thought they could not get a job, and for other reasons. Again, home-related responsibilities were the most common reason, with over 1 million women responding that this was why they were not looking for outside employment. School attendance was again the second-highest reason with 600,000 women responding in that category.\textsuperscript{172} On the whole, the Bureau’s data reveals that a great number of American women were participating in the paid labor force, and that there were many others who would have been looking for employment if school and family responsibilities were not a factor. When comparing the 31.9 million women homemakers to the figure of 36 million working women in the U.S. in the mid-1970s, this reveals even more the unrealistic viewpoint of some policymakers and American citizens who assumed American womanhood to mean wives and mothers and not workers. Millions of women had little choice and, as outlined above, had pressed the U.S. government to recognize this fact through enforcing its public policy on sex discrimination. Many would later view sexual harassment within this context.

These statistics offer a significant portrait of the status of working women in the years when they defined sexual harassment. As the next chapter illustrates, how these women framed the problem was based on their experiences in the workforce. Women also turned to another important framework for their understanding of sexual harassment—the success of the second-wave feminist movement. By the late 1960s, the movement was expanding and had two distinct concerns—equality and liberation. Activists arguing for equality tended to come from the New Left and share the views of Friedan and others that the path to positive legal and economic change was through political means. Those who aligned more with women’s liberation advocated a radical change in American culture and ideology. They focused on women’s private

\textsuperscript{172} Women’s Bureau, \textit{1975 Handbook on Women Workers}, 79.
life and identity, and not on public policy.\textsuperscript{173} Women in the liberation movement found that their success came from learning from each other in “consciousness-raising” sessions in which their shared experiences of oppression became common goals for their grassroots efforts to make “personal” issues “political.”\textsuperscript{174}

Collectively, the feminist movement achieved an overwhelming amount of success in a relatively short period of time. By 1975, Americans could admit that the feminist movement had made a major impact on society and culture. Sara M. Evans describes NOW’s efforts to form what its leaders called “task forces” which produced reports on a variety of topics such as “sexism in education, legal discrimination, or violence against women.”\textsuperscript{175} The women’s liberation movement, using a much less structured approach, in Evans’s words, “spawned thousands of projects and institutions.”\textsuperscript{176} Its efforts were widely reported in the national media, although not kindly. One of the first women’s liberation protests to receive a great deal of attention was its 1968 protest of the Miss America pageant which gave birth to the myth that women’s “libbers,” as they were deridingly known, were bra burners.\textsuperscript{177} In spite of how the press made light of the feminist movement, it brought many issues to the political stage as women, who were already entering the workforce in record numbers because of economic conditions and wider opportunities, were also demanding autonomy in other ways. Among the victories that feminists could count were the right to legalized abortions and birth control; new laws against pregnancy discrimination and rape; domestic violence shelters; and access to athletics in schools. In 1971, Gloria Steinem founded \textit{Ms.} magazine to give additional voice and

\textsuperscript{173} Evans, 24-26.
\textsuperscript{174} Ibid., 29 and Alice Echols, \textit{Daring to Be Bad: Radical Feminism in America, 1967-1975} (Minneapolis, MN:University of Minnesota Press, 1989), 83. See also Susan Brownmiller, \textit{In Our Time: Memoir of a Revolution} (New York: The Dial Press, 1999), 79-80
\textsuperscript{175} Evans, 38.
\textsuperscript{176} Ibid.
\textsuperscript{177} Ibid., 39-40; Echols, 92-95; Rosen, 159-161; and Freedman, 214-215.
publicity to feminist concerns. Despite these accomplishments, feminists faced new challenges near the end of the decade as their movement had sparked a countermovement which opposed them on key issues. This opposition became so influential in U.S. society and politics that scholars have pinpointed 1972 as the “banner year” of feminist victories throughout the decade.178

During 1972, Congress passed the Equal Rights Amendment (ERA), which guaranteed legal equality regardless of a person’s sex; the Equal Employment Opportunity Act, which strengthened enforcement of anti-sex discrimination law; and the Higher Education Act’s Title IX, which widened women’s opportunities in sports.179 The year 1972 also marked the beginning of one of the most successful anti-feminist campaigns when Phyllis Schlafly pledged to prevent the ERA’s passage and founded the organization she would run in doing so, STOP ERA.180 The following year brought Roe v. Wade, the Supreme Court decision that legalized abortion and which added an additional dimension to anti-feminist activism as members of this camp linked the issue of abortion to the ERA throughout the debate over the amendment’s ratification.181 The counter-movement to feminism thus came at the height of feminist success in this period and in the form of anti-feminist and New Right activists such as Schlafly who strongly opposed feminism because of their different views on women’s roles in society, abortion and sexuality, and women in combat.182 Much as feminist successes provided the context in which working women and activists defined sexual harassment, debates over these same issues shaped how anti-feminists would later react to the problem by questioning its seriousness and criticizing sexual harassment policy.

178 Evans, Tidal Wave, 67 and 92.
179 Ibid., 67.
180 Ibid., 113.
182 Mansbridge, 3, 5, and 13, and Rosen, 39.
When discussing women’s roles in society, the debate often centered on women as workers, on the feminist side, and women as mothers and homemakers, on the anti-feminist side. The differences between the two ideologies were at times striking as feminists argued for such workplace benefits that they believed the ERA would bring. This included an end to wage discrimination based on sex. Feminists indicated this by using the rallying cry of “equal pay for equal work” and wearing buttons that bore the simple slogan “59¢,” a symbol of the pay disparity at that time in which women earned only 59 cents for every dollar that men earned.\(^\text{183}\)

On the other side, anti-feminists activists called attention to women’s roles as dependent wives and mothers and their belief that the ERA would put an end to policies and practices in which men were financially responsible for their wives and children. Often, they played upon questions of Christian morality and fears of feminist values of independence and sexual license in their campaigns.\(^\text{184}\)

The Supreme Court’s decision in *Roe v. Wade* added additional fuel to antifeminist campaigns as antiabortion activists defined their position as “pro-life” and formed a strong counterpoint to feminism. Feminist activists responded by arguing for a “pro-choice” position and by seeking to remove questions of morality from the debate and replace them with issues of privacy and freedom.\(^\text{185}\) This also put feminists in a situation in which they had to learn how to defend their positions after years of being on the offensive and controlling how issues were framed for the public.\(^\text{186}\) Linda Gordon argues that while this process in the abortion debates helped to form a more defined, feminist global coalition supporting birth control, “it came at the

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\(^\text{183}\) Mansbridge, 36-39.

\(^\text{184}\) Evans, 112-113 and Rosen, 39 and 332-333.


\(^\text{186}\) Evans, 112.
cost of arguing for abortion rights as a social good, part of a larger group of reproductive rights that helped to create equality for women and social responsibility for children.  

As Jane Sherron DeHart and Donald G. Mathews recount, when antifeminists related abortion to the ERA, they conflated understandings of sex and gender and failed to understand the nuances between how feminists understood the terms sex and gender, where “sex” referred to biological differences between men and women and “gender” meant cultural differences between the sexes.  

DeHart and Mathews show the relationship between the ERA and abortion by explaining how “both issues had been identified with women’s rights.” Here, “ERA was an attempt to remove sex as a classification in law, a way of separating individual women from their sex” whereas “abortion was a way for women to avoid the natural process associated with their sexuality.” They describe how antifeminist activists viewed both as undermining the family and write, “Both ERA and abortion, therefore, were seen as ways through which women could be released from traditional roles and responsibilities; possibility was perceived as prescription. ERA and abortion could become two aspects of the same threat to women whose identity was wrapped up in motherhood.”

This, and because of its association with the linkage between abortion and “uncontrolled sexuality” sparked many women to join the anti-ERA movement.  

The idea that perceptions of traditional women’s roles dictated how Americans responded to the ERA debate is also evident regarding how the ERA would impact women serving in the U.S. Armed Forces. DeHart and Mathews also illustrate how fears that, if ratified, the ERA would open the doors to drafting women into the military and then having them serve in combat

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187 Gordon, The Moral Property of Women, 297, her emphasis.
189 Ibid., 159.
190 Ibid.
191 Ibid., 159-160.
zones, fueled additional opposition to the amendment.\textsuperscript{192} Jane J. Mansbridge shows the reaction to this idea among anti-ERA activists such as Schlafly whose “entire case against the ERA revolved around women’s continuing need for male protection.”\textsuperscript{193} Mansbridge argues that feminists saw Schlafly as calling for a protectionist view of women when they believed in women’s independence and strength.\textsuperscript{194} Mansbridge, along with Sara Evans, reveals the irony in the fact that so much of the ERA debate was focused on women in the military when there was little likelihood that the Supreme Court would interpret the amendment to allow women in combat.\textsuperscript{195}

As feminists faced the challenge of mounting an effective counterargument to anti-feminist concerns over the ERA, their other successes in identifying and framing problems of sex discrimination and “personal” issues would enable them to shape their strategy for advocacy to define and solve the problem of sexual harassment. They had much experience in making what had been formerly seen as individual problems a matter of public policy and debate. Although, as the next chapter explains, some mainstream feminists came later to sexual harassment activism, the networks they had started in earlier years were in place, helping activists to shape this new issue and argue effectively for the recognition of sexual harassment as a social problem. Because of their knowledge and history in fighting sex discrimination, activists and working women turned to Title VII as a logical solution. In doing so, they brought it under the umbrella of women’s citizenship rights and merged it with how working women conceptualized their fight for economic equality in the workplace.

\textsuperscript{192} Ibid., 46.
\textsuperscript{193} Mansbridge, 69.
\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid., 3 and Evans, 178.
CHAPTER TWO:
SEXUAL HARASSMENT FRAMED AS AN ISSUE OF ECONOMIC CITIZENSHIP RIGHTS

The idea that feminist activism led to the naming and recognition of sexual harassment as a working women’s problem in the United States has been well-documented by a number of historians.¹ These scholars explain how, in 1975, a diverse group of women, without the help of established feminist organizations, began to organize around the issue with the goal of forcing policymakers to take stock of men’s treatment of women in the workplace. That they confronted a difficult task in making a previously unnamed problem part of public discourse is evident in the fact that the earliest sexual harassment activists had to convince mainstream feminist organizations that ending the sexual harassment of working women was a high-priority issue. Because of the work of two new feminist organizations, Working Women United (WWU) in Ithaca, New York and the Alliance Against Sexual Coercion (AASC) in Boston, which were founded solely to deal with sexual harassment in 1975 and 1976, respectively, the problem of sexual harassment began to be covered by mainstream newspapers and women’s magazines.² After this publicity and the early activism of these two groups, older feminist organizations such as the National Organization for Women (NOW) and Ms. magazine joined their efforts,³ which paid off when the Equal Employment Opportunity Commission (EEOC) added sexual harassment to its Guidelines on Discrimination Based on Sex in 1980. The Guidelines were the first federal-level government sexual harassment policy of its kind and stated that sexual

² Carrie N. Baker notes that WWU and AASC were two of the first groups to do this. See Baker, The Women’s Movement against Sexual Harassment, 3. Susan Brownmiller writes about WWU’s pioneering efforts. See Brownmiller, In Our Time, 279-282.
³ Brownmiller, In Our Time, 284.
harassment was a form of sex discrimination in employment, which was illegal under Title VII of the Civil Rights Act of 1964, as amended. While the activism of these groups has been explored, the ways in which they argued for the use of policies such as Title VII to help curb the behavior has received less coverage. As such, the role of feminists in framing the issue has received much attention whereas how they framed it and the larger implications of this effort in terms of women’s overall status as U.S. citizens still needs more consideration.

This chapter examines the origins of sexual harassment activism and policy by focusing on how victims of sexual harassment, activists, and legal theorists first framed the issue. Unlike previous studies of the women’s movement and sexual harassment, this chapter is less concerned with how these women organized a campaign to end the sexual harassment of working women and more with how they expressed that sexual harassment violated women’s economic citizenship rights throughout the five years between when the term “sexual harassment” was coined and just before the EEOC issued its guidelines. Since this was the first policy of its kind, this chapter turns to the first stage of the policy process model, the agenda-setting phase of policy origins in order to explain how and why it originated. Because the EEOC guidelines grew out of feminist activism and the efforts of working women to bring this problem to the attention of the federal government, three of Sidney Tarrow’s cycles from the mobilization phase of contentious politics—conflict and diffusion, repertoires and frames, and old and new movement organizations—are also relevant to the origins of this policy. These portions of the combined policy process-Tarrow model of studying how the feminist movement defined sexual harassment help to answer the following questions: Who set the agenda for framing sexual harassment as a social problem amenable to public policy? Why, if sexual harassment was not a new

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phenomenon, did it reach the feminist agenda in the mid-1970s and not before? In setting their agenda as working toward public policies to account for sexual harassment, how did victims and activists frame the problem when addressing the issue publicly? Finally, despite their efforts in framing and publicizing the problem, why did it take more than two years before more established feminist organizations joined the early activists in arguing for sexual harassment policies?

This chapter begins by analyzing the history of sexual harassment activism through the policy process-Tarrow framework. Given that sexual harassment was defined in 1975 because more women were working than ever before, and even though mainstream feminist organizations were not the first to speak out about the issue, the efforts of the women’s movement in the years before 1975 had laid the foundations for activism and policy to end sexual harassment. This framework magnifies their efforts once activists named the problem and set their agenda when speaking out about sexual harassment. Chapter Two argues that, when naming the problem, activists framed it as an issue of economic citizenship rights and, in doing so, extended the protections of existing anti-sex discrimination employment policies to include sexual harassment. Their efforts in framing and publicizing a new definition of an old but unnamed problem created tension between newer feminist organizations that were devoted solely to eradicating sexual harassment and older, established organizations that believed other problems were of higher priority, causing those organizations to join in sexual harassment activism later than they may have otherwise.

In this chapter, these questions and arguments will be addressed following the phases of the policy process-Tarrow model above. When necessary, certain phases will be revisited when explaining how different actors appeared on the scene and when tracing how the concept of
sexual harassment was diffused throughout feminist organizations and society. The policy process stage, the agenda-setting phase, speaks for itself in terms of what the model offers. Simply put, it helps to illustrate the who, the what, and the why of the activism that focused on achieving sexual harassment policies for women in the workplace. Tarrow’s cycles, on the other hand, need a bit more explanation as to how they will be used. Not only are they relevant in illuminating how sexual harassment came to be defined when it did, they also provide an organizational scheme for relating this history.

Of conflict and diffusion, Tarrow writes that a cycle of contention begins with “heightened conflict” and that cycles “demonstrate the vulnerability of authorities to contention, signaling to others that the time is ripe for their own claims to be translated into action.”5 His point that contention begins when “the time is ripe” explains why sexual harassment was named in 1975 and not before. By 1975, some gains had been made regarding women and employment with the passage of the Equal Pay Act, the EEOC’s improvement in enforcing Title VII, and the likelihood (as it was perceived in 1975) of the ratification of the Equal Rights Amendment (ERA). Because of such developments, authorities, in this case policymakers, would be vulnerable to further action by women’s groups who would use the lessons of these successes in order to push for more policies. The related facts of the increasing legitimacy of women working for wages, the rising number of women working in the U.S., and the increasing likelihood that more women would be exposed to harassment would also have helped their cause in the mid-1970s as it would be difficult to deny that women were not a significant portion of the U.S. workforce.

Turning to diffusion, Tarrow claims that it “is misspecified if it is seen only as the ‘contagion’ of collective action to similar groups making the same claims against equivalent

5 Tarrow, *Power in Movement*, 144.
opponents.”\textsuperscript{6} While this no doubt happens with social movements and it certainly happens as the sexual harassment frame is diffused to other feminist groups, he also stipulates that “a key characteristic of cycles is the diffusion of a propensity for collective action from its initiators to both unrelated groups and to antagonists.”\textsuperscript{7} In other words, Tarrow explains that with heightened conflict comes the diffusion of the problem to those who agree that it is a problem (and are likely to join WWU and AASC’s efforts), to unrelated groups (either older feminist groups or others who did not originally define the problem), and to antagonists (those who disagree about either the seriousness of the problem in general, how it is defined, or those who use the frame for their own purposes).\textsuperscript{8} Looking at conflict and diffusion in this way answers how activists’ set their agenda was set and then raised awareness about sexual harassment.

The idea of repertoires and frames is especially important here because sexual harassment was a new term and thus a new “master frame” of a problem. So, how it was framed and how the frame changes as the cycles of contention move forward means a great deal because, as Tarrow claims, “cycles are the crucibles out of which new weapons of social protest are often fashioned.”\textsuperscript{9} The sexual harassment frame became this “weapon of protest” and this chapter analyzes both the frame that became recognized in the EEOC policy, that sexual harassment was sex discrimination and a violation of women’s economic citizenship rights, and the other options of framing the problem that activists considered. Tarrow accounts for these different possibilities when explaining how “in the uncertainty and exuberance of the early period of a cycle of mobilization, innovation accelerates and new forms of contention are developed and

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\begin{itemize}
  \item \textsuperscript{6} Ibid., 145.
  \item \textsuperscript{7} Ibid.
  \item \textsuperscript{8} The role of antagonists in adopting the frame for adverse purposes is considered in later chapters.
  \item \textsuperscript{9} Tarrow, 145.
\end{itemize}
This chapter illustrates that, in the earlier period of sexual harassment activism, between 1975 and 1977, varying opinions circulated as to why it happened and how to stop it, with the sex discrimination frame “winning out,” so to speak over other possible remedies such as unemployment insurance or workers’ compensation. Tarrow reveals that multiple frames are the product of new movement organizing and contagion as an issue becomes public. With sexual harassment, early activists brought different experiences to their organization and were also spread out geographically (with WWU in New York and AASC in Boston) and may not have known how the others approached the problem at first. That one frame may become dominant fits with Tarrow’s point that “not all the innovations that appear in these periods of generalized contention survive past the end of the cycle.”

How frames become diffused relates to Tarrow’s understanding of the relationships between old and new movement organizations and the idea that more than one group will be involved in contentious politics. He writes, “Cycles of contention almost never fall under the control of a single organization. The high point of the wave is marked by the appearance of ‘spontaneous’ forms of action, but even at this phase, both previous organizational traditions and newly organized movements shape their direction and outcomes. Nor do ‘old’ organizations necessarily give way to new ones in the course of the cycle.” As an example, he offers the work of the NAACP in adopting more “radical tactics” during the civil rights movement as other groups entered the scene. With sexual harassment, the “old” and “new” groups are reversed than with Tarrow’s example of the civil rights movement. It was not “old” groups such as NOW who started sexual harassment activism but “new” groups such as WWU and AASC, who, while

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10 Ibid.
11 Ibid.
12 Ibid., 146.
13 Ibid.
their founding members may have had roots in other feminist organizations, were not representing these “old” feminist groups when they formed the new ones to focus on sexual harassment. This seems to both challenge and reinforce Tarrow’s theory that new organizations shape a movement. In this case, at first old organizations gave way to new, but the older organizations later got involved in sexual harassment activism and even outlasted the new organizations.¹⁴

Importantly, framing occurs throughout all of these cycles and happened as the problem of sexual harassment was defined and considered throughout these phases. The feminist framework of sexual harassment as a hindrance to women’s economic citizenship was then evaluated, affirmed, or further made public by various individuals and organizations in the years before the EEOC guidelines. When victims first began to speak publicly about sexual harassment, and thus first began to frame the issue, they did not argue that they were being deprived of their right to control their own sexuality at work. Instead, these women turned to existing policies and discussions regarding sex discrimination and framed the problem by articulating that they were being denied autonomy in the workplace in the form of a right to work in an environment free of sexual harassment. Following Alice Kessler-Harris’s definition of economic citizenship as the right to full participation in the polity,¹⁵ workers and activists argued for economic citizenship as the right to fully participate in the polity of the workforce without being sexually harassed. They viewed both the problem itself and any retaliation they faced

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¹⁴ Another way to look at this dynamic between old and new organizations may be in the distinction between “radical” and “mainstream” feminist organizations in that the founders of these new groups had ties to more radical feminist organizations. If, as some scholars indicate, radical feminism was on the decline by 1975, this could help to explain some of the tension that arose after feminists formed new groups dedicated to sexual harassment and argued for its recognition by more mainstream, or older, feminist groups such as NOW. On radical feminism, see Alice Echols, Daring to Be Bad: Radical Feminism in America, 1967-1975 (Minneapolis, MN: University of Minnesota Press, 1989).

when bringing complaints as denying them the benefits of working in jobs that paid well and were emotionally gratifying, with the economic costs of sexual harassment in the form of lost wages or promotion opportunities standing out most prominently. When victims, activists, and theorists spoke about sexual harassment as a hindrance to women’s economic citizenship, they framed their discussion around women’s employment rights, leading to the conclusion that sexual harassment was sex discrimination, a violation of Title VII of the Civil Rights Act of 1964. What these women argued was that sexual harassment was an expression of men’s power over women at work, where men used this behavior to keep women at a lower status. They made the argument that sexual harassment violated their employment rights at the first speak-outs, in the first mainstream media and activists publications about the problem, and in the first sexual harassment lawsuits brought before the courts. How all of this contributed to the framing of sexual harassment is explained in the sections below. The chapter ends as the first courts began to affirm this frame in the late 1970s by ruling that sexual harassment was a form of sex discrimination.

Sexual Harassment and Employment Rights Framed at First Speak-Out

On May 4, 1975, a group of women met at the Greater Ithaca Activities Center in Ithaca, New York, for the first ever speak-out on sexual harassment.16 A total of 275 working women attended and listened to 21 women address the audience. During the speak-out, eight of these women gave prepared speeches, ten of them spoke during the “open mike” period, and three of them, Lin Farley, Karen Sauvigné, and Susan Meyer, represented the group that organized the event, Working Women United (WWU). The speak-out was also sponsored by the Human

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16 See Brownmiller, 282.
Affairs Program at Cornell University, where the three women were employed, and the Ithaca chapter of NOW.\textsuperscript{17}

Farley, Sauvigné, and Meyer had formed WWU in Ithaca, New York, after their experiences working for the Women’s Section of the Human Affairs Program. The Human Affairs Program was a product of student uprisings in the 1960s which offered courses and field study on public interest topics, including prison reform, urban development, and money and banking. The Women’s Section was added in 1974 when Farley was hired to teach a course on Women and Work. In 1975, she enlisted the help of her friends, Sauvigné and Meyer, to work with her. Sauvigné and Meyer shared the position of Research Director and assisted students with the community organizing aspect of the program. Prior to joining the Human Affairs program, Farley had been a journalist and an activist in a Washington, D.C. radical lesbian organization, the Furies collective, where she met Meyer. Meyer was a former antiwar activist and had met Sauvigné while working with the Lesbian Feminist Liberation and New York Radical Feminist groups that endeavored to increase the participation of women at the 1974 New York City gay pride march. During this involvement with radical feminist groups, Sauvigné and Meyer gained valuable knowledge on the topics of rape and domestic violence which they would later bring to their sexual harassment activism. Sauvigné, herself an antiwar activist, also had a legal background that she brought to WWU because of time she had spent working for the ACLU Women’s Rights Project and the Law Students Civil Rights Research Council, a group

started in the 1960s to help law students in the northern U.S. to travel to southern states and register black voters.\textsuperscript{18}

The idea to organize Working Women United came after Farley, Meyer, and Sauvigné met and heard the story of Carmita Wood, a Cornell employee who had quit her job as an administrative assistant in the nuclear physics department after refusing her supervisor’s sexual advances. Wood was denied any unemployment benefits as a result and went to Farley for advice at the Human Affairs office. Not long after, Farley, Meyer, and Sauvigné along with a few others from Human Affairs met to discuss Wood’s case. During this meeting, the women realized that the problem Wood experienced had happened to each of them at some point in their lives but that none of them had ever talked about it before. In addition, Farley told the group about what had happened in a class on Women and Work that she had taught at Cornell the previous fall.\textsuperscript{19} Due to the lack of literature on the topic, Farley held a consciousness-raising session on women and work so that they could talk about the experiences of women in the workplace. To her surprise, each student in the class said that they had quit a job or been fired from one because of sexual coercion.\textsuperscript{20}

This realization that the problem they were all discussing, which did not yet have a name, affected each of them follows the pattern of consciousness-raising and feminist activism described in the scholarship of Ethel Klein, Jo Freeman, and others. Klein explains how “the growth of the feminist movement was fostered by the emergence of feminist consciousness” that led to political activism.\textsuperscript{21} Freeman defines consciousness-raising as women coming “together

\textsuperscript{19} Brownmiller, \textit{In Our Time}, 279-281.
in small groups to share personal experiences, problems, and feelings” which leads to “the realization that what was thought to be individual is in fact common; that what was thought to be a personal problem has a social cause and a political solution.” That feminists did this specifically with sexual harassment is described by Elaine Lunsford Weeks, Jacqueline M. Boles, Albino P. Garbin, and John Blount who write, “Feminists rely on coalition politics built largely through interpersonal relationships, informal intergroup exchanges, and interlocking directorates, to exert constituency pressure and encourage policymakers to initiate changes. This is an accurate description of the strategy adopted by women’s groups involved in the development of sexual harassment into a social issue.”

The feminist pattern of consciousness-raising leading to activism also describes exactly how WWU was formed and how sexual harassment came to have a name. After discussing Wood’s, the students’, and their own stories, Farley, Meyer, Sauvigné, and the others came to the conclusion that the problem they were talking about affected countless women in the workplace. As a result, they formed Working Women United to organize around the issue. Working Women United later held another meeting to plan the May speak-out, but they did not know what to call the problem when publicizing their event. Before they left this historic meeting, the women coined the term “sexual harassment” and pledged to work together on the issue.

Once the problem of sexual harassment acquired a name and the women from Cornell formed Working Women United, they worked quickly to raise awareness about the problem. On April 21, 1975, Farley testified before the New York City Commission on Human Rights (NYCCHR). The Commission, under the leadership of civil rights and feminist activist Eleanor

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Holmes Norton,\(^{25}\) was investigating sex discrimination in the blue-collar and service industries.\(^{26}\) Norton, appointed to lead this agency in March 1970, moved it into the direction of women’s rights within her first few months in charge by holding a week-long round of hearings on the problems faced by working women. She continued this effort to magnify women’s inequality throughout the early 1970s.\(^{27}\) When Farley addressed Norton and the other commissioners at the 1975 hearings, she explained the problem of sexual harassment and how women were often unwilling to come forward about their experiences because of embarrassment or fear of reprisals. Following the hearings, Norton oversaw the addition of a sexual harassment provision to the NYCCHR’s affirmative action policy.\(^{28}\) It was this unwillingness of women to speak about the issue that the first speak-out was organized to address less than one month after the hearings. When Lin Farley introduced herself to the crowd gathered on a rainy Sunday in Ithaca on May 4, she mentioned the importance of women coming together to raise the issue in order to show policymakers its seriousness and to cause change. Farley also discussed the realization that women were reaching about sexual harassment: that it was not a problem for individuals, that it was “widespread,” that it was “really serious,” and that it was “causing women harm and damage all over the place.”\(^ {29}\)

These three characteristics that Farley identified were expressed by the women who shared their own stories that afternoon. There was no question that each of the 21 women who addressed the crowd considered sexual harassment a serious problem. The women who spoke represented a variety of occupations: secretaries, waitresses, graduate students, and factory


\(^{26}\) Brownmiller, *In Our Time*, 203.


\(^{29}\) Carrie N. Baker, “Document 5.”
workers; plus a professional model, a mail clerk, a professor, a cleaning woman, a switchboard operator, a draftswoman, a filmmaker, and a lab assistant. When it came to the fact that sexual harassment was widespread because it affected numerous women and not a handful of individuals, ten of the women stepped up to the microphone and expressed this feeling directly. Connie Korbel explained that she was a friend of Carmita Wood’s and that she could not remember “ever having had a job without sexual harassment” and that it was time women “all got together and did something about it.”

Kate Harps, a secretary, spoke about how hearing other women talk about sexual harassment helped her realize that the problem went beyond her own experience, a sentiment shared by other women as well. After being harassed by her boss, she told the group that she internalized the problem and blamed herself. Harps explained how this was changing, “And it’s really good to come and hear other women talking about it. I’m beginning to really feel inside that it’s not me; it’s – it’s them, and it’s the way it’s [the system’s] set up.” A woman named Carol spoke after Harps and recounted how she had been harassed while working as a model and then later as a waitress. She shared Harps’s first feeling that the problem was her own—that she had done something to invite the harassment. Carol explained the speak-out as a “catharsis” and “a comfort” to know that other women had been through the same thing.

Two other testimonies stand out regarding the widespread nature of the issue and reveal the different forms sexual harassment could take. One was from Susan Madar, who was a childcare worker at the time of the speak-out but who had worked in a variety of other positions. She spoke of what she called “the other side of sexual harassment” where men hire only conventionally attractive women and, when they cannot, ignore the unattractive women in their

30 Ibid.
31 Ibid.
32 Ibid.
offices, making them feel worthless and resentful toward the attractive women. Madar also said that she had experienced sexual harassment “in the more obvious way” by being pinched by a supervisor but that “all these experiences” were “a part of sexual harassment.” She continued on about the effect of situations where some men pay attention to only the attractive workers by stating, “And if one woman is being openly harassed on a work situation, the other women are too.” 33 The second one was from Deirdre Silverman, a professor. Her testimony was a bit different from the rest because she was speaking from the viewpoint of an educated professional, a difference that she remarked upon at the beginning of her allotted time. She started, “Perhaps as many of you, I believed at one time that educated women, women who worked as professionals, women who worked as equals with men were exempt from the kind of sexual harassment that we’re talking about, and over the last five years I found out that that is not true.” 34 Silverman then proceeded to tell the crowd of the harassment she experienced at the hands of a professor at a college where she wanted a job. She explained that he propositioned her while they were at a conference by repeatedly dropping his hotel key in her lap. Knowing that she needed to be nice to him if she wanted to get hired in his department, she tried to tell him no discreetly but he persisted until she finally had to reveal that she was five months pregnant (a fact that she was trying to conceal at the time). 35 Her experience regarding the widespread nature of the problem was telling in that it raised the point that sexual harassment could happen to just about any woman, regardless of her class status, whether she was a secretary, a college teacher, or a factory worker.

With its widespread nature, as it was presented at the speak-out, came the harm and damage that sexual harassment exacted on working women. Those who gave their testimonies

32 Ibid.
34 Ibid.
35 Ibid.
told of the economic and emotional toll that sexual harassment had taken on their lives. In Farley’s introduction, she explained the economic harm of sexual harassment in the position it placed women who, based on their status, were often left with very few options. Because of economic necessity, Farley stipulated, many victims could not leave their jobs. Again, the women’s testimony echoed and reinforced Farley’s statements. Of the 20 other women who addressed the crowd during the prepared remarks and open mike sessions, 14 of them described being deprived of some type of economic benefit because of sexual harassment. Their stories can be categorized as follows: five had to transfer or quit because of the harassment; four were denied a job or promotion, including Silverman who gave up looking for a job at the institution where her harasser worked; three of the women described that because of financial need they had to be nice for tips and play along with the harassment because they could not quit; one, a lesbian, described her fear that she would be forced to give up her career because of her sexuality; and, finally, one more described how her boss withheld her pay while sexually intimidating her at work.

Regarding the emotional damage that victims of sexual harassment experienced, seven of the speakers explained how they felt after being sexually harassed. The most common response, given by four of these women, was a feeling of shame and guilt that they had caused the behavior. Carol, the woman who had referred to the speak-out as cathartic and who had been denied a promotion for not sleeping with her manager, said she had felt “really ashamed” and like she “wasn’t a person” because “no one really cared” about her at work, they just looked at her as another possible score. One other woman, Louisa, dealt with her experience by isolating herself in cleaning jobs where she could work alone because of the fear that “working with the

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36 Ibid.
37 Ibid.
38 Ibid.
public” meant that she was “going to be harassed by men sexually.”³⁹ Her story was similar to that of Eryl Sena, a filmmaker, who refused to sleep with a potential boss in order to get a job in her field. Instead, she remained in her second job, as a taxi driver, because she was so “freaked out” by this experience that she had been unable to look for another job as a filmmaker. The final emotional harm, a feeling of helplessness, was expressed by Donna Thomas, a 27-year-old waitress who began her remarks by stating, “I’ve heard some statistics that 6 out of 10 women are sexually harassed on the job. I can’t believe that its [sic] not 10 out of 10.” She finished by offering her opinion that sexual harassment happened to “every waitress of the world” and that they were “helpless” to do anything about it.⁴⁰

Another waitress, Janet Ostreich, offered comments that sum up the overall attitude of the speak-out in terms of women’s rights. She told of men feeling that they had the right to sexually harass waitresses in restaurants and bars and also the right to do it to women in offices, but that “you can’t work like that, you just can’t! And it should’nt [sic] be, you shouldn’t have to!” Ostreich expressed the harms and dangers of sexual harassment and suggested the response that women wanted from the hearing: recognition of the problem and an end to it because they had a right to work free of harassment.⁴¹ The third founding member of Working Women United who spoke, Susan Meyer, addressed the crowd at the very end of the speak-out and offered a solution for Ostreich and the others by reiterating that women needed to be active regarding the issue—by filling out a sexual harassment survey that was being passed out and by coming forward with complaints—in order for their words to reach policymakers. Importantly, Meyer set the agenda for the group in telling the women that Title VII was one potential possibility for the legal recognition of sexual harassment but that it had not been formally recognized and would only be

³⁹ Ibid.
⁴⁰ Ibid.
⁴¹ Ibid.
so with their help. Due perhaps in part because they ran out of time, or because of the legal cases that were already pending in 1975 in Arizona, Wisconsin, and Florida, which Carmita Wood had mentioned to the crowd and which had been framed and brought as sex discrimination suits, Title VII was the only possibility for framing the problem of sexual harassment that Meyer described at the speak-out.

From this beginning, Working Women United (WWU) was off and running. In the summer of 1975, Farley, Sauvigné, and Meyer formed a sister organization to WWU that they called the Working Women United Institute (WWUI). They saw the difference between the two organizations as WWU focusing on collective action and organizing working women, in a similar fashion to Boston’s clerical organization, 9 to 5. The purpose of WWUI then was to “engage in research, education and litigation on issues of concern to working women” and “to answer a need to have an independent research center devoted solely to the unique needs and problems of working women.” In December of 1975, WWUI began to plan a research project on sexual harassment and wrote a “Project Description and Request for Funds” for “Research on Sexual Harassment on the Job” in which they described women’s lower economic status as compared to men and how a research institute was needed “to make public policies more responsive to the needs of working women.” They outlined the Institute’s goal as “to do research and public education on issues that have policy relevance so that the conditions of women’s lives may be materially improved by changes in public policy.” In terms of citizenship rights, this was a significant goal, meaning that WWUI aimed to measure women’s

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42 Ibid.
43 Ibid.
45 Attached Document 2: Project Description and Request for Funds, Attached to letter from Bonnie Brower to Susan Green, 12/27/77, “Sexual Harassment Study – Copyright Question 12/77-3/78,” Box 100, Office of Public Liaison, Jimmy Carter Library.
46 Ibid.
47 Ibid.
economic lives and how public policy could solve the problem of sexual harassment. The major thrust of their organization, despite talking about working women’s problems in general, revolved around sexual harassment. In addition, the link between feminists and policymakers was even more direct because WWUI’s Board of Advisors included two politicians, Elizabeth Holtzmann, a U.S. Congresswoman from New York, and Norton, who had heard Farley’s testimony before the NYCCHR which she chaired until 1977.  

In its proposal, WWUI argued that sexual harassment “was one of the most important and least understood problems” facing working women. WWUI claimed, “The impact of unwanted sexual advances causes women workers to bear a double burden of discrimination in the workplace: women receive unequal opportunities in hiring, promotion, wages and training and at the same time must deal with the anxiety caused by being degraded as a worker and treated instead as a sex object in the work situation.” WWUI illustrated this point by describing the experience of Carmita Wood. When Wood complained of harassment, her supervisor responded by telling her “a mature woman should be able to handle it.” Combining the words of the speak-out testimonials and WWUI’s overall goals illustrates that, when women first spoke publicly regarding sexual harassment at work, they framed the problem around employee rights and saw early on that sex discrimination specifically was one area to pursue for redress. Unfortunately, this request for funds from the National Institute for Mental Health did not see fruition until 1977 when, after running into some legal problems, WWUI finally received some grant money for its research.

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49 Attached Document 2: Project Description and Request for Funds.
50 Quoted in Attached Document 2: Project Description and Request for Funds.
51 Baker, “Sex, Power, and Politics,” 114-117. Baker writes that WWUI initially submitted this proposal to the National Institute of Mental Health, which approved the proposal but did not offer funding because of an ownership dispute that WWUI became involved in when the two researchers that WWUI found to conduct the project, Drs. Harriet Connolly and Judith Greenwald from the City University of New York, tried to conduct the study through
Issue Becomes Diffused in the Public Arena as Media and More Activists Respond

WWU/I were therefore seeking to create change in responding to the problem of sexual harassment via a grassroots-type organization and a professional-research one. Their work was followed by Enid Nemy, a journalist for *The New York Times*, who wrote the first major newspaper article on sexual harassment in August 1975.\(^52\) Nemy described Lin Farley’s testimony before the New York Commission on Human Rights as well as the first speak-out on sexual harassment. She also interviewed Karen DeCrow, president of the National Organization for Women, who referred to sexual harassment as “one of the few sexist issues which has totally been in the closet” and one “that has been shrouded in silence because its occurrence is seen as both humiliating and trivial.”\(^53\) DeCrow’s insight into the issue offers a possible explanation of why sexual harassment took so many years to become a public issue before 1975—women were too embarrassed to talk about it and men did not take the issue seriously. In general, the coverage of sexual harassment by such a wide-reaching newspaper furthered public knowledge about the issue and had the potential to spread WWU/I’s message that sexual harassment was a form of sex discrimination.\(^54\)

DeCrow’s inclusion in Nemy’s article raises an interesting question regarding the actions of older, more mainstream feminist organizations, in this case NOW, in raising awareness about sexual harassment. The local chapter of NOW in Ithaca sponsored the first speak-out, but, the national organization itself had yet to become involved. Nemy’s article indicates that DeCrow knew about the issue, but it does not explain whether or not the national organization planned to

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52 Farley, *Sexual Shakedown*, xii.
53 Nemy, “Women Begin to Speak Out Against Sexual Harassment at Work.”
54 Susan Brownmiller notes that Nemy’s article was syndicated nationally. Brownmiller, *In Our Time*, 283.
work on it with WWU/I in the future. In fact, when WWUI published the first issue of its newsletter, *Labor Pains*, in August 1975, they noted that the speak-out had led to various pledges of support for WWU’s work. Of DeCrow, they wrote that she was “traveling around the country telling audiences about the exciting work WWU was doing and the importance of the issue of sexual harassment on the job.”\(^{55}\) Importantly, they did not write that she had pledged NOW’s support in the effort, just that she was publicizing WWU’s work, indicating the possibility that, at least in August 1975, NOW’s national office was not getting involved.\(^{56}\)

Nonetheless, Nemy’s article also helped diffuse the issue by her inclusion of Farley’s (and presumably WWU/I’s) definition of sexual harassment. Farley simply listed all of the verbal and physical behaviors that could be considered sexual harassment at work: “constant leering and ogling of a woman’s body,” “continually brushing against a woman’s body,” “forcing a woman to submit to squeezing or pinching,” “catching a woman alone for forced sexual intimacies,” “outright sexual propositions, backed by threat of losing a job,” and “forced sexual relations.”\(^{57}\) Nemy’s article also highlights that economic concerns were raised by the first women to speak out against sexual harassment. She described the testimonies mentioned above in addition to the experiences of other women, including a nurse named Cathy Edmondson from Washington, D.C., who spoke of sexual harassment as “a working condition between


\(^{56}\) Stephanie Gilmore’s work on local NOW chapters in Memphis, Columbus (Ohio), and San Francisco offers the possibility that groups at this level were involved with sexual harassment. She writes that these local offices “toed the national NOW line and worked on the ERA and electing feminists to public office” but that they did not always conform to this agenda by tackling other issues important to their communities, including sexual harassment. Gilmore does not offer specific details about this activism, but does suggest a departure for further research. See Stephanie Gilmore, “Rethinking the Liberal/Radical Divide: The National Organization for Women in Memphis, Columbus, and San Francisco,” (PhD diss., The Ohio State University, 2005), 79-80 and 289.

\(^{57}\) Nemy, “Women Begin to Speak Out Against Sexual Harassment at Work.”
doctors and nurses.”58 Nemy also wrote about a woman named Jan Crawford, from New York, who said that she had worked in a real estate firm in San Francisco where her boss believed that a woman’s place was in the home. Crawford then had to endure the sexually harassing behavior of her boss’s underling, who, when she refused to comply, had the main boss fire her for “inefficiency.”59 When she spoke to Nemy of this experience, which had happened eight years before, what stands out is not her outrage of being propositioned at work, but that the incident had deprived her of what she had worked hard for and a job she enjoyed. She told Nemy, “I had poured myself into that job…It was just devastating to me that everything could be pulled out from under me for no reason. For several years after that, I had no ambition. I had the frightening feeling that it could all be taken away again.”60

In addition to the economics of sexual harassment, the stories that Nemy included also told of sexual harassment in terms of the power relationship between men and women in American society. She noted the remark of Janet Ostreich, the student-waitress-clerk who spoke at the Ithaca speak-out in May, and who had asked “What made him think he had the right to do it?”61 Cathy Edmondson, the nurse from Washington, framed the sexual harassment between doctors and nurses around the idea that “resident physicians develop airs and some of them think they are God’s gift to patients and nurses” and that “certain men convey a feeling to you that you are subservient.”62

As one of the first mainstream newspaper articles published about sexual harassment, Nemy’s article raised many issues about the problem and spoke to the need for women to talk to one another and to work for a change in the nature of workplace relationships between men and

58 Ibid.
59 Ibid.
60 Ibid.
61 Ibid.
62 Ibid.
women, and even between women themselves to avoid the feeling that they were all alone in experiencing the problem. By describing the testimonies at the speak-out and comparing them to the other women she interviewed, Nemy’s article also further diffused the issue by broadening the scope of awareness about the newly defined frame “sexual harassment” to include women from areas beyond Ithaca. Interestingly enough, all of these women had the same message about sexual harassment, economic issues, and rights—because of their shared experiences of how the problem had impacted their working lives.

The issue gained more and more attention as women outside of Ithaca began to raise their voices about sexual harassment in the months after the first speak-out. In October 1975, New York City’s Women Office Workers (WOW), a clerical workers’ organization, sponsored another speak-out on working women’s issues that was also covered by The New York Times. While the event’s purpose was to protest a variety of issues concerning working women, including pay equity, respect, and promotions, sexual harassment figured prominently in the women’s speeches. Because the event focused on a variety of issues, the WOW speak-out was different from the one in Ithaca and also because it was conducted in the form of a hearing complete with 14 witnesses testifying before a panel of six members of federal, state, and local government agencies. During the hearing, 280 clerical workers joined public officers in listening to the testimony of one office worker who was fired from her job for refusing to accept a dinner invitation from her then-separated boss. Another woman told the panel and the audience that her boss removed items of his clothing, including his shoes, socks, and shirt, whenever she went into his office. After listening to all of the testimonies, the panel was given a copy of the Women Office Workers’ Bill of Rights, a document devised in 1973 by members of WOW’s sister organization, 9to5 of Boston, outlining the basic workplace rights for women, including respect. 

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job descriptions, overtime pay, maternity benefits, equal pay, and an overall end to sex
discrimination, among others.\textsuperscript{64} In 1975, sexual harassment was not yet on this list.\textsuperscript{65}

At WOW’s speak-out, \textit{New York Times} writer Nadine Brozan reported that the chairman
of the New York State Assembly Labor Committee, Seymour Posner, advised the group, “The
answers are not in new legislation or in raising the consciousness of your employer. You’re not
about to do that. You must do what the coal miners, the hospital workers, the teachers did:
organize. Don’t agonize, organize; that’s the only answer.”\textsuperscript{66} His advice was telling at a time
when union organization in general was not popular among women office workers, who were
perceived by labor groups as notoriously difficult to organize;\textsuperscript{67} therefore, his suggestion did not
indicate an easy road. However, Posner did offer this solution at the same time women’s groups
were already beginning to organize, with the most notable in relation to Posner’s comment being
an office workers’ union, Local 925, an affiliate of the Service Employees International Union
(SEIU), which was formed in Boston in 1975.\textsuperscript{68} Posner’s advice in telling the women at the
WOW speak-out not to argue for new laws for problems such as sexual harassment but to argue
for its inclusion in existing legislation offers another possible reason why feminist activists
increasingly turned to Title VII of the Civil Rights Act of 1964 when framing the problem.

Nemy and Brozan’s articles told of the sexual harassment activism occurring in late 1975
in Ithaca and New York City. One area that also experienced an early surge in sexual

\textsuperscript{64} 9to5, 1978 9to5 Convention brochure, “The Bill of Rights for Women Office Workers,” Folder 131: “1978
Convention Packet, hand-outs, advance publicity, report,” Box 5, 9to5, National Association of Working Women
\textsuperscript{65} Sexual harassment was not added to the “Working Women’s Bill of Rights” until 1983 when 9to5 updated and
revised its 1973 version in honor of its tenth anniversary. Judy Cooper, “9to5 issues new ‘Working Women’s Bill of
Rights,’” (date and publication of this article unknown) Folder 144: “n.d.,” Box 4, 9to5, National Association of
\textsuperscript{66} Brozan, “A Demand to Be More Than Just ‘Office Girls.’”
\textsuperscript{67} Dorothy Sue Cobble, \textit{The Other Women’s Movement: Workplace Justice and Social Rights in Modern America}
\textsuperscript{68} Proposal to Service Employees International Union to Support Expanded Organizing Program by Local 925 in the
Boston, Massachusetts Area, May 22, 1981, SEIU District 925 Collection, Box 7, File 18, Archives of Labor and
Urban Affairs, Wayne State University.
harassment activism was Boston, home of the clerical workers’ organization, 9to5, the group that the founders of WWU wanted to emulate, which was also affiliated with WOW in New York City. Local 925 was also a Boston organization. With all of this activity regarding working women’s rights in Boston, it should not be surprising that a separate sexual harassment organization was founded there in June 1976, the Alliance Against Sexual Coercion (AASC). By this time, WWU had ceased operating in Ithaca (due to the difficulty of organizing factory women there) and Sauvigné and Meyer moved WWUI to New York City where they continued the work they had outlined earlier.69

Similar to WWUI, AASC outlined sexual harassment as an economic problem for working women. AASC was formed by three women, Freada Klein, Liz Cohn Stuntz, and Lynn Wehrli, all veterans of the anti-rape movement who had worked together at the Washington, D.C. Rape Crisis Center.70 Their first major action as a group was to write a position paper on the issue, before going public as an outreach organization in June 1977. That they clearly framed sexual harassment around the issue of women’s economic rights is evident in the first few sentences of this paper, which states,

Employers have considerable economic power over their employees—the power to hire, fire, determine benefit levels and give or withhold raises and promotions. And this economic power underlies relationships established at the workplace. When male employers make sexual demands upon women employees, women cannot freely choose to say yes or no, since they are economically dependent upon their employers. To refuse sexual demands from those who control one’s livelihood is to endanger that livelihood. Thus, sexual demands become coercive in this context, because they are supported

70 August 7, 1977 letter to feminist organizations from Freada Klein, Alliance Against Sexual Coercion Records, Schlesinger Library, Radcliffe Institute, Harvard University.
by, and can be enforced through, the use of economic power.\textsuperscript{71}

AASC then offered its definition of this sexual coercion by noting that it “takes the forms of verbal harassment or abuse, subtle forms of pressure for sexual activity, as well as rape and attempted rape.”\textsuperscript{72} Next, AASC explained that sexual harassment did not just happen between employers and employees, but that co-workers and clients could commit these acts as they too held power over women at work. For example, they noted that supervisors could obviously fire women because of sexual harassment whereas co-workers could “retaliate by making working conditions intolerable” and clients could take their business elsewhere, thus all of them could impact a woman’s job situation in a negative manner.\textsuperscript{73}

Also like WWUI, AASC wrote in its position paper that women had few available options to deal with sexual harassment because of this power dynamic. They wrote, “When jobs are scarce and employment discrimination against women is a well-documented reality, women cannot leave the jobs they have.”\textsuperscript{74} AASC outlined this apparent “no choice,” “no recourse” situation as what their organization hoped to change for women. In the last paragraph of the document, they presented their overall goal of ending sexual harassment in the workplace and their shorter-term goals of researching and examining the scope of the problem, of serving as a clearinghouse for information on the issue, of developing “a more thorough feminist analysis” of it, of educating people about the problem, and of developing resources for women in need of legal or emotional counsel.\textsuperscript{75}

\textsuperscript{71} AASC Position Paper, c. 1976, Alliance Against Sexual Coercion Records, Schlesinger Library, Radcliffe Institute, Harvard University.
\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid.
\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
In the year between when AASC wrote this position paper and when they opened its doors to the public, AASC conducted further research on sexual harassment and applied for grant money in order to publish a brochure on sexual harassment in the workplace. On August 7, 1977, AASC was featured in an article in *Equal Times*, a feminist newspaper published in Boston, which revealed that the work AASC was doing was similar to that of WWUI’s, or at the very least, that the two groups had defined the issue similarly and were hearing the same types of stories from victims of sexual harassment. The article explained the Alliance’s history of activism regarding rape in the workplace and meeting the need of working women because feminist organizations were not dealing with sexual coercion at work at the time. AASC then chose to make this issue its own and work with these other kinds of women’s groups to change the experience of working women in its community. By August 1977, two months after AASC formally opened, it was already receiving referrals from 9to5 and was offering women information on the problem and where to go for help. AASC’s membership had also increased from three to seven by the time it was featured in *Equal Times* and the group was well on its way to accomplishing one of its short-term goals by outlining for *Equal Times* the current legal options available to women who were sexually harassed. As they saw the situation, these options included Title VII of the Civil Rights Act of 1964, unemployment compensation laws, state fair employment practice laws, and, where appropriate, assault and battery laws.\(^76\)

Clearly then, by mid-1977, both WWUI and AASC had identified possible ways to frame the problem of sexual harassment in their efforts to reach out to working women. Since their first speak-out, WWUI had advocated framing sexual harassment as an issue of citizenship rights under Title VII. They continued to argue for this recognition throughout this time. AASC, on

\(^{76}\) August 7, 1977 *Equal Times* article, “Tyranny of Sex In The Office,” Alliance Against Sexual Coercion Records, Schlesinger Library, Radcliffe Institute, Harvard University.
the other hand, focused their efforts on telling women to try a variety of legal remedies. As Carrie N. Baker outlines, while both organizations observed the same effect of sexual harassment, the detriment to women’s economic citizenship, they each explained why it happened differently. AASC believed that capitalism was to blame whereas WWUI placed the blame on the patriarchal relationship between men and women. AASC also did not fully trust that governmental, bureaucratic, or managerial solutions were the best remedies for sexual harassment because they believed that policymakers and managers would act on their own self-interest and not those of the women who were victims of sexual harassment. As a result, they encouraged women to organize with each other and try to keep control over the situation when making sexual harassment complaints so that they would not have to depend on someone else.77

While AASC and WWUI expressed seemingly different approaches for why men sexual harassed women, there is a similarity in that their approaches to the problem—similar to their observations of its effect on women economically—were also tied to women’s economic status. AASC located the problem in the American capitalist system that put corporate profit over workers’ rights and WWUI placed it in the social relationship between men and women in which men were viewed as the breadwinner and women were their inferiors. When taking this broader view of the two organizations, the link between sexual harassment and women’s economic citizenship becomes even more apparent, even if the two groups did not agree on the best way to end sexual harassment.

Although the different ways that the two primary sexual harassment activist organizations framed the cause of the problem may have stalled further awareness or diffusion of it by confusing the issue, AASC kept to its stance on advocating multiple remedies. Later that same year, with funds from a Women and Work Small Grant from the Center for Research on Women

in Higher Education and the Professions from Wellesley College, AASC published a brochure entitled, “Sexual Harassment at the Workplace,” where it explained more about the legal options available to victims in 1977. They used the 25-page pamphlet in their outreach efforts by sending a copy of it to anyone who inquired about their work, along with a copy of its position paper, a copy of the *Equal Times* article, a list of legal options, a leaflet, and a card to leave with victims of sexual harassment.78

Altering the list AASC provided for the *Equal Times* article, it explained in the brochure each remedy and the pros and cons that needed to be weighed when considering what action to take. AASC’s new list of options included: Title VII of the Civil Rights Act, state human rights legislation, occupational safety and health codes, rape statutes, and unemployment insurance. While they did not recommend any one option because all were untested, AASC outlined the possibilities available with each and cited state human rights legislation and unemployment insurance as two of the most promising. Using the New York state’s human rights legislation as an example, AASC explained that these types of laws were advantageous because they protected complainants from retaliation and included a short complaint process, with a resolution in just over three months. One drawback here was the fact that not all states had human rights laws as progressive as New York’s in covering sexual harassment which it had done following Norton’s hearings in May 1975.79 In terms of unemployment insurance, the potential to receive financial relief in the form of unemployment benefits rendered his option promising; however, those who filed had to prove, under the example that AASC quoted of Massachusetts law, that they quit “for good cause attributable to the employing unit,” involving proof that the filer had tried to

79 AASC Brochure, 17-18.
complain to her employer or requested a transfer and was denied, all of which required written proof or witnesses in order to be successful.\textsuperscript{80} AASC stipulated that rape statutes were too limiting to account for the more subtle and/or less violent types of sexual harassment. They also claimed that occupational safety and health regulations had potential if the codes were written to include psychological trauma such as stress in addition to physical injury, but this was unlikely in the near future, especially with so few working women unionized and arguing for such policies. Regarding Title VII, AASC noted that one court had ruled that sexual harassment constituted sex discrimination, but that it was too risky to recommend because of the lack of “clear precedents.”\textsuperscript{81}

While AASC did not necessarily frame the issue of sexual harassment as solely a problem of discrimination and patriarchy in its brochure, the agency did share with WWUI and others the belief that sexual harassment was the result of the misuse of economic power. In doing so, AASC sought to erase the belief that women brought the behavior on themselves. They also wanted to expose other fallacies about the problem, including the notion that only bosses sexually harassed women.\textsuperscript{82} The brochure considered many of the misconceptions that were expressed and reconsidered by the women at the 1975 speak-out, including that it was not a serious social problem, that women enjoy or ask for the treatment, and that only women in low-level or non-professional occupations were sexually harassed. Just as the women who spoke at the speak-out realized that none of these myths were true, AASC’s brochure served to educate the public, and working women especially, about the falsehoods surrounding the problem of sexual harassment. When explaining these misconceptions, AASC addressed economic issues specifically in five of the ten “myths” they presented, including the following:

\textsuperscript{80} Ibid., 19.
\textsuperscript{81} Ibid., 17. The case they referred to is \textit{Williams v. Saxbe}, which is explained below.
\textsuperscript{82} AASC Brochure, 1-3.
MYTH: Sexual harassment is not a serious social problem—and it affects only a few women.
FACT: Women suffer from sexual harassment regardless of their appearance, age, race, marital status, occupation, or socio-economic status…
MYTH: Only women in certain occupations are likely to be sexually harassed.
FACT: Waitresses, flight attendants and secretaries are not the only victims of sexual harassment. Women who work in factories, at professional jobs—all kinds of jobs—consistently report this problem…
MYTH: A firm ‘no’ is enough to discourage any man’s sexual advances.
FACT: Because people believe women say no when they really mean yes, men often dismiss women’s resistance. Men’s greater physical, economic and social power enable them to override women’s protests.
MYTH: Women who remain in a job where they are sexually harassed are masochistic—or are really enjoying it.
FACT: Women’s lower socio-economic position in the U.S. means that many are unable to quit their jobs or find new employment…
MYTH: Women make false charges of sexual harassment.
FACT: Women who speak out against harassment meet with negative reactions, ranging from disbelief and ridicule—to loss of job. Women have little to gain from false charges.
MYTH: If women can’t handle the pressure of the working world, they should stay home.
FACT: Women work out of economic necessity. Staying home is not an option for most working women. Nor—as we know from current publicity on wife abuse—is staying home a protection against sexual harassment.83

This list and its emphasis on economic issues highlights that issues of economic citizenship were also on the minds of AASC members when they considered the problem. The theme of economics and sexual harassment is also carried out throughout the rest of the brochure, in explaining that men harass women because they are accustomed, in American society, to use violence when faced with economic threat (in this case the threat of women in the workplace

83 Ibid., 3.
taking men’s jobs, etc.), and because “manhood in American society is defined by economic success and sexual prowess.” While AASC did not explicitly discuss sexual harassment in the context of other workplace issues such as equal pay or pregnancy benefits, they did provide statistical evidence in the brochure and theorized why men may have felt threatened in the mid-1970s by providing figures illustrating that more women were working in the labor force than ever before. In addition, while they did not discuss equal pay explicitly, AASC presented statistics that illustrated that women’s average earnings were lower than men’s and that the earnings of minority women were the lowest of all. AASC noted that minority women were in a “perilous economic position” and that the figures demonstrated “the particular vulnerability of minority women in regard to sexual harassment at the workplace.” In the final paragraph of this section, AASC wrote the following: “Monetary livelihood, to a great extent, determines women’s consciousness and self-expectations, including what women will tolerate at the workplace. Most women have little autonomy or control over working conditions. We must answer constantly to an employer and are often powerless to change work situations. Thus, economic survival has been a major reason for difficulties in successfully combatting [sic] sexual harassment at the workplace.” This statement reinforces both Nancy MacLean’s arguments about women and work and the idea that sexual harassment was an economic and emotional threat. AASC even went one step further when summarizing the historical background of

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84 Ibid., 5
85 Ibid., 6
86 Ibid., 8.
87 Ibid., 8 and 10.
88 Ibid., 10.
89 Ibid., 11.
sexual harassment in which the conditions made the behavior “a means for male workers to deal with women who they see as threats to their masculinity, power, or economic status.”

The work of WWUI and AASC illustrates both the successes and limits of early activism regarding sexual harassment. These organizations played an essential role in raising the issue and bringing it out in the open, yet activists in both organizations spoke of the need for more women to join their efforts. The fact that they did not agree on every single aspect of the problem was outweighed by their similarities in locating its economic component and its roots in the power dynamic between men and women at work, in addition to the overall necessity of publicizing the issue. More generally, these early activist groups needed to overcome the mindset shared by many Americans that sexual harassment was not a problem, as illustrated by a remark from a woman who said, several months later, that “sex is a good thing” and “there can never be too much of a good thing—even at work.” Without the help and broad support from more women’s organizations and working women themselves in framing this issue, either by joining these organizations or in filing complaints and arguing for policies, WWUI and AASC realized that the changes they were seeking would not take place.

**Diffusion Continues as the Media and Activists Survey American Women about Sexual Harassment, Drawing in Older Feminist Organizations**

It is apparent when examining their early efforts that these organizers and the victims they spoke with framed sexual harassment as an economic problem, but not everyone saw this connection at first, including other feminists. As Tarrow theorizes, new movement organizations do not only have disagreements over framing an issue amongst themselves, as in the different ways WWUI and AASC approached sexual harassment activism, but they also tend to have

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91 AASC Brochure, 15.
difficulty in dealing with older movement organizations over how a problem is defined. If activists’ goals are to raise awareness and then solve a problem, identifying if and when tension arises between these organizations is key to understanding how and when their efforts lead to change in society. This also helps to identify when problems arose and how they can be avoided in the future. The issue of sexual harassment experienced such tension when WWUI encountered resistance from more established feminist organizations as it tried to study and raise awareness about the problem and AASC had also realized that working women and feminist organizations were not tackling the issue. Writing about sexual harassment activism over two decades later, Susan Brownmiller offered one possible explanation. Brownmiller interviewed Karen Sauvigné in the 1990s who discussed the “resistance among some feminists” that WWUI experienced in the late 1970s. According to Sauvigné, WWUI had applied for a grant from the Ms. Foundation in the early years, but that it was turned down because “sexual harassment wasn’t a bread and butter issue because it was not about equal pay for equal work.” Sauvigné continued, “We utterly failed to persuade them that women were losing their jobs over this, that sexual harassment contributed to the discouragement and dead-end nature of women’s careers.” Another group of scholars note a similar reason for NOW’s slow response to sexual harassment in its preoccupation “with general economic and political issues.” Clearly then, WWUI still had work to do in making older feminist organizations understand their framing of sexual harassment as a problem that violated both women’s economic and political rights under Title VII.

93 Quoted in Brownmiller, In Our Time, 284.  
94 Quoted in ibid.  
95 Weeks, Boles, Garbin, and Blount, “The Transformation of Sexual Harassment,” 436. They also say that the National Women’s Political Caucus shared similar concerns and was thus also not involved in identifying and defining sexual harassment.
Despite the reluctance of the Ms. Foundation and the NOW headquarters in 1975-76, women around the country responded to the issue of sexual harassment. While it is not possible to trace how many women joined feminist organizations or unions because of sexual harassment as there were many problems facing women at this time, the fact that many women responded to the issue is evident in newspaper, magazine, and survey accounts during the years 1976 and 1977. On January 29, 1976, the *Wall Street Journal* published its first article on sexual harassment, “Career Women Decry Sexual Harassment By Bosses and Clients.” Similar to Nemy’s article, this story, written by Mary Bralove, gave a history of how the problem was named and offered accounts of harassment from women who had experienced it. Bralove also published the results of WWU’s survey which was handed out at the May speak-out. She reported that of the 155 women who had completed the survey, 70 had experienced sexual harassment themselves and 92 percent of that number believed sexual harassment to be a serious problem.96 Bralove also wrote about how women usually dealt with sexual harassment by keeping silent but that they were beginning to change this by adopting new tactics. She explained, “These days, the wall of silence surrounding the issue of sexual harassment is gradually crumbling. Across the country, small pockets of working women are boldly speaking out and seeking protection against unwanted sexual advances by bosses or clients.”97

Another indication that more women were aware of sexual harassment and were beginning to consider its impact on their lives was the results of *Redbook Magazine*’s sexual harassment survey, published in November 1976. In January of that year, *Redbook* called on its readers to respond to the overall question, “How do you handle…sex on the job?” The survey asked respondents for personal information such as their occupation, age, salary, and level of

97 Ibid.
education. *Redbook* then questioned them about more specific incidents, including the types of harassment they had experienced, their feelings about it, how they reacted to it, whether or not they or someone they knew had quit or been fired because of it, and how they shielded themselves from it. Respondents were also polled about whether or not they had ever used their sexual attractiveness to their advantage at work, about how important they felt men’s and women’s attractiveness was to their working lives, and about what they thought would happen if they reported sexual harassment to their supervisors or union representatives.\(^98\)

*Redbook* received 9,000 responses, making their survey the first of its kind in measuring how sexual harassment affected that many women across the country. The magazine printed the survey results in an article by Claire Safran with the title, “What Men Do to Women on the Job: A Shocking Look at Sexual Harassment.”\(^99\) Safran reported that, according to the survey, sexual harassment was “not epidemic” but “pandemic—an everyday, everywhere occurrence” which had been experienced by nine out of ten respondents.\(^100\) Safran wrote that 92 percent of the women surveyed said that sexual harassment happened when it came “from someone with the economic power to hire or fire, help or hinder, reward or punish,” including supervisors, co-workers, or clients.\(^101\) She also reported that women were financially and emotionally hurt by sexual harassment and nearly half of those who completed the survey had themselves been or knew of someone who had been fired or quit because of it.\(^102\)

Much of what the survey revealed was similar to WWUI and AASC’s explanation of the problem, including exposing the myth that sexual harassment only happened to women at the bottom of the economic scale. Safran wrote that “there is scarcely any difference in the amount

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\(^100\) Ibid., 217.
\(^101\) Ibid., 149.
\(^102\) Ibid., 217.
of sexual harassment that goes on in the executive suite, in the steno pool or on the assembly line…it happens everywhere, to almost the same degree, though it may be gross in some places, subtle in others” and “whether a woman is married or single, 20-ish or 40-ish.”103 The women’s reactions were also the same, with almost 75 percent finding the behavior “embarrassing,” “demeaning,” or “intimidating,” and an overwhelming majority “feeling helpless.”104 Not surprisingly, only one in four of the women felt that anything would be done to their harassers if they reported the abuse.105

The Redbook survey was significant in that it lent even more support to the claim that sexual harassment was a widespread problem; yet, even Safran noted in her article that the sample group had been “self-selected” and that the women who responded had most likely completed the survey because they felt strongly about the issue.106 In order to answer this possible criticism, Safran compared the Redbook results to those of a naval officer who had used the Redbook survey to randomly poll the women on his base and in nearby Monterey, California. According to Safran, even though his survey was of a smaller number of women, 81 percent of them reported that they had experienced sexual harassment, compared to the 88 percent of the Redbook survey. Safran also lined the Redbook results up against those of a survey conducted by a group of women at Cornell University who had found that 70 percent of the women in their area had been sexual harassed.107 The message, then, was clear: sexual harassment was a big problem that needed to be addressed.

Even if the survey only presented figures from women who had been harassed, the appearance of a six-page, in-depth article in a major women’s magazine was significant in its

103 Ibid., 217.
104 Ibid., 217 and 218.
105 Ibid., 218.
106 Ibid.
107 Ibid. Safran does not indicate whether or not this was the same survey conducted by WWU.
ability to reach other women who may not have been familiar with the issue otherwise. Hence, the fact that *Redbook* both reported about the number of women affected by the problem and about how women could handle it is important. In 1976, *Redbook* noted at least twice that sexual harassment was an illegal form of sex discrimination, an idea still in its infancy even with some women’s rights organizations. Whereas AASC insisted that this issue still needed to be tested, *Redbook* told women that it was “a serious form of discrimination”\(^{108}\) and that they needed to seek help from local and federal government agencies, including city or state human rights or fair employment agencies and the EEOC.\(^{109}\) The article stated then, in clear terms, that sexual harassment was sex discrimination and that women should bring these complaints forward if they wanted to change their workplaces.

That these articles and the *Redbook* survey made an impact in drawing interest in sexual harassment activism by older feminist organizations is evident in Brownmiller’s observation that, by 1977, some women in the feminist movement were beginning to change their minds, including those at *Ms*. Brownmiller writes that the magazine “finally got its act together” regarding sexual harassment.\(^{110}\) In October 1977 *Ms.* magazine sponsored a forum on sexual harassment that was organized by Susan Meyer and Karen Sauvigné and reported on by *New York Times* writer Ann Crittenden. Like similar events, the format for this speak-out consisted of several women speaking before an audience and describing their stories of sexual harassment at the workplace. During this event an audience of nearly 200 women heard from victims of sexual harassment who represented a variety of occupations, including a stenographer, an actress, a buyer for a garment firm, and a Wall Street investor. *Ms.* founder Gloria Steinem also addressed the group and spoke about the underlying cause of sexual harassment in the power dynamic

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\(^{108}\) Ibid., 220.
\(^{109}\) Ibid., 224.
\(^{110}\) Brownmiller, *In Our Time*, 284.
between men and women. Steinem felt that men sexually harassed women when they were in lower positions or were beginning to climb the corporate ladder. Sexual harassment provided a reminder about their proper place. On this point Steinem said the following, which became an oft-quoted remark about sexual harassment, “Sexual harassment might be called the taming of the shrew syndrome...It’s a reminder of powerlessness—a status reminder.”

Steinem’s argument gives further weight to the idea that more feminists in the late-1970s were responding to the problem of sexual harassment and locating the cause of it in the imbalance of power between men and women. This imbalance had much to do with the general status of women as second-class citizens. More importantly, it was also related to their economic status as well—where women were often found in less-paying jobs. Along these lines, feminists such as Steinem exposed sexual harassment as a male response to women infringing on their territory in the workplace.

*Ms.* also ran its own article, “Sexual Harassment on the Job and How to Stop It,” by Karen Lindsey, in its November 1977 issue. Like the other newspaper and magazine articles on sexual harassment that appeared before it, Lindsey’s article offered examples of the types of sexual harassment that had happened to working women, including one story about a secretary whose boss had unzipped his pants in front of her and another of a waitress who was required to wear a skimpy costume and put up with customers who were constantly grabbing her.

Lindsey included a different story in her report involving women on Capitol Hill complaining of sexual harassment and wrote of how they had to dodge their bosses and co-workers around desks and how they had to play “hostess” to important guests. Moreover, she noted that the men in

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Congress were protected from antidiscrimination legislation by a declaration of President Carter’s attorney general, which essentially made Congressmen immune from penalties for their actions.\textsuperscript{113}

Lindsey’s article on women and sexual harassment at work was accompanied by Mim Kelber’s piece that exposed the sexual harassment of women at the United Nations, “Sexual Harassment…The UN’s Dirty Little Secret.” Kelber began by describing how a number of women had come to the UN headquarters in New York City as foreign nationals. Many of these women by the mid-to-late-1970s were single women from the Philippines and other Third World regions and had come to the UN seeking better economic opportunities. Instead, the women told Kelber of being verbally and physically harassed by “men of all nationalities.”\textsuperscript{114} In a different twist on the story of sexual harassment at the workplace, these women also spoke of men who used their positions at the UN to attempt to coerce both women and men into sexual relationships. Kelber supported these claims with results from a report conducted by the UN Ad Hoc Group on Equal Rights for Women which had distributed a questionnaire to 875 women and men at the UN, representing both professional and clerical jobs. In their report, 50 percent of the women and 31 percent of the men had been sexually harassed or knew of someone else being sexually harassed.\textsuperscript{115} Much like victims of sexual harassment in American workplaces, the respondents told of the economic consequences of the harassment in circumstances such as retaliation for complaining, forced transfers, less challenging job duties, and denied promotions. For women dependent on work at the UN in order to remain in the United States on work visas, Kelber noted the vulnerability of these women who faced situations such as those which were

\textsuperscript{113} Ibid. Lindsey explains that the Carter administration used “separation of power” theories to claim immunity from antidiscrimination legislation.

\textsuperscript{114} Mim Kelber, “Sexual Harassment…The UN’s Dirty Little Secret,” \textit{Ms.}, November 1977, 51.

\textsuperscript{115} Ibid. Kelber does not specify whether or not this harassment came from members of the opposite sex or from those of same sex.
reflected in the survey.\textsuperscript{116} As these articles indicate, along with previous ones and survey results, sexual harassment as an issue of sex discrimination and economic rights was becoming more widespread by the late 1970s.

NOW finally began contributing to this awareness in the late 1970s as well, with its Legal Defense and Education Fund working with WWUI in New York City on an early sexual harassment case.\textsuperscript{117} According to Carrie N. Baker, NOW made its first political statement about sexual harassment when its members passed a resolution on sexual harassment at the 1979 national conference which “provided that NOW would support litigation to establish a clear cut precedent that sexual harassment was sex discrimination, that they would ‘evaluate the feasibility’ of introducing legislation in Congress to explicitly prohibit sexual harassment under Title VII, and that they would develop projects for local NOW groups to publicize the issue and aid victims.”\textsuperscript{118} Finally, one of the most well known and, for this time, “oldest” feminist organizations, emphatically stated what the newer organizations had, for the most part, argued all along: that sexual harassment was sex discrimination. Coincidentally, NOW adopted this resolution during the time when the courts were beginning to agree with this position as well.

\textbf{“Sexual Harassment is Sex Discrimination” Frame Begins to be Backed by Courts}

In the two years after feminists first named sexual harassment, women had responded to the issue in many ways, including organizing and participating in speak-outs, writing newspaper and magazine articles, and completing questionnaires. Also by this time, a few women had reacted to this workplace injustice by doing more than picking up a pen and filling out a survey. These women, Paulette Barnes, Jane Corne, Geneva DeVane, Diane Williams, and Margaret

\textsuperscript{117} Baker, “Sex, Power, and Politics,” 238.
\textsuperscript{118} Ibid., 246.
Miller, were the plaintiffs in the first sexual harassment legal cases to reach federal courts.\(^{119}\) During the course of 1974-1976, their four case proceedings became the site in which judges first tackled the question of whether sexual harassment constituted sex discrimination. Because all of these cases had been filed before sexual harassment even had a name, the judges’ decisions do not even make reference to that phrase.\(^{120}\) While only Diane Williams’ case resulted in a positive verdict with the judge ruling in favor of sexual harassment as a Title VII claim, the legal pioneering of these plaintiffs and their attorneys was followed by others. By the end of 1979, nine more cases of employment discrimination had been filed at the federal level, in addition to one other case that involved sexual harassment in education.\(^{121}\) This, in essence, was the “testing period” that AASC spoke of.

According to Carrie N. Baker, the earliest cases alleging what became known as sexual harassment were filed with the EEOC beginning in 1971. Without a name, the problem was framed as one of hostility to women in the workplace and not one of sexual behaviors during these proceedings. They later became sexual harassment cases once feminists coined the term and legal theorists developed the concept of sexual harassment as a Title VII violation. Of the cases that first reached federal district courts, Baker explains that many of these women were “black women who were familiar with discrimination law and the mechanisms for legal redress because of their understanding of race discrimination” and that “two of these early cases were


originally filed as race discrimination claims."\(^{122}\) Baker also describes how plaintiffs and their attorneys looked to early racial harassment cases for guidance in bringing these allegations before the courts.\(^{123}\) One of the best examples came from the *Rogers v. Equal Employment Opportunity Commission* decision, a 1971 case in which Josephine Chavez, a self-described “Spanish surnamed American” woman and employee of an optometrists’ office, filed a discrimination complaint with the EEOC on the basis of national origin. Chavez claimed her employers discriminated against her by firing her for not getting along with her all-white co-workers and because they made their employees record their patients’ information according to race, with African-American patients written in red and all other patients written in blue or black. When the case went to trial, the federal trial court found no grounds of discrimination under Title VII. The appellate court reversed this decision and the judge who gave the opinion argued that Title VII was intended by Congress to be applied broadly and the status of the working environment, in addition to hiring and firing practices, should be considered when examining discrimination cases. Because of this emphasis on the working environment and a broad application of Title VII, the *Rogers* decision—although it in no way mentioned sexual harassment—was frequently cited in early sexual harassment cases alleging sex discrimination as a guide for how judges should consider the effect of sexual harassment on the work environment.\(^{124}\)

In 1974, the case of *Barnes v. Train* became the first sexual harassment case involving workplace behavior to reach federal district court.\(^{125}\) The lawsuit was brought by Paulette Barnes, a black woman who argued that her supervisor, a white male, committed sex

\(^{123}\) Ibid., 43.
\(^{124}\) Ibid., 43-46.
\(^{125}\) Ibid., 49.
discrimination by retaliating against her and eliminating her job after she declined his sexual advances. Refusing to see the case as anything more than a personal dispute between a woman and a man over Barnes’ refusal to have an affair with her boss, the court ruled that the behavior was not on account of her sex and therefore not sex discrimination. When Barnes appealed, this ruling was overturned and the appellate court ruled that sexual harassment was a violation of Title VII in 1977.

In 1975, an Arizona office of the EEOC wrote what would later be considered the agency’s first official position that sexual coercion in the workplace constituted sex discrimination. The EEOC filed an amicus curiae brief in the Corne v. Bausch and Lomb case, the second case to reach the federal courts before sexual harassment was named as such. The plaintiffs in the Corne case, Jane Corne and Geneva DeVane, were clerical workers who alleged that their male supervisor repeatedly harassed them verbally and physically to the point that their jobs were intolerable. Echoing what later working women and activists would argue about how sexual harassment affected them economically, Corne and DeVane told the court that their supervisor’s behavior placed them in the difficult position of putting up with such treatment or not working at all. They later quit their jobs in order to escape such abuse. As a result, they believed that their employer was guilty of sex discrimination for allowing their supervisor to impose such conditions. The judge in the case refused to see how their supervisor’s actions could benefit their employer and therefore did not agree that Baush and Lomb should be held accountable.

128 Baker, “Sex, Power, and Politics,” 49 and MacKinnon, 59-60. Although decided in 1975, Baker and MacKinnon note that the Corne case was not reported until a few years later and was therefore not widely known until its appeal in 1977.
129 MacKinnon, 60-61 and *Corne v. Bausch and Lomb*. 
Although these cases originated before activists coined the phrase “sexual harassment” and began forming an organized response, they demonstrate how women responded to this problem via the American legal system and served as a guide for feminists when framing the problem. Activists later looked to these early cases and argued for Title VII remedies, illustrating the significance of these plaintiffs’ actions. Sexual harassment might have been a new phrase to these women, but facing sex discrimination in the workplace in the form of pay inequity and denial of entry into certain jobs was not. These early plaintiffs, then, put the unwanted sexual attention they faced in the workplace into the existing framework of employment discrimination law, where women had already made gains in the courts with regards to sex discrimination in help-wanted advertising and in access to jobs that had previously been denied to them because of their physical differences from men or because of sex stereotyping. Therefore, the earliest sexual harassment plaintiffs acted upon existing concepts of citizenship and rights when filing claims of sex discrimination by asserting that, just as in these earlier decisions, women were sexually harassed (and thus discriminated against in employment) because of their gender. Once these types of cases began to be decided in favor of the women, scholars and activists were prompted to argue clearly and effectively using the frame that Title VII was the best legal remedy against sexual harassment.

When looking at the history of sexual harassment policy the role of women such as Barnes, Corne, DeVane, Williams, and Miller is noted only as their cases are described. Usually, their stories are limited to a brief mention with the result of their cases, then maybe a personal

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130 For how women were acting on these issues by the late 1970s see MacLean, Freedom is Not Enough, Cobble, The Other Women’s Movement, Susan M. Hartmann, The Other Feminists, and Dennis A. Deslippe, “Rights Not Roses”: Unions and the Rise of Working-Class Feminism, 1945-80 (Urbana, IL: University of Illinois Press, 2000).
132 Ibid., 122-123.
reaction or two to the overall experience of their trial (the effect, often one of emotional and financial toll, which the trial had on their lives). Because their actions came before feminists mobilized around the problem of sexual harassment, the link between these women and acts of citizenship needs further consideration. While the victims at the first speak-out publicized the issue, these four women and the others who followed later in the 1970s, politicized it in a different way, through the court system. Since this is where the illegality of sexual harassment would eventually be determined with the Supreme Court’s 1986 *Meritor v. Vinson* decision, it is worth examining the political currency of women who filed sexual harassment claims in the uncharted territory of sex discrimination law.

These cases impacted sexual harassment policy because they were a significant development in outlining sexual harassment as sex discrimination, before the EEOC issued its guidelines. The idea that court cases shape public policy corresponds with the scholarship of Anna-Maria Marshall who studied the plaintiffs in the first sexual harassment cases at length. Marshall argues that they “reveal the potential political significance of private litigation,” with “private litigation” signifying that these cases were brought by individual women. In turn, this “political significance” of sexual harassment litigation relates to the fight for sexual harassment policies by victims and their use of expressions of economic citizenship as a means of stating their rights to these policies. The plaintiffs (and their attorneys) explicitly claimed that sexual harassment was sex discrimination because it deprived them of the basic right, as they saw it, to work without having to be verbally or physically harassed by their male supervisors, colleagues, and clients. As such, plaintiffs, activists, and other women who argued for the recognition of sexual harassment as sex discrimination were part of the same push for these

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rights. Yet, by the mid- to late-1970s, as AASC suggested and Marshall also illustrates, these groups had not formed a cohesive effort to make this a reality. These plaintiffs and their attorneys were, therefore, on their own, and, as their early defeats would suggest, they were fighting an uphill battle.

In 1976, Diane Williams’ case, *Williams v. Saxbe*, became the first in which a federal district court found that sexual harassment constituted an actionable offense under Title VII of the Civil Rights of 1964, as amended by the Equal Employment Opportunity Act of 1972. Although the decisions in two of the original four cases, *Barnes v. Costle* (formerly *Barnes v. Train*) and *Miller v. Bank of America* were later reversed after the *Williams* verdict, the reasons why federal district courts originally did not find for a cause of sex discrimination in these first cases illustrates the legal thinking on sexual harassment in the years before the EEOC added it to its sex discrimination guidelines in 1980, and is therefore an important part of the history of sexual harassment policy. In *Barnes v. Train*, District Judge John Lewis Smith, Jr. wrote in his opinion that the alleged retaliatory actions of plaintiff’s supervisor taken because plaintiff refused his request for an ‘after hours affair,’ are not the type of discriminatory conduct contemplated by the 1972 Act…The substance of plaintiff’s complaint is that she was discriminated against, not because she was a woman, but because she refused to engage in a sexual affair with her supervisor. This is a controversy underpinned by the subtleties of an inharmonious personal relationship. Regardless of how inexcusable the conduct of plaintiff’s supervisor might have been, it does not evidence an arbitrary barrier to continued employment based on plaintiff’s sex.\footnote{Barnes v. Train.}

\footnote{Ibid., 787.}
\footnote{Barnes v. Costle and Miller v. Bank of America.}
\footnote{Barnes v. Train.}
Similar to Barnes v. Train, the Court in Corne v. Bausch and Lomb treated sexual harassment as a personal issue between supervisors and employees and not a problem of gender or sex discrimination. In his opinion, District Justice Frey wrote that Corne and DeVane “failed to state a claim for relief under Title VII of the Civil Rights Act” because the Court thought that their boss, Leon Price, did not sexually harass them as part of a company policy but because he “was satisfying a personal urge.”137 Frey also argued that protecting women from the behavior of sexual harassment was not the original intent of Title VII. He stated,

It would be ludicrous to hold that the sort of activity involved here was contemplated by the Act because to do so would mean that if the conduct complained of was directed equally to males there would be no basis for suit. Also, an outgrowth of holding such activity to be actionable under Title VII would be a potential federal lawsuit every time any employee made amorous or sexually oriented advances toward another. The only sure way an employer could avoid such charges would be to have employees who were asexual.138

Miller’s case was a bit different from these first two because her employer, Bank of America, actually had a sexually harassment policy on its books.139 However, she went directly to the EEOC and did not use the bank’s complaint procedures before filing her lawsuit, a fact that the Court used in dismissing her original claim. District Judge Spencer Williams recorded this in his opinion and stipulated that the Bank could not be held responsible for the harassment when he stated that the “plaintiff cannot validly claim Bank’s tacit approval of Taufer’s [her supervisor’s] conduct since…she failed to bring the matter to Bank’s attention by filing a complaint with Bank’s Employer Relations Department and allowing it to conduct an appropriate

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137 Corne v. Bausch and Lomb, Inc.
138 Ibid.
139 Miller v. Bank of America. The court document does not outline the origins of this policy. However, it does state that it was “undisputed that Bank has a policy of discouraging sexual advances of the sort here alleged and of affirmatively disciplining employees of such conduct.”
In addition to dismissing the Title VII claim, the Court in *Miller* was also similar to that of *Corne* and even referenced this decision when Judge Williams expressed the Court’s fear that if federal courts recognized sexual harassment as sex discrimination, then a watershed effect would result in which such cases would come pouring into the legal system. He wrote,

In addition, it would not be difficult to foresee a federal challenge based on alleged sex motivated consideration of the complainant’s superior in every case of a lost promotion, transfer, demotion, or dismissal. And who is to say what degree of sexual cooperation would found a Title VII claim? Is it conceivable, under plaintiff’s theory, that flirtations of the smallest order would give rise to liability. The attraction of males to females and females to males is a natural sex phenomenon and it is probable that this attraction plays at least a subtle part in most personnel decisions. Such being the case, it would seem wise for the Courts to refrain from delving into these matters short of specific factual allegations describing an employer policy which in its application imposes or permits a consistent, as distinguished from isolated, sex-based discrimination on a definable employee group.

When looking at the *Miller* decision and comparing it to previous sexual harassment cases, the court’s conceptualization of sexual harassment can be characterized as follows: it viewed the problem as of a personal nature and not one that had any bearing on employment decisions; they considered it outside of the original scope of Title VII, and they feared that ruling sexual harassment a violation of Title VII would bring frivolous lawsuits. None of these reasons reflected the thoughts of victims and activists that were beginning to be publicized by 1976, when the last of these verdicts was handed down. Not surprisingly, the court system itself was behind these plaintiffs and the feminist activists and working women who argued that sexual

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140 *Miller v. Bank of America.*  
141 Ibid.
harassment was a widespread problem in the labor system that needed to be recognized and institutionalized by policy.

Only about a year after the Ithaca speak-out, however, the district court in Williams did claim that women could sue under Title VII when it ruled that the “retaliatory actions of a male supervisor, taken because a female employee declined his sexual advances, constitutes discrimination within the definitional parameters of Title VII of the Civil Rights Act of 1964, as amended.” Williams, an employee of the Justice Department, alleged that her supervisor had retaliated against her by interfering with her job performance and giving her poor evaluations after she rejected his sexual advances. He denied this, even though he had once sent Williams a Mother’s Day card in which he told her that “seldom a day goes by…without a loving thought of you,” which made the defense’s argument that Williams’ poor reviews were because of her declining performance and not because of his advances hard to believe.

Based on this evidence, the district court decided in favor of Williams. U.S. District Judge Charles Richey wrote the opinion and stated even more clearly that “taking the facts of the plaintiff’s complaint as true, the conduct of the plaintiff’s supervisor created an artificial barrier to employment which was placed before one gender and not the other, despite the fact that both genders were similarly situated.” Richey summarized the defendants’ argument in favor of dismissing Williams’ Title VII claim and illustrated that the defendants believed the claim should be dismissed because they understood Title VII as only protecting women from discrimination when sex stereotypes are involved, such as “women are weak” or “women are not business-minded.” The district court rejected this opinion and considered it a “narrow view of

142 Williams v. Saxbe.
143 Catharine MacKinnon, 60, 63-65.
144 Quoted in ibid., 64.
145 Williams v. Saxbe.
the prohibition of the statute” and “an erroneous analysis of the concept of sex discrimination as found in Title VII.” Richey stated,

On its face, the statute clearly does not limit discrimination to sex stereotypes. And while there is language in the legislative history of the amendment that indicates that Congress did want to eliminate impediments to employment erected by sex stereotypes, these expressions do not provide a basis for limiting the scope of the statute, particularly since there is ample evidence that Congress’ intent was not to limit the scope and effect of Title VII, but rather, to have it broadly construed. Furthermore, the plain meaning of the term ‘sex discrimination’ as used in the statute encompasses discrimination between genders whether the discrimination is the result of a well-recognized sex stereotype or for any other reason. It is important in this regard to note that Title VII is applicable to men as well as to women. With this last sentence, the Richey addressed the possibility that this argument could lend itself to situations where women harassed men or men harassed men, although no such claim had been made before courts at this time. Richey further explained that the district court interpreted Title VII to nonetheless include the possibility that such claims could be brought by either genders when he asserted,

It is also notable that since the statute prohibits discrimination against men as well as women, a finding of discrimination could be made where a female supervisor imposed the criteria of the instant case upon only the male employees in her office. So could a finding of discrimination be made if the supervisor were a homosexual. And, the fact that a finding of discrimination could not be made if the supervisor were a bisexual and applied this criteria to both genders should not lead to a conclusion that sex discrimination could not occur in other situations…

While Richey may have been foreshadowing future court cases in which gender and sexuality would have more of a bearing on Title VII decisions regarding sexual harassment, the fact that the district court ruled in favor of Williams was a significant step in the development of sexual

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146 Ibid.
147 Ibid.
148 Ibid.
harassment law and policy. As this dissertation will show in a later chapter, Diane Williams herself would become a figure closely associated with this development when she testified before Congress about the problem of sexual harassment in the workplace.

In the nine other sexual harassment cases alleging sex discrimination based on Title VII that came before federal district courts after Williams, the courts ruled in four of them that the plaintiffs’ claims constituted actionable offenses under Title VII. In the remaining five cases, plus the case that alleged sex discrimination in education under Title IX of the Education Amendments of 1972, Alexander v. Yale, federal courts found no cause of action under sex discrimination law. Only two of these decisions were reversed on appeal with only one of the reversals being decided before the EEOC guidelines were issued in 1980 when Tomkins v. PSE&G was reversed in 1977. Even unsuccessful decisions, in which federal courts did not rule in favor of sex discrimination, did not change the definition or scope of sexual harassment. For the most part, these judges did not stray from how feminists had defined sexual harassment because they considered their merit under Title VII when weighing whether or not employers were liable for sex discrimination.

All in all, the “testing ground” of Title VII claims was beginning to turn out in favor of working women, although sexual harassment remained a complicated issue to identify and


150 See Tomkins v. PSE&G (1977). The other case that was reversed was Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981).

151 MacKinnon, 71, Tomkins v. PSE&G, Neely v. American Fidelity Insurance, Smith v. Rust Engineering, Bundy v. Jackson, and Neidhardt and Marino v. D.H. Holmes Co. In Tomkins, the lower court rejected the sexual harassment claim, not because of a disagreement over how the problem was defined, but because of the fear that it would open the floodgates, so to speak, and result in many more such suits, in addition to the fact that the lower court did not find the employer liable at this time. In Neely, Smith, Bundy, and Neidhardt, the lower courts all ruled because of a dispute over the facts in each case and also not because of any dispute over the definition, thus not changing the feminist definition or scope of the problem.
define. Yet, in the midst of all of this legal action, one legal theorist, a recent Yale law school graduate, Catharine MacKinnon, was working to clarify how sexual harassment was a form of sex discrimination. While at Yale, MacKinnon interned for the New Haven Law Collective, which handled the *Alexander v. Yale* case. She wrote her law school thesis on sexual harassment in late 1974-early 1975 and began passing it around to other members of the legal community and activists who were concerned about this issue. She then published this work as her 1979 book, *Sexual Harassment of Working Women: A Case of Sex Discrimination.*¹⁵² Catharine MacKinnon made her mark on the history and development of sexual harassment law in two important ways. First, she defined the two types of sexual harassment that women faced at the workplace, quid pro quo and condition of work sexual harassment. Second, she clearly argued and outlined all of the reasons why sexual harassment constituted sex discrimination. Since the courts were just beginning to rule that sexual harassment was sex discrimination by 1979, the appearance of her book at that time was significant and would have a broad impact because it would be cited in the first Congressional hearings on sexual harassment later that year and because her theories would be reflected in the EEOC’s 1980 Guidelines.

MacKinnon’s first type of sexual harassment, quid pro quo harassment, was addressed by the federal district courts in all but two of the 13 cases that were decided before 1979. She defined quid pro quo sexual harassment as “the more or less explicit exchange, the woman must comply sexually or forfeit an employment benefit.”¹⁵³ Because quid pro quo harassment needed the weight of economic power behind it, this type of harassment constituted that which took place between supervisors and employees. It was also the simplest form of harassment to identify because an employee was usually fired or forced to forego another employment benefit,
such as a promotion, for not going along with her supervisor’s demands. Whereas quid pro quo harassment was clearly visible, MacKinnon considered condition of work sexual harassment, also known later as hostile environment or hostile work environment sexual harassment, to be “less clear” and “undoubtedly more pervasive” and defined it as “the situation in which sexual harassment simply makes the work environment unbearable.” Because this definition was “less clear,” she continued to outline the behavior by claiming, “Unwanted sexual advances, made simply because she has a woman’s body, can be a daily part of a woman’s work life. She may be constantly felt or pinched, visually undressed and stared at, surreptitiously kissed, commented upon, manipulated into being found alone, and generally taken advantage of at work—but never promised or denied anything explicitly connected with her job.”

While this second type of harassment was experienced by countless women in the years when sexual harassment activism was getting off the ground, as evidenced when working women spoke of it while attending speak-outs and completing surveys, condition of work harassment, as noted above, had not been considered by the courts at length. Although this was not a fault of the courts as they decided only on the cases brought before them, the fact that only two women had brought such cases before 1979 speaks to the complexity involved in identifying this type of harassment. Some women may have not even realized that these subtle forms of abuse could be considered sexual harassment and therefore sex discrimination, or they feared that the courts would not see it that way. These fears were well-founded given the history of sexual harassment claims in general and the fact that the first two hostile environment claims brought before the

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154 Ibid., 40.
courts, *Smith v. Rust Engineering* and *Bundy v. Jackson*, were dismissed because the courts could not envision sexual harassment as discrimination without the loss of a tangible job benefit.\(^{155}\)

MacKinnon’s second contribution in 1979 was in being the first legal scholar to publish on sexual harassment at length and outline why it should be a Title VII issue. However, she was not the first activist to make this claim. The efforts of Lin Farley, Susan Meyer, and Karen Sauvigné in forming WWU/I are noted above.\(^{156}\) Farley later split from Meyer and Sauvigné because of a dispute over who had actually coined the term “sexual harassment” and wrote about sexual harassment and sex discrimination in her 1978 book, *Sexual Shakedown: The Sexual Harassment of Women on the Job*. Farley expounded upon her earlier definition of sexual harassment and conceptualized the problem as follows: “The end result of male sexual harassment of women on the job is the extortion of female subservience at work. As a consequence, the broad range of male aggression brought to bear against working women—which includes, but is not limited to, forced sex either by rape or in exchange for work—cannot be seen as anything more (or less) than the means by which this extortion is effected.” She continues, “Work is the key element in understanding sexual harassment, because this is the price men are controlling through their extortion…The consequences of such extortion—being denied work or being forced out of work or being intimidated on the job as a result of male sexual aggression—are at the heart of the problem of sexual harassment.”\(^{157}\) Here, Farley’s understanding of work as central to the issue of sexual harassment is a key element of her text as it lends itself to the argument that sexual harassment policies should remedy situations in which women are denied the right to work. She discusses the variety of ways in which individuals and

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\(^{156}\) Please note that in 1978 Meyer and Sauvigné changed WWUI’s name from Working Women United Institute to Working Women Institute (WWI), since WWU no longer existed. See Baker, “Sex, Power, and Politics,” 122.

groups were arguing for these policies, including the work of private litigators, human rights commissions, and unemployment offices.¹⁵⁸ In doing so, Farley highlights their use of Title VII to argue for back wages or reinstatement for victims of sexual harassment. She offers her opinion that Title VII was “the farthest-reaching law in the area of employment discrimination on the basis of sex” at the time and that it held “the greatest potential for forcing change in employment practices.”¹⁵⁹

When MacKinnon made similar claims she also located the fundamental issue of sexual harassment in the relationship of women and work. She writes, “Work is critical to women’s survival and independence. Sexual harassment exemplifies and promotes employment practices which disadvantage women in work (especially occupational segregation) and sexual practices which intimately degrade and objectify women. In this broader perspective, sexual harassment at work undercuts women’s potential for social equality in two interpenetrated ways: by using her employment to coerce her sexually, while using her position to coerce her economically.”¹⁶⁰ Here, MacKinnon hits upon a point expressed by Janet Ostreich and Cathy Edmondson who, as recorded in Enid Nemy’s 1975 article, linked sexuality and work in terms of the power men exercise when they sexually harass women. Recall that Ostreich and Edmondson realized that the men who were harassing women in their workplaces did so either because they believed that they had the right or because they thought women should be subservient to men.¹⁶¹ The problem with such sexual power, as MacKinnon understands it, is that, when exercised, it has serious economic consequences for the harassed women. As to what she hoped the determination that sexual harassment was sex discrimination would accomplish to fix this social inequality with

¹⁵⁸ Ibid., 125.
¹⁵⁹ Ibid., 133-134.
¹⁶⁰ MacKinnon, 7.
¹⁶¹ Nemy, “Women Begin to Speak Out Against Sexual Harassment at Work.”
regards to men and women at work, she argues, “Legal recognition that sexual harassment is sex discrimination in employment would help women break the bond between material survival and sexual exploitation. It would support and legitimize women’s economic equality and sexual self-determination at a point at which the two are linked.”\textsuperscript{162} In other words, MacKinnon realized that policies stipulating that sexual harassment was an illegal form of sex discrimination would provide women opportunities to improve their social status in the workplace and their economic status as well.

For these reasons, MacKinnon went to great lengths throughout her work to support her claim that sex discrimination law was the best choice for this to become reality. For instance, in a chapter titled “Sexual Harassment as Sex Discrimination,” she analyzes all of the existing non-Title VII legal options to sexual harassment policy, including tort law, labor agreements, the Occupational Health and Safety Act, and criminal law. MacKinnon then proceeds to pick apart each possible approach and then discards all of them in favor of sex discrimination. She does try to offer an explanation for this by considering that the law was inadequate in these areas because women did not attempt to use them by filing complaints or legal suits.\textsuperscript{163} However, MacKinnon dismisses this excuse because she views the problem as much deeper than women’s lack of complaining. Instead, she locates it in “the conceptual inadequacy of traditional legal theories to the social reality of men’s sexual treatment of women.”\textsuperscript{164} Furthermore, MacKinnon reiterates her overall point and argues, “It is no accident that no recognized legal category has been applied with any regularity to the entire fact pattern of sexual harassment. No legal doctrine except sex

\textsuperscript{162} MacKinnon, 7.
\textsuperscript{163} Ibid., 158-161.
\textsuperscript{164} Ibid., 161.
discrimination, which is relatively new, comfortably accommodates the entire configuration of facts, places them in broad social perspective, or approaches the appropriate relief.”

Conclusion

In her conclusion to *Sexual Harassment of Working Women: A Case of Sex Discrimination*, Catharine MacKinnon writes,

Sexual harassment at work connects the jobs most women do—in which a major part of their work is to be there for men—with the structure of sexual relations—in which their role is also to be there for men—with the denigrated economic status women as a gender occupy throughout the society. Women’s place at work and in sexual relations can be seen as socially constructed, not naturally given; public and structural, not private and individual; separate and subordinate and not equal. Discrimination law exists to remedy such disparities.

Although she expressed herself in a more eloquent way with the publication of her book than had the women who spoke at Ithaca on May 4, 1975, MacKinnon and the women who addressed the crowd that day shared a common complaint: the economic power men wielded over women at the workplace in the form of sexual harassment. They also shared a common goal: to frame this problem as one of employment discrimination, and, therefore, as one of citizenship rights. The role of Catharine MacKinnon and the activists, victims, and plaintiffs who spoke along with her in definitively stating the illegality of sexual harassment as well as in arguing for policies to recognize that fact was significant to the origins of sexual harassment policy in American society. By 1979, one year before the EEOC would effectively make the claim for such a policy a reality, their efforts in expressing sexual harassment as an issue of economic citizenship had come full circle. Their combined forces had put this issue and how it placed a “double burden”

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165 Ibid.
166 Ibid., 220.
on women on the map. The next step in the origins of sexual harassment policy phase would be in how the federal government would respond to this activism.
CHAPTER THREE:
THE FEDERAL GOVERNMENT RESPONDS TO THE PROBLEM OF SEXUAL HARASSMENT

The year 1979 marked a significant turning point in the history of sexual harassment policy. By this time, at least six federal courts had decided that sexual harassment constituted an actionable offense under Title VII of the Civil Rights Act of 1964, Catharine MacKinnon had published her groundbreaking work, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, and feminist activists around the country were raising the issue as one of economic citizenship rights by protesting its negative impact on their earning capabilities and arguing for policies to address the problem. By the end of that year, the federal government also responded to the issue of sexual harassment in the form of congressional hearings. On October 23, November 1, and November 13, 1979, the House of Representatives Subcommittee on Investigations of the Committee on Post Office and Civil Service held hearings on sexual harassment in the federal government. The hearings, called after an alarming report of widespread sexual harassment at the Department of Housing and Urban Development (HUD), are known as the Hanley Hearings, after Representative James M. Hanley (D-NY), the Subcommittee Chairman. These hearings represent the first major federal government response to the problem of sexual harassment and, as a result, they had lasting implications on sexual harassment policy. Because of Chairman Hanley’s investigation and hearings, the first sexual harassment policies for both the federal government and private business sectors were created.

This chapter examines the subcommittee’s hearings and recommendations for addressing sexual harassment in the federal government in order to answer the following questions: How was the problem of sexual harassment viewed by members of Congress when the hearings began? What arguments did witnesses make about the origins of the problem of sexual
harassment and how it should be accounted for in public policy? How did Title VII become the policy most closely associated with remedying sexual harassment? Why did Congress charge the EEOC with writing the first widespread public- and private-level sexual harassment policy? Chapter Three argues that the feminist frame of sexual harassment was being diffused throughout society and was reaching the highest levels of the federal government. The Hanley subcommittee accepted the established viewpoint among feminists which prompted the hearings that sexual harassment in the federal government and in the private sector was a serious problem. In addition, it called for policies based upon the position that sexual harassment was sex discrimination, much as working women and feminists had also done. The outcome of the hearings reinforced the arguments that a majority of feminist activists made about the economic impact of sexual harassment on women and about Title VII as a possible remedy. Throughout the hearings it became evident that, while there were other policies besides Title VII that were being tested as remedies for sexual harassment, such as state unemployment and fair employment practice laws, they did not offer as widespread a remedy as Title VII’s federal anti-discrimination policy. In addition to the idea that a federal sexual harassment policy would cover more women than individual state laws, was the fact that, after the *Williams v. Saxbe* decision in 1976,¹ federal courts were consistently ruling that sexual harassment violated Title VII’s sex discrimination provision. Finally, this chapter maintains that the hearings established EEOC’s position as the federal agency with the largest possible role in enforcing sexual harassment policy because of its ability to regulate anti-discrimination law in both the private and public employment sectors.

In doing so, Chapter Three draws from Sidney Tarrow’s theory on the increased information and interaction stage of a social movement’s mobilization. Of this phase he writes

¹ See Chapter Two.
that “during periods of increased contention, information flows more rapidly, political attention heightens, and interactions among groups of challengers and between them and authorities increase in frequency and intensity.”\(^2\) This chapter considers how, once sexual harassment was framed as an issue of economic citizenship, efforts to understand and stop the problem led to an increased level of contention and an information flow which brought the issue of sexual harassment to the floor of Congress. Here, political attention was heightened during the Hanley subcommittee’s investigation and published report. Although, as this chapter explains, there was much consensus between the committee members and those who testified that sexual harassment was a serious problem for both public and private workers and that Title VII was the appropriate remedy, there were a few dissenting voices. Therefore, even as the feminist frame was being put into practice when Chairman Hanley mandated that the EEOC develop a sexual harassment policy, a challenge was brewing over the question of corporate liability and the severity of the problem in private U.S. businesses. Tarrow sheds light on this by claiming that “new centers of power” also “develop” during this phase and can cause alliances to split during this period as some members of the movement “seek more radical change” while “others try to institutionalize their gains.”\(^3\) Given that Chapter Two showed the differences between how the two main organizations dedicated to sexual harassment activism, Working Women’s Institute (WWI) and the Alliance Against Sexual Coercion (AASC), at times sought different solutions to the problem, Tarrow’s explanation of how movement alliances shift offers further explanation for why WWI argued for government involvement and the use of Title VII as a remedy whereas AASC focused on a variety of different alternatives, some that had nothing to do with


\(^{3}\) Ibid.
governments intervention. Yet, both organizations saw the problem as one of women’s economic status.

This chapter also examines what Hugh Davis Graham outlined as the design stage, adoption, or legislative enactment phase of a policy. The testimony heard throughout the hearings explained why sexual harassment was a problem of women’s economic citizenship. Witnesses raised several questions about why a sexual harassment policy was needed and the types of provisions that it should have in order to offer working women adequate remedies. Some of these included punishing harassers, reinstating the employment status of victims, receiving back pay for lost wages and/or promotions, and protecting women from retaliation when they filed complaints, to name a few. The EEOC listened to this testimony and used it when designing the first draft of its guidelines. Speaking with the authority of the federal government in prompting the EEOC to enact its policy, the Hanley subcommittee later commended the EEOC on its guidelines and pronouncement that sexual harassment was sex discrimination. The sections below follow these two phases and describe who the witnesses were and what they said about sexual harassment during their testimonies, before explaining the outcome of the Hanley Hearings in the specific charges to three federal agencies who were responsible for creating the first sexual harassment policies as a result of this testimony.

Members of Congress Hear Testimony on Sexual Harassment in the Federal Government

The Hanley Hearings began as a response to a specific report about allegations of sexual harassment in a single federal agency and became a broad investigation into sexual harassment within the federal government. The survey that prompted Congressman Hanley to call for the hearings was conducted by Al Ripskis, a HUD employee and editor of its employee newsletter.

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IMPACT.\textsuperscript{5} Because of allegations of sexual harassment at the agency in the spring of 1979 and other stories of sexual harassment circulating throughout Washington, D.C., including accusations against city officials and Diane Williams’s case, Ripskis devoted an issue of the newsletter to the problem and also distributed questionnaires to employees in order to gauge its scope.\textsuperscript{6} He heard from 63 women who completed the surveys and another 103 women who responded by telephoning his office.\textsuperscript{7} All 166 of these women reported that they had been sexually harassed by their supervisors who had promised them employment benefits if they complied and threatened their job status if they did not. Ripskis’ study also revealed that most of these women, or approximately 85 percent of them, did not file complaints and that the few who did complain felt that management did not take appropriate action in addressing the problem. In addition, Ripskis described how the women who were most likely to be pressured for sex at HUD were clerical or administrative workers in the $11,000 to $15,000 income range. Over 90 percent of the survey respondents also claimed that they had faced negative consequences on the job for turning down their supervisors, namely freezes in their grade level and bad performance reviews.\textsuperscript{8} Ripskis’ findings raised eyebrows that all of this was going on in a federal agency, but the specific responses that the women gave, that the sexual harassment came from supervisors and that they did not often complain and saw few results if they did, served as the basis for much of the subcommittee’s inquiry.

\textsuperscript{5} House Subcommittee on Investigations of the Committee on Post Office and Civil Service, Sexual Harassment in the Federal Government, 96\textsuperscript{th} Cong., 1\textsuperscript{st} sess., 1979, 2. Hereafter cited as 1979 Hanley Hearings.
\textsuperscript{7} Causey, “Sex and the GS-3.”
\textsuperscript{8} Ibid.
Congressman Hanley responded to Ripskis’ report by having his subcommittee investigate sexual harassment at HUD first, before widening its scope to include other federal agencies. Rosemary Storey, a senior staff assistant of the House Post Office – Civil Service Committee, was assigned to take complaints for the investigators. She told a *Washington Post* writer that her phone started to ring “off the hook” once word of the investigation spread. The investigators focused their attention on the “behavior that constituted an abuse of authority and behavior that adversely affected the effectiveness of the workplace.” In other words, the subcommittee had two overall motives: to determine how widespread the problem of sexual harassment was in the federal government and to discover if, from an employer perspective, sexual harassment had a negative effect on productivity. Hanley’s team also narrowed its investigation by concentrating only on situations where men sexually harassed women. They understood that men could also be victims. However, the subcommittee viewed women as the “majority of victims” and thus viewed male charges as “insignificant.”

Following the HUD report, Hanley instructed his staff, led by Storey, to broaden Ripskis’ study to include agencies beyond HUD in order to gauge more fully the extent of sexual harassment within federal offices and departments. After this preliminary investigation and before Hanley opened the first day’s hearing, he stipulated three areas that the subcommittee wished to address: the necessity for a clear definition of sexual harassment and a policy explicitly outlining it as a “prohibited personnel practice” and a “violation of merit principles,” the need for a scientific and official large-scale survey of sexual harassment in the federal

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11 1979 Hanley Hearings, 2.
12 Ibid.
government, and a reliable sexual harassment grievance system. Here, Hanley was in an experimental phase and asked different agencies to get involved in addressing sexual harassment. Hanley asked the Office of Personnel Management (OPM) to draft a directive that defined sexual harassment for government human resources purposes. By October of 1979, OPM was only a nine-month-old agency and the Hanley Hearings offered a chance for it to prove its commitment to upholding fair government personnel standards. OPM was formed to remedy some of the ills of the Civil Service Commission such as its lack of clear responsibilities and extraneous policies. OPM began operating on January 1, 1979, as part of President Carter’s 1978 Civil Service Reform Legislative Proposals, including the President’s Reorganization Plans No.1 and No.2 of 1978. Reorganization Plans No.1 and No.2 abolished the Civil Service Commission. Plan No. 1 transferred the Civil Service Commission’s equal employment opportunity duties to the EEOC and Plan No. 2 made OPM responsible for monitoring the human resource functions of the federal government, including regulating all aspects of federal employment in accordance with merit principles in hiring, firing, promoting, training, etc.

Next, the Merit Systems Protections Board (MSPB) was given the task of conducting a survey of sexual harassment in the federal government. MSPB was another new agency that had been created out of the former Civil Service Commission under the President’s Reorganization Plan No. 2. MSPB had two main duties regarding federal employment, “protecting merit systems from political intrusions” and “adjudicating appeals from Federal employees on all matters affecting their employment.” While conducting a large-scale survey of federal

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14 1979 Hanley Hearings, 2.
16 Ibid.
employees really only seems to fit tangentially within the second of MSPB’s functions, Hanley stated that the Board was “uniquely suited to perform the kind of authoritative survey needed.”

Finally, the EEOC would handle the grievance system under its duties of enforcing Title VII of the Civil Rights Act of 1964, as amended. Unlike OPM and MSPB, EEOC was not a new organization—it had been in operation since July 2, 1965. However, it too had been given new duties under President Carter’s Civil Service Reform legislation. As stipulated in Reorganization Plan No. 1, EEOC was handed with overseeing “the entire matter of equal employment opportunity” in the federal government, another duty that had previously been overseen by the Civil Service Commission. The Plan also stated that EEOC and MSPB would “share responsibility for acting on discrimination appeals from Federal employees.” The Reorganization Plan, in a sense, doubled EEOC’s duties and gave the agency the role of enforcing anti-discrimination law in the public sector, a responsibility that the 1964 Civil Rights Act had given it in the private sector.

Once the preliminary investigation was complete and these directives were issued, the Hanley subcommittee began its hearings and listened to testimony about the overall problem of sexual harassment in American workplaces in the government and in private businesses, as well as updates from these agencies regarding their progress in completing their assigned tasks. Hanley opened the hearings on October 23 by addressing the seriousness of the issue and stating that the subcommittee’s preliminary investigation found that sexual harassment was, borrowing a line from Claire Safran’s 1976 Redbook article, “not only epidemic; it is pandemic, an everyday,

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17 1979 Hanley Hearings, 2.
20 Ibid.
everywhere occurrence.” Hanley also referred to sexual harassment as a “working condition” and framed it much the same way as feminist activists did by stating that the focus of the hearings was “the potential of a serious abuse of power by a male supervisor of a subordinate female employee.” He followed this by explaining that victims often face “adverse personnel action or threats of such an action,” thus describing Catharine MacKinnon’s quid pro quo sexual harassment as a major focus of the hearings. Hanley continued by proclaiming, “Managers should be put on notice that a ‘boys will be boys’ atmosphere will not be condoned in any Federal agency.” This statement would be echoed later when the Equal Employment Opportunity Commission (EEOC) issued its sexual harassment policy and urged employers to educate their workers about the problem.

Although the subcommittee’s report does not reference the work of feminist activists as the hearings began, there is no doubt that the feminist activists who put the issue on the map played a role at some point in bringing it to this forum. On the most basic level, the use of the term “sexual harassment” itself and the way that Hanley defined it indicates this. Relatedly, the fact that Hanley quoted from Safran’s Redbook article (although he did not acknowledge that he borrowed her words) in his opening reveals that the subcommittee was aware, in some form or another, of the earlier surveys that had been conducted about the problem of sexual harassment and which were a product of feminist activism. Most likely this is because he had members of his staff investigate the issue before the hearings began. The subcommittee also referenced earlier studies such as the Redbook survey and others when questioning witnesses on the

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22 1979 Hanley Hearings, 1.
23 Ibid., 2.
24 Ibid.
percentage of women who experienced sexual harassment. These are just two examples of how, while not always explicit, the feminist frame of sexual harassment as a problem related to women’s work and economic status was being diffused during the subcommittee’s investigation.

Throughout the three days of hearings, the subcommittee heard from representatives of five federal agencies: EEOC, HUD, the Justice Department, OPM, and MSPB; three women’s groups: the Women’s Legal Defense Fund, the District of Columbia Commission for Women, and Federally Employed Women; one research group that had conducted a small-scale survey of sexual harassment and federal employees, New Responses, Inc.; one union: the American Federation of Government Employees (AFGE); and one plaintiff in a sexual harassment case who had also been a government employee: Diane Williams, plaintiff in *Williams v. Saxbe*, the first case in which the court recognized sexual harassment as a form of sex discrimination under Title VII.

Because of Hanley’s charge that the hearings would focus on the three areas outlined above, much of the testimony involved statements, questions, and clarifications of the definition of sexual harassment, the frequency with which it was happening to women, and the need for better complaint procedures. A number of themes emerged in the testimony and are considered here in the order of the frequency in which they were discussed, beginning with those that were mentioned the most. These included women’s economic citizenship issues such as how sexual harassment violated Title VII and the economic impact of sexual harassment. Others involved complaint procedures such as the need for management and employee training about the problem and the possibility of women filing frivolous or false sexual harassment charges. A few more

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included theories explaining sexual harassment as a form of coercion and a product of unequal power relations between men and women in the workplace. Witnesses also express that sexual harassment was both a widespread and a serious problem. Finally, they also considered the usefulness of non-Title VII remedies to solve the problem and the need for policies protecting women from retaliation.

The testimonies showed the emerging consensus that Title VII was the most appropriate remedy for sexual harassment at the workplace. This is evident in the fact that every one of the eleven testimonies mentioned sexual harassment as a violation of Title VII by spelling this out directly or by mentioning sex discrimination in general. Not one of them raised an objection to the use of this policy as a potential legal remedy for sexual harassment at work although some did note that the EEOC’s procedures needed improvement. In doing so, those who testified furthered the notion that, as an issue of discrimination, sexual harassment was therefore linked to citizenship as a guaranteed civil rights protection in the workplace.

For example, Donna Lenhoff, Staff Attorney for the Women’s Legal Defense Fund, described her organization’s experience in representing Paulette Barnes in one of the first cases in which an appellate court ruled that sexual harassment violated Title VII, *Barnes v. Costle*. “The pervasiveness and general acceptance of sexual harassment of women at their jobs operates to circumscribe their employment opportunities in every respect,” she argued. “Thus, it is appropriate to address sexual harassment through the mechanism of antidiscrimination law,

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28 See, for instance, the following verbal and written testimonies in the 1979 Hanley Hearings: Donna Lenhoff, Staff Attorney, Women’s Legal Defense Fund, 4-5; Mary Ann Largen, Director, New Responses, Inc., 40-41; Helen Lewis, Executive Director, D.C. Commission for Women, 66; Diane Williams, Plaintiff, *Williams v. Saxbe*, 72, 74; Eleanor Holmes Norton, Chair, EEOC, 90, 92; Louise Smothers, Director, Department of Women’s Affairs, AFGE, 102; Dorothy Nelms, President, Federally Employed Women, 118; William Medina, Assistant Secretary for Administration, HUD, 130, 132; Joseph A. Sanches, Director, Equal Employment Programs, Department of Justice, 147; Alan K. Campbell, Director, OPM, 154, 158; and Ruth T. Prokop, Chairwoman, MSPB, 166.
primarily title VII of the Civil Rights Act of 1964.”

Congressman and subcommittee member Jim Leach (R-Iowa) agreed with Lenhoff and proclaimed that she was “right” when he stated that “there is a remedy through civil rights legislation.” As the federal authority on Title VII enforcement, Eleanor Holmes Norton, the EEOC’s Chair, testified on behalf of her agency that “EEOC regards sexual harassment as an important antidiscrimination issue” and discussed how “the Commission pioneered development of the title VII case law on sexual harassment.”

Here, Norton referred to the Arizona EEOC office’s participation as amicus curiae in the 1977 *Corne v. Bausch & Lomb* case. She also explained how the EEOC was directing federal agencies to draft policies treating sexual harassment as a violation of Title VII in employment policies.

Turning to the second theme of the hearings and also one of the main ways that feminists framed the problem, the economics of sexual harassment, eight of the eleven testimonies included remarks about the economic impact of sexual harassment. Not surprisingly, all of the representatives from the three women’s groups noted this phenomenon, as did the members of New Responses, Inc. and AFGE. As the only plaintiff to testify, Diane Williams also offered her firsthand account of being fired after filing a sex discrimination complaint. The two government agencies whose testimonies mentioned this issue were OPM and EEOC, the federal agencies that were the most closely connected to the problem of sexual harassment out of the five represented at the hearings.

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29 *1979 Hanley Hearings*, 4.
30 Ibid., 37.
31 Ibid., 92.
32 Ibid., 90-91.
33 See, for instance, the following verbal and written testimonies in the *1979 Hanley Hearings*: Lenhoff, 4; Lewis, 53; Nelms, 115; Largen, 40; and Smothers, 101.
34 *1979 Hanley Hearings*, 70.
35 See, for instance, the following testimonies in the *1979 Hanley Hearings*: Campbell, 154 and Norton, 90.
In Donna Lenhoff’s testimony, she also noted the economic consequences of sexual harassment when explaining “its effect on the reality of the work experience for the women who suffer it.” Lenhoff outlined this for the subcommittee by stating that 75 percent of harassers were supervisors or “someone in a position to hire and fire his victim.” She continued, “At worst, a woman who is sexually harassed loses her source of income because she won’t submit or because she cannot tolerate the harassment; at best, she continues to work in a hostile environment in which she is always subject to a demeaning sexual put-down or an unwanted advance.” Here, Lenhoff’s statement is comparable to those of the first victims and activists who spoke out about sexual harassment.

Mary Largen, Director of New Responses, Inc., a Washington, D.C.-based nonprofit organization of women’s policy consultants, included similar remarks in her prepared testimony to the subcommittee. Largen discussed the reluctance of women to file sexual harassment complaints because they believed that management would protect supervisors instead of victims and they did not want to risk harming their careers. She argued, “The most obvious consequence of this form of victim response to sexual harassment is that women are experiencing inhibition, if not destruction, of their career ambitions which may keep them in the lower rungs of the job market.”

The need for training and education about the problem for managers, employees, and equal employment opportunity counselors appeared in seven out of the eleven testimonies. In weighing the issue of mandatory sexual harassment training policies and procedures, the

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36 1979 Hanley Hearings, 4.
37 Ibid.
38 Ibid.
39 See Chapter Two.
40 1979 Hanley Hearings, 40.
41 See, for instance, the following testimonies in the 1979 Hanley Hearings: Lenhoff, 8, Largen, 42, Lewis, 68-69, Williams, 74, Norton, 91-92, Nelms, 117, and Campbell, 156.
subcommittee revealed even more that it took the problem seriously. In order to see that these policies became a reality, the subcommittee had to learn what victims needed in the form of prevention measures and complaint procedures. They heard testimony from Diane Williams about her opinion that the proper training of equal employment opportunity (EEO) investigators would help them appear less “insensitive” when processing complaints.42 Her comments were buttressed by the commitment to such training that Eleanor Holmes Norton expressed in her explanation that EEOC would develop sexual harassment training programs for its officers. In addition, Alan K. Campbell, Director of OPM, also outlined how his agency was implementing sexual harassment training in its federal government employee training package.43

Unlike most of the other main themes of the hearings, the question of the need to protect supervisors from women bringing false charges of sexual harassment against them was not one raised by the earliest feminist activists. Yet, it became a frequent topic of discussion throughout the hearings and was also mentioned in seven out of the eleven testimonies.44 Chairman Hanley, along with Congressman Gene Taylor (R-Missouri) and John J. Cavanaugh (D-Nebraska), were the members of the subcommittee who most often raised this question to the witnesses. Typically, they asked the witnesses for their opinions regarding the severity of the problem that the possibility of frivolous charges posed compared to the overall problem of sexual harassment at work. In addition, these members of the subcommittee asked for recommendations from witnesses in order to write policies that would protect supervisors and others from false claims, in combination with policies that would protect victims from retaliation or from the problem in

42 1979 Hanley Hearings, 74.
43 Ibid., 91 and 156.
44 See, for instance, the following testimonies in the 1979 Hanley Hearings: Lenhoff, 11, Lewis, 67-68, Williams, 69-71, Smothers, 110, Nelms, 122-23, Campbell, 155, and Prokop, 170.
the first place.\textsuperscript{45} Hanley explained, “We want very much to protect the innocent in the process of penalizing the offenders.”\textsuperscript{46}

When it came to the power relationship between men and women underlying the coerciveness of sexual harassment, meaning that male supervisors can pressure their women subordinates, many of the witnesses again hit upon a major feminist argument about sexual harassment. This topic also received mention in seven of the eleven testimonies.\textsuperscript{47} Even though those who testified did not directly link the feminist activists and theorists who first explained sexual harassment in this manner, that they included it in their testimonies suggests that feminist arguments were being diffused throughout society or at least were reaching the men and women who were investigating sexual harassment in the federal government. As Tarrow’s theory predicts, this served as the period in which there was an increased flow of information and interaction regarding sexual harassment. Beginning with the accusations at HUD, the political attention to the problem was heightened throughout the hearings. After the informal survey at HUD, there was a rapid response among the witnesses who testified and considered how the issue had impacted their lives.\textsuperscript{48} Many of the witnesses then viewed the problem as a result of an unequal power differential between men and women in the workplace. On the other hand, the idea that the majority of witnesses outlined this cause indicates that the position of women in the workplace relative to men provided a simple, if unfortunate, explanation for a complicated problem.

The witnesses explained the sexual harassment of women at work by their male superiors and co-workers as an exercise of male power over female subordinates. In situations where the

\textsuperscript{45} 1979 Hanley Hearings, 11-12, 67-68, 110, 122-123, and 170.
\textsuperscript{46} Ibid., 110.
\textsuperscript{47} See, for instance, the following testimonies in the 1979 Hanley Hearings: Lenhoff, 33, Largen, 48, Norton, 90, Smathers, 101, Nelms, 115, Medina, 130, and Prokop, 162.
\textsuperscript{48} See Tarrow, 146.
harassers were co-workers, witnesses described that even men who did not have a direct impact on the woman’s job status, they were part of the overall societal structure where men’s employment status was more valuable than women’s. For instance, when explaining that sexual harassment was a cultural phenomenon, Mary Largen of New Responses, Inc., argued that legal remedies alone would not solve the problem because they could not “eradicate sexual harassment or the imbalance of power which fosters the behavior.” She referred to sexual harassment as a “cultural phenomenon” that could be “eliminated only through re-socialization and re-education” or, in other words, “a change in attitudes as well as behaviors.” In her verbal testimony, Largen offered as evidence her organization’s survey in which “67 percent of alleged offenders were line supervisors, division heads, administrators, et cetera—men in positions of authority.” She also claimed that the harassers were protected from punishment because individuals denied or ignored the problem in order to protect their agency’s reputation. Largen viewed this as protection of “the power structure in that department or agency.” Dorothy Nelms, President of Federally Employed Women, agreed with Largen’s viewpoint and testified that “the manifestation of sexual harassment has to do with the males having power in the economic environment and the exercise of that power in the form of sexual harassment against women and the feeling of powerlessness because women feel the systems haven’t been responsive.”

In their official statements, Eleanor Holmes Norton of EEOC and William Medina of HUD told the subcommittee that their organizations also considered sexual harassment a product of male-female positions in the workforce. Norton argued,

\[49\] 1979 Hanley Hearings, 41.
\[50\] Ibid.
\[51\] Ibid., 47.
\[52\] Ibid., 47-48.
\[53\] Ibid., 48.
\[54\] Ibid., 115.
Sexual harassment is a phenomenon associated with the subordination of women. It is directly inverse to the degree women are accepted as peers in employment situations and in the society generally. Until quite recently it was thought to be unacceptable for women to engage in employment outside the home, and those who did had to expect whatever happened. I, therefore, submit to you, Mr. Chairman, that the overall problem of sexual harassment will only be abated when women cease meeting artificial barriers to their career advancement; when they are present at all levels of employment, and represented in all job categories.\textsuperscript{55}

Medina later testified that his agency’s employee policies outlined sexually harassing behaviors “as an abuse of authority and power.”\textsuperscript{56}

The fact that sexual harassment was believed to be a widespread, serious problem—as asserted by Congressman Hanley when he opened the hearings—was reiterated in six of the eleven testimonies by Donna Lenhoff, Helen Lewis, Executive Director, D.C. Commission for Women, Diane Williams, Eleanor Holmes Norton, Louise Smothers, Director, Department of Women’s Affairs, AFGE, and Dorothy Nelms of Federally Employed Women. Often, these witnesses simply began their statements with their opinion that sexual harassment was widespread.\textsuperscript{57} Williams presented her own case, \textit{Williams v. Saxbe},\textsuperscript{58} as evidence that sexual harassment was a severe problem and quoted the court’s decision which stated “that there was a pattern and practice of sexual harassment” at the Justice Department.\textsuperscript{59} Finally, Norton remarked on the widespread nature of sexual harassment by beginning her testimony with this statement: “Sexual harassment is an issue which has confronted every woman in the course of her career, whether directly or through the experience of her friends.”\textsuperscript{60}

\textsuperscript{55} Ibid., 93-94.
\textsuperscript{56} Ibid., 130.
\textsuperscript{57} See, for instance, the following testimonies in the 1979 Hanley Hearings: Lenhoff, 4, Lewis, 53, Smothers, 100, and Nelms, 114.
\textsuperscript{58} \textit{Williams v. Saxbe}.
\textsuperscript{59} 1979 Hanley Hearings, 75.
\textsuperscript{60} Ibid., 90.
Norton also responded to questions from Congressman Cavanaugh about what he considered a discrepancy between the different figures recorded regarding the severity of sexual harassment. For instance, he noted the differences between studies which showed that 70 percent of working women were sexually harassed, such as the *Redbook* and WWU/I studies that Lenhoff cited in her testimony, and the figure that EEOC had given the subcommittee of only 39 sex discrimination complaints out of 1,426 filed with federal agencies between January and November 1979 alleging sexual harassment (or only 2.7 percent of EEOC complaints). Norton attributed this figure to underreporting, or the fact that women did not bring complaints because of various reasons, including fear and embarrassment. She argued that because of this factor, the number of complaints could never account for the actual number of times sexual harassment took place. In addition, she told the subcommittee that these figures did not represent federal government complaints to the EEOC but were figures that federal agencies had submitted to the EEOC because the EEOC had not yet started processing federal complaints under the President’s Reorganization Plan. Because of these facts, Norton told the subcommittee to “attach no significance whatsoever to them” because she could not validate their accuracy. In doing so, Norton never strayed from her argument that sexual harassment was, indeed, a serious and widespread problem.

The subcommittee also heard testimony about the various remedies that could possibly be used to prevent or correct the sexual harassment of working women, besides Title VII. While all of those who testified viewed Title VII as an adequate remedy, they nonetheless discussed some of the other options that were being developed at the time, many of which had been raised before

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61 Ibid., 4, 12, 96-97.
62 Ibid., 97.
by feminist groups such as AASC. Of these, unemployment compensation policies were the most frequently discussed, followed by state laws and actions in Wisconsin, New York, Michigan, Illinois, and Washington, D.C., in addition to criminal and tort laws and federal or state labor relations boards, human rights commissions, or fair employment practices agencies. The testimonies outlining these various options revealed, in Mary Ann Largen’s words, how women were starting to “fight back” against sexual harassment. The witnesses’ descriptions of these policies also offer a possible explanation for why they were not as widely accepted and implemented as civil rights legislation was in later sexual harassment policies.

Despite being the alternative most frequently mentioned, the options available in unemployment compensation policies proved to be limited. Women who tried to file for benefits after quitting their jobs because of sexual harassment usually met with little success when bringing their cases before unemployment boards. The subcommittee learned this from one of the members of the Committee on Post Office and Civil Service, Congresswoman Mary Rose Oakar (D-Ohio), who had also been Chair of the National Commission on Unemployment Compensation. Congresswoman Oakar explained that the Commission had held hearings earlier that year in June on this topic and that the issue of sexual harassment and unemployment compensation had been raised throughout. She demonstrated this to the subcommittee by presenting for the record five different testimonies from representatives of unions and women’s groups who outlined their experiences dealing with victims of sexual harassment who had tried

63 See Chapter Two.
64 See the following testimonies in the 1979 Hanley Hearings: Largen, 40, Williams, 79, Smothers, 108, 110-111, Nelms, 124.
65 See the following testimonies in the 1979 Hanley Hearings: Lenhoff, 4-5, Largen, 40, Lewis, 54-63,66, Williams, 73, and Smothers, 110.
66 1979 Hanley Hearings, 40.
67 Ibid., 13.
to obtain unemployment compensation. In these testimonies, the witnesses asked for federal legislation stipulating that women who quit because of sexual harassment could be eligible for unemployment compensation. One of the problems with unemployment insurance policies at the time that made this impossible for most women was the standard which did not allow employees who “voluntarily” left their jobs to collect unemployment benefits. This was one of the main aspects of unemployment compensation law that these organizations wanted to change. One of the witnesses pointed to Minnesota and California as examples where states had such policies pending or where unemployment compensation had been awarded to victims of sexual harassment who had voluntarily quit. The witnesses also expressed displeasure at unemployment policies that placed the burden of proof on the victims to prove the existence of the harassment, rather than the other way around where harassers would have to disprove allegations.

When the issue of unemployment compensation was discussed at the Hanley Hearings, some of these same problems were brought up, especially the question of “voluntary quits.” Mary Jacksteit, Louise Smothers’s associate at AFGE who joined her in testifying, responded to a question from Congresswoman Gladys Noon Spellman (D-Maryland) about the difficulties women faced when applying for unemployment compensation. Jacksteit explained how women who resigned from their jobs “to avoid sexual harassment” because they felt they had no other choice “would still be ‘voluntarily’ resigning without due cause and be disqualified from

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68 See, for instance, the submitted testimonies of the following in the 1979 Hanley Hearings: Tamara Bavar, Member, United Auto Workers Local 594, 13-23; Barbara Somson, Assistant General Counsel, International Union of Electrical, Radio, and Machine Workers, 23-24; Jane Pinsky, Working Women, National Association of Office Workers, 25-27; Jan Leventer, Attorney, Women’s Justice Center, Detroit, Michigan, 27-29; and Isabelle Katz Pinzler, Director, Women’s Rights Project, American Civil Liberties Union, 29-32.

69 See the following in the 1979 Hanley Hearings: Bavar, 14, Somson, 23, Pinsky, 26, and Pinzler, 30.

70 See the following in the 1979 Hanley Hearings: Somson, 24, Pinsky, 26, and Pinzler, 31.

71 See Somson’s testimony in the 1979 Hanley Hearings, 24.

72 See Somson and Pinsky’s testimonies in the 1979 Hanley Hearings, 24, 26.
unemployment compensation.”73 Williams, who had not tried to file for unemployment benefits, nonetheless reinforced the statements that the subcommittee heard from Congresswoman Oakar and Jacksteit by testifying that she understood “that women who quit, complaining of sexual harassment, have had a very difficult time getting unemployment compensation.”74

The records of the Hanley Hearings show that unemployment compensation policy was discussed as a possible form of assistance to help women who quit their jobs because of sexual harassment, with the Wisconsin law cited as the most positive example. However, the testimonies also presented the negative side of this type of legislation. First, despite the Wisconsin law, many other states did not change their unemployment compensation policies to allow women who quit because of sexual harassment to collect these benefits. The state of New York is a good example of this. Between 1979 and 1981 the issue of changing unemployment compensation law to include sexual harassment as a valid reason for quitting was brought before the state legislature at least three times. While it had succeeded in the State Assembly, it did not in the State Senate.75 Again, this example shows that, similar to other state policies, these regulations would not offer blanket coverage for victims unless they happened to be employed in a state with such laws.

Second, some of the working women’s organizations argued that unemployment compensation policies would not prevent sexual harassment from happening in the first place. Dorothy Nelms told the subcommittee that collecting unemployment was a “negative side” to

74 Ibid., 79.
sexual harassment that she “would rather not deal with,” whereas the positive side would be to do “something about what is happening within the system.” In other words, Nelms argued that the federal government should be more proactive in helping to prevent sexual harassment in the first place so that women would not have to quit their jobs and collect unemployment.

The witnesses also described specific state laws regulating sexual harassment. Largen told the subcommittee that, in 1977, Wisconsin became the first state to pass a law “which prohibits sexual harassment in employment and qualifies for unemployment compensation any person who quits a job because of such harassment,” while also noting that similar legislation had been considered in New York. Williams mentioned the Wisconsin law as well and that it was similar to sexual harassment legislation passed by the District of Columbia. Lewis described the D.C. law, which was passed by Mayor Marion Barry on May 24, 1979, after an investigation by his Mayor’s Task Force on Sexual Harassment. The Task Force was formed in response to Sandra Bundy’s case, in which Bundy alleged that she had been sexually harassed by her supervisor at the D.C. Department of Corrections. A D.C. personnel director had also been charged with sexually assaulting an aide just after the Task Force was organized. The Task Force recommended that the Mayor issue a policy on sexual harassment outlining what

76 1979 Hanley Hearings, 124.
77 It seems as if the subcommittee did consider unemployment compensation policy a remedy—in that it asked witnesses such as Nelms to explain when certain situations of sexual harassment would be considered voluntary quits under employment policy. However, at least one member of the subcommittee, Donald Joseph Albosta, was interested in employees abusing the system and quitting, then later claiming sexual harassment. Nelms dismissed this idea. She also quickly dismissed the idea of unemployment policy in general, preferring instead remedies that prevented the problem or addressed it before a woman would be forced to quit. Another member of the subcommittee, Rep. John J. Cavanaugh, referred to Nelms’s testimony as “the best” of the hearings. See 1979 Hanley Hearings, 124-125.
78 1979 Hanley Hearings, 40.
79 Ibid., 73.
80 Ibid., 54.
83 Ibid.
types of behaviors were considered violations, that sexual harassment was sex discrimination, and that the D.C. Office of Human Rights should handle complaint procedures. Mayor Barry complied with all of those recommendations in his policy prohibiting sexual harassment in the District of Columbia government.

Like the District of Columbia, Michigan also had a Task Force on Sexual Harassment, which Hanley mentioned during HUD representative William Medina’s testimony. Hanley noted that the Michigan Task Force held a conference on sexual harassment one week before the hearings began, drawing more than 600 attendees, and he urged other states to “follow suit” and hold similar events. Smothers also mentioned the Michigan Task Force and that the Illinois Commission on the Status of Women was also researching the issue. While these state laws and commissions may have served as possible incubators for later federal sexual harassment policies and no doubt deserve further exploration, by the time of the Hanley Hearings the focus appears to have been on more widespread remedies that would have a national impact, especially given that federal courts had begun to set a precedent in favor of Title VII as a remedy by 1979.

Criminal laws were the last of the possibilities mentioned during the hearings. Here, comparisons were made to sexual assault laws and Lewis recommended that the District of Columbia change its sexual assault legislation to account for “four degrees of sexual assault” with “certain types of job-related sexual harassment” being one of them. Lewis proposed this change and argued for other policies as well, namely administrative and civil ones in order to “make a broad attack” against sexual harassment. Lewis was the only witness to call for

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84 See “Memorandum, To: Mayor Marion S. Barry, Jr., Mayor, From: The Mayor’s Task Force on Sexual Harassment, Subject: Final Report, May 18, 1979,” in 1979 Hanley Hearings, 58 and 59.
86 1979 Hanley Hearings, 137.
87 Ibid., 110.
88 Ibid., 66.
89 Ibid.
criminal policies. Her proposal raised little question or debate about criminal laws and procedures during the hearings, leading to the conclusion that this option appeared to have little support behind it.

Overall, solving the problem of sexual harassment presented the subcommittee with a complicated question due to the different types of policies being debated in 1979. For such a newly defined problem, it makes sense that many options would be identified. Yet, the testimonies help to illustrate why Title VII was the one most commonly believed to be the appropriate choice. No other policy at that time offered working women in both public and private employment the same type of remedies. As a federal policy, Title VII could make sexual harassment a form of discrimination in all states, not just in those where human rights boards or other types of commissions considered it a civil rights violation. Title VII also, and this would later be reflected in EEOC’s sexual harassment policy, answered the concern of Nelms and others, who may have not linked Title VII to this directly, but who nonetheless argued that prevention was key to ending discrimination. By improving upon such policies, they claimed that it would be beneficial for employers to educate their workers about sexual harassment so that they would hopefully not commit this offense and for providing options in existing equal employment opportunity procedures when it did happen.

Aside from preventing the problem of sexual harassment, six of the witnesses discussed with the subcommittee the need for policies which would protect victims from retaliation when they complained.90 This was an obvious problem because it resulted in the double victimization of women who were sexually harassed who then had to face some other form of negative consequence for complaining about the harassment. Retaliation, or the fear of it, could be the

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90 See the following in the 1979 Hanley Hearings: Lenhoff, 8, Largen, 46-47, Williams, 75-76, Smothers, 101, and Nelms, 115-116, Sanches, 144-147.
reason why a woman complied with her harasser’s demands in the first place.91 The fear of retaliation could also prevent a woman from complaining at all, leading to the underreporting that Norton described during her testimony and which was reiterated in Largen’s testimony.92 Nelms also described this feeling, “Obviously the victim of sexual harassment who chooses to make a complaint frequently finds herself in the same position as a woman who chooses to report a rape. She may be disbelieved, ignored, her credibility challenged, or her complaint may be trivialized. Reporting the harassment may expose her to retaliation and in the end nothing is usually done about the complaint anyway.”93

Diane Williams’ testimony provided the subcommittee with a firsthand account of the retaliation victims could face, since she had been fired on a Friday afternoon with only 25 minutes’ notice nine days after she had filed a sex discrimination complaint against her supervisor.94 Because Williams was also the plaintiff in the first sexual harassment case ruled as sex discrimination, her testimony provided the subcommittee with more than an account of the retaliation. It also showed a real-life example of how feminist theories played out in the courts and in the federal response to calls for sexual harassment regulations.

When testifying on October 23, 1979, Williams gave a brief background statement about her case. She had been an employee of the Community Relations Service of the Justice Department and claimed that her supervisor sexually harassed her. In September of 1972, nine months after Williams began working for the Justice Department, this supervisor terminated her employment because she had declined his sexual propositions and had subsequently filed a

91 Smothers considers this in her testimony. See 1979 Hanley Hearings, 101.
93 Ibid., 47.
discrimination complaint. After being fired and then getting no resolution from her supervisor’s supervisor about her complaint, Williams sought legal redress through the Justice Department’s Equal Employment Opportunity office. Again, much to her disappointment, her complaint went nowhere. Williams then hired a private attorney and eventually her case reached the U.S. District of Columbia District Court. On April 20, 1976, four years after Williams filed her initial complaint, the District Court judge, Charles Richey, affirmed Williams’s position that the sexual harassment she experienced was a form of sex discrimination and ruled to that effect. Judge Richey claimed that sexual harassment was actionable under Title VII because “the conduct of the plaintiff’s supervisor created an artificial barrier to employment which was placed before one gender and not the other.” At the time of her testimony at the Hanley Hearings, seven years after she first complained of sexual harassment, Williams’s case was still pending on appeal.

This seven-year timeframe of one sexual harassment complaint concerned the subcommittee and they posed questions to Joseph A. Sanches about this issue. Sanches was Director of Equal Employment Programs at the Department of Justice. He testified on November 13, 1979, and while he was not directly involved in the litigation of Williams v. Saxbe, in which the Justice Department was one of the defendants, he was nonetheless expected to comment about the case. Interestingly enough, when Sanches offered his prepared statement before taking questions from the subcommittee, he made no mention of Williams’ firing, or even of her case at all or of Title VII in general. Instead, he testified about the complaint procedures

95 1979 Hanley Hearings, 75-76.
96 Ibid., 77-78 and 86.
97 Williams v. Saxbe.
98 1979 Hanley Hearings, 86-87.
in the Justice Department’s Equal Employment Programs office. When pressed to discuss Diane Williams and her complaint process he admitted that he had not even read the account of Williams’s testimony before the subcommittee from three weeks earlier and he made it clear that he did not want to discuss the particulars of the *Williams v. Saxbe* case. The subcommittee also pointed out that Sanches made no reference in his initial testimony to sexual harassment specifically and asked him for the Justice Department’s position on the issue of whether or not sexual harassment constituted sex discrimination. After a rather confusing exchange, Sanches and an associate who accompanied him in his testimony, Squire Padgett, admitted that the Justice Department held the position that sexual harassment fell under the parameters of Title VII. In addition, Sanches and Padgett claimed that the reason the *Williams* case had taken seven years was not because the Justice Department disagreed with the notion that sexual harassment was sex discrimination but that the Department believed that there was not enough evidence to conclude that Williams had been sexually harassed by her supervisor. They explained that the Justice Department had conducted two separate hearings regarding Williams’s complaint. In the first hearing, the examiner recommended a finding of no discrimination. After Williams took the case to federal court, the federal district judge sent her complaint back to the Department of Justice for an additional investigation in which the Justice Department would be required to carry the burden of proof, unlike the first hearing in which the burden was on Williams. Again, the Justice Department concluded that there was no discrimination. They based this conclusion on the understanding that Williams was not discriminated against because “she had decided not to furnish the sexual consideration claimed to have been demanded.” This testimony reveals the confusion on the part of the Department of Justice regarding how to define sexual harassment.

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99 Ibid., 138-142.
100 Ibid., 71-72, 144-148.
101 Ibid., 148.
and more likely, the lengths the agency went to deny Williams’s claim and try to escape liability for her supervisors’ actions. Sanches also went so far as to accuse Williams of filing her initial complaint only because she knew that she was about to be fired.\footnote{Ibid.}

At no time in their testimony did Sanches and Padgett outline the Justice Department’s exact response to sexual harassment in the workplace, meaning they gave no indication of whether or not the Justice Department had implemented any policies to protect its workers from sexual harassment. By comparison, many of the representatives of government agencies who testified at the hearings clearly outlined their sexual harassment policies and complaint procedures. Sanches only presented his office’s general EEO procedures that the Justice Department personnel followed. He did not discuss the specific types of discrimination complaints that his office handled. Instead, he traced the length of time a complaint should take from its initial filing to its resolution.\footnote{Ibid., 150-152.} As a result, one member of the subcommittee, Representative John J. Cavanaugh, heavily criticized Sanches and the Justice Department for evading the main issues of the hearings. At one point Cavanaugh asked Sanches if he was even aware that the hearings were about sexual harassment.\footnote{Ibid., 147.} At the end of his questioning, Cavanaugh referred to the testimony from Sanches as “among the most inadequate that I have experienced since I have been a member of Congress.”\footnote{Ibid., 150.}

In striking contrast, the subcommittee appreciated Diane Williams’s testimony and complimented her for her forthrightness in testifying and for the suggestions she offered to the committee on how better to regulate sexual harassment.\footnote{Ibid., 84-85.} In light of how she filed her initial complaint as one of discrimination, in addition to Judge Richey’s ruling, it is not surprising that
Williams’s testimony included the merits of Title VII in regulating sexual harassment. She also presented to the subcommittee her opinion of other protections that should be included in sexual harassment policies. Her words are revealing in that they exemplify what women needed in order for sexual harassment regulations to rid the workplace of this behavior. Specifically, Williams asked for protections for those who bring sexual harassment complaints. She stipulated that the complaint procedures should be written in such a way that would make women feel more comfortable in filing sexual harassment complaints. Williams believed that this was necessary because, in her opinion, women often felt embarrassed to come forward and she felt that throughout her litigation experience she was treated like the offender instead of the victim. She repeatedly told the subcommittee that she was made to feel as if she were the defendant in the case because the Justice Department had contacted her family and attempted to raise questions about her character. Williams remarked in her testimony, “The Government is now trying to make me out to be a, ‘loose woman,’ whatever that means.” She also stated that her mother had been questioned about her social activities, to which she commented that her mother “virtually has to serve as my alibi to attest to the fact that no, I did not go out two or three times a week; no I am not the disco queen of this city.” What Williams experienced during this part of her ordeal had been foreseen by Lin Farley, one of the women who had coined the term “sexual harassment” and who had helped to found WWI four years earlier when she testified before the New York Human Rights Commission. Farley claimed that any woman who complains about sexual harassment and tries to make her harasser accountable “runs the risk of

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107 Ibid., 69-70 and 73.
108 Ibid., 70.
109 Ibid., 72.
110 See Chapter Two.
suddenly being seen as a crazy, a weirdo, or even worse, a loose woman.”

Farley’s predictions point to the fact that Williams was not exceptional in this manner, and that many women had to face the same fate in confronting attacks to their reputations, in addition to their economic livelihoods, when bringing sexual harassment complaints.

Finally, Williams testified about the need for protection against retaliation. She explained that it was a commonly known fact in her agency that the director retaliated against anyone who complained of discrimination. Policies that would protect complainants from retaliation were especially important to her since she was fired shortly after filing her own complaint. When asked her opinion of the Department of Justice, Williams speculated that the agency’s reason for retaliating might have been “to set [her] up as an example of what other women complaining of sexual harassment can expect to face if they complain.” She continued, “We have accepted sexual harassment just as we have accepted the fact that women are expected to take notes at meetings and expected to make the coffee. Sexual harassment to me is not fun and games. It is a very emotional experience, a very degrading experience, a very humiliating experience…So I don’t know what we can do about these particular situations. It is going to be a problem that will continue, but I am glad at least it is out in the open now so we can deal with it as constructively as possible.”

This quote from Williams is revealing because it further illustrates how feminists and victims conceived of the problem of sexual harassment as one of women and work and not as a criminal issue or as a private problem. The subcommittee appreciated Williams’ testimony and no doubt took her words into consideration as well as those from all who testified, when they

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112 *1979 Hanley Hearings*, 75-76.
113 Ibid., 77.
114 Ibid.
continued their investigation after the hearings ended. The subcommittee had heard how sexual harassment violated Title VII, how it disadvantaged women economically, how these women and others felt that training programs were necessary, how serious a problem the possibility of frivolous complaints were, how sexual harassment is a product of male power in the workplace and throughout society, how other remedies besides Title VII were being debated, and how retaliation was a severe problem and a by-product of sexual harassment. These were the main issues discussed and debated throughout the hearings. In addition to these topics there were many others that were mentioned, indicating the complexity of the issue, even if they were not frequently debated and only minimally relate to the main goals and outcomes of the hearings. These include the emotional impact of sexual harassment and the appropriate punishment for harassers, among others. Still other topics, such as the Hanley subcommittee’s directives to OPM and the EEOC and the debate over a broad or specific definition of sexual harassment, relate more directly to the impact of the hearings in calling for these federal policies and their later implementation.115

**The Impact of the Hanley Hearings on Sexual Harassment Policy**

When Diane Williams referred to the issue of sexual harassment as “out in the open now,”116 she remarked upon the impact that the Hanley Hearings were having in publicizing the problem. This was manifested in remarks that members of the subcommittee made during the hearings and in their final report, *Sexual Harassment in the Federal Government*, issued on April

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115 See, for instance, the following testimonies in the *1979 Hanley Hearings*: regarding the emotional impact of sexual harassment: Largen, 39, Williams, 73, 77, 87; regarding the appropriate punishment for harassers: Williams, 74; Campbell, 159; Prokop, 166; regarding the directives OPM was charged with writing: Largen, 51; Campbell, 154; Prokop, 164; regarding the role of EEOC: Largen, 42; Williams 73, 83; Norton, 92; Smothers, 102; regarding the debate over a broad or specific definition of sexual harassment: Lenhoff, 8, 10; Smothers 100, 108-109; and regarding the complaint procedures: Williams, 80, 82; Nelms 116; Sanches 141-42.

116 *1979 Hanley Hearings*, 77.
Clearly, Chairman Hanley’s subcommittee believed that its investigation was having a major impact in bringing this relatively new issue to the public. Their work was an important way the issue of sexual harassment was being diffused further throughout society and among the highest levels of government. The outcome of the hearings also resulted in the design stage, adoption, and enactment of the first federal sexual harassment policies. The Hanley subcommittee concluded that sexual harassment was, indeed, a serious problem and charged three federal agencies to address it.

The subcommittee itself recognized, although in different terms, that it was helping to publicize the issue. At several points throughout the hearings, Hanley and the subcommittee members discussed their opinions regarding the role of the hearings in making the public more aware of sexual harassment. On the first day of the hearings, Hanley commented that the subcommittee had already brought the issue a long way by conducting its preliminary investigation and holding the hearings. He remarked that “some have said that if we were to cut it off right here we already have served a meaningful purpose in transmitting into various sectors of the Federal Government a message…that harassment is indeed intolerable.” Congresswoman Donald Joseph Albosta (D-Michigan) told Lenhoff that her appearance before the committee would also raise awareness among federal employees and “all employees over the country” that “the Congress intends to do something about” sexual harassment. Congresswoman Spellman made a similar comment about awareness spreading beyond federal government employees when she congratulated Hanley for starting the investigation, which, she said gave “great heart to women all over the country, not only those working in the Federal Government but those who

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118 1979 Hanley Hearings, 10.
119 Ibid., 34.
are working elsewhere” because he was taking the problem seriously.\textsuperscript{120} She also told Hanley that it was personally important for her because she had heard of many instances of men sexually harassing women throughout her 17 years of government service and those women had nowhere to turn.\textsuperscript{121} Hanley replied, “Hopefully by the initiation of a program that we have in mind, the private sector will take heed and initiate similar programs that will provide the type of protection for those employees.”\textsuperscript{122}

One witness who testified before the subcommittee did mention the link between the attention surrounding the issue and the feminist movement. In response to a question from Congressman Albosta about whether or not the problem was due to a “moral degeneration” in society, Donna Lenhoff replied, “I don’t know whether there is a moral degeneracy. I think the problem of sexual harassment has always been there. I don’t think this is new. What is new is the public attention it is getting, and I think that is a direct result of the women’s movement.”\textsuperscript{123} Seeing the situation in reverse, where the hearings were leading to action among women, Hanley claimed that the upcoming Michigan Task Force on Sexual Harassment’s conference was a product of “the spinoff that is occurring around the country resulting from what we are doing.”\textsuperscript{124} While the hearings were no doubt raising awareness, here Hanley took credit for an event that may have been planned prior to when the hearings were held.

Because of examples such as these, the subcommittee nonetheless viewed its role in conducting the hearings as bringing awareness to the American public. Spellman hoped that this awareness would lead to change for working women. She proclaimed, “We are talking seriously today seriously [sic] about how to change things. The mere fact that we are talking is changing

\textsuperscript{120} Ibid., 3.
\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
\textsuperscript{123} Ibid., 36
\textsuperscript{124} Ibid., 137.
things right this moment. Right this moment things are changing because people know that there are going to be new ground rules and they are already beginning to adjust to those ground rules.”¹²⁵ She continued, “I think attitudes will be changed as a result of these hearings, and as a result of the oversight that I am sure this subcommittee will be providing.”¹²⁶ Alan Campbell of OPM shared Spellman’s opinion of this change when he stated, “It is clear that the actions of this committee have prompted attention to the problem that would not have occurred if it were not for the actions of this committee.”¹²⁷

Aside from the opinions of the subcommittee, a few articles from the mainstream press that appeared throughout the months of the hearings indicated that these members of Congress may have been correct in assuming that their work was leading to awareness or some sort of change in which more people at least knew what sexual harassment was and that it was beginning to be defined as an intolerable practice. Even before the hearings began, a reporter named Mike Causey noted in the Washington Post a general feeling of apprehension among some in Washington who thought that they were going to be forced to confront and to put an end to the problem. He mentioned the upcoming hearings and wrote, “A number of officials – high and low – at GSA [General Services Administration], Labor, HUD, the Pentagon, Treasury, and Commerce, just to mention a few, are already sweating the results. Maybe for good reason.”¹²⁸ After the hearings, Causey wrote an article about OPM’s planned sexual harassment training program for federal agencies and noted that the issue “has been big news recently” because of the hearings as well as newspaper and television coverage and surveys.¹²⁹ In ending his article, he highlighted a somewhat different motivation for the government’s involvement in the issue

¹²⁵ Ibid., 128.
¹²⁶ Ibid.
¹²⁷ Ibid., 160.
other than the Hanley subcommittee’s reason for putting an end to a widespread problem. Causey claimed, “There is no reason anybody should be subject to blackmail, or abuse, on the job. But if fairness does not persuade Uncle Sam to get interested in the problem, maybe other things will. There is the possibility that Uncle Sam may find himself paying out big bucks (in your money) in damages to women bringing lawsuits alleging a lack of protection on the job. One such is in the works now. Study up or pay up.”\(^{130}\) Finally, on April 14, 1980, an editorial in the \textit{Christian Science Monitor} mentioned that the testimony “indicated that sexual harassment is hardly an isolated phenomenon affecting only a few workers.”\(^{131}\)

In its April 1980 report, the subcommittee commented again on the impact of its investigation and wrote, “Even though public discussion of this subject had been negligible, the subcommittee was able to play a key role in focusing public attention on the issue.”\(^{132}\) Here, the report does not consider that there had been much feminist activism or press coverage on the issue. In addition, the report does not indicate how this impact was measured and the newspaper articles which mentioned the hearings only suggest that word may have been reaching the public. The issue had clearly reached the highest levels of government, but the subcommittee may not have fully realized that, while the issue was new to them, it may not have been as new to the public as it suggested. Therefore, the impact of the hearings in raising awareness was perhaps most easily observed in how they led to discussions of sexual harassment throughout the federal government. Because of the subcommittee’s conclusions and recommendations, all federal employees were very likely to learn about the issue as policies were written and training programs initiated in numerous federal agencies in the months after the report was released. The

impact of the hearings thus lies in how they led to the creation of the first government-wide sexual harassment policies.

The report, *Sexual Harassment in the Federal Government*, is a 30-page document summarizing the committee’s investigation and much of it is devoted to the three-day hearings. The report affirms some of the earlier statements regarding sexual harassment and discrimination as well as its economic impact on women victims. It states, “The subcommittee concluded that in order to be understood, sexual harassment must be fully recognized as a form of discrimination.” In the report the subcommittee confirmed that sexual harassment was a serious problem for women:

> The subcommittee feels strongly that sexual harassment has been ignored too long, and must be eliminated from the workplace. Sexual harassment is pervasive and is not the insignificant personnel issue some people may believe it to be. Sexual harassment will clearly be a major workplace issue in the 1980s and it must be squarely faced by both the public and private sector. It is already evident that sexual harassment severely affects the well-being and economic livelihood of women employees, while also affecting the morale, productivity, and integrity of the workplace.

In referring to sexual harassment as a “major workplace issue in the 1980s,” the subcommittee viewed the problem as urgent and one that would likely not go away unless certain measures were taken. Here, it sounded very similar to some of the witnesses who shared this opinion when testifying. In addition, the subcommittee also referenced a study by the Urban Institute as further evidence that the problem was only going to get worse as more women entered the workplace, which is exactly what the Urban Institute report, “The Subtle Revolution,” revealed. The subcommittee report cites the Urban Institute’s conclusion that by 1990 “an additional million women will enter the labor force each year” and speculates, “The weight of those

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133 Ibid., 24.
134 Ibid., 21.
numbers alone should be enough to prompt action. However, sexual harassment and any other problem that affects the ability of women to work freely will also increase in importance as economic conditions force more and more families to depend on the women’s additional income.” The subcommittee heard about the Urban Institute’s report when Helen Lewis of the D.C. Commission for Women testified at the hearings. She mentioned the report’s figure of a million women entering the workforce each year and said, “If for no other reason than that such large numbers of people are potential victims of employment-related sexual harassment, we must grapple with this problem as quickly and constructively as possible.” With such an increase in the number of working women also came the possibility that more of them would stand up for their rights as citizens and not tolerate sexual harassment in the workplace, as the subcommittee’s report suggests.

Clearly, the subcommittee considered the testimonies they heard very carefully when issuing their report. Because this was the first investigation of its kind, it is worth examining the subcommittee’s summary and recommendations in more detail in order to compare them with the testimonies from the hearings and to understand the potential effect they had in later sexual harassment policies. Its summary included many of the same major themes outlined above. First, the subcommittee asserted that sexual harassment needed a specific definition, as opposed to a broad one, “in order to minimize the possibility of frivolous complaints.” Second, the subcommittee determined that sexual harassment was underreported. It listed the reasons for this as the fear of retaliation, the reluctance to report the harassment because the complaint would be handled within the same agency where the harassment took place, the belief that internal EEO officers were unaware that sexual harassment was sex discrimination and were also insensitive to

135 Ibid.
136 1979 Hanley Hearings, 53-54.
the problem in general, and the desire to avoid the lengthy complaint process which, at that time, lasted an average of 440 days. Third, the subcommittee found that women were unaware of existing federal government procedures, such as Title VII, available to them. In other words, they were unaware of the successful ruling in the *Williams v. Saxbe* case that made this a possibility. The report notes specifically that Title VII was an option and that federal employees could file complaints with EEO counselors and the EEOC because both the Commission and federal courts considered sexual harassment a grievable discrimination offense at that time. Fourth, the subcommittee argued for training programs to inform employees about the definition of sexual harassment and to show them how to implement effective complaint procedures. Its focus here was in “stopping it before it happens, rather than trying to solve the problem by punishing harassers after they have already harmed their victims.” Finally, the summary included the need for a reliable survey. The subcommittee believed this was necessary because “very few surveys had been conducted to determine the nature and scope of sexual harassment in the Federal workplace.” It noted that unofficial surveys existed and that there would likely be more of them as sexual harassment “receives more attention” but that, while helpful, these surveys had questionable credibility.

In addition to this summary, the subcommittee addressed two of its goals expressed at the outset of the hearings and answered its main questions about sexual harassment in the federal government. The subcommittee began with the first question regarding the severity of the problem and concluded that “sexual harassment is an extremely serious matter.” Its proof was

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138 Ibid., 11-12.  
139 Ibid., 14.  
140 Ibid., 18.  
141 Ibid., 19.  
142 Ibid.  
143 Ibid., 22.
the “overwhelming response” the subcommittee received from “federally employed women across the country” who “were relieved and encouraged that a congressional committee was willing to address the issue.” It also concluded that sexual harassment was underreported because many women were reluctant to come forward for the reasons stated above and because of “prevailing attitudes concerning sexual harassment” in which “women should expect to be harassed.” In addition, the report notes that the subcommittee felt this was “disturbing” because of the side effects victims of sexual harassment experience, including physical and emotional ailments that could affect job productivity or lead to job loss. The subcommittee’s final point regarding the seriousness of the problem was that “sexual harassment has not surfaced as a serious employment issue because managers are reluctant to recognize it as a problem.”

The subcommittee discovered that agencies did not issue sexual harassment procedures because they did not want to acknowledge that the problem existed. The report illustrates that since the hearings some federal agencies had issued policy statements on sexual harassment which the subcommittee referred to as “essential because where there is a reluctance to have employees learn of their rights and options, there will also be a reluctance to exercise those rights.”

The subcommittee then turned to its question regarding solutions to the problem and how federal agencies could serve that purpose. The report outlined the ways the subcommittee wanted to help federal (and ultimately private) sector employees exercise their rights when they listed their 21 recommendations for the OPM, the MSPB, the EEOC, the U.S. Postal Service, the Department of Defense, the Executive Branch, state and local governments, organized labor, and the private sector. While they charged all of these groups with taking some sort of action, the

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144 Ibid.
145 Ibid., 23.
146 Ibid.
147 Ibid.
148 Ibid.
ones that were the most important were those given to the OPM, MSPB, and EEOC because they involved definitions, training, and complaint procedures that would affect all of the others. These recommendations are where the impact of the hearings is most visible. Each agency was given a task to complete that had a long-lasting effect on sexual harassment policy in the federal government and in general. Regarding the private sector, the subcommittee took this segment of American workers into consideration when stating “that the problem is also present in the private sector” and when offering advice to businesses for how to address the problem. The report reads, “Fortunately, addressing sexual harassment will not be a burden to private employers. Private firms can address the problem through their existing personnel and equal opportunity programs and will benefit from their past experience in working to eliminate racial discrimination.” Interestingly enough, the subcommittee took no testimony from the private sector regarding whether or not they shared the opinion that implementing such programs would not be a burden. They only cited the work of two major automobile manufacturers, the Ford Motor Company and the Chrysler Corporation, in negotiating agreements with the United Auto Workers union about sexual harassment procedures as an example of how private business could construct such policies and not fear that addressing sexual harassment would negatively affect their businesses. This assumption that private business would therefore welcome federal sexual harassment guidelines and easily implement them with their existing equal employment opportunity procedures would prove to be incorrect in the business community’s later unfavorable response to the EEOC’s 1980 Guidelines.

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149 Ibid., 24.
150 Ibid., 25.
151 Ibid., 24-25.
152 See Chapter Five.
Turning to the role of the federal agencies designated with responsibilities for creating sexual harassment policies, the subcommittee made its charges to the OPM, MSPB, and EEOC clear before the hearings closed. OPM’s main charge was to issue a policy statement and definition of sexual harassment for all federal employees. In addition, the subcommittee recommended in its report that OPM continue its involvement with sexual harassment in the federal government through implementing training programs for all federal employees, both supervisors and subordinates, through monitoring the punishments that harassers are handed, through monitoring agencies and urging them to issue their own directives based on OPM’s policy statement and to make sure that they conduct sexual harassment training, and finally, through continually evaluating agency “compliance with sexual harassment laws.”

MSPB was handed the task of conducting a large-scale sexual harassment survey of federal employees. The subcommittee argued that this duty fell to MSPB because the Civil Service Reform Act of 1978, which it quoted in its report, authorized the agency to “conduct from time to time, special studies relating to the civil service and other merit systems in the Executive branch and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected.” When Ruth Prokop, MSPB’s Chairwoman, testified, she acknowledged her organization’s role along these lines but explained that conducting such a survey would take a considerable amount of MSPB resources and budget. Nonetheless, Prokop and MSPB pledged to complete this survey and poll at least 20,000 federal employees representing various government agencies.

Hanley’s subcommittee called on MSPB to complete two additional tasks. The first one was to

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154 Ibid., 19.
155 1979 Hanley Hearings, 163.
publish a report upon completion of this survey “containing a summary of the legal aspects of
sexual harassment, a comprehensive discussion of current remedies for Federal employees and
possible improvements, and a compilation of important statistics derived from the survey
results.”157 Second, they asked MSPB and the Special Counsel to “use their unique statutory
authority to protect Federal employees from prohibited personnel practices such as sexual
harassment” and to “create a supportive climate in which victims of sexual harassment will come
forward to seek the available sanctions.”158

Finally, the EEOC was charged with defining sexual harassment as a violation of Title
VII. While the subcommittee did not direct the EEOC to establish guidelines for the private
sector separately from the federal sector, it did not need to because the 1972 Equal Employment
Opportunity Act and President Carter’s Reorganization Plan No. 1 gave the EEOC jurisdiction
over both without the need to issue separate guidelines. In other words, how the EEOC
interpreted Title VII was the same for all private and public organizations and both had the same
responsibility to communicate this to their employees. Such an expanded jurisdiction also
established the EEOC as the primary agency that would deal with sexual harassment complaints.

The subcommittee also called on the EEOC to continue some of the work that Chair
Norton testified that it was already doing concerning sexual harassment, including raising
awareness that sexual harassment was prohibited under Title VII and conducting training for
EEO personnel and working with OPM in developing sexual harassment training for new staff
supervisors. The subcommittee’s final two recommendations involved EEOC’s pilot program—
the program it initiated in order to test how it would handle complaints from the federal

157 Ibid., 25.
158 Ibid.
government per their expanded duties under the President’s Reorganization Plan No. 1. The subcommittee wanted EEOC to evaluate the pilot program and to reduce federal complaint processing from 441 to 100 days and to report the results of their evaluation to the subcommittee.

The subcommittee’s eleven remaining recommendations were directed to three other federal agencies, state and local governments, organized labor, and the private sector. The subcommittee charged the Postal Service with issuing and managing its own directives and complaint procedures. The Department of Defense was responsible for ensuring that “all military and civilian personnel are protected against sexual harassment in the military service” because “women are playing an increasingly important role in the armed forces.” The Executive Branch was already included by virtue of OPM when the subcommittee suggested that the President should write a sexual harassment policy prohibiting the behavior in both the federal government and private sectors and in urging department heads to adhere to OPM’s directives in protecting federal workers from sexual harassment. Finally, the subcommittee recommended that state and local governments follow the federal government’s lead in issuing policies, instituting training programs, and evaluating remedies for sexual harassment. The last six recommendations were doled out to organized labor and the private sector. Organized labor was urged to add sexual harassment to grievance procedures and to conduct training for its members on the problem and possible solutions. Similar to state and local governments, the private sector

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159 1979 Hanley Hearings, 90-91.
161 Ibid., 26.
162 Ibid.
163 Ibid.
was urged to mirror the federal government in protecting employees, creating policies and training programs, and evaluating their effectiveness in processing complaints.  

Absent from the report is a lengthy discussion of the problem of frivolous sexual harassment complaints, a topic that was considered at length during the hearings. This fact did not escape the notice of Congressman Gene Taylor, who wrote a letter to Chairman Hanley explaining his disapproval of the report for this reason. Interestingly enough, Taylor’s letter was the only letter of its kind included with the report. He claimed, “I cannot agree that we have determined sexual harassment to be as widespread a problem of working conditions in the Federal Government agencies as the report indicates. The report places the Subcommittee in a position of jumping to conclusions, I fear, based upon the limited testimony of a few witnesses who represented a particular point of view.” Taylor wrote that he was “surprised” that the report made no conclusions or recommendations about the problem of frivolous complaints because he was “concerned that artificial constraints and cumbersome mechanisms not be placed as impediments on a manager’s ability to manage or a supervisor’s ability to supervise merely to satisfy some imagined personnel problem.”

In making the claim that the hearings were too one-sided, he did not offer any support for his contention that frivolous complaints were a serious problem. The subcommittee concludes its report by noting that, of the hundreds of calls and letters that the subcommittee received throughout its investigation, “only a few were frivolous in nature.” Based on their testimonies, the witnesses who testified represented some of the groups most familiar with sexual harassment in the federal government. Taylor’s letter also does not describe how the issue of

\[164\text{ Ibid., 26-27.}\]
\[165\text{ Ibid., 31.}\]
\[166\text{ Ibid., my emphasis.}\]
\[167\text{ Ibid., 22.}\]
frivolous complaints was considered at the hearings. Even though it was mentioned several times, it was only discussed when these witnesses claimed that frivolous complaints were not in any way as serious an issue as the problem of sexual harassment itself. For example, of the seven total times that this issue was mentioned, in four of those the discussion centered on why false claims were not a problem and, even if they did occur, the detriment to the victims of sexual harassment far outweighed any negative consequence for those falsely accused.\textsuperscript{168} For instance, when Donna Lenhoff of the Women’s Legal Defense Fund answered Taylor’s question about what the subcommittee could do to protect supervisors from false charges, she agreed with him that the problem could arise. Yet, she downplayed its significance when stating, “I think that what has happened in the past is that there has been overconcern for that problem and insufficient attention paid to the reality of the working condition for a woman who is being subjected to sexual harassment…The fact that there might be a problem of character assassination isn’t enough, I do not think, for the Government to ignore the problem altogether.”\textsuperscript{169} Diane Williams, who the subcommittee admitted had impressed it with her testimony, also offered a similar opinion of frivolous complaints when she began her testimony. She claimed that there were “already sufficient protections to alleged discriminating officials in the case of sexual harassment complaints, because quite often it is the woman who is made to feel as though she is the culprit, by having the audacity to bring forward a complaint of sexual harassment, rather than the man who is guilty of perpetrating what I consider to be a criminal offense.”\textsuperscript{170} Furthermore, of the three witnesses who, unlike Lenhoff and Williams, did not refute that false charges were a problem, they did not argue that they were a problem either. If

\textsuperscript{168} See the following in the\textit{ 1979 Hanley Hearings}: Lenhoff, 11; Lewis, 67-68; Williams, 69-70; and Nelms, 122-123.

\textsuperscript{169} \textit{1979 Hanley Hearings}, 11.

\textsuperscript{170} Ibid., 69-70.
they had they would have lent support to Taylor’s belief that this was as serious an issue as the sexual harassment of women in the federal government. Instead, their testimonies included general statements about frivolous complaints in response to direct questions about them and they spoke of how training programs would help prevent this and how complaint procedures had built-in protections against frivolous complaints.171

In not including Taylor’s concerns within the body of the report, the subcommittee may have wanted to make the statement that sexual harassment would not be tolerated in the federal government—or elsewhere. Hanley certainly seemed to see his (and the subcommittee’s) role as an important one when highlighting the publicity he felt the hearings generated and by doling out a list of recommendations to many agencies and employment sectors he had no jurisdiction over. In this sense, the subcommittee appeared to agree with feminists that the best way to stop sexual harassment was to educate employers and to urge them to act and try to prevent the problem.

Conclusion

The overall importance of the subcommittee’s investigation, among all of the contributions noted above, is that it clearly stated that sexual harassment was a problem and that the federal government was going to do something about it. Hanley’s subcommittee responded to the increased information and interaction stage of a social movement in conducting its investigation. Although they did so following the work of federal employees at HUD, the fact that the sexual harassment frame reached this level indicates the extent to which feminist activism was diffusing knowledge and awareness about the problem. The hearings and the subcommittee’s charges to OPM, MSPB, and EEOC also represent the design stage, adoption, and legislative enactment of the first federal sexual harassment policies in the U.S. The testimony heard throughout the hearings helped figure into the design stage of these policies as

171 See the following in the 1979 Hanley Hearings: Smothers, 110; Campbell, 155; and Prokop, 170.
each agency considered how witnesses perceived the problem and what they wanted done to solve it. Hanley’s subcommittee adopted the goal of addressing the problem of sexual harassment in the federal government and enacting federal policy through these agencies since they were responsible for upholding anti-discrimination policies for federal employees. While Hanley may have at times overstated the subcommittee’s importance in raising awareness about sexual harassment among the general public (since feminist activists were already accomplishing this), his charge to the EEOC did have a more widespread impact than OPM and MSPB’s as the EEOC was the only agency charged with writing a sexual harassment policy that would also cover workers in the private business sector. The next chapter considers this and how each agency turned to implementing sexual harassment policies and completing the duties they had been assigned.
CHAPTER FOUR: 
SEXUAL HARASSMENT IS SEX DISCRIMINATION: 
THE EEOC DESIGNS AND IMPLEMENTS FEDERAL SEXUAL HARASSMENT POLICY 

When Congressman Hanley exercised his authority as Chairman of the House Committee on Post Office and Civil Service and charged OPM, MSPB, and EEOC with designing and implementing the first federal-level response to sexual harassment, he assigned these agencies important roles in the history of sexual harassment policy, yet none were more important than the EEOC’s duty in defining sexual harassment as a form of sex discrimination. Unlike OPM and MSPB, EEOC’s policy and anti-discrimination efforts applied to both the federal and private employment sectors. The EEOC issued its 1980 Guidelines on Discrimination Because of Sex in the months after the hearings and established that sexual harassment violated Title VII and offered federal courts, which were already beginning to rule consistently that sexual harassment violated Title VII’s sex discrimination provision, important guidance on this issue. The guidelines thus served to establish the EEOC’s larger role in enforcing sexual harassment policy, especially since the public, including government agencies and private business, later had the opportunity to comment on the guidelines and put the EEOC’s policy to the test.

This chapter continues the previous chapter’s examination of the design stage and implementation of sexual harassment policy of the Tarrow/Graham model and examines the results of OPM, MSPB, and EEOC’s efforts on behalf of the subcommittee. Chapter Four asks how the EEOC differed from the other two agencies in terms of its role with regards to sexual harassment policy and, more importantly, this chapter questions the influences behind the guidelines. For instance, did the guidelines include the language used by the working women and feminist activists and legal theorists who first framed the problem? Did they account for recent case law on sexual harassment and sex discrimination? If so, to what extent? Chapter
Four argues that the EEOC was different because of its jurisdiction and that the content of the guidelines was a result of a combination of Eleanor Holmes Norton’s leadership and desire to use the sexual harassment guidelines as a way to overcome the EEOC’s past negative reputation on sex discrimination and equal employment opportunity enforcement in general. In addition, this chapter maintains that, while the exact process behind the formulation of the guidelines is uncertain, they nonetheless represented the most current trends in sexual harassment case law and established new areas of employer liability for employment discrimination that were used in other EEOC guidelines. Plus, because of later controversy, the EEOC’s policy stayed in the minds of policymakers, employers, and feminist activists for a much longer period of time than OPM and MSPB’s work.

**OPM and MSPB Write Sexual Harassment Definition, Conduct Survey**

Once the Hanley subcommittee’s hearings closed, OPM wasted little time in issuing its policy statement and sexual harassment definition for government workers on December 12, 1979. In a memorandum attached to the policy statement, OPM Director Alan K. Campbell stated that the purpose of the statement, as requested by Chairman Hanley, was to make “clear that sexual harassment undermines the integrity of the Federal Government and will not be condoned.”¹ He recommended that the heads of all departments and agencies “take a leadership role” and initiate the following three actions:

1. Issue a very strong management statement clearly defining policy of the Federal Government as an employer with regard to sexual harassment;
2. Emphasize this policy as part of new employee orientation covering the merit principles and the code of conduct; and
3. Make employees aware of the avenues for seeking redress, and the actions that will be taken against employees

¹ Memorandum to Heads of Departments and Independent Agencies, Subject: Policy Statement and Definition on Sexual Harassment, 12/12/79, “Sexual Harassment,” Box 17, Domestic Policy Staff, Kathyne Bernick Files, Jimmy Carter Library.
violating the policy.\textsuperscript{2}

In its Policy Statement and Definition of Sexual Harassment, OPM outlined the problem as follows: “Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment debilitates morale and interferes in the work productivity of its victims and co-workers.”\textsuperscript{3} Here, OPM’s statement aligns with the Hanley subcommittee’s opinion that sexual harassment was a detriment to worker productivity and the integrity of the federal workplace. It also demonstrates that sexual harassment was an issue of employment rights when the policy stipulates that “all employees must be allowed to work in an environment” without this behavior, echoing the sentiment of the first workers and activists who spoke out about the problem in terms of economic citizenship.

OPM also informed government supervisors that sexual harassment was “a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures.”\textsuperscript{4} OPM then defined sexual harassment as “deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome,” fitting the Hanley subcommittee’s recommendation for a specific definition.\textsuperscript{5} Director Campbell also argued that the definition was open enough to satisfy those who called for a broad definition while still specific enough to deter false charges.\textsuperscript{6}

\begin{itemize}
\item \textsuperscript{2} Ibid.
\item \textsuperscript{3} OPM Policy Statement and Definition on Sexual Harassment, [November 1980?] “Sexual Harassment,” Box 17, Domestic Policy Staff, Kathryne Bernick Files, Jimmy Carter Library.
\item \textsuperscript{4} Ibid.
\item \textsuperscript{5} Ibid.
\end{itemize}
While one of the main purposes of OPM’s policy was to provide consistency among all agencies in defining sexual harassment, its policy is also consistent with how feminist legal theorist Catharine MacKinnon defined sexual harassment. In particular, OPM’s policy accounts for the two different forms of sexual harassment that MacKinnon identified, quid pro quo and condition of work sexual harassment. OPM considered MacKinnon’s quid pro quo sexual harassment in its policy when stating, “Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee is engaging in sexual harassment.” \(^7\) OPM covered condition of work sexual harassment in its policy by stipulating that “any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere in work productivity is also engaging in sexual harassment.” \(^8\) (See Appendix B.)

OPM’s Policy Definition and Statement on Sexual Harassment applied to all federal agencies as part of their duties under President Carter’s reorganization plans to uphold the federal workplace as discrimination-free. In Campbell’s memorandum accompanying OPM’s policy, he stipulated that, in order to ensure government-wide implementation, each agency had to initiate its own anti-sexual harassment actions by issuing a management directive specific to each agency, using OPM’s guidelines stating what sexual harassment was and that it was a prohibited personnel practice in the federal government. Campbell’s policy also told federal agencies to add their individual sexual harassment policies to their employee training programs and to emphasize to their employees the available remedies for bringing complaints and to

\(^7\) OPM Policy Statement and Definition on Sexual Harassment.
\(^8\) Ibid.
remind them that the behavior would not be tolerated. OPM also took a leadership role by developing its own sexual harassment training program as part of its existing courses and by creating modules for different government agencies to use in their own employee orientation and training programs. Unlike the EEOC, OPM conducted employer training for the federal government (similar to human resources training), therefore, it designed its own training programs.

When MSPB began its survey, the agency announced its intention to use OPM’s definition of sexual harassment in its study and to measure the following seven issues, plus others:

1. The degree to which sexual harassment is occurring within the Federal workplace, its manifestations and frequency;
2. Whether the victims or perpetrators of sexual harassment are found in disproportionate numbers within certain agencies, job classifications, geographic locations, racial categories, age brackets, educational levels, grade levels, etc.;
3. What kinds of behavior are perceived to constitute sexual harassment, and whether the attitudes of men and women differ in this respect;
4. What forms of express or implied leverage must have been used by harassers to reward or punish their victims;
5. Whether victims of sexual harassment are aware of available remedies, and whether they have any confidence in them;
6. The impact of sexual harassment on its victims in terms of job turnover, job performance, their physical or emotional condition, and their financial or career well-being and;
7. The effect of sexual harassment on the morale or productivity of the immediate work group.

This list shows the influence of feminists in its inclusion of determining the degree of sexual harassment—a topic found in many articles regarding feminist activism on sexual harassment. It also shows that MSPB adopted the feminists’ frame of sexual harassment as an issue of economic citizenship by including the analysis of the impact of sexual harassment based on a number of criteria that dealt with economic issues. In measuring these issues, MSPB was aware of the fact that while there had been several informal surveys polling women about sexual harassment on the job, its study of sexual harassment in the federal government was the first large-scale, scientific survey on sexual harassment. Therefore, MSPB also wanted to study issues relevant to employers, such as the impact of sexual harassment on productivity, victims’ knowledge of remedies, and the demographic breakdown of victims. Recognizing the importance of their task, MSPB’s directors enlisted the help of three professionals, Drs. Sandra Tangri, Martha Burt, and Leanor Johnson, who each took a leave of absence from the Urban Institute\(^\text{12}\) in order to lend their research expertise in the field of sexual behavior to developing the questionnaire that MSPB planned to send to over 20,000 federal employees. MSPB also gathered experts together in an advisory panel to oversee the research and offer guidance as the study got underway. This group included a representative from the U.S. Commission on Civil Rights, the OPM, the EEOC, Auburn University, the Department of Justice, the Department of the Air Force, and the American Federation of Government Employees. Only one member, Freada Klein of AASC, represented a feminist activist group dedicated to sexual harassment.\(^\text{13}\)

\(^{12}\) Please note: Drs. Tangri, Burt, and Johnson do not appear in the Urban Institute’s *Subtle Revolution* report discussed in Chapter One.

MSPB planned to complete its survey by July 1980 and release its final results and formal report on sexual harassment in the federal government by November 1980.\textsuperscript{14}

As OPM and MSPB were completing their initial tasks, the EEOC turned to its charge of creating a policy that outlined how sexual harassment violated Title VII of the Civil Rights Act, as amended. On April 11, 1980, just two weeks before the Hanley subcommittee issued its own report on the hearings, the EEOC issued its policy as an interim amendment to the Commission’s Guidelines on Discrimination Because of Sex. Under the amended Title VII and President Carter’s Reorganization Plan No. 1, the EEOC’s definition applied to all of the employment sectors in which it was charged with enforcing anti-discrimination law, including both the public (federal, state, and local governments and educational institutions) and private (any company with at 15 or more employees) sectors, in addition to employment agencies, joint apprenticeship committees, or labor organizations.\textsuperscript{15} The reorganization plan was meant to reorganize the equal employment opportunity functions of the federal government and to streamline the process of enforcing the law. In effect, it made the EEOC the lead agency with regards to anti-discrimination enforcement due to its expanded jurisdiction. However, given that these changes to the EEOC as well as the creation of new agencies such as OPM were in their infancy by the time that both agencies wrote their first sexual harassment policies, there was some confusion as to which definition took precedence over the other. When looking at the wording of OPM’s policy and this statement, “The Equal Employment Opportunity Commission will be issuing a directive that will define sexual harassment prohibited by title VII of the Civil Rights Act and distinguish it from related behavior which does not violate title VII,” it appears that OPM’s

\textsuperscript{14} 1980 Hanley Report, 20.
definition would apply to complaints of non-discriminatory sexual harassment. However, when listing the channels employees could use to complain about sexual harassment, OPM listed several options that would seemingly have equal weight, regardless of the type of complaint, including OPM and EEOC procedures as well as internal grievance procedures and others. When Alan Campbell testified before the Hanley subcommittee even he noted that there were questions regarding authority and the proper agency where government employees could file complaints. He mentioned that the organizations were in a “state of change” in terms of mapping out each agency’s jurisdiction. OPM did mention that when questions over jurisdictions arose, the complaint was usually transferred to the agency best suited to handle a specific complaint. The bottom line is that, despite this confusion, there were at least a few remedies for victims of sexual harassment to file complaints, and while these organizational issues needed to be addressed, so did awareness of the remedies in the first place.

**Eleanor Holmes Norton Brings Change, Sexual Harassment Guidelines to the EEOC**

Given the EEOC’s problematic history of enforcing anti-sex discrimination policy, it may have seemed surprising to some that the Hanley subcommittee looked to this agency to implement such an important sexual harassment policy. However, as the only agency designated to enforce Title VII of the Civil Rights Act of 1964, as amended, in light of the strong testimony arguing that Title VII was an appropriate remedy for sexual harassment, there was no other regulatory agency in Washington that could implement a policy stating that sexual harassment violated Title VII. In addition, despite its poor track record regarding sex discrimination, the agency was poised by 1979 to shed this reputation and take a more affirmative stance in ending

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16 OPM Policy Statement and Definition on Sexual Harassment.
18 1979 Hanley Hearings, 161.
20 See Chapter One.
sex discrimination in employment. The reason for this dramatic change can be attributed to the leadership of Eleanor Holmes Norton, whom President Carter appointed to chair the EEOC in 1977.

During the years before Norton took control of the EEOC, the agency was largely considered by many in Washington to be ineffective in enforcing civil rights legislation. In its own organizational history, published in commemoration of its thirty-fifth anniversary in the year 2000, the EEOC explains that throughout this time the agency was adjusting to its greater jurisdiction and duties as stipulated in the 1972 Equal Employment Opportunity Act, which it says brought in “a new era of enforcement for the EEOC.” Based on this evidence, the Commission appears to have been concentrating on enforcing multiple kinds of anti-discrimination provisions, meaning trying to enforce both sex and racial discrimination at the same time and not separately (when in its first years the focus seemed to be solely on racial discrimination), by investigating four large companies in the mid-1970s, General Electric, General Motors, Ford, and Sears and Roebuck. The EEOC also joined forces with the Departments of Labor and Justice in 1974 to file suit against the steel industry and its union, the outcome of which benefited both minorities and women when the companies had to provide back pay to these employees and agree, along with the union, to hiring goals and timetables for minority and women workers. The year 1976 saw a similar decision in which United Airlines was forced to provide monetary and affirmative relief to its minority and women workers for race, national origin, and sex discrimination. In 1977, the Commission again made a company, Duquesne Light Company, pay back pay and institute employment programs for black and/or

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female employees. These decisions offer an overview of what the Commission was doing with regard to sex discrimination. However, the focus on these cases meant that individual discrimination charges piled up, giving the agency its negative reputation and infamous case backlog.

A more in-depth look at the EEOC’s chairmanship and backlog, in addition to a new effort by working women’s groups to monitor its activities, reveals that its efforts on behalf of women stalled throughout this period because of the Commission’s internal problems. Starting with the position of EEOC chairman, the agency went through six chairmen and three acting chairmen between 1965 and 1977, in addition to ten executive directors. In fact, in the two years prior to Norton’s appointment alone, the Commission had two Chairmen and two Acting Chairmen. This “merry-go-round of personnel” a lack of consistent leadership that would keep the sex discrimination drive of the early 1970s moving forward. The backlog offers additional proof that the agency was having difficulties in overcoming its lack of budgeting and human resources. According to the EEOC’s 1975 Annual Report, the backlog grew from 48,239 to 97,177 unresolved charges between fiscal year 1972 and fiscal year 1975. There are conflicting figures as to how many cases were still unresolved when Norton took office in June 1977. The EEOC lists the figures at 94,700, while Norton’s biographer records the number as 130,000 cases. It is likely that the EEOC’s figure is an under-estimation because the agency’s

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22 Ibid., 15-16.
23 Ibid., 82-83 and Jacqueline Trescott, “Eleanor Holmes Norton: A Fighter In the EEOC Chair; Eleanor Holmes Norton: A Fighter Takes Over the EEOC Chair,” Washington Post, June 22, 1977.
25 Trescott, “Eleanor Norton: A Fighter in the EEOC Chair.”
figure is below the backlog figure that it reported in 1975. Since the backlog had been increasing, rather than decreasing, a better estimation is at least 97,177 cases.

Working women’s groups were unhappy with this record and in 1977 formed the National Women’s Employment Project (NWEP) to monitor the EEOC and other federal equal employment agencies. The NWEP was comprised of six working women’s organizations, representing over 3,000 women in six major cities: Women Office Workers in New York, Women Organized for Employment in San Francisco, 9to5 in Boston, Women Employed in Chicago, Cleveland Women Working, and Dayton Women Working. After the organizations filed a number of discrimination complaints with the EEOC which were never reviewed due to the agency’s backlog, they decided to use the experience they had gained in bringing complaints and in learning how the agency operated in order to undertake a project where their organizations would conduct research, advocacy, monitoring, and public education activities in order to “ensure that working women themselves have a voice in shaping changes in the federal equal employment opportunity enforcement apparatus.” With regards to the EEOC, their overall goal was to research the Commission’s administrative, enforcement, and litigation procedures and then make recommendations for how it could better enforce the civil rights legislation it was responsible for. The NWEP also wanted to educate Congress, the American public, and working women about equal employment issues and to build relationships among its six member organizations and other civil rights and women’s groups. Despite some improvements in the EEOC’s enforcement of anti-discrimination statutes after the Equal Employment Opportunity

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30 Ibid.

31 Ibid.
Act of 1972, much remained to be done when Norton took office in 1977 and two years later when Hanley asked the EEOC to write the nation’s first sexual harassment policy.

If Hanley entrusted Norton’s EEOC with such a major responsibility, writing essentially what was the first sexual harassment policy to cover millions of workers in the nation’s government agencies and private businesses, then something had to have happened in the first two years of Norton’s term that would lead Hanley and his subcommittee to the conclusion that the Commission was up to the task. After all, had the EEOC not been ridiculed and targeted for review because of its ineffectiveness toward women’s issues? It had earned such an unfavorable reputation by the late 1970s that the Commission was known as unmanageable and a “joke” or a “laughingstock.”32 Did Norton’s appointment finally mean that the agency was going to possess the type of leadership, change, and commitment to civil rights that the NWEP and countless others were hoping for? While all of this constitutes a tall order for just one woman who would hold the position of EEOC Chair for only three years and eight months, Eleanor Holmes Norton was able to bring positive changes to the EEOC and to improve its reputation in enforcing sex discrimination policy by not only overseeing the manner in which the sexual harassment guidelines were written and issued, but in affirming the EEOC’s commitment to stopping sexual harassment in the workplace.

Hanley had confidence in Norton because of her long record of leadership on the issue of anti-discrimination policy enforcement. That Norton would then get behind an issue such as sexual harassment, one which she remembers that she had to “grab hold of” “and shape it, because women were so reluctant to come forward,”33 is not surprising given her history of activism. Norton participated in both civil rights and women’s rights activities. As an active

32 Trescott, “Eleanor Norton: A Fighter In the EEOC Chair,” and Lester, Eleanor Holmes Norton: Fire in My Soul, 197.
33 Lester, 206.
participant in the civil rights movement, she had joined Yale’s civil rights organization while a law student there, had participated in the Student Nonviolent Coordinating Committee (SNCC), and had helped to organize and had attended the 1963 March on Washington.\(^34\) Just as her mentor, Pauli Murray, did, Norton saw the connections between civil rights and women’s rights and was active in the feminist movement.\(^35\) Susan M. Hartmann writes that Norton’s experience working as a staff attorney for the American Civil Liberties Union (ACLU) alongside Murray from 1965 to 1970 shaped her feminist consciousness. When preparing an argument for the inclusion of sex in legislation to prohibit racial discrimination in jury service, Norton realized that male civil rights leaders paid little attention to women’s rights.\(^36\) Norton’s experiences as an activist and an attorney later led to her appointment as Chair of the New York City Commission on Human Rights in 1970, a position she held until President Carter appointed her to the EEOC in 1977.\(^37\) While Human Rights Commissioner, she encouraged women to use sex discrimination law and file complaints. Also like Murray, Norton saw beyond the racial distinctions between the civil rights and women’s movements and also within the women’s movement itself. She argued for black women to join the women’s liberation movement. After just five months as New York’s Human Rights Commissioner, Norton chaired the first-ever hearings on women’s rights in the United States in September 1970.\(^38\) When Norton opened the week-long hearings with a speech about strategies for change, she made the following assertion:

There is one myth that troubles me personally as much as all the rest, and that is the myth that somehow black women are not a part of the struggle for women’s rights but belong exclusively to

\(^{34}\) Lester, 92, 110, 115-118.
\(^{37}\) Lester, 157-158.
\(^{38}\) Ibid., 176-177.
the movement for black liberation. That cannot be. For black women are preeminently working women who have borne double oppression…These women need to join the struggle for women’s rights and demand that part of our effort go to making women’s work a dignified and well-paid work…We who are black have failed to develop our own issues in this struggle. Black sisters need to stop criticizing the white woman’s struggle for being white, for it will only take on color if we who are black join it. It is hypocritical for us who are black to insist upon speaking for ourselves but to blame white women for articulating their needs, not ours.39

In 1973, Norton again acted on these beliefs and helped found the National Black Feminist Organization (NBFO), an organization founded by women who were dissatisfied with the National Organization for Women’s response to the needs of black women.40

On August 19, 1975, Norton presided over another historic round of hearings when the New York City Commission on Human Rights conducted hearings on sexual harassment, the hearings in which Lin Farley and others had testified about the widespread nature of the problem. The sexual harassment clause the Commission adopted after the hearings was historic because it was one of the first local policy responses to feminist activism on the issue of sexual harassment.41 Indeed, Norton’s leadership at the Commission in equal employment opportunity enforcement and in ridding that agency of an ominous case backlog made her an ideal candidate in 1977 when it came time for President Carter to appoint a new EEOC Chairman. In a January 29, 1977, memo to President Carter, Midge Costanza, Carter’s Assistant for Public Liaison, answered the President’s request to be notified of any names of

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40 Williams, 275 and Benita Roth, Separate Roads to Feminism: Black, Chicana, and White Feminist Movements in America’s Second Wave (Cambridge: Cambridge University Press, 2004), 105-107.

“women for important positions” and recommended Norton for the EEOC chairmanship. Costanza told the President that Norton was “an especially well qualified woman” and she remarked on Norton’s success throughout her six years in New York City. Costanza also spoke of Norton’s reputation and wrote that she was “regarded as the outstanding professional in the country in the field of equal opportunity” at that time and that she “would lend the two qualities that the EEOC most needs—leadership and technical management competence in the field.” Costanza went on to describe Norton’s efforts in creating procedures that eliminated the New York City Commission’s case backlog and the importance of appointing “a person with this kind of track record to an agency whose performance apparently results from the appointment of commissioners who had no experience or track record in the field.” Costanza closed her recommendation by arguing that Norton presented the President “with an opportunity to appoint a woman who is without male peers” and that “her nomination would thus be greeted as an especially creditable one not only by women, but by minorities and by citizens who know this field, among whom she enjoys the same strong reputation.”

In March of 1977 President Carter decided to nominate Norton to the EEOC position. A Washington Post writer confirmed Costanza’s opinion that Norton’s appointment would be supported by women’s and civil rights groups, noting that she had “been strongly supported” by women’s groups such as the National Women’s Political Caucus and “some civil rights groups.” Another Post writer later wrote of Norton’s reputation and support and contrasted her good reputation in handling discrimination cases with the EEOC’s poor one. On June 16,

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42 Memo from Midge Costanza to President Carter, Subject: Appointment of Chairman of the Equal Employment Opportunity Commission, “Norton, Eleanor Holmes: Costanza Recommendation to President, 1/77,” Box 7, Office of Assistant for Public Liaison Records, Jimmy Carter Library.
44 Trescott, “Eleanor Norton: A Fighter In the EEOC Chair.”
1977, the day before Norton was sworn-in as Chair, one of Carter’s staff members prepared a set of “talking points” for the President to use at the swearing-in ceremony about Norton and other appointees in which he referred to her as “a woman after your own heart” because of Norton’s background in human rights. This staffer also reminded the President that, when speaking at the ceremony, he should reflect the sense of confidence he had that Norton would turn things around at the EEOC.45

When President Carter spoke at the Rose Garden ceremony the next day, he opened by stating that while the U.S. had had some success with human rights the nation still had “a long way to go.” He then mentioned sex discrimination specifically when he commented, “And now we are recognizing that there is a majority of people in our country who felt, and who still feel, discrimination – and that is women.” When introducing Norton he remarked upon her courage, a quality he had said ought to be recognized in those who had tested themselves in fighting discrimination. Regarding her reputation, he told the press gathered that “her ideals and hopes and aspirations for the poor and weak and inarticulate, sometimes uneducated, non-influential people” were “recognized throughout this country and indeed throughout the world.” President Carter also mentioned her experience in New York where she had been a “great success” because of her “good, strong legal background” and the “sensitivity and concern and compassion” that she brought “to those that she has represented, combined with a tough competence in the management of a very difficult governmental bureaucracy.” Finally, President Carter spoke about the difficulties ahead and his faith in her abilities to improve the situation when he stated, “We now have a great obstacle in the guarantee of basic equal rights in Washington, because of the diversity and the fragmentation and the maladministration of some

of the agencies that are supposed to operate efficiently to guarantee those rights. I believe that if anyone can bring order out of chaos and have a consistent and effective policy in the Equal Employment Opportunity Commission, it is Eleanor Holmes Norton.\textsuperscript{46}

One of Norton’s first actions at the EEOC was to have the “man” dropped from the word “Chairman,” making her the first EEOC “Chair.” She told a \textit{Washington Post} reporter that she wanted to be “Chair” because “chairwoman is sexist, chairman is too sexist and chair-person is a title men refuse to use.”\textsuperscript{47} On a more serious note, Norton began her term by vowing to “control the backlog”\textsuperscript{48} by calling the first-ever staff meeting at the agency (as one staff member explained), and by whipping the staff into shape with her “hold-nothing-back” attitude.\textsuperscript{49} In explaining these efforts she said that she was giving the EEOC what she had once said was the “hard-headed and no-nonsense direction” that it needed.\textsuperscript{50}

Not surprisingly, Norton’s next task was to develop a plan for eliminating the backlog. Here, she drew on her experience in New York and set about to take the small-scale backlog eliminating plan that she and her staff at the Human Rights Commission (many of whom had followed her to Washington) had developed and adapt it to a federal-size agency. When she testified before a House subcommittee about the new plan, which had taken her and her staff only six weeks to design, the members of Congress were impressed.\textsuperscript{51} Norton referred to the plan as “rapid charge processing,” in which discrimination claims were handled as quickly as possible, often with negotiated settlements between the two parties. While it did help to


\textsuperscript{47} Trescott, “Eleanor Norton: A Fighter In the EEOC Chair.”

\textsuperscript{48} Ibid.

\textsuperscript{49} Lester, 198-199.

\textsuperscript{50} Trescott, “Eleanor Norton: A Fighter In the EEOC Chair.”

\textsuperscript{51} Lester, 200.
eliminate the backlog, the plan was not without its detractors, who criticized it for rushing to these settlements instead of conducting more thorough investigations. Norton responded to this criticism by saying that the plan was better than the alternative, a needlessly lengthy process whereby claims sat around unprocessed for years. When Norton took over as Chair, the number of backlogged cases was so overwhelming that her staff found case files throughout the Commission’s offices, including some five-year-old files that were stacked throughout different rooms and stuffed into the ceiling tiles. When she left the EEOC in 1981, the backlog had been decreased to fewer than 50,000 pending cases.

Norton not only implemented her rapid-charge processing system at the EEOC, she concentrated on improving the regional offices as well. She also established “model offices” in Dallas, Baltimore, and Chicago which were designed to showcase the new complaint procedures and handle cases more efficiently. These offices decreased the turnaround time of filing a complaint to 31 days, increased the amount of monetary benefits complainants received, and reduced the backlog in these offices by 88 percent. Norton’s EEOC was well on its way to improving the agency’s reputation and enforcement of antidiscrimination laws by tackling the old, unresolved cases to the point where two of the district offices, Dallas and Seattle, eliminated their case backlog and could then focus only on new complaints. However, while all of these changes were good for the EEOC’s reputation, they came at the price of angering some staff members who were not pleased with the new system and who picketed the EEOC’s headquarters with their union, the American Federation of Government Employees. In addition, the EEOC was not immune to its own staff members filing discrimination and sexual harassment

52 Ibid., 200-201.
54 Lester, 204
Norton dealt with these problems by signing an agreement with the union that the
rights of the employees would be protected throughout the reorganization and by taking a “zero
tolerance” position regarding discrimination in the agency. It also helped that she had the
“confidence of the president” in dealing with tough staff situations. President Carter backed her
on some of her personnel decisions and demonstrated his faith even further when the White
House gave the EEOC a significant budget increase, 35 percent, within six months of Norton’s
first year as Chair.56

In her second year at the EEOC, President Carter issued his Reorganization Plans No.1
and No. 2 of 1978 and Executive Order 12067. The latter reorganized federal civil rights
enforcement and expanded the EEOC’s duties by consolidating the functions of 17 agencies,
including the Labor, Justice, and Treasury Departments, while also giving the EEOC the role of
enforcing the Equal Pay and Age Discrimination Acts as well as statutes prohibiting
discrimination against Americans with disabilities.57 Another part of the president’s
reorganization plan stipulated that the “EEOC also was charged with coordinating the
enforcement of all federal equal employment efforts” because all federal agencies were required
“to consult with EEOC in developing EEO regulations, policies, and procedures.”58 Norton
remembers that this consolidation helped the agencies to work together when in the past the
Justice Department had been running the show.59 Her goal after the reorganization was to make
the EEOC a “single-stop operation” for federal civil rights enforcement, accomplishing “one of

55 Ibid., 201-202
56 Ibid., 202-203.
also.
59 Lester, 204.
the oldest goals of the civil rights movement: to get a strong, single-purpose equal employment agency."

Norton also concentrated on further placing the EEOC at the forefront of antidiscrimination enforcement by issuing guidelines that would inform federal courts on issues of employment law. She saw the leadership possibility that publishing such guidance offered the Commission well before Hanley charged the EEOC with this task. In fact, this was one area in which the Commission had been successful in the past and, knowing this, Norton saw it as a way to influence employment law by guiding the courts with the EEOC’s expert advice. She set the Commission to work on writing voluntary affirmative action guidelines. By the late 1970s, some white Americans were dissatisfied with antidiscrimination law and were charging that it resulted in the “reverse discrimination” against white men. Norton hoped that EEOC guidelines would help the courts in dealing with such circumstances. In addition to the affirmative action guidelines, the EEOC had issued guidance on religious discrimination, national origin discrimination, employment testing procedures, and employment selection procedures.61

The process of writing guidelines was, in Norton’s words, “a Herculean process,” which involved numerous drafts and “lawyers, investigators, policy makers, [and] the commissioners.”62 Using the affirmative action guidelines as an example, Norton explained that they “sat down and figured it out, based on the case law, examination of the statute, and analogies from other discrimination law.”63 Norton turned to the understanding that racial slurs created an offensive environment in the workplace when considering the effect of sexually

60 Quoted in Ibid., 204.
62 Quoted in Lester, 206.
63 Quoted in Ibid.
harassing language on working women. Another strategy that Norton used was to publish draft guidelines and give the public and business community, and in the case of the affirmative action guidelines, the civil rights community, at least three months to comment on them. She spoke of opening the draft affirmative action guidelines for comments as follows: “We insisted on formal Notice and Comment. The more comment you had the fewer mistakes you made. The business community and the civil rights community each had an opportunity to weigh in as much as possible.” Once all comments were received by the announced deadline, the Commission would then take them into consideration and make appropriate changes to the guidelines.

Possibly due to the EEOC’s prior experience in issuing guidelines, Norton’s biographer tells the story of the origins of the sexual harassment guidelines by crediting Norton for much of the impetus behind the policy. The biography makes no mention of the fact that the impetus for the guidelines came from Hanley’s 1979 hearings on sexual harassment in the federal government, even though Norton testified during the hearings. Instead, her biographer explains that, shortly after the Commission issued the affirmative action guidelines, Norton purportedly had the idea to write the sexual harassment guidelines. When she appeared before the subcommittee, Norton credited Chairman Hanley and the other members for bringing the issue under congressional oversight, but focused on how the EEOC “pioneered development of the title VII case law on sexual harassment” by submitting an amicus curiae brief arguing that sexual harassment was sex discrimination as early as 1977 in the Arizona federal court case, *Corne v.*

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65 Quoted in Lester, 206.
66 Ibid.
Bausch & Lomb, Inc. 67 She also explained that the EEOC was currently at work on regulations requiring Federal agencies to add sexual harassment provisions to its affirmative action plans and was also writing directives for Federal agency EEO counselors to include in their programs. 68 Norton did not specifically say that the Commission was writing overall guidelines outlining how sexual harassment violated Title VII for public and private employees. Nevertheless, it is possible that Norton saw the task of writing sexual harassment guidelines as an opportunity to put the Commission at the forefront of sexual harassment policy in order to continue to improve the agency’s overall reputation. In addition, it is likely that Norton sought to earn the respect of the women’s groups which were calling for policies that explicitly defined sexual harassment as sex discrimination, just as Norton had sought to win the support of civil rights groups in issuing affirmative action guidelines and throughout the President’s reorganization of civil rights enforcement.

While there is little explicit evidence that directly links women’s groups to Norton over the issue of sexual harassment during the year of 1979-80, she was meeting with women’s groups such as the NWEP (who by then was not only affiliated with its regional organizations but operating under the name of Working Women, the National Association of Office Workers) about the structural changes at the EEOC and women’s rights issues in general. 69 Major newspaper articles from this period also suggest that women’s groups, including the first ones to

67 1979 Hanley Hearings, 92. Carrie N. Baker notes that while the Corne decision was handed down in 1977, the EEOC had submitted an amicus curiae brief in 1975, therefore the EEOC’s involvement in sexual harassment jurisprudence occurred even earlier, when Norton was still Chair of the New York City Commission on Human Rights. See Carrie N. Baker, “Sex, Power, and Politics The Origins of Sexual Harassment Policy in the United States,” (PhD diss., Emory University, 2001), 316-317.
68 Ibid., 91-92.
organize around sexual harassment, WWI and AASC, as well as other groups representing women from different employment sectors, such as clerical workers in the Chicago affiliate of Working Women, Women Employed, and women miners in the Coal Employment project, were continuing to argue for sexual harassment policies. By this time these activists were engaged in raising awareness among their members about successful rulings that sexual harassment was sex discrimination, such as the 1978 *Heelan v. Johns-Manville* case and others, adding indirect pressure for a Title VII policy.70

That such an education on successful Title VII cases was needed is evident when Norton remembered how her agency began the process of writing the sexual harassment guidelines when stating, “There were a few cases here and there, not even court of appeals, no cases with any precedent value. I was concerned that the courts would be all over the map, because there wasn’t anything to tell them about where the EEOC stood or about where anybody else stood. There were no Supreme Court decisions.”71 While Norton correctly remembered that there was no Supreme Court decision until the *Meritor v. Vinson* decision in 1986, there were a few cases in federal district courts that had been decided by 1979 when the Commission began writing the guidelines, including the 1976 *Williams* decision, the 1977 *Barnes v. Costle* and *Tomkins v. PSE&G* decisions, and the June 1979 *Miller v. Bank of America* decision.72 All of these cases except for *Williams* were appellate court decisions and therefore carried the precedent-setting authority she spoke of. While she may have been incorrect in stating the importance of these few cases, Norton was correct in implying that there was not enough knowledge of them among

71 Quoted in Lester, 207.
72 See Chapter Two.
federal and private employers, employees, and EEO counselors, a fact which she alluded to when testifying before the Hanley subcommittee in 1979.\textsuperscript{73}

Norton also empathized with women who had to bring complaints during this time and who were up against powerful men and corporations, especially since it was such a sensitive, often embarrassing subject to discuss and the prevailing attitude was that a woman brought it upon herself in some way.\textsuperscript{74} Norton remembers thinking, “This isn’t fair. I want guidelines to protect women, and to put employers and courts on notice about what sexual harassment is.”\textsuperscript{75} Here, she made a point that some members in Congress as well as the women who testified at the Hanley Hearings agreed with and therefore welcomed such guidelines and believed that they were necessary.

Issuing the guidelines proved to be a difficult task because the concept itself was so new and there were comparatively fewer legal cases to draw from than when some of the previous EEOC guidelines were written. Remember that Title VII made no mention of sexual harassment specifically and the business community was therefore confused about it as well. Under these circumstances, Norton believed guidelines would be welcome and would lessen the burden on employers to determine what behavior constituted sexual harassment. Instead, they would be able to look to the guidelines, determine if the behavior violated Title VII, act accordingly, and hopefully sexual harassment would happen less often. Norton discusses this and then recounts the process of writing the guidelines when stating, “I could clarify it, and give the courts an offer that would be hard for them to refuse. And that was one of the most satisfying parts of being an

\textsuperscript{73} 1979 Hanley Hearings, 91-98.  
\textsuperscript{74} Lester, 207.  
\textsuperscript{75} Quoted in Ibid.
administrator under a federal statute. My staff and I worked long hours, writing over and over, thinking it through.”

The staff members who worked these long hours and wrote the EEOC’s sexual harassment guidelines were part of the Commission’s Office of Policy Implementation (OPI). OPI was “responsible for developing Title VII policy recommendations for Commission approval” and was established during the reorganization in order to better facilitate communication among the regulatory agencies. OPI’s sister office was the Office of Inter-agency Coordination (OIC), which had the duty of “developing for the Commission uniform standards, guidelines and policies concerning equal employment opportunity for all Federal departments and agencies.” Presumably, because the sexual harassment guidelines were being developed for both the public and private sectors, and not only the public sector, the duty of writing them fell to OPI and not OIC.

Per EEOC procedures, new guidelines could only be developed or existing ones altered after approval from either the Staff Committee on EEOC Policy (SCEP) or the Staff Committee on Inter-Agency Policy (SCIP). Any office in the EEOC could submit a proposal for such guidelines to these committees, however, they first had to justify that the requested guidelines were “significant.” Once identified as significant, the office proposing the new guidelines had to submit a memorandum discussing “the need for and purpose of the regulation,” “why the regulation is considered to be a ‘significant’ regulation,” “the issues to be considered in developing the proposed regulations,” “the alternative approaches to be explored,” “a tentative plan for obtaining public comment,” the “target dates for completion of steps in the development

76 Quoted in Ibid., 207-208.
77 Addendum No. 2 for the February 6, 1979 Meeting, February 2, 1979, “2-6-79 Open Session, BbW, 101,” Commission Meetings and Tapes, Box 16, EEOC Records, NARA.
78 Ibid.
79 Ibid.
of the regulation,” and “a preliminary assessment of the economic impact of the regulation and a statement as to whether it is anticipated that a regulatory analysis will be required.”  

These memoranda were then submitted to either OPI or OIC for review, then to either SCEP or SCIP for approval. After approval from one of the Staff Committees, the proposal would then be submitted to the Commission, via the Executive Director, for final approval to develop the guidelines. The Commission then authorized the guidelines to be published in the Federal Register in interim form, inviting public comment. Once the comment period was over and the opinions taken into consideration and the necessary changes made, the guidelines were then submitted to the Commission for final approval. Even though the guidelines were not considered permanent until they received final Commission approval, per EEOC procedures, they were effective immediately upon publication in interim form in the Federal Register.

The records do not indicate whether or not the EEOC went through all of these steps, except for one mention that the SCEP was involved in recommending that the sexual harassment guidelines be added to the sex discrimination guidelines. It is nonetheless likely that OPI skipped much of this process, particularly the determination and memorandum regarding the “significance” of the guidelines. It would have been unnecessary for OPI to obtain permission for altering the existing sex discrimination guidelines and adding sexual harassment because the Hanley subcommittee had requested that the Commission do so and Norton pledged her commitment to see this completed. Therefore, the justification for changing the guidelines was already stated at the hearings and the Office of Policy Management (OPM) had already issued its

80 Ibid.
81 Ibid.
82 March 10, 1980 Memorandum.
sexual harassment policy while waiting for the EEOC to clarify its directive further by outlining the situations in which sexual harassment violated Title VII.\footnote{See Chapter Three.}

One important step that OPI did not skip was the “involvement of interested individuals and organizations,” which required, per Executive Order 12067, that the Office submit its draft guidelines “to other affected Federal agencies for at least 15 working days” before the 60-day public comment period began.\footnote{Addendum No. 2 for the February 6, 1979 Meeting, February 2, 1979.} In addition, the Commission had to approve the development of any drafts for publication in its Semi-Annual Regulatory Agenda, which it published each February and July in the \textit{Federal Register}. The publication of the Semi-Annual Regulatory Agenda was another measure to facilitate coordination and cooperation among federal equal employment agencies in which they would be informed of the EEOC’s activities, especially those that pertained to their duties.

The OPI began working on the sexual harassment guidelines not long after the Hanley Hearings came to a close in November 1979 and the OPM issued its policy directive in December.\footnote{Agenda for Commission Meeting – January 29, 1980, January 25, 1980, “1-29-80 Open Session, BbW, 87,” Commission Meetings and Tapes, Box 16, EEOC Records, NARA.} On February 5, 1980, the Commission approved the publication of the agency’s February-July 1980 Semi-Annual Agenda, which included the announcement of the Commission’s intention to amend the sex discrimination regulations in order to provide guidance on the issue of sexual harassment.\footnote{Report of Meeting, Commission Meeting – February 5, 1980 – Open Session, “2-5-80 Open Session, BbW, 25,” Commission Meetings and Tapes, Box 16, EEOC Records, NARA and February 1, 1980 Memorandum on Proposed Semi-annual Regulatory Agenda, February 1, 1980 Through July 31, 1980, “2-5-80 Open Session, BbW, 25,” Commission Meetings and Tapes, Box 16, EEOC Records, NARA.} The section describing the sex discrimination guidelines as written by OPI included four parts: a) the need for the regulation, b) the legal basis, c) regulatory analysis, and d) contact information. In stating the need for the regulations the EEOC
highlighted its own leadership efforts regarding sexual harassment policy and invited comment as follows:

a. **Need for the Regulation**: Sexual harassment in the workplace has long been recognized by EEOC as a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended. However, cases involving the issue of sexual harassment have been litigated only recently. Since 1976, courts have supported EEOC’s position that sexual harassment in the workplace is sex-based discrimination which violates Title VII and constitutes an unlawful employment practice. The Commission recognizes that the law on sexual harassment is still developing, and it will continue to contribute to that development through the courts. However, the Commission also recognizes the input into the further development of the Commission’s position by members of the public. The Commission has determined that the publication of this amendment to its Guidelines on Discrimination Because of Sex will best serve those ends.88

OPI listed Title VII of the Civil Rights Act of 1964, as amended, as the legal basis for the amended regulation and wrote that a regulatory analysis would not be necessary because, while “the economic impact of this amendment and revision has not been finally determined,” they believed that it was “unlikely…that the impact will be great enough to require a regulatory analysis.”89 Generally, a regulatory analysis was an extra step that the Commission required the OPI or OIC to perform when a regulation was “expected to have one of the following economic consequences: 1) an annual effect on the economy of $100 million or more; or 2) a major increase in costs or prices for individual industries, levels of government or geographic regions.”90 If an analysis had to be performed, it was for the purpose of justifying the regulation by outlining the alternatives to the proposed regulation, their costs, and why the office chose the proposed solution to the problem over any others.91 Again, due to the provenance of the sexual

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88 February 1, 1980 Memorandum on Proposed Semi-annual Regulatory Agenda.
89 Ibid.
90 Addendum No. 2 for the February 6, 1979 Meeting, February 2, 1979.
91 Ibid.
harassment guidelines—as a Congressional mandate—this step was unnecessary. In addition, OPI stated that these regulations were not likely to have that large of an economic impact on employers. After all, they were merely going to be required to inform their workers what sexual harassment was and that it would not be tolerated. On Thursday, February 14, 1980, the announcement of the proposed change to the sex discrimination guidelines appeared in the Federal Register under the heading “Changes to Existing Regulations.”

Per the Hanley subcommittee’s “Memorandum of Understanding” as to the EEOC’s duties after the hearings, the Commission had to issue a management directive to all government agencies that defined the types of sexual harassment that violated Title VII, informed each government agency to add a section on sexual harassment to its affirmative action guidelines, and explained that the Commission would then evaluate all of these plans to ensure that each agency was taking the necessary steps to stop sexual harassment at the workplace. Considering the dearth of available materials from which to draw in writing the guidelines and management directive, OPI acted quickly to finish them, writing the interim guidelines in about three months. The interim nature of the guidelines meant that they were effective immediately upon their publication but that OPI would take public comment before they were considered permanent.

The official agenda for the March 11 meeting lists the sexual harassment guidelines as up for a Commission vote so that they could be distributed to the other federal agencies for a 15-day comment period before they were offered to the public.

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94 March 6, 1980 Memorandum.
When tracing the actions of OPI through these memoranda, there is little indication of the process that the office went through in writing the guidelines. In other words, these materials do not offer the specific documents, cases, or other papers that influenced how OPI viewed sexual harassment and how it defined it as sex discrimination. There is also only one memorandum included with the Commission’s packet on the guidelines which explains how Norton herself may have contributed. In a memorandum dated March 10, 1980, Chair Norton wrote the Commissioners to inform them of a proposed addition that she wanted to appear in the sexual harassment guidelines, clarifying that the same standards that applied to the issue of harassment on the basis of sex as a violation of Title VII also applied to harassment based on race, color, or national origin. When the Commission later wrote its guidelines on discrimination because of national origin, it included a similar statement about applying Title VII and outlining that employers had “an affirmative duty to maintain a working environment free of harassment on the basis of national origin.” 96 However, much of the language in the sexual harassment guidelines was not similar to the Commission’s existing guidelines on employee selection procedures and affirmative action. Importantly, the affirmative action guidelines appeared to give employers a chance to prove that they had put forth a “good faith” effort not to discriminate and avoid liability in race discrimination claims. While both the affirmative action and sexual harassment guidelines spoke of employers having an affirmative duty to prevent discrimination, the affirmative action guidelines were more open-ended regarding the employer liability question. 97 In making her addition, Norton then used what had previously been an implicit aspect of EEOC

96 Section 8(a) Guidelines on Discrimination Because of National Origin (1980); 45 FR 85635, (December 29, 1980); 29 CFR part 1606, section 1606.8 (a).
97 Section 13(a) and (b) Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295, 38312, (August 25, 1978); 29 CFR part 1607, section 1607.13(a) and (b); Section 1(c) and Section 4(c)(1) Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as Amended (1979); 44 FR 4422, (January 19, 1979); 29 CFR part 1608, sections 1608.1(c), 1608.1(d), and 1608.4(c)(1).
guidelines, that harassment applied to all forms of anti-discrimination policy that the EEOC enforced.

Norton also addressed the question of why the sexual harassment guidelines should be regulated under sex discrimination when stating, “The proposed interim interpretative guidelines are appropriate as amendments to the sex discrimination guidelines because sex is overwhelmingly the basis upon which such harassment occurs. And it is important to focus employers specifically on the almost exclusive locus of such violations today.”

Norton also added a change to the “Supplementary Information” section of the guidelines, which read, “Sexual harassment has long been recognized as a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended. However, despite the position taken by the Commission, sexual harassment continues to prevail.” Echoing the theme of the Hanley Hearings, Norton changed the phrase “continues to prevail” to the phrase “continues to be especially widespread.”

While this memorandum illustrates that Norton may have been drawn from testimony at the hearings, there is no indication whatsoever of any other influences behind the interim guidelines. For instance, did OPI consult Catharine MacKinnon’s book or MacKinnon herself? Did it talk to anyone involved with the recent court decisions? Did OPI turn to any feminist organizations about the problem and ask what the guidelines should accomplish? Or, did the office just write the guidelines as quickly as possible, figuring that it would wait until they received comments from the feminist community before considering their opinions?

While the record remains inconclusive on some of these issues, there are clues which illustrate that the legal and regulatory threads did come together at some point as the guidelines were drafted, even if this was not stated in the guidelines themselves. Norton’s own testimony at

98 March 10, 1980 Memorandum.
99 Ibid.
the Hanley Hearings indicates that the agency was aware of the recent case history surrounding sexual harassment and Title VII. She not only cited the 1976 Williams decision, but also the 1979 ninth circuit case, Miller v. Bank of America, which, as Norton summarized it, “established that an employer is responsible for the acts of an employee—supervisor—under the theory of respondeat superior.” One other fact is that there was an established relationship between federal courts and EEOC guidelines in the 1971 Griggs v. Duke Power Co. employment discrimination case in which the fourth circuit court referred to the EEOC’s employee selection procedure guidelines in its decision and stated generally that the EEOC’s “administrative interpretation of Title VII of the Civil Rights Act of 1964 is entitled to great deference.”

On March 11, 1980, the Commission voted to “approve the interim guidelines for the formal interagency coordination 15-day comment period, prior to publication in the Federal Register.” During this period, all federal agencies affected by the guidelines were invited to comment. Only one month later, on April 11, 1980, the interim guidelines were published in the Federal Register and, shortly after, the Commission began hearing from many individuals and groups who wanted to weigh in on the issue of the EEOC’s sexual harassment policy. The intention here was that the EEOC would consider these comments in making any necessary changes to the guidelines before issuing them on a more permanent basis. Not surprisingly, the EEOC later heard from the government agencies who had been given a “first look” at the

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100 1979 Hanley Hearings, 93. Latin for “let the master answer,” respondeat superior establishes that an employer is responsible for the acts of its employees or agents during the course of employment activities.


103 Addendum No. 2 for the February 6, 1979 Meeting, February 2, 1979.
guidelines, in addition to feminist organizations, businesses, and others who wrote in as individuals and who were not part of any of these groups.  

The interim guidelines reflected how working women, feminist activists, and feminist legal theorists had framed the problem as one of sex discrimination. The policy consisted of five paragraphs that defined the behavior, stated how it would be determined as sexual harassment under Title VII, outlined when employers were responsible for the conduct of their employees, explained when employers were liable with regards to other persons not previously mentioned in addition to other agents or supervisory employees, and finally, stipulated why employers should implement preventative training programs to eliminate the problem.

In part (a) of the guidelines, the EEOC began by simply stating its position that sexual harassment violated Title VII and writing, “Harassment on the basis of sex is a violation of Sec. 703 of Title VII.” The EEOC then defined sexual harassment as:

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

Although using different language, EEOC’s sexual harassment definition was comparable to OPM’s in its use of the term “unwelcome” and in its inclusion of both verbal and physical

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104 See Chapter Five for a full account of these comments. According to the March 6th Memorandum, it appears that even though federal agencies were given a “first look” at the guidelines, the EEOC considered all of the comments at once.

conduct. EEOC’s guidelines also included MacKinnon’s quid pro quo harassment and condition of work harassment.

Where the EEOC’s policy differed from OPM’s was in part (b) in which the guidelines explained how the Commission would determine whether “alleged conduct constitutes sexual harassment” by looking “at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred.” The Commission would then determine “the legality of a particular action” by examining the “facts, on a case by case basis.” OPM’s policy had only defined the conduct and stated that it was unacceptable. It did not outline how OPM would weigh sexual harassment complaints and determine if a policy violation had occurred.

The next two sections of the guidelines, parts (c) and (d), established how the EEOC would judge employer liability under Title VII sexual harassment complaints. These two paragraphs were relatively short, but they became the most contested aspects of the policy once the public comment period began. The EEOC’s stance on employer liability answered working women and feminist activists’ call for employer responsibility in solving the problem of sexual harassment, and also appeared to be in line with federal court decisions such as Miller. However, some employers would later object that the EEOC applied too strict of an interpretation of employer liability under Title VII. Section (c) reads:

Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereafter collectively referred to as “employer”) is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment

106 Ibid.
relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.  

Part (d) established the same standards for situations involving any other persons acting in an agent or supervisory capacity in an employer’s workplace and states, “With respect to persons other than those mentioned in paragraph (c) of this section, an employer is responsible for acts of sexual harassment in the workplace where the employer, or its agents or supervisory employees, knows or should have known of the conduct. An employer may rebut apparent liability for such acts by showing that it took immediate and appropriate corrective action.”

The final paragraph of the EEOC guidelines addresses one of the main ideas to come out of the hearings: not just stopping the behavior, but preventing it from happening in the first place. Part (e) stipulates:

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

This section offered ways for federal agencies and private sector organizations to escape liability and complemented the work OPM was undertaking by requiring employers to implement programs that would inform their employees of behavior that would not be tolerated.

In publishing the guidelines, Norton’s EEOC not only finished one of its tasks from the Hanley Hearings but established a federal sexual harassment policy that reflected the legal climate of the late 1970s-early 1980s in which appellate courts were consistently beginning to rule that sexual harassment violated Title VII and that employers were liable for the acts of their

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107 Ibid.
108 Ibid.
109 Ibid.
supervisors, employees, and agents. The EEOC’s policy, including its stance on employer liability, also impressed at least one member of Congress when the Hanley subcommittee held follow-up hearings on sexual harassment in the federal government in the fall of 1980.\footnote{House Subcommittee on Investigations of the Committee on Post Office and Civil Service, \textit{Sexual Harassment in the Federal Government (Part II)}, 96\textsuperscript{th} Cong., 2\textsuperscript{nd} sess., 1980, 47. Hereafter cited as \textit{1980 Hanley Hearings}.}

**Hanley Subcommittee Checks in with OPM, MSPB, and EEOC**

On September 25, 1980, just as the EEOC’s six-month comment period on the sexual harassment guidelines was coming to a close, the Hanley subcommittee held follow-up hearings in order to check in with OPM, MSPB, and EEOC and make sure that, indeed, something was being done in the federal government about sexual harassment. Specifically, the committee wanted an update on where the three agencies stood regarding implementing the recommendations that it had made to each. These hearings reveal that, while MSPB and OPM had played important roles in establishing a sexual harassment policy for the federal government and measuring the extent to which it affects federal employees, respectively, EEOC clearly had the potential for having a larger impact on the future of sexual harassment regulations in both the federal government and the private sector.

All of these factors became evident in the second Hanley Hearings because of what each agency reported back to the subcommittee. First, OPM reported that it had surveyed over 70 federal agencies and found that its policy statement had prompted several federal agencies to issue their own sexual harassment directives using OPM’s definition of sexual harassment, in accordance with the subcommittee’s recommendations. OPM’s Deputy Director, Jule Sugarman, told Chairman Hanley that the number of agencies who responded by implementing such policies covered “probably better than 80 percent of Federal employees” and that the agencies who had not yet written their own policies were only waiting for the final EEOC
guidelines before doing so.” He also reported that several agencies had adopted OPM’s sexual harassment training module and, as a result of their efforts in combination with OPM’s own training sessions, over 8,000 federal employees had received training on sexual harassment.

Among many of the examples of federal agencies who complied with OPM’s directive was the Department of Commerce, the first agency to do so. In a memo to Chairman Hanley, the Acting Secretary of Commerce wrote that the agency was committed “to achieving a workplace free from sexual harassment.” The Acting Secretary also reported that his agency had addressed the issue of sexual harassment in its affirmative action guidelines and that all equal employment opportunity (EEO) counselors had been given copies of the EEOC guidelines in preparation for processing sexual harassment complaints. Interestingly enough, the Justice Department, which had offered embarrassing testimony with respect to its own record of handling sexual harassment complaints at the first Hanley Hearings, reported that it too had complied with OPM’s management directive. However, the Justice Department was not using OPM’s training module but was instead planning to use a different program. In addition, the Justice Department had not yet added sexual harassment to its affirmative action plans but it had made the EEOC guidelines available to its EEO counselors. Many federal agencies reported similar statements back to the subcommittee, in addition to a number of federal workers’ unions and state governors who wrote that they too had implemented their own sexual harassment initiatives after the 1979 hearings.

111 1980 Hanley Hearings, 39.
112 Ibid., 33.
113 1980 Hanley Hearings, 57.
114 Ibid., 60-61.
115 Ibid., 87-89.
Second, MSPB offered its “Summary of Preliminary Findings on Sexual Harassment in the Federal Workplace” in testimony given by Ruth Prokop, MSPB’s Chairwoman, and Patricia Mathis, Director of the Office of Merit Systems Review and Studies. Prokop explained that MSPB sent questionnaires to 23,000 federal workers, a number which included members of both sexes, of all ages, of all races and ethnicities, and of all kinds of jobs in various federal agencies throughout the U.S. The survey asked the workers to give their responses based on their experiences between May 1978 and May 1980. She noted that they had an 85 percent response rate for the survey, meaning that 19,550 federal workers had completed the questionnaire.116 The MSPB Summary reported that 25 percent of the respondents had experienced “some form of sexual harassment during the 24-month period.” MSPB widened this number to include a representative number of the entire federal workforce and not just those who had completed the survey. In doing so, the agency argued that 462,200 federal employees, or a number “roughly equal to the population of Nashville, Tennessee,” had been sexually harassed within that two-year time frame.117 This figure was enough for MSPB to conclude its preliminary investigation with the statement that their data “shows that sexual harassment is widespread, deeply felt by its victims, and that the earlier Congressional hearings were indicative of a significant problem.”118

MSPB found that the victims of sexual harassment were overwhelmingly female with two out of every three reported victims being women. The agency divided this number according to the type of harassment the victims experienced and categorized the behavior in three different groups, most severe (actual or attempted rape or sexual assault), severe (letters, phone calls, materials of a sexual nature; pressure for sexual favors; touching, leaning over, cornering, pinching), and less severe (pressure for dates; suggestive looks, gestures; sexual

116 Ibid., 3-4.
117 Ibid., 5.
118 Ibid., 7.
teasing, jokes, remarks, questions). MSPB reported that, of the 42 percent women respondents who answered that they were victims of some form of harassment, one percent experienced the most severe form of sexual harassment, 29 percent experienced the severe form, and 12 percent the less severe type. The remaining 58 percent were non-victims. Overall, Prokop explained to the subcommittee that “every form of sexual harassment (except actual or attempted rape or sexual assault) was experienced by a substantial percentage of Federal employees.”

Because the Hanley subcommittee was very interested in the background of the victims in their investigation—in their efforts to identify the scope of the problem and devise ways to stop it—Prokop and Mathis also reported on the job types, geographic locations, race and ethnicity, age, educational background, and salary level of the victims. Before their study, they were aware that the subcommittee was concerned that sexual harassment was experienced by women in disproportionate numbers in different demographic groups because of these factors. In its preliminary findings, MSPB found that many of these assumptions were not the case. Among women victims, there appeared to be no connection between the likelihood of being sexually harassed and an employee’s job classification, geographic location, race, ethnicity, or salary level. In other words, the problem of sexual harassment was not concentrated in any one particular group among these categories, but was found to occur throughout all of them. While sexual harassment also occurred among women federal employees of all ages and educational backgrounds, there were differences among victims in these categories with younger women (16-24 years of age) and college-educated women more likely to be sexually harassed. Prokop reported that young women were “more than twice as likely to experience some form of sexual

119 Ibid., 5 and 10.
120 Ibid., 5.
121 1979 Hanley Hearings, 163.
harassment as older women in ages 45 and above.”123 In terms of educational background, college-educated women appeared to have been harassed at a much higher rate than women with a high school diploma or less, where the lowest instances of sexual harassment victims were found. Prokop speculated that the reason for this factor may have been that more educated women simply may have been more aware of the problem, but that further analysis was necessary to make a better conclusion.124 Further analysis may have also shown that older women did not identify their experiences as harassment because they may have gotten used to it.

Where some of these demographic differences did register was among the sex, age, and employment status of harassers. MSPB discovered that when the victims were women, the harassers were male in 80 percent of the cases, with 16 percent of the cases involving two or more male harassers. In terms of age, the majority of victims reported that their harassers were men older than themselves.125 The agency also found that, unlike the subcommittee’s view that sexual harassment was an abuse of power or form of “sexual intimidation by a male supervisor of a subordinate female employee,”126 the majority of harassers, at least 70 percent, were co-workers of the victims or other employees. Supervisors constituted about 40 percent of the harasser group, while subordinates were found to rarely harass their own supervisors.127 Regarding the race and ethnicity of victims and harassers, Prokop told the subcommittee that most harassers shared the victims’ racial or ethnic background.128

MSPB’s study also measured the effect of sexual harassment on women victims. In its preliminary findings, MSPB concluded that women experienced adverse emotional and physical

123 Ibid.
124 Ibid.
125 Ibid. The Washington Post also highlighted these results that most of the harassers were men. See Mike Causey, “Assaults Frequent, U.S. Survey Shows,” Washington Post, September 26, 1980.
126 1979 Hanley Hearings, 1.
128 Ibid.
effects as well as negative effects on their ability to do their jobs.\textsuperscript{129} Where MSPB’s report most aligned with the women who first spoke out about sexual harassment was in its statement that 50 percent of the women victims reported that they had left a federal job because of harassment (including transferring to another department).\textsuperscript{130} Upon hearing this fact, Hanley asked Prokop if this indicated that sexual harassment was a longstanding problem. Prokop replied that this was indeed the case—that sexual harassment had been around much longer than the two years recorded in the study and that she believed it had affected even more women as only those whom she labeled “survivors” had completed the survey, not the women who had left the federal sector altogether and were thus not counted in those numbers.\textsuperscript{131} Prokop explained that the reason for these numbers was that sexual harassment was a “cultural phenomenon.”\textsuperscript{132} She offered evidence that sexual harassment was also a problem in the private sector to buttress this claim and illustrate that the problem was not experienced just among federal employees. The respondents in the MSPB study weighed in on this question when 60 percent of them claimed that sexual harassment was the same or worse in the private sector as in the federal government.\textsuperscript{133}

Finally, Eleanor Holmes Norton testified that EEOC had issued its April 1980 interim guidelines in such a way that they were applicable to both the public and private sectors in order to provide “the clearest, most meaningful, and most consistent” statement regarding “the unlawfulness of sexual harassment.”\textsuperscript{134} She also told the subcommittee of EEOC’s efforts in reducing the length of time it took to process discrimination complaints in the federal

\textsuperscript{129} Ibid., 7, 19.
\textsuperscript{130} Ibid., 25.
\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid., 23.
\textsuperscript{133} Ibid., 24.
\textsuperscript{134} Ibid., 41.
government, something that had garnered much criticism for the EEOC during the first hearings. The time period had been reduced from 440 days to 106 days. Norton also remarked that she was pleased with all of the efforts in the federal sector regarding sexual harassment, particularly in terms of training programs, which were such an important part of the EEOC guidelines. Furthermore, Norton also offered a preview of the public responses to the guidelines and reported that the private business sector had responded favorably to the EEOC guidelines as well. She explained that “so many of the employers who commented on the sexual harassment guidelines seem[ed] to welcome the clarification.” Norton also shared that this was surprising as follows, “In the past, when we issued guidelines, some employers almost immediately wrote us to indicate that they took some objection to the whole notion of guidelines.” Here, she argued that this was not the case, even though they may have disagreed with certain portions of the guidelines, on the whole, they agreed with EEOC’s conclusion that sexual harassment was sex discrimination under Title VII. She affirmed the EEOC’s position on this matter by reiterating that employers needed to take action in order to make their workplaces free of discrimination.

**Conclusion**

It is clear that the first federal response to sexual harassment in the form of Chairman Hanley’s hearings led to important sexual harassment policies and procedures and a commitment by federal policymakers to streamline equal employment opportunity enforcement on behalf of victims of sexual harassment and federal employees generally. These hearings established the EEOC’s importance with regards to sexual harassment policy in writing and enforcing its

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135 Ibid., 45-46.
136 Ibid., 47.
137 Ibid.
138 Ibid., 46-47.
guidelines as well as upholding the principle that sexual harassment violated Title VII as a form of employment discrimination. In addition, the EEOC became the federal agency most closely associated with sexual harassment policy because its role as a regulatory agency served to bridge the federal government and the legal sector in offering guidance for sexual harassment cases. When Chair Norton issued the interim guidelines, she seized upon the EEOC’s role and ensured that the policy did not prohibit sexual harassment in name only but made employers liable for the behavior if they did not take steps to prevent it—an action very much in line with feminist concerns. In viewing the EEOC’s policy as having such feminist goals, Norton opened the EEOC to responses from the one sector that the Hanley subcommittee had not consulted, private employers, who, as the next chapter illustrates, responded to the guidelines and expressed their overwhelming disagreement with the EEOC’s stance on sexual harassment and employer liability, despite Norton’s testimony to the contrary.
CHAPTER FIVE:  
MEASURING REACTION TO THE EEOC’S SEXUAL HARASSMENT POLICY  
& FINAL INTERPRETIVE GUIDELINES  

By the spring of 1980, the problem of sexual harassment had been named, recognized in federal courts, described in Congressional hearings, and written into public policy in the form of the EEOC’s interim sexual harassment guidelines. These guidelines were more than just a rough draft or first attempt at a federal sexual harassment policy because they were enforceable from the date they were issued. Just as the EEOC’s Chair, Eleanor Holmes Norton, designed, after April 11, 1980 employers were on notice that they had to prevent sexual harassment in their workplaces if they wanted to escape liability for it under Title VII of the Civil Rights Act of 1964. The EEOC guidelines, even in interim form, represented two important pieces of the history of sexual harassment policy. First, they indicated that the feminist framework of sexual harassment as employment discrimination and a violation of women’s economic citizenship rights under Title VII had been made into a federal policy. ¹ Second, they indicated that this framework was being institutionalized. When the EEOC, as an arm of the federal government, began regulating sexual harassment, the working women and activists who had been framing the problem and arguing most strongly about how it should be corrected continued to lose control over the definition of sexual harassment and how it was presented to the American public. Although the EEOC largely sided with feminists in framing the problem, it was a public institution and had to take into consideration the opinions of all of its constituents. This became evident when the EEOC’s six-month comment period began after the interim guidelines were published in the Federal Register and the private business community seized what was its first

¹ See also Carrie N. Baker, The Women’s Movement against Sexual Harassment (Cambridge: Cambridge University Press, 134.)
opportunity to respond to this issue, of which Chair Norton had glossed over in her report to the Hanley subcommittee in September 1980.

Chapter Five continues analyzing how the EEOC implemented sexual harassment policy and also considers the polarization and institutionalization phases of Tarrow’s model. This chapter measures the reaction of the business community and others who submitted comments to the EEOC and categorizes how each of them responded. Chapter Five also considers the private business sector’s response to the guidelines as an important employment sector that the Hanley subcommittee had not heard from during its hearings. This chapter asks: How did the business sector respond? What did this mean for the feminist framework of sexual harassment? This chapter argues that the comments represent the point at which the feminist framework of sexual harassment began to face competition from new actors who responded to the guidelines and were motivated by their own self-interests, many of which were not in the best interests of working women. As the loudest voice of opposition, the private business sector’s negative reaction to the EEOC’s policy clearly showed that, despite the feminist movement’s success in framing the issue and Norton’s positive summation of its comments, not everyone agreed with the stance that sexual harassment constituted sex discrimination. Their comments illustrate a major challenge to the EEOC’s policy and to the framework of sexual harassment as an issue of economic citizenship itself. As Chapter Five shows, these comments did not effectively alter the EEOC’s final sexual harassment guidelines. They did, however, foreshadow the backlash against the regulations that would ensue once the Republicans won the White House and the Senate in the 1980 elections.
Chair Norton thought that the American public, and especially businesses, would welcome the clarification that the guidelines would bring to the problem of sexual harassment. When she testified before Hanley’s subcommittee during its follow-up hearings on sexual harassment, she put a positive spin on the private business sector’s reaction to the guidelines during the comment period. In reality, the corporate world reacted much more negatively to the EEOC’s policy and even to its stance that sexual harassment was a violation of Title VII.

Among the first several comments the EEOC received was a letter from Clyde A. Wootton, Corporate Counsel and Secretary of Blue Cross Blue Shield of North Carolina, who wrote, “Having had several allegations of sexual harassment within this Plan, with allegations both by males and females, we are confident that while we totally disapprove of sexual harassment on any basis, it should not be a violation of Title VII of the Civil Rights Act. Our experience has proved that in all cases, the actions in which we have been involved, were individual actions and it is very difficult, if not impossible, for the employer to determine who is telling the truth, where there is an express denial.”

William H. Knapp, Labor Relations Attorney for the U.S. Chamber of Commerce, argued that the guidelines should be withdrawn completely because they were “far beyond that which has been articulated by either Congress or federal courts.” Norton attributed reactions such as these to the business community’s traditional dislike of government rules. She felt that, in the minds of employers, protesting government involvement in their day-to-day

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2 Sexual Harassment Guidelines: Comments, Received in Response to Proposed Rulemaking in the Federal Register, April 11, 1980, U.S. Equal Employment Opportunity Commission Library, EEOC Archives Collection, EEOC Headquarters, Washington, D.C., 24-1. Hereinafter cited as Sexual Harassment Guidelines: Comments or Comments. Please note: the comments from the EEOC Library are in a bound volume with two sets of page numbers. The ones appearing here are found on the right-hand corner of the page and are numbered according to the order in which they were received and, when more than one page, the page number in each particular comment. So, Wootton’s comment was the 24th received and the statements quoted here appeared on the first page of the document he submitted.

3 Sexual Harassment Guidelines: Comments, 98-1.
business overrode any recognition on their part that the guidelines were necessary and that someone had to provide a uniform definition of sexual harassment. Although she recognized that business representatives may not agree with them, Norton was not deterred from issuing the interim guidelines. She believed that the policy’s stipulation that employers would be protected if they implemented their own policies and educated their employees about sexual harassment should assuage their fears of government regulation. Because of this conviction, Norton described her response to the corporations as follows: “But there was nothing they could do. I had the authority to do it…They liked rapid charge processing because it was quick…Yet they were afraid of guidelines. They just thought, ‘Oh my God, how can you put in writing everything somebody thinks is sexual harassment? How will you ever catalog it all?’”

Overall, the EEOC received at least 172 comments on the interim guidelines. Aside from members of the private business community, who, not surprisingly, weighed in by writing dozens of responses, the EEOC also received comments from representatives of various government agencies, feminist organizations, educational institutions, and unions. A number of individuals, writing on their own behalf and not as representatives of any corporation or group, also submitted comments. Broken down, the EEOC received 50 comments from corporations and businesses, 53 comments from government agencies, 21 from feminist organizations, 30 from individuals, 14 from educational institutions, and four from unions. The comments that these respondents wrote varied from simple statements of support, to statements of support accompanied by minor suggestions for alterations, to statements of token support accompanied by major suggestions for alterations, to statements completely against all aspects of the guidelines, including the EEOC’s authority to issue them in the first place. On the whole, most of the comments can be categorized as either in support of the guidelines or against the

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guidelines, with the comments labeled as against the guidelines including those that seemed to express support of them on the surface but that really called for significant changes which would have altered their feminist framework. Only a handful of the comments expressed both support of and objection to the guidelines at the same time and there were also only a few that were inconclusive, meaning those who wrote them either expressed “no comment” on the guidelines or their sentiment could not be determined from the context of their letters.5

The business community wrote in with the most comments against the guidelines, with 41 of the total 50 comments from this sector in disagreement with the EEOC’s policy. On the other hand, 39 of the 53 government agencies voiced support for the guidelines. Representatives from the feminist community expressed unanimous support for the guidelines overall, while some offered suggestions for how to refine the guidelines to better protect working women. The individuals who wrote in were almost divided down the middle, with 19 of the 30 individual letters expressing support for the guidelines. Most of the educational institutions, 9 out of 14, were against the guidelines. Finally, only one of the four unions which sent in comments voiced disapproval of the guidelines.6 See the following table for how each sector weighed in on the guidelines:

5 These numbers and categorizations were compiled by analyzing the following: Sexual Harassment Guidelines: Comments and “Sexual Harassment – Comments – Original,” Box 8, Commission Decision Files (Comments on Proposed Commission Regulations) 1979-1983, EEOC Records, NARA. This interpretation differs from Carrie N. Baker’s description of the responses as mostly “strongly supportive.” While many of the comments seemed to support the guidelines on their surface, their underlying tone and criticism suggests a more complicated picture. See Baker, The Women’s Movement against Sexual Harassment, 117.

6 Sexual Harassment Guidelines: Comments and “Sexual Harassment – Comments – Original.”
Figure 2. Comments Received on EEOC’s Interim Sexual Harassment Guidelines

<table>
<thead>
<tr>
<th>Sector</th>
<th>Total Comments Received</th>
<th>Comments in Support of the Guidelines</th>
<th>Comments Against the Guidelines</th>
<th>Comments Expressing Both Support and Objection</th>
<th>Inconclusive Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate</td>
<td>50</td>
<td>5</td>
<td>41</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Government Agencies</td>
<td>53</td>
<td>39</td>
<td>7</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Feminist Organizations</td>
<td>21</td>
<td>21</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Individuals</td>
<td>30</td>
<td>19</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Educational Institutions</td>
<td>14</td>
<td>3</td>
<td>9</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Unions</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>172</strong></td>
<td><strong>90</strong></td>
<td><strong>69</strong></td>
<td><strong>9</strong></td>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>

The following paragraphs consider the comments of each of these groups in the order in which they appear in the above chart, beginning with the corporate community’s overwhelming disapproval of the guidelines.

The most common complaint of those in the private sector who expressed token support of or downright disapproval of the EEOC’s policy altogether had to do with employer liability. In paragraph (c) of the guidelines, the EEOC stipulated that an employer was strictly liable for damages in sexual harassment complaints regardless of whether or not the employer had prior

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7 Again, this table represents my analysis of each of the comments received from the files at the EEOC Library and at the National Archives. I began by categorizing the overall tone of each comment. If the writer was generally in support of the guidelines as they were written, I counted that comment in the “support” column. If the writer was generally against the guidelines, I counted the comment in the “against” column. Many of the writers wrote that they supported the idea behind the guidelines, but found fault with certain parts of them. If I felt that their dissatisfaction or requests for changes really outweighed any support of the guidelines, I placed them in the “against” column. I also divided the comments into the six sectors based on the name of the organization or individual and based on the context of their letters. Recognizing that these are very subjective methods, I nonetheless thought it beneficial to break these comments down accordingly in order to get an idea of who responded to the EEOC’s request for comments and their overall opinion of the guidelines. I also believed that such a snapshot of the comments would be useful when analyzing the EEOC’s final version of the guidelines.
notice of the behavior. The EEOC considered all employers to be responsible for sexual harassment in the above circumstances and outlined that employers would be responsible for the actions of agents as well and could only avoid liability by taking corrective measures.9

The EEOC suggested a way for employers to prevent sexual harassment in their workplaces and thereby avoid any kind of liability altogether by informing their employees about the problem and creating preventative policies and procedures.10 The employers who complained about the guidelines did so because they believed that the liability paragraphs were unfair and that such preventative measures would place unnecessary burdens on their businesses. For instance, a manager from The Boeing Company in Seattle, Washington, John A. Priest, wrote that the liability rule spelled out in paragraph (c) made “the employer the absolute insurer of the elimination of all sexual harassment whether such employer has or should have any control over the situation or not,” which made “no more sense than holding the employer liable for sexual harassment claims occurring off the job.”11 Priest also objected to paragraph (e) because it required “affirmative action where no problem” existed and because such preventative measures were “destined to cause more problems than they solve.”12 Another manager, R.V. Salvino of The Timken Company in Canton, Ohio, complained that the liability rules in the guidelines meant that employers had to adopt “a ‘Big Brother’ environment in order to prevent” sexual harassment and that the prevention measures in paragraph (e) were “unrealistic, naïve” and “counter-productive.”13

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9 “EEOC Interim Sexual Harassment Guidelines.”
10 Ibid.
11 Sexual Harassment Guidelines: Comments, 1.
12 Ibid.
13 Ibid., 108-2.
After writing general complaints about paragraphs (c), (d), and (e), many corporate respondents also voiced their disapproval about the EEOC’s policy regarding employer liability by charging that it was outside the realm of then current Title VII case law. In doing so, the business community placed itself in a debate over whether or not Title VII covered sexual harassment and whether or not there was enough judicial support for the EEOC’s position on employer liability. Here, the majority of the business representatives claimed that there was no legal founding for the EEOC’s stance and cited cases accordingly. In a letter on behalf of the Machinery and Allied Products Institute of Washington, D.C., the Institute’s President, Charles W. Stewart, wrote:

We have one major concern with the proposed guidelines on sexual harassment: namely the imposition of a strict doctrine of respondeat superior. To paraphrase, the proposed rule makes an employer responsible for acts of sexual harassment of its supervisory employees or agents, regardless of whether the acts were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of the acts. We respectfully submit that the extent of an employer’s responsibility should be much more limited and extend only to the acts of sexual harassment in the workplace where the employer knows or should know of the conduct and where the employer takes no appropriate corrective action.  

Stewart supported this claim by arguing that “the exact quantum of harassment necessary to trigger the violation of Title VII is not clear” and citing the 1978 *Heelan v. Johns-Manville Corporation* case. In describing additional sexual harassment cases in order to further prove his point he claims, “The courts do not now agree on the extent of an employer’s responsibility for acts of sexual harassment committed by its supervisors, but, nonetheless, usually require a showing of employer knowledge, constructive or otherwise, of the alleged sexual harassment.”

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14 Ibid., 126-2, his emphasis.
15 Ibid.
16 *Comments*, 126-1-126-2, his emphasis.
Here he cited and summarized the following decisions: the 1977 *Munford v. James T. Barnes & Co.* case in which “the employer is not automatically vicariously liable for discriminatory acts of supervisors,” the 1977 *Garber v. Saxon Business Products, Inc.* case where “the complaint must allege employer policy or acquiescence in a practice of compelling female employees to submit to the sexual advances of male supervisors,” and the 1978 *Kyrazi v. Western Electric Co.* case which stipulates that “a failure to take action after receiving complaint of sexual harassment demonstrates explicit encouragement of such harassment.”

Interestingly enough, one commenter from the business sector, Alice L. Bodley of the Washington, D.C. Law Collective of Holmes, Hunter, Polikoff & Bodley, P.C., went against the majority and argued that paragraphs (c) and (d) were justified under Title VII. She wrote that they were an “application of longstanding Title VII principles” and were “appropriately done in regard to employers’ liability.” Bodley also offered a reason why other business representatives would be against these paragraphs by stating that they “adequately address the problem of employers’ efforts to personalize sexual harassment and to deny liability for the actions of their employees.” Another supporter, Louisa Beale Stimpert, Owner-Manager of Beale Training Resources in Washington, D.C., expressed her thanks to the EEOC for the guidelines and praised them as “an excellent and badly needed document.” She made no mention of employer liability in her comments and suggested instead that the EEOC clarify the guidelines and “expand the considerations to include (a) harassment of men by women” and “(b) harassment by homosexuals (both male and female) of people of their own sex.”

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17 Ibid., 126-2.
18 Ibid., 65-2.
19 Ibid.
EEOC to “use language that includes all sexual preferences and deviations” so that the guidelines would not “be in violation of the Equal Rights Amendment when it is ratified.”

While it provoked fewer comments, the EEOC’s definition of sexual harassment also sparked a negative response from the private sector. The business representatives argued that the EEOC’s definition was too broad or vague and they called for a narrow, more specific definition that would be easier for employers to use in writing company policies. The thinking here was that if the EEOC listed specific behaviors such as kissing, touching, etc., then employers could look to the list and determine if sexual harassment was occurring. Bobbe A. Brown, Associate Counsel of the Louis Dreyfus Corporation in Stamford, Connecticut, argued that the guidelines were too strict in their statements regarding liability and also claimed that “the definition of sexual harassment is so vague as to provide no clearly ascertainable standard for determining proper behavior.” She explained her reasoning for this and the question that the guidelines raised for her by stating:

The demand for sexual favors as a condition of employment or promotion is a clear standard and one to which no reasonable person would not subscribe. However, the Guidelines’ definition of sexual harassment includes “physical conduct of a sexual nature… [which] has the…effect of substantially interfering with an individual’s work performance.” This standard is so vague that it can only create more problems than it avoids. For example, the physical appearance of an employee which distracts fellow employees and interferes with their work could be labeled sexual harassment under this definition. Would this require an employer to forbid the wearing of form fitting clothes by employees? Surely, such conduct is not intended to be covered by these guidelines.

Connie C. Holbrook, Staff Attorney for the Mountain Fuel Supply Company in Salt Lake City, Utah, expressed similar sentiments and based her comments on her own company’s experience.

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20 Ibid., 68.
21 Ibid., 104-2.
22 Ibid., 104-2-104-3.
as the defendant in a sexual harassment sex discrimination lawsuit and a reading of relevant case law on the subject. In outlining why she felt the EEOC’s definition of sexual harassment was too broad she wrote:

The interim guidelines use three criteria for determining whether “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment.” The third criterion does not tie harassment to employment; it specifies that sexual harassment occurs if the “conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment” (emphasis added). Citing this vague and overly broad language, an employee could object to an admiring whistle, a Playboy joke, a suggestive glance, or an affectionate hug. A sexual invitation may be welcomed by one woman, but be regarded as offensive to another; a sexual joke may be laughed at by one and be a source of humiliation to another. These actions should not subject the employer to absolute liability if committed by a supervisor or agent and should not force the employer to discipline the employees committing them.23

Gerald M. Lowrie, Executive Director of Government Relations for the American Bankers Association, shared Holbrook’s objection to this section of the guidelines and called for its elimination. Lowrie stated that the definition “provides almost no guidelines to employers as to the type of conduct the Commission would consider to be sexual harassment” and that “such clearly non-harassing conduct as dating or marriage among coworkers, including those not employed in the same department, could, under certain circumstances, fall squarely within the definition.”24 He continued by writing that “the subjective nature of the definition would allow an employer no defense against an unusually sensitive employee who might find the ‘effect’ of

23 Ibid., 119:2.
24 Ibid., 163:1.
objectively innocuous banter to be offensive” and concluding that the EEOC had failed to
“provide a clear indication of the type of conduct for which a remedy will be provided.”\textsuperscript{25}

Robert Alan Palmer, Associate Counsel of the National Restaurant Association, called
the third part of the definition a “‘catch-all’ provision” that was “too subjective to give an
employer notice of what specific conduct is to be penalized” as “any act or word could be
interpreted as intimidating or hostile, depending on individual temperament.”\textsuperscript{26} He continued,
“The provision tries to cover too great a multitude of sins without giving employers, courts or
EEOC personnel the specific guidance needed to determine what conduct is prohibited.”\textsuperscript{27}

One way to consider these comments is to view them as a business interests versus
feminists’ interests breakdown. To understand it this way is to recognize that employers were
cared about protecting themselves financially which explains why the majority of corporate
respondents argued for less stringent liability standards. On the other side were certain
government agencies, all of the feminist organizations, and most of the individuals and unions
who were concerned about protecting workers and their right not to have to confront
discrimination in the form of sexual harassment at work. The responses from government
organizations illustrate this business versus feminist dynamic. This determined which agencies
supported the guidelines and which ones did not. For instance, the Director of the Santa Clara
County, California, Commission on the Status of Women, Rina Rosenberg, wrote that her
Commission “wholeheartedly approved” of them because of its experience in dealing with sexual
harassment complaints. She wrote, “The women who have come to us have shared their fear of
retaliation by the harasser, their fear of social stigma if they report the incident, and also their
fear of losing their jobs. The abuse of economic power by employers has resulted in a great deal

\textsuperscript{25} Ibid., 163-2-163-2.
\textsuperscript{26} Ibid., 128-1-128-2.
\textsuperscript{27} Ibid., 128-2.
of unnecessary suffering by women and these new guidelines will go a long way in assisting women to feel more secure in their place of employment and more confident in asserting their rights.”

Her opinion was not shared by James F. Truitt, Jr., Assistant Attorney General and Counsel of the Department of Personnel for the Baltimore Attorney General’s Office. Truitt argued that “the Guidelines fall short of providing any real guidance to employers” and that “the assumption that sexual demands are the same as discrimination because of sex may not be warranted.”

He also shared in the business sector’s complaints that there was no basis in title VII case law for the EEOC’s stance on employer liability when he claimed that “there is no real support for the notion that Congress intended to proscribe sexual harassment in enacting Title VII” and when dismissing the definition of sexual harassment as too vague.

In arguing their positions and trying to push the EEOC to change the guidelines, regardless of their supportive or objective stance, many respondents used the tactic that the business community employed in turning to Title VII case law to prove their points. While this was done most often by businesses in order to argue for the deletion of or major revisions to the clauses regarding employer liability, the government agencies that voiced support for the guidelines also turned to the relevant legal history and the most recent Title VII sexual harassment cases, including *Miller v. Bank of America* and *Barnes v. Costle*. David A. Garcia, Marjorie E. Cox, and Marjorie Gelb of the California Department of Fair Employment and Housing drew upon these two cases and others in outlining why their agency concurred with the EEOC’s longstanding opinion that sexual harassment violated Title VII. They also supported the preventative and liability measures and wrote, “In any event, in evaluating the ‘fairness’ of

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28 Ibid., 67.
29 Ibid., 37-1.
31 Ibid., 37-3 and 37-4.
32 Ibid., 115-2 and 115-4-115-5.
imposing such liability on an employer, we must not lose [sic] sight of the fact that so long as a woman must grant sexual consideration to her superiors in exchange for employment benefits, or be confronted with a job environment rendered hostile and offensive by unwanted sexual advances, slurs, and comments, her material status remains a function of her sex, and Title VII’s promise of equality for women will remain an illusion.”33

When weighing in on the guidelines regarding the issue of employer liability, almost all of the government agencies who were against the guidelines listed this issue as their primary objection. Robert C. Samko, Chief Legal Counsel for the State of Illinois Department of Personnel, wrote that section (c) went “far beyond anything previously seen in the area of Title VII enforcement” and that it was “a huge leap in the wrong direction.”34 One agency that supported the guidelines and even referred to section (c) as following “generally accepted principals of anti-discrimination law” was the City of New York Commission on Human Rights, where Norton served as Chair before accepting her appointment to lead the EEOC.35 The New York City Commission even went so far as to argue that the behavior of co-workers as well as agents should be included in section (d) and that the line allowing employers to rebut liability if they took “‘immediate’ and ‘appropriate corrective action,” should be removed. In the Commission’s view, this section placed the burden on the complainant in trying to prove the harassment rather than the employer in trying to prevent the problem in the first place.36

Two of the agencies also raised concerns similar to their private sector colleagues on the issue of how the EEOC defined sexual harassment. Bruce G. Lawson and Robert F. Hilsmann of Multnomah County in Portland, Oregon argued that the definition was too broad and “should be

33 Ibid., 115-6.
34 Ibid., 105-2.
35 Ibid., 137-1.
36 Ibid., 137-1-137-2.
substantially clarified and narrowed.” The National Aeronautics and Space Administration’s General Counsel, S. Neil Hosenball complained that the guidelines in general were confusing and that the definition in part (a)(3) was “so vague and overbroad that it is unlikely that a court would be willing to apply it” because “any allegation (real or imagined) that a complainant could imagine would fall within this standard” and “the alleged discriminating official could unknowingly violate it because it is based solely on the perception of the complainant.”

Turning to the comments from the 21 respondents who wrote in representing the opinions of feminist organizations, many of these letters stood in stark contrast to the abrupt dismissals of the EEOC’s policy from the private sector and from some of the government agencies. The representatives of this interest group offered serious consideration about each paragraph of the guidelines and often reinforced their earliest statements about the problem of sexual harassment, such as its economic impact on the lives of women and the definite need for such policies to correct the problem. Here, the comments written by the Working Women’s Institute (WWI), on behalf of Working Women, the National Association of Office Workers; the National Employment Law Project; the Women’s Justice Center in Detroit, Michigan; the Women’s Litigation Clinic, Rutgers School of Law, Newark, New Jersey; and the National Emergency Civil Liberties Committee, provide the best illustration of how these organizations responded to the guidelines. In their 25-page comments, WWI provided an overview of the problem of sexual harassment then stated their suggested revisions of the guidelines. WWI’s description of the background of the problem demonstrates how the organization had refined its arguments about sexual harassment in the five years since they held their first speak-out. In 1975, WWI expressed the problem in terms of women’s lower economic position in society and heard from

37 Ibid., 146.
38 Ibid., 160-1-160-2.
women who had experienced sexual harassment at work. In 1980, they framed sexual harassment as the product of women’s “socio-economic background” and proceeded to give statistics about the types of jobs (mainly clerical or low-level) women tended to have and the fact that on average, women earned $0.59 for every man’s $1.00. WWI also still argued that sexual harassment was a product of unequal power relations between men and women in the workplace. Regarding the economic impact of sexual harassment on women, WWI asserted that it “had a substantial negative impact on women’s ability to achieve economic equality” because it “contributes directly to their lack of job advancement by causing them to be fired, lose promotions and/or raises, or be forced into resigning.” WWI also referenced earlier arguments when explaining the need to protect women from retaliation and by stating, “Women are frustrated in their attempts to obtain meaningful work and equal economic and employment opportunities.”

These comments further illustrate how the debate over the EEOC guidelines broke down according to feminists’ interests versus business interests in how they, in addition to the business and government respondents noted above, looked to the sexual harassment legal history in arguing for the guidelines. A look at how women’s organizations used the same legal history reveals how the opposing sides considered the guidelines and attempted to persuade the EEOC to pick one side over the other with regard to employer liability. Both looked to past court cases for justification of their dissatisfaction or satisfaction with the guidelines. Because the case history was relatively new, there were cases that would support both sides. In addition, because the courts had more recently started to decide in favor of sexual harassment as a violation of Title

39 Ibid., 107-6.
40 Ibid., 107-7 and Baker 117-118.
41 Comments, 107-11.
42 Ibid., 107-13.
VII in which employers were liable along the lines outlined in paragraphs (c) and (d), those who supported the EEOC’s position on this issue referenced the newer cases, whereas those who did not support the EEOC cited the older cases. An excellent example here is again found in the comments from the Machinery and Allied Products Institute in which the Institute’s President, Charles W. Stewart, referenced the lower court’s decision that employers were liable only if they had known of the harassment and failed to do something about it in the *Munford v. James T. Barnes & Co.* case. In their comments in support of the guidelines, the representatives from the California Fair Employment & Housing Commission made reference to the appellate court’s decision in the same case, then called *Barnes v. Costle.* They argued that the *Barnes v. Costle* decision supported the EEOC’s stance that employers were liable “regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.” Stewart made no mention of the *Barnes* appeal in his comments. Because there were few cases in general, it was possible for respondents such as Stewart to reference the older cases and claim that the courts needed to decide more cases in the future in order for there to be a clearer precedent, especially since, as at least one respondent pointed out, the Supreme Court had yet to decide a sexual harassment case.

In its report, WWI went a step further than the California Fair Employment & Housing Commission did in its appraisal of the guidelines and argued that the policy clarified what had “remained cloudy” after cases such as *Barnes* and, in doing so, had “benefited working women

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43 Ibid., 126-1-126-2.
44 Ibid., 115-5.
45 Statement from Robert L. Gluckstern, Chancellor, University of Maryland, College Park, Maryland, in *Comments,* 131-2.
and employers alike.\textsuperscript{46} Another feminist organization, Equal Rights Advocates, Inc., had even participated as counsel in the 1979 \textit{Miller v. Bank of America} case which “established the doctrine of respondeat superior in regard to sexual harassment cases.”\textsuperscript{47} Equal Rights Advocates was “a non-profit public interest law firm specializing in the area of sex discrimination” with “a long history of interest, activism, and advocacy in all areas of the law which effect [sic] equality between the sexes” who believed that “economic equality [was] fundamental to women’s ability to achieve equality in other aspects of society.”\textsuperscript{48} They were joined by representatives of other feminist organizations who also argued that the guidelines aligned with the case history.\textsuperscript{49} One feminist representative, Josephine Milnar from NOW’s Brooklyn Chapter, even argued that the EEOC’s stipulations on employer liability were a “vital” piece of the guidelines.\textsuperscript{50}

Further distancing themselves from the private sector respondents, those in the feminist camp lauded the EEOC’s broad definition because they recognized that it was impossible to list all of the different types of behaviors that could be considered sexual harassment and they felt that a broad definition would therefore offer more protection. In a joint submission filed on behalf of representatives from NOW, the National Women’s Political Caucus, the New York City Commission on the Status of Women, the Center for National Policy Review, Women Employed, the Women’s Equity Action League Educational and Legal Defense Fund, the NOW Legal Defense and Education Fund, Inc., and the Women’s Legal Defense Fund, attorneys Susan K. Blumenthal, Donna R. Lenhoff, and Winnie Roberts wrote that they supported the EEOC’s interim guidelines because they recognized “sexual harassment takes many forms, often very

\textsuperscript{46} \textit{Comments}, 107-5.
\textsuperscript{47} Ibid., 92-1.
\textsuperscript{48} Ibid.
\textsuperscript{49} The joint statement submitted by the NOW Legal Defense and Education Fund and the Women’s Legal Defense Fund on behalf of six other feminist organizations also references the \textit{Barnes} case, \textit{Comments}, 124-13.
\textsuperscript{50} \textit{Comments}, 129-3.
subtle” and “it is not a concept susceptible to precise definition. It may take the form of a single encounter; more often, it is a series of incidents. It may include, for example, verbal abuse and humiliation, leers, indecent suggestions, physical touching, and even rape. It extends along a continuum of increasing severity and unwantedness.”51 In arguing that sexually harassing behavior fell along a “continuum” of different actions, the writers of these comments hit at the heart of the difference in how business and feminists viewed the issue. Businesses were not comfortable with the continuum idea because it did not fit their demand for a specific set of behaviors that they could list in their policies and then avoid liability.

The same breakdown of feminists’ interests versus business interests can be seen in the responses from various individuals, who provided colorful commentary when illustrating how they felt the guidelines would affect their working lives. Those who wrote on their own accord but who nonetheless explained that they were business owners or managers, tended to argue in the same manner as the corporations while others, often victims of sexual harassment, wrote letters that reinforced the feminist argument about the overall need for the guidelines and attested to the widespread nature of the problem. One woman, Kathleen Patricia Schmidt, wrote a short letter which simply stated, “I am very much in support of these new guidelines on sexual harassment. As a professional working woman sexual harassment has been a problem to me and has greatly hindered me in carrying out my responsibilities on my job. I hope that these new guidelines will be strictly enforced as they should be.”52

The letters from individuals who disagreed with Schmidt reveal the varied nature of opinions on this issue and also the continuing belief among many Americans that sexual harassment was not a serious problem. David Fritz of Michigan City, Indiana, accused the

51 Ibid., 124-4-124-5.
52 Ibid., 60.
EEOC of having an “anti-business attitude,” while John Paul Barach of Nashville, Tennessee, considered the guidelines an “intrusive and unclear and offensive imposition of the Federal power into the most personal part of people’s lives.” Others negatively equated the guidelines with feminism, and one even associated it with the Equal Rights Amendment (ERA), and then expressed distaste for the policy because of how these individuals felt about such issues. C.E. Dickerson of North Syracuse, New York, wrote, “We the majority see a very ugly trend developing in the Federal Government which will lead to more and more lack of productivity, and waste of tax money! The Federal Government is pathetic.” Dickerson continued, “I have no respect for ‘ERA’ women” and “you will never stop sex. If anything this so-called law will encourage sexual violence.” Finally, Lynn C. Phyfve, also from Nashville, wrote, “I have a comment to make on your new regulations outlawing sexual harassment on the job. The comment is phooey to you! Your organization has nothing to do with the American people. You are not an elected organization. The will of the people did not give its consent to either you or your law making policies.” He then signed his letter, “in hopes that I can find a new little secretary to pinch today, I am Lynn C. Phyfve.”

In light of all of these comments, the EEOC’s OPI had a great task before it in determining how to react to these responses from the business, government, feminist, and individual sectors. They also received a smaller number of responses from educational institutions and a few from union representatives. The comments from educational institutions were interesting in that, because the EEOC’s interim guidelines were an employment policy, they tended to be written from the viewpoint of the educational institution as an employer, not as

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53 Ibid., 22.
54 Ibid., 73-1.
55 Ibid., 74. See Chapter Six for a discussion of the link between sexual harassment policy and the ERA.
56 Comments, 15-1.
57 Ibid., 15-2.
an educator. Therefore, the majority of these comments had nothing to do with protecting students from sexual harassment, but were instead written along the lines of those from the business community, explaining the fact that so many of the educational institutions did not support the guidelines. (See Figure 2.) The EEOC received a brief letter from Kenneth Sidwell, Dean of Students of Belmont College in Nashville, who objected to the government regulating the behavior in the first place. He wrote:

> Of all of the regulations to come out of Washington your guidelines on sexual harassment takes the cake. The projection of the federal government into the role of “sex judge” is something out of Ripley’s Believe It or Not. As the Dean of Students of a small college it is comforting to know that I can refer all cases of sex improprieties to Washington, our big brother who knows best. Since my wife sometimes doubles as my secretary I must be on my best behavior not to be “suggestive” or Uncle Sam will come calling. How ridiculous, stupid, asinine. Such regulations are ambiguous, hypocritical, unenforceable, and hopefully will be simply ignored by the American public. God save us from frustrated women administrators who want to save the world with public financing.58

Susan Fratkin of the National Association of State Universities and Land-Grant Colleges also expressed disapproval of the guidelines but referred to specific parts of the policy by name rather than relying on the anti-government rhetoric that pervaded Sidwell’s letter. Similar to her business counterparts, Fratkin argued that the behavior in general was hard to categorize and that the definition was too broad.59 She also claimed that the guidelines did not afford both complainant and defendant “adequate due process.”60 In considering the specific interests of university employers, Fratkin called for universities to write their own guidelines instead of using the EEOC’s and for the EEOC to recognize the “particular nature of an industry”61 and modify the guidelines to account for different types of employers, such as universities, who have

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58 Ibid., 75.
59 Ibid., 127-1.
60 Ibid., 127-2.
61 Ibid., 127-1.
to meet the unique needs of both faculty members and students. Fratkin recognized that student concerns needed consideration and that the universities should be responsible in certain cases but that the guidelines should “indicate that universities are not responsible as employers for personal actions by individual faculty members toward other faculty members.”

From the perspective of the small number of unions who submitted comments, the guidelines were a welcome policy, except for one respondent from the American Federation of State, County and Municipal Employees who argued that unions should not be held responsible for sexual harassment in situations when they are not acting as “employers.” The three remaining unions expressed their support on behalf of working women. Cathy Buchmann of Women in the Trades argued that the guidelines should make additional considerations for psychological behavior and should account for age discrimination in conjunction with sexual harassment because it “has often led to forms of sexual harassment.” She also called on the EEOC to clarify that the actions of co-workers and not just supervisors were covered in its policy.

There is little in the records of these comments to indicate how closely OPI considered these opinions before issuing the final guidelines. On July 18, 1980, Karen Danart, OPI’s Acting Director, sent a memorandum to Chair Norton, Vice Chair Daniel E. Leach, and Commissioners Ethel Bent Walsh, Armando Rodriguez, and J. Clay Smith about the July 31st Semi-Annual Regulatory Agenda that was going to be published in the Federal Register. Danart mentioned the interim guidelines but wrote only that the comments requested in the April 11, 1980 Federal

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62 Ibid., 127-2.
63 Ibid., 144.
64 Ibid., 53 and 55.
65 Ibid., 53.
Register introducing the interim guidelines were “still being reviewed by EEOC staff.”66 In the meantime, word was getting out that some members of the business community were unhappy with all of the changes that Norton spearheaded at the EEOC, including the sexual harassment guidelines. On Thursday, August 28, 1980, the Wall Street Journal published an article under the headline “Guideline-Happy at the EEOC?” and noted that businesses were referring to the agency as “an ‘imperial bureaucracy’” because of all of the guidelines that it had been issuing.67 As proof of this, these critics cited the guidelines on employee-selection procedures, pregnancy benefits, and reverse discrimination, which the EEOC issued after Norton took office, and the rumor that it was going to issue more guidelines on comparable worth, seniority, and pension benefits in the near future. In addition, they pointed to the interim sexual harassment guidelines and proposed guidelines on religious accommodation and reproductive hazards as the worst examples of the EEOC’s “imperial” bureaucratic nature. The article noted that while such guidelines were not legally binding, “they indicate[d] the agency’s position in future litigation, and many employers fe[lt] obligated to comply.”68 An October 24, 1980 New York Times article on the sexual harassment also included criticisms of the guidelines. One personnel official was quoted as stating that they had so much “legal verbiage that a man would be afraid to speak to a woman in the office without first speaking to a lawyer.”69 Norton responded to this criticism by reinforcing her belief that the guidelines only encouraged employers to take action to stop

66 July 18, 1980 Memorandum to Chair Eleanor Holmes Norton, Vice Chair Daniel E. Leach, Commissioner Ethel Bent Walsh, Commissioner Armando Rodriguez, and Commissioner J. Clay Smith from Karen Danart Acting Director, OPI, “7-22-80 Open Session, BbW, 114,” Commission Meetings and Tapes, Box 20, EEOC Records, NARA.
68 Ibid. Employers felt obligated to comply because, while the guidelines were not technically law, they indicated the agency’s stance and, as described in Chapter Four, judges tended to follow the EEOC’s lead in ruling on issues of discrimination. Therefore, it was in the best interest of employers to comply rather than risk liability later.
discrimination at their workplaces and, once they did so, they would not be held accountable or would help prevent problems in the first place.  

**EEOC Issues Final Sexual Harassment Guidelines**

By early September 1980, OPI had finished reviewing the comments and had made a few changes to the guidelines that they submitted to Chair Norton, Vice Chair Leach, and the Commissioners for approval. After a five-months period since the interim guidelines had been issued, OPI’s “Proposed Final Guidelines on Sexual Harassment” were added to the agenda of the September 16, 1980, Commission meeting. In a memorandum explaining the changes, Danart summarized the three main changes that OPI had made to the guidelines in the interim by listing them as follows:

1. In Subsection (a, 3) we propose that the word “substantially” be changed to “unreasonably”.
2. Subsection (d) has been divided into two subsections to more clearly define coverage with respect to persons other than employers, supervisors, and agents.
3. Subsection (g) has been added to recognize the related issue of sexual favors as an issue cognizable under Title VII.

Although these three changes may seem relatively small compared to the number and content of comments the EEOC reviewed, the Commission nonetheless did consider some of this feedback when writing the final guidelines. Furthermore, the September 1980 guidelines reflect that, in not substantially changing the EEOC’s policy based on arguments from the private business sector, the original intent to define sexual harassment as discriminatory and to make employers liable for it remained intact.

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70 Lublin, “Guideline-Happy at the EEOC?” and Lester, 208.
71 September 10, 1980 Memorandum to Chair Eleanor Holmes Norton, Vice Chair Daniel E. Leach, Commissioner Ethel Bent Walsh, Commissioner Armando M. Rodriguez, and Commissioner J. Clay Smith from Karen Danart Acting Director, OPI, “9-23-80 Open Session, BbW, 2 of 2, 238,” Commission Meetings and Tapes, Box 21, EEOC Records, NARA. Baker writes that the EEOC made “several modifications” to its guidelines. Given the substantial number of suggestions the three changes above seem rather small in comparison. See Baker, 118.
The first change came as a result of what OPI felt were a number of “questions as to the meaning of the word ‘substantially’” and because “the word ‘unreasonably’ more accurately states the intent of the Commission and was therefore substituted to clarify that intent.” The interim guidelines stated that conduct was sexual harassment when it had “the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.” OPI deleted the word “substantially” and replaced it with “substantially.” Feminists claimed that the problem with the use of the word “substantially” was that it implied that sexual harassment would be allowable if it did not affect the working environment to a certain degree. NOW found this troubling and argued that sexual harassment should not be condoned under any circumstances. In making this change, OPI answered the call of the feminist groups, especially those that submitted comments in conjunction with WWI and NOW. (See Appendix C.)

The second proposed change reflected the high number of comments from the business sector protesting the EEOC’s view on employer liability. OPI referred to this issue as “the second highest” most commented upon. Despite many employers calling for the EEOC to do away with paragraph (c) on employer liability altogether, or at least to drastically change it in favor of less liability for employers in instances where co-workers, and not supervisors, were the perpetrators, where employers could have absolutely no knowledge of the harassment whatsoever, or in situations where the employer did have a sexual harassment policy or other

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72 September 10, 1980 Memorandum, EEOC Records, NARA.
73 EEOC Interim Sexual Harassment Guidelines.
74 Comments, 124-9-124-10.
75 Ibid., 107-14 (WWI) and 124-9-124-10 (NOW). This does not assume that all feminists agreed with the new wording as it too faced later criticism from some activists who preferred an even broader definition. See Baker, 118-119.
76 September 10, 1980 Memorandum, EEOC Records, NARA. OPI stated that “the greatest number of comments, including those from employers, were those commending the Commission for publishing guidelines on the issue of sexual harassment, as well as for the content of the guidelines.”
preventative measures in place, OPI refused to do so. It argued that “the strict liability imposed in §1604.11(c) is in keeping with the general standard of employer liability with respect to agents and supervisory employees. Similarly, the Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates Title VII, regardless of knowledge or any other mitigating factor.”\(^77\) OPI then cited several cases, most notably the *Miller* decision, to illustrate its meaning and explained that it was going to let paragraph (c) “stand” as originally written.\(^78\)

Where OPI did change the guidelines with regards to employer liability was in the new subsections (d) and (e), with the interim subsection (d) divided to create a new subsection (e). In the interim guidelines, subsection (d) stated that employers were responsible for the behavior of anyone else not covered in section (c) (which included the following under “employer”: employers, employment agencies, joint apprenticeship committees or labor organizations). As many of the feminist organizations and one of the unions pointed out, the original paragraph did not explicitly state that employers were responsible for the harassment between co-workers or clients.\(^79\) The new subsections clarified this position. In paragraph (d), the EEOC explicitly stated that employers were responsible for the “conduct between fellow employees…where the employer…knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.”\(^80\) The new paragraph (e) considered non-employees, such as clients, in a similar manner and where OPI stated that employers would be liable “where the employer…knows or should have known of the conduct and fails to take

\(^{77}\) September 10, 1980 Memorandum.

\(^{78}\) Ibid.

\(^{79}\) This was mentioned by representatives from the following in Comments: Women in the Trades, 53; Working Women’s Institute, 107-20-107-25; NOW et. al., 124-14; and NOW-Brooklyn Chapter, 129-3-128-4.

immediate and appropriate corrective action.” Once again, the EEOC was noting how it took the public comments into consideration in clarifying employer liability along these lines, however, in doing so, the Commission appears to have supported the feminist position and not the business community’s.

The final major change to the guidelines was in moving the paragraph on prevention, subsection (e), to subsection (f), and adding the new paragraph (g). OPI decided, based on the comments, to leave the prevention paragraph untouched. The new paragraph (g) was added to include situations in which “a third party who was denied an employment benefit would have a charge cognizable under Title VII where the benefit was received by a person who was granting sexual favors to their mutual supervisor.” While the OPI memorandum states that “several commentors [sic] raised” this question, there were comparatively fewer respondents who mentioned this problem than commented upon several of the other issues described above. OPI only offered the following explanation for the addition of subsection (g): “Even though the Commission does not consider this to be an issue of sexual harassment in the strict sense, the Commission does recognize it as a related issue which would be governed by general Title VII principles.”

While the Commission only made three changes to the interim guidelines, the memorandum explaining these changes (a portion of which was also published in the Federal Register under “Supplementary Information” along with the guidelines) indicates that OPI took the public comments into serious consideration before issuing the final guidelines. The changes

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81 Ibid.
82 September 10, 1980 Memorandum, EEOC Records, NARA.
83 Ibid. J. Clay Smith, Jr., Acting EEOC Chairman following Norton’s tenure, later wrote that the Commission had received a large number of telephone calls regarding this issue, although there is no record or transcripts of these telephone calls included with the written comments. See J. Clay Smith, Jr., “Prologue to the EEOC Guidelines on Sexual Harassment,” Capital University Law Review—Symposium: Sexual Harassment 10, no.3 (Spring 1981): 477.
that they describe show that the Commission did not bow to pressure from businesses or government agencies who argued for substantial revisions that would weaken the guidelines by offering the employers less liability or by narrowing the definition of sexual harassment and therefore making the policy less helpful to working women. Instead, the Commission upheld its position that the guidelines adhered to Title VII principles regarding liability and that it was the employer’s responsibility to take action by becoming aware of the problem and informing their employees that it would not be tolerated. The Commission also made the guidelines even more responsive to the feminist community’s concerns.

Much as the comments were divided, responses in law reviews reveal mixed reactions to the guidelines in a similar business v. feminist fashion. Some reviewers described the guidelines’ faults in the same manner as the business community while others faulted them for not doing enough on behalf of working women. For instance, one legal scholar, Lynn McLain, based her criticism on the EEOC’s application of the law regarding employer liability.84 Although she wrote that “the agency’s zeal [was] understandable” in its “all-out attack against sexual harassment,” she argued that the EEOC overstepped its Congressional authority under Title VII in issuing them.85 She also asserted that the guidelines were missing three key elements that the law under Title VII required in sex discrimination cases: “acts which discriminate between persons because of their gender,” “have significant adverse employment ramifications,” and “were taken either by an employer covered by Title VII or by its agents.”86 Regarding her first point, McLain claimed that the EEOC’s definition did not include comparisons of discriminatory acts between persons because of gender in its conflation of the

85 Ibid., 278.
86 Ibid., 288.
terms “sex” and “sexual harassment” in the first two sentences of subsection (a). She argues that “harassment on the basis of sex” is not the same as “sexual harassment” according to Congress’s understanding of the word sex when Title VII was originally passed. McLain contends that Congress meant sex to refer to its “expressed concern only with the types of jobs women held and the lower pay they received; its stated goals were of equal employment opportunity for similarly qualified males and females” and not with the EEOC’s use of the term to refer to “sexual behaviors of any kind in the workplace.” She wrote that the EEOC could have avoided this confusion “by stating that harassment on the basis of sex includes but it not limited to sexual harassment” to clarify that it view[ed] sexual harassment as only one of the actionable types of gender-based harassment.

McLain also turned to the EEOC’s definition in subsection (a) on her second point about employment ramifications and the difficulties of recognizing when the severity of the problem or its effects on the work environment are actionable under Title VII. She stated that quid pro quo harassment was easy to identify using the EEOC’s definition but that it was too vague with regards to hostile environment harassment. She continued, “The EEOC must be especially careful to make clear that neither trivial chargers nor claims resulting from acts which no harm resulted will be found to be actionable Title VII violations.” This last point is a clear similarity to how some businesses and government leaders reacted to the guidelines. Finally, McLain explained how the guidelines were incorrect regarding employer liability for employers or their agents and the question of determining what constitutes the environment setting along these lines. She illustrated that, of the four paragraphs in guidelines dedicated to

87 Ibid., 289-290.
88 Ibid., 290.
89 Ibid., 290n92 and 291.
90 Ibid., 308.
91 Ibid., 313.
employer liability (subsections (b) through (e)), the first two had statutory bases in case law, but the last two did not. McLain claimed that the EEOC incorrectly interpreted the definition of “agents” under Title VII as a catch-all for non-supervisory personnel who are clearly part of the management. Near the conclusion of her commentary, McLain also criticized the EEOC for not reconsidering its position on employer liability after the wealth of comments it received criticizing this aspect of its policy.

Jan Leventer, a trial attorney for the EEOC’s Detroit Regional Office and the Legal Director of the Women’s Justice Center in Detroit, who wrote in her private capacity and not in conjunction with her work at the EEOC, also raised objections about the EEOC’s definition in subsection (a). She believed that this part of the guidelines did not go as far as feminists would have liked in protecting working women from sexual harassment. Leventer pointed out that, when commenting on the interim guidelines, feminists had objected to the use of the word “substantially,” which they wanted deleted altogether. They did not suggest a term to take its place. Leventer wrote, “The contradiction inherent in this terminology is that there now, arguably, could be a ‘reasonable’ interference with a woman’s work performance.” Although Leventer appreciated the EEOC’s additions expanding employer liability, she leveled criticism on subsection (d) of the guidelines because of its inherent assumption that women ‘sleep their way to the top,’” which she referred to as “a destructive stereotype in a male-dominated workplace.” She continued, “By codifying this sexist stereotype of women workers, the EEOC

92 Ibid., 315-316.
93 Ibid., 316-317.
94 Ibid., 317.
95 Ibid., 318.
97 Ibid., 484.
now lends credence to it.”98 Even so, Leventer concluded her remarks by commending the EEOC on its policy as “so in touch with women’s realities that it takes the position that it does and, in fact, develops some nuances of its own, even if the guidelines could have gone farther in some respects.”99

Conclusion

The Commission approved the final interpretative guidelines by a unanimous vote on September 23, 1980, and they were published in the Federal Register on November 10, 1980.100 Although the records do not clearly indicate the level of involvement of the EEOC’s Chair in drafting the final guidelines, the final guidelines themselves reflected her priorities: that sexual harassment was sex discrimination under Title VII, that the burden of proof lay with the employer and not with the victim, and that employers were liability for violations. Her biographer writes,

Eleanor fundamentally altered the legal landscape when she lifted the responsibility that had been on women to complain and reversed it, saying to employers, “This is your burden. Chase it from the workplaces. If you don’t, these guidelines will help a woman prove sexual harassment.” Rejecting a passive posture—waiting for a woman to be harassed and then come forward—was quintessentially Eleanor’s own character, transferred to a federal blueprint. And her ability to do it by providing an incentive for employers as well, if they issued their own sexual harassment policy, was also emblematic Eleanor, who liked nothing so much as a win-win.101

Carrie N. Baker notes that while the policy did uphold how feminists had framed sexual harassment as an issue of sex discrimination on behalf of working women, it did not expand the

98 Ibid., 485. See also Baker, 118-119.
101 Lester, 208.
framework in additional feminist directions, such as by including an even broader definition.\textsuperscript{102} Given that Norton—as the leader of a federal institution—had to balance the interests of feminist activists and the EEOC as a regulatory agency, this illustrates the limitations of institutionalization in providing for the possibility of policy losing its original feminist impulse as more actors influence the understanding of the issue. Linda Gordon also recognized in 1981 the potential for sexual harassment policy to lose some of its feminist intent in fighting “against male supremacy.”\textsuperscript{103} The EEOC accepted and used the original feminist framework declaring sexual harassment illegal under Title VII, but could only go so far without extending its authority under the law, which was already being questioned. Nevertheless, Norton set about making the most of her “win-win” situation by working to educate her agency and the general public about the guidelines. She designated October 27-31, 1980 as the first National Federal Women’s Week at the EEOC. In a memorandum to the directors of the EEOC headquarters, district, and area offices, she wrote that each of them should highlight the new sexual harassment policy in events commemorating the week by holding seminars with not just the members of their offices but anyone in other federal agencies in their areas and even anyone in their office buildings or in the general public.\textsuperscript{104} Following her own recommendations, Norton also sent a letter to over 60 women’s groups around the country, including Working Women, the National Association of Office Workers, the Coalition of Labor Union Workers, Women Employed, and NOW, inviting

\textsuperscript{102} Baker, 119.

\textsuperscript{103} Linda Gordon, “The Politics of Sexual Harassment,” \textit{Radical America} 15, no.4 (July-August 1981): 10. Gordon did not mention the EEOC guidelines specifically or any opposition to them. Instead, her point was to warn feminists of this possibility and to continue to be proactive in fighting sexual harassment through other means besides public policy.

them to come to a special seminar in Washington, D.C. on Sexual Harassment in the Workplace, which was being held during the EEOC’s National Federal Women’s Week. ¹⁰⁵

Under her leadership, Norton had helped to transform the EEOC into an agency that had the potential to live up to the expectations that it could be a “super-agency” that enforced antidiscrimination policies, including those regarding sex, to the letter of the law. While the agency was not perfect, the possibility that it could carry its new enforcement attitude and guidelines into a “decade of the EEOC” during the 1980s seemed like it could become a reality during the period before the November 1980 presidential election. Ironically, in the same month that the EEOC’s permanent sexual harassment guidelines were issued, President Carter, who had put Norton and the EEOC at the forefront of federal equal employment opportunity changes, lost the election to Ronald Reagan, prompting Norton to announce her resignation as EEOC Chair, effective February 1981. As the next chapter illustrates, the Reagan administration wasted no time in targeting the EEOC for an agency review, arguing that it needed to do so in order to trim what it considered to be questionable policies, including the sexual harassment guidelines, from the federal budget.

¹⁰⁵ Letters to Women’s Organizations regarding Sexual Harassment in the Workplace Seminar, “CH CHRON November 1980,” Chairman’s Chronological File, 1976-1999, Box 2, EEOC Records, NARA.
CHAPTER SIX: COMPETING VOICES: POLITICAL CONTESTS OVER THE EEOC’S SEXUAL HARASSMENT POLICY

“…sexual harassment on the job is not a problem for the virtuous woman except in the rarest of cases.”
- Phyllis Schlafly, to the Senate Labor Committee, April 21, 1981

The 1980s brought an era of significant political change to America with the election of Ronald Reagan, a Republican and leader of the New Right. The New Right had emerged in the postwar era as a conservative grassroots social movement that was dedicated to the principles of limited government and limited capitalism.¹ Reagan’s election not only prompted Eleanor Holmes Norton’s resignation as Chair of the Equal Employment Opportunity Commission (EEOC). The Senate also went Republican in 1980 after over two decades of Democratic rule. His party’s rise to political power also affected the issue of sexual harassment in other fundamental ways, leaving it in the hands of policymakers and activists who, unlike those who had first named the problem and raised awareness about it, were not dedicated to enforcing working women’s citizenship rights. Instead, new actors appeared on the scene, including Reagan’s advisers and anti-feminist leaders such as Phyllis Schlafly, who sought to un-do the work that had been done in the previous five years by contesting the framing of sexual harassment as an economic citizenship issue in order to protect their own conservative ideals of business and femininity.² After Reagan took office, his administration cut the EEOC’s budget, targeted equal employment opportunity programs such as affirmative action, and later placed the EEOC’s sexual harassment guidelines under review. Following this trend, the guidelines were a


prominent part of Senator Orrin Hatch’s 1981 Hearings on Sex Discrimination and his investigation into the effectiveness of federal anti-sex discrimination policies. Hatch also wanted to eliminate the EEOC’s Office of Policy Implementation (OPI), which had issued the guidelines.

Schlafly was not the only anti-feminist who expressed concern over the EEOC’s policy; however, she was the most recognizable due to her longstanding opposition to feminism and the Equal Rights Amendment (ERA). Her statement and role in the hearings also signified a change in which the feminists who had first politicized the problem had not only lost much of their control over how the issue was portrayed, it showed how they then faced opposition as the Reagan administration and Schlafly’s movement mobilized against how feminists had framed sexual harassment. These changes led to debates in which sexual harassment was tied to questions over women’s roles in American society, with each side arguing fundamentally different viewpoints. On one side were feminist activists who argued for policies on behalf of women’s right to earn a living. On the other side were anti-feminists such as Schlafly who, viewing women as mothers and homemakers, claimed that sexual harassment policies were unnecessary because only indecent or immoral working women were harassed. This happened just after the issue of sexual harassment became institutionalized with the 1980 EEOC Guidelines, which should have brought positive gains for the women’s movement’s sexual harassment framework. Instead, the political changes of the 1980s resulted in renewed challenges and opposition to federal sexual harassment policy. This occurrence seems to fit with Sidney Tarrow’s theory on the demobilization phase of a social movement, in which, once a policy is recognized, activists are no longer the only ones involved in framing the issue and, in this case, often confront the countermobilization of their opponents. He also theorizes that,
following institutionalization, the opinion of some groups will be facilitated in public policy and others’ will be repressed. Here, the Norton EEOC had successfully repressed the business community’s negative reaction to its policy in not substantially changing the guidelines before issuing them in their final form. Once the Reagan administration took over, this situation was reversed when it began to more seriously consider corporate reactions to the EEOC’s policy, especially regarding employer liability for sexual harassment. Yet, this alone does not account for how this change occurred and produced such a reaction from Schlafly. Nor do anthologies of the feminist movement, which explain in great detail how the issue was first defined and politicized, but do not offer much insight into how and why the successes of the 1970s were met with an apparent countermovement to contest the success of feminists’ sexual harassment framework throughout the 1980s. Their stories pick back up with the 1991 Anita Hill-Clarence Thomas sexual harassment scandal, which again changed the political climate in which the issue was debated.

This chapter examines the consequences of the 1980s political climate and asks how support for the issue as economic citizenship—as feminist activists had framed it—as well as sexual harassment policy were altered by the Reagan administration and the associated backlash against American feminism. After studying the Hatch Hearings and the political context in which they took place, Chapter Six argues that sexual harassment as an issue of economic citizenship became a target of the New Right’s 1980s agenda, including its attack on feminism,

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its efforts to defeat the Equal Rights Amendment (ERA), and its commitment to American business interests. These factors then, in turn, cut into the overall public support for sexual harassment remedies, reopened debates that called the problem’s seriousness into question, and limited the EEOC’s ability to enforce its sexual harassment policy effectively. In doing so, Chapter Six continues the examination of the demobilization cycles of a social movement by analyzing the polarization, institutionalization, facilitation, and repression of the feminist-defined sexual harassment framework. Here, the backlash against the women’s movement is viewed as part of the polarization phase. The institutionalization, facilitation, and repression phases illustrate how, once the Reagan administration took over, it tied anti-feminist and pro-business attitudes to government policy, impacting how the federal government considered the EEOC’s sexual harassment guidelines and repressing earlier feminist arguments. Before outlining how this took place, Chapter Six offers an overview of the history of the New Right, the anti-feminist movement that arose out of the ERA debate, and the associated criticism of feminism’s larger issues that came to include sexual harassment policy in the 1980s.

**The New Right, Feminist Backlash, and a New Era in American Politics**

The New Right’s political roots lie in the opposition to post-New Deal liberalism and in the anti-communism efforts of the post-World War II era. From the late-1940s throughout the 1960s, even former proponents of the New Deal joined a conservative movement that revealed itself as opposed to liberal reforms including civil rights for African Americans. Once viewed as lacking respectability, this movement grew to dominate American politics. The defeat of Republican presidential candidate Barry Goldwater in 1964, and the disgrace of President Richard Nixon’s resignation after the Watergate scandal in 1974, gave way to the achievement of
the New Right’s rise to national prominence by the late 1970s.\textsuperscript{5} Ronald Reagan, the “standardbearer”\textsuperscript{6} of the New Right and a man who was often idolized as its “founding father,”\textsuperscript{7} solidified its power both symbolically and in reality with his presidential victory in 1980.

Not only did the New Right bring a shift in political power in America from the Left to the Right, or from Democratic to Republican, it also brought in a different value system that was often at odds with the liberal politics that had been prominent from the New Deal to the 1970s. These years had been defined by the Left’s campaigns for government social programs, organized labor, and civil rights. In 1980, the New Right ushered in an era identified by its beliefs in the primacy of capitalism and the free market system, suspicions of big government, opposition to unions, and accusations that liberalism had caused all of America’s problems.\textsuperscript{8} In particular, the New Right took issue with many of the social movements of the 1960s and 1970s, especially feminism.\textsuperscript{9} The New Right viewed feminism as a severe threat to its religious and traditional family values because of the feminist movement’s campaigns for abortion rights, the ERA, and government-funded child care programs.\textsuperscript{10} Because of Ronald Reagan’s status as


\textsuperscript{6} McGirr, \textit{Suburban Warriors}, 5.


\textsuperscript{9} Berlet, “The New Political Right in the United States,” 71 and 81.

leader of the New Right and his public opposition to abortion, he was a clear opponent of feminists.¹¹

By the time Ronald Reagan was elected, there was a distinct anti-feminist movement in America led by conservatives who railed against feminist successes such as *Roe v. Wade* and the ERA. Many have even credited anti-feminists with revitalizing the New Right and contributing to its rise.¹² Whereas the early- to mid-1970s had been characterized by feminist successes, by the late-1970s and early-1980s, feminists faced a distinct backlash and countermovement which challenged their gains and ideals of American womanhood. One woman who was very much responsible for this backlash and who has been called “the nemesis of feminism” is Phyllis Schlafly.¹³ Schlafly’s rise as a leader of the antifeminist movement mirrors the rise of the New Right, of which she also became an important figure as the New Right turned to cultural issues in the late 1970s. Raised in St. Louis, Schlafly graduated from Washington University with a degree in political science and went on to graduate from Radcliffe University’s graduate school in 1945. She later returned to St. Louis and began working for the St. Louis Trust Company. Shortly after, she met and married Fred Schlafly in 1949 and settled into Alton, Illinois as a homemaker. Her first foray into politics came in the early 1950s when she joined the grassroots Right in its efforts against New Deal liberalism and communism.¹⁴ Schlafly continued her political activism in the Right and, by the Goldwater campaign in 1964, she had become, in the words of journalist Chip Berlet, a “high-profile” figure in the conservative movement.¹⁵

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¹¹ Berlet, 86.
¹³ Critchlow, 279.
¹⁴ Ibid., 19, 29, 32, and 39.
¹⁵ Berlet, 80.
Schlafly did not become involved in anti-feminist issues until she was asked by a conservative forum in Connecticut to participate in a debate on the pending ERA in December 1971. Having little knowledge about the ERA, she read background materials on the amendment in order to prepare for the debate and quickly realized that she was against its ratification. By September 1972, Schlafly had organized the STOP ERA movement, and in doing so, propelled the ERA debate forward in such a way that Schlafly’s political biographer, Donald Critchlow, argues that the amendment “helped revive the GOP Right.” Schlafly’s group of anti-feminist and anti-ERA supporters was motivated by the feminist successes of the early 1970s. They responded to these gains by using the ERA debate in arguing that the amendment threatened traditional family values and the associated protections they afforded housewives, mothers, and working women. They especially protested the pro-ERA feminists who linked the amendment’s passage with abortion and gay rights. Anti-ERA activists also claimed that the amendment was needless because of the protections and opportunities that recent Congressional acts had given women, such as the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, and others. By 1979, Schlafly’s anti-ERA movement had been so successful that “opposition to [its] ratification” appeared “insurmountable,” according to Critchlow. Indeed, the political tide had turned so strongly against feminism that supporters of the ERA were forced in 1978 to seek an extension of the deadline for ratification. Critchlow also highlights how Schlafly’s movement became tied to the larger pro-family movement that put moral conservative values on the map when Reagan defeated Carter in

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16 Critchlow, 217.
17 Ibid., 214.
18 Ibid., 218, 221, 225-227.
19 Ibid., 249.
Schlafly placed sexual harassment in the context of these anti-feminist, anti-ERA, and pro-family values at the Hatch Hearings in 1981 when she argued against the EEOC’s sexual harassment policy using language that, not surprisingly, made her even more unpopular with feminist supporters of the EEOC guidelines. By the time Senator Hatch opened the hearings on sexual harassment, the EEOC’s guidelines—and feminist supporters of sexual harassment policy by extension—faced a two-pronged attack, beginning with the Reagan administration’s budgetary cuts and then the criticism from figures such as Schlafly who used debates over the guidelines to combat American feminism.

These differences between Schlafly’s group and feminists on women’s issues came to light most prominently in debates over the ERA and eventually led to its defeat. Combined with a rising backlash against feminism in general and Ronald Reagan’s election in 1980, pro-ERA activists faced an uphill battle at the same time the survival of other feminist victories, namely legalized abortion and then the EEOC’s sexual harassment policy, were in jeopardy. Given this context, questions relevant to the ERA debate over women’s roles, abortion and sexuality, and women in combat also became relevant to the public discussion of sexual harassment. ERA opponents used the Hatch hearings and other forums to tie the issue of sexual harassment to the sinking fortunes of the ERA. Organized feminists, many of whom had come late to the issue of sexual harassment, were forced to respond to the way that Schlafly framed the issue. Schlafly rejected the feminist framing of the issue of sexual harassment and, in doing so, brought the problem outside of its framework as an issue of economic citizenship rights and into the debate over women’s roles as workers versus mothers and homemakers.

The debate over the ERA’s ratification most clearly demonstrates how the politics of the 1980s impacted sexual harassment policy and discourse and explains the larger relationship

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20 Ibid., 268.
between sexual harassment and the feminist movement. This also illuminates how Schlafly’s status as a feminist opponent gave her a greater role in linking discussions of sexual harassment to the New Right’s agenda, contributing to the contested nature of sexual harassment policy and enforcement throughout the early 1980s. When Congress passed the ERA on March 22, 1972, many feminists believed that its prospects for ratification were excellent. This was evident in a period of initial excitement in which 24 states had ratified the amendment by the following year. Although this period slowly subsided by 1977, an additional 11 had states ratified the ERA by then, meaning that the amendment was just three states shy of the number needed for it to become law. In 1978, Congress handed its supporters another victory in extending the deadline for ratification from 1979 to 1982. Even under these circumstances, the ERA went down in defeat as not even one more state legislature ratified the amendment before the extended deadline expired on June 30, 1982.21 This climate, a national debate over a hotly contested feminist issue, provided the context in which the EEOC Guidelines were written and then issued in their final form, and also in which they later came under fire from the same political forces that successfully stopped the ERA’s passage.

What linked all of these together—debates over the ERA and sexual harassment policy—was Schlafly’s effort to connect sexual harassment to the three main issues she used to build opposition to the ERA: questions of women’s roles, sexuality and abortion, and military service. Because such a forceful opposition to their movement arose in debates over the ERA, feminists had to confront new attacks and new frameworks of issues in the public arena and had to contend with these new forces and the associated backlash against feminist politics. Whereas feminists had succeeded much earlier in framing their issues around arguments of equality and economics, Schlafly’s co-optation of their issues put feminists on the defensive when responding

to anti-feminist criticism of the ERA. This is also where the ERA debates contributed to a breakdown in the framing of sexual harassment as an issue of economic citizenship when Schlafly testified at the hearings. Instead of accepting how feminists had framed the problem, she linked it to how she viewed the ERA as an affront to women’s dependent economic status, sexuality, and military service, or what she saw as women’s proper roles in the home. Sara M. Evans provides insight into the overall impact of this opposition to how the movement could frame its issues and writes,

Feminists could no longer successfully frame the changes they advocated in terms of simple fairness and equal opportunity. They faced opponents who appealed to fears about the dissolution of all traditional and communal institutions, redirecting many women’s anxieties (especially the growing sense of vulnerability and marginalization among housewives) into opposition to “equal rights.” Opponents suggested, for instance, that an ERA would allow men to abandon all responsibility for their families and further diminish the grounds for female distinctiveness and respect.

In addition to this feminist backlash and challenge to feminist policies and viewpoints, the ascendancy of the New Right and Ronald Reagan’s rise to the presidency also had two major effects on American politics that impacted sexual harassment discourse. The first is the resignation of EEOC Chair, Eleanor Holmes Norton, a longtime supporter of both the civil rights and feminist movements. Norton’s appointment as the head of the EEOC was slated to expire in June of 1981. However, because of her opinion that Reagan’s election and the rise of the New Right would represent a turn in American politics away from her own beliefs and ideologies, Norton stunned a conference audience in the fall of 1980 by telling the attendees that she would

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23 Evans, 113.
resign if Reagan was elected. Shortly after Reagan’s inauguration, on January 22, 1981, Norton submitted her official resignation to the president.\(^{24}\) As the previous chapters demonstrate, Norton had not only been successful in creating measures that cleared up the Commission’s backlog and made the EEOC a more respectable organization in Washington, she was instrumental in revising the Commission’s sex discrimination guidelines to include sexual harassment in such a way that would actually protect working women and not business interests. Without her leadership at the EEOC, the future of these guidelines was uncertain.\(^{25}\)

The second effect of Reagan’s election was that his administration wasted no time in targeting federal civil rights and affirmative action programs for review. The EEOC came under fire even before Reagan was sworn in when the leader of one of his advisory groups, J.A. Parker, accused the Commission in a December, 1980 report of creating “a new racism in America in which every individual is judged by race” and criticizing it for going beyond its congressionally mandated duties in the 1964 Civil Rights Act.\(^{26}\) While Parker did not name the sexual harassment guidelines in his report, his group did argue that the EEOC’s anti-discrimination policies in general burdened American business interests. In addition to these contentions, the advisory committee recommended a budget cut for the EEOC, a reduction in its political power in enforcing equal employment opportunity regulations, and a one-year ban from issuing guidelines. That this announcement came only two months after the sexual harassment guidelines were issued in their final form is not mere coincidence but a clear indication of the


administration’s opposition to the EEOC.\textsuperscript{27} Remember too, that the Carter administration had just significantly increased the Commission’s budget in 1977. All in all, such attacks on the Commission’s political role would hamper its effectiveness in educating the American public about the existence of its sexual harassment guidance, in processing sexual harassment claims, and finally, in monitoring the implementation of sexual harassment policies that could prevent the behavior from happening in American workplaces in the first place. Although the EEOC’s records do not reflect its sexual harassment charge-processing statistics until its 1981 Fiscal Year Annual Report, the Commission had been actively enforcing the guidelines throughout this time by processing claims, issuing management directives to educate its staff about adding sexual harassment to federal agencies’ affirmative action plans, and recommending sexual harassment cases for litigation.\textsuperscript{28} The EEOC had thus only begun its charge-processing, data-collection, and educational-outreach efforts; therefore, this timing was crucial. If employers realized the guidelines were under review by the Reagan administration, what incentive did they have to abide by them?


Newly Empowered Republican-Led Senate Challenges EEOC Guidelines

More concrete evidence that the Reagan administration’s criticisms of the EEOC impacted the sexual harassment guidelines is found in the Senate Labor and Human Resources Committee hearings on sex discrimination on January 28 and April 21, 1981. The hearings consisted of two rounds of testimony and statements from representatives of various women’s groups, unions, and government agencies. The first day was dedicated to the subject of sex discrimination generally and the second one addressed the EEOC and its sexual harassment policy specifically. Held just months after the Hanley subcommittee’s follow-up hearings on sexual harassment, the purpose of these hearings was to investigate the EEOC and to challenge its 1980 sexual harassment guidelines. Under the direction of Senator Orrin Hatch (R-Utah), Committee Chairman, the Labor and Human Resources Committee wanted to learn “about the extent and nature of the problem and how effective the new regulations [would] be in eliminating sexual harassment.”29 Given the recent transfer of Senate control from the Democrats to the Republicans—marking the end of over 25 years of Democratic leadership,30 the newly empowered Hatch made his committee’s intentions to trim the EEOC of its enforcement powers known. In March of that year, Hatch’s committee recommended a 20-percent budget cut to the agency by calling for the EEOC to receive only $116 million in appropriations in 1982. This figure was a significant decrease from the EEOC’s actual budget of $125 million in fiscal year 1980 and was also less than the $145 million the Carter administration had estimated the agency would need in 1982. Even more striking and revealing of Hatch’s agenda to cripple the EEOC was the fact that his recommendation was also much less than the $140 million figure that the

30 Wilentz, 125 and Troy, Morning in America, 48.
Reagan administration itself had proposed.\textsuperscript{31} He had also earlier called for OPI’s elimination.\textsuperscript{32} Senator Edward M. Kennedy (D-Massachusetts) used his opening statements at the hearings on sexual harassment policy to voice his concern over these measures. He called the EEOC guidelines “important and valuable” and claimed that “just as the Federal enforcement structure begins to show signs of making a real dent in the second-class economic status of women, there appears to be a major effort underway to drastically curtail these efforts.”\textsuperscript{33}

When Hatch introduced the first day’s testimony on January 28, 1981, he did not exactly voice his goals of the hearings in this manner but expressed that he sought to examine sex discrimination in employment in order to understand which anti-discrimination policies were necessary and which ones were not effective. He acknowledged that women were not achieving more equality in the workforce, but articulated his suspicions that additional government intervention was necessary when inquiring the following, “I will be frank to ask, with some 30-plus Federal statues and many State statutes on the books granting equal rights to women in the workplace, why women are not getting equal rights in the workplace?”\textsuperscript{34} By recognizing that women still faced inequality in the workplace, Hatch framed his opening statements and reasons for his hearings under an umbrella of concern for working women’s equality but his question here demonstrates that underlying these efforts was also a concern to protect business interests. This is evident in the same set of introductory remarks when Hatch raised the issue of sexual harassment by stating that it was “anathema to everything we stand for as a Nation that some women are subjected to various forms of sexual harassment in order to obtain, keep, or advance in their jobs. Surely this is a practice which is abhorrent to all but the offenders, but this

\textsuperscript{31} Hatch Hearings, 335 and 375. An excerpt from the Report of the Senate Committee on Labor and Human Resources on the proposed budget for fiscal year 1982 is included on pages 373-375 of the Hatch Hearings.
\textsuperscript{32} Hatch Hearings, 471.
\textsuperscript{33} Ibid., 334.
\textsuperscript{34} Ibid., 2.
committee will not be afraid to address it. We will seek the advice and counsel of both women and business in dealing with this sensitive area.”

For the first time, Congress asked the business community to weigh in on the guidelines. Hanley referred only to women’s groups and government agencies for expert testimony on sexual harassment and he did not include testimony from business representatives or appear to even consider their interests over that of the women most affected by the problem, which Hatch evidently planned to do.

Hatch’s hearings further reveal a move away from the politics of the previous hearings, as indicated by his opening remarks during the second day of testimony on April 21, 1981, in which he targeted the EEOC guidelines as under review. Whereas Hanley had expressed faith in the EEOC and its guidelines after his committee’s investigation, Hatch posed these questions about the policy:

Is the definition of sexual harassment, as found in the regulations, too inclusive or too exclusive? Will these regulations place an undue burden on the employer? Do these regulations have the potential for infringing upon freedom of expression of others? Will they help create more employment opportunities for women, or will they be a drain on the economy? And last but not least, what assurance is there that the EEOC will make findings on complaints in an even-handed manner?

Although Hatch’s questions and the rest of his opening remarks do not explicitly outline any changes that the Reagan administration was going to make to the policy at that time, they obviously link the EEOC guidelines to the overall conservative effort to protect business interests, especially when he asks if the guidelines will burden employers. In addition, Hatch’s

36 Representing women-affiliated business groups and the business community at large in the January 28th hearings were: Marlene Johnson, president of the National Association of Business Owners and Nancy Felipe Russo, president of the Federation of Organizations for Professional Women. At the April 21st hearings were: Judith Finn, an economist from Oak Ridge Tennessee (who was part of a panel with Phyllis Schlafly); Gwendolyn Jo M. Carlberg, an attorney from Alexandria, Virginia; and Kenneth McCulloch, an attorney from New York, New York. The Committee also received a statement from the National Federation of Business and Professional Women’s Clubs, Inc.
37 Hatch Hearings, 333-334.
questions indicate that his was not a friendly investigation and left open the debate of the EEOC’s legitimacy in regulating anti-discrimination policies and of the usefulness of its sexual harassment policy.

When his committee heard testimony from J. Clay Smith, Jr., Acting EEOC Chairman, Hatch criticized the EEOC’s sexual harassment policy and its enforcement of anti-discrimination statutes. Hatch’s questions to Smith clearly illustrate his position that the problem of sexual harassment was not very serious, that the Commission’s definition of sexual harassment was inadequate and lacking in useful guidance for employers, and that the EEOC itself, in its daily operations, was overstepping its authority under Title VII. To measure the seriousness of the issue that Hanley had already called “pandemic,” Hatch grilled Smith on the actual number of sexual harassment charges that had been filed at the EEOC by the time of the hearings. Smith could not state the exact number when he testified but estimated that it was “small” because the guidelines were so new and that it was likely to increase as more employees became aware of the policy. Hatch continued to push Smith regarding the number of cases in an apparent effort to have Smith admit that the number was minimal. Hatch even tried pressing Smith to affirm a low figure by asking Smith the leading question, “So, there is something less than 300 cases throughout the country, as of right now, up until now?” Smith would not agree with that estimate and later submitted figures to the Committee which showed that there had been 972 sexual harassment charges filed with the EEOC in the five months since the agency had issued the final guidelines and began processing such charges. Of the 972 sexual harassment charges, 292 had been closed by April 1981 and 680 were still active, with 130 of that number awaiting decision by the OPI at EEOC headquarters and the remaining 550 awaiting investigation by

38 Ibid., 362.
39 Ibid., 363.
EEOC field offices throughout the country. Of the 292 that had been closed, Smith reported that 153, or 52 percent of them, had been settled in favor of the charging party. In pushing Smith on the numbers question, Hatch attempted to downplay the severity of sexual harassment by proposing a figure that turned out to be only a third of the number of charges the EEOC had received. He later expressed disbelief that Smith was unable to report another figure—the number of sexual harassment allegations that became civil lawsuits instead of EEOC charges—by chiding Smith about not being prepared to answer his question in reminding him that the point of the hearings was “to find out just how widespread and pervasive these problems are.”

Hatch critiqued the EEOC’s definition of sexual harassment by asking Smith to respond to a scenario, in which a male on a picket line verbally harassed female co-workers who crossed the picket line, and state whether or not an employer would be liable if it did not stop the harassment. Smith replied that it was unlikely that an employer would be liable in this situation. Hatch, dissatisfied with this response, voiced the same concern as the business representatives who commented on the interim EEOC guidelines when inquiring, “Are these guidelines too broad and general, or should there be some more specifics so that employers know what the extent of their liability actually is?” Smith answered Hatch by explaining that the EEOC’s purpose in having a broad definition of sexual harassment was so that it could evaluate

40 Ibid., 362-363.
41 Smith also reported that 21 of the charges had been dismissed because of lack of supporting evidence and that in one of the charges conciliation had failed because there was no finding of cause. He did not report the outcome of the 117 remaining charges. See Hatch Hearings, 363.
42 Smith’s prediction that the number of sexual harassment charges would rise with awareness of the policy bore out as this number had increased to 4,272 by the end of FY 1981. See Chapter Seven and U.S. Equal Employment Opportunity Commission, 16th Annual Report: FY 1981, 140-141. His remarks were also confirmed by EEOC Vice Chairman, Daniel Leach, who reported to the Bureau of National Affairs after the hearings that EEOC field offices reported an increase in sexual harassment charges after the guidelines were issued. See Bureau of National Affairs, Inc., Sexual Harassment and Labor Relations: A BNA Special Report (Washington, D.C.: The Bureau of National Affairs, Inc., 1981), 8. Hereafter cited as BNA Special Report.
43 Hatch Hearings, 393.
44 Ibid., 393-394.
45 Ibid., 394.
charges on a case-by-case basis and thoroughly consider all of the facts in each.\textsuperscript{46} Here he reiterated the same point that Norton had made when keeping the EEOC’s broad definition of sexual harassment instead of a narrow, behavior-specific one that would be difficult to apply to different types of cases.

When defending the EEOC’s thorough investigative procedures in his answer about the EEOC’s definition of sexual harassment, Smith raised Hatch’s next criticism of the EEOC before Hatch could do so himself. Hatch then inquired how Smith ensured that all of his staff—at the headquarters in Washington, DC, and in field offices around the U.S.—consistently and appropriately resolved cases. Smith answered this by describing how each office was trained in EEOC compliance and apprised of all available data to make uniform decisions. Hatch was not satisfied with this and asked the following question—a clear indication of his opinion that the EEOC overstepped its boundaries and one that sounded much like that an employer would ask: “Well, maybe they have this instruction, but what if they, through this rapid charge process, are just arbitrarily making decisions that really are not appropriate under the decisions made by the Commission itself?”\textsuperscript{47} Smith reacted to this charge by outlining the EEOC’s auditing procedures, including steps in which OPI evaluates “difficult and sensitive cases” that need higher approval.\textsuperscript{48}

Hatch continued to query Smith about EEOC operations and even called out the agency on issues of fairness to employers when asking him, “What assurance do employers have, or will they have, that they are going to be treated fairly by the EEOC field staff and the Commission?” Hatch explained the reason behind this question as complaints of “some arbitrariness by the field

\textsuperscript{46} Ibid.  
\textsuperscript{47} Ibid.  
\textsuperscript{48} Ibid., 395.
staff in this rapid charge system.”

Smith gave Hatch his personal commitment to employer fairness in general and with regards to sexual harassment when he stated, “I think I can say unequivocally that our staff will be instructed that in the area of sexual harassment charges, employers should be treated fairly and that grieving parties ought to be treated fairly.” He buttressed this point by describing that there was a clear policy regarding evidence that must exist in each charge resolved and again, he reiterated that the guidelines call for employers to demonstrate “that he or she took immediate and appropriate corrective action” in avoiding liability. Smith then encouraged employers to carefully review the guidelines paragraph by paragraph in order to not miss this very important point.

Finally, Hatch turned to one of the overall themes of the hearings and asked Smith if the guidelines “will actually create more employment opportunities for women, or will they be a deterrent to the creation of more employment opportunities for women?” Hatch did not elaborate on how he thought they would deter additional employment opportunities for women. Nevertheless, Smith acknowledged that the guidelines would possibly improve opportunities for both women and men because of their wording. He explained, “It is my belief that the purpose of these guidelines is to deter the lack of opportunity for women, or perhaps for men, since these guidelines are not restricted to—.” Hatch interjected, “The regulations apply either way,” and Smith continued, “It applies either way. It would deter conduct which would inhibit opportunities for advancement or assignment in the workplace. I think that if the problem is a

49 Ibid.
50 Ibid.
51 Ibid.
52 Ibid., 396.
large problem, these guidelines will certainly be beneficial to opportunities for men and women who may be subjected to sexual harassment.”53

The hearings also took an interesting turn when Senator Kennedy questioned Smith. As in his opening remarks, Kennedy appeared to use Smith’s testimony as an opportunity to express his political differences from Hatch and the other Republican members of the Labor and Human Resources Committee. Taking the opposite view from Hatch that sexual harassment was indeed a serious problem, Kennedy asked Smith to tell the Committee about his view of the issue, based on his experience at the EEOC as both a Commissioner and as its Acting Chairman. Smith responded by repeating what had been said by many others at previous hearings and in the press, simply that it was “a serious problem.”54 In explaining his answer, Smith revealed the Commission’s efforts in educating workers about its sexual harassment policy when he told Kennedy and the Committee that he could attest to the severity of the problem because of conversations he had had with women workers throughout the country. He recounted how, following speeches about the guidelines, women in all types of groups, and not just women’s groups, would ask him for more information about the policy and about the charge-filing process. Smith also stated that he and the Commissioners were being asked to conduct training sessions on the guidelines by both employer seminars and civil rights groups. In what led to a headline-grabbing quote for the press, Kennedy then asked, “Is it your sense that the number of complaints that you have gotten or have raised is the tip of the iceberg as compared to what is really happening in the American economy?”55 Smith began his reply by stating “there is a greater problem in the workplace than has presented itself to the doorstep of the EEOC” and

53 Ibid.
54 Ibid., 368.
“some stirring out in the Republic on this issue.” He based this on his discussions with not just working women but with “some employers who earnestly and definitely want to avoid these problems,” leading Smith to concur with Kennedy when answering “this may be the tip of the iceberg.”

Instead of seemingly pitting the business community against the EEOC in the manner of Hatch’s questioning, Kennedy asked Smith if corporations were working with the EEOC to solve the problem of sexual harassment. Smith replied that they were and that he hoped more would continue to take preventative measures by posting signs educating employees about the Commission’s guidelines and the problem in general. Even more telling of his deeper interest in exposing how Hatch’s proposed budget cuts would harm the EEOC’s educational and outreach efforts with the business community and on behalf of working women, Kennedy then asked Smith if he wanted to comment on this issue. He also tried to direct Smith’s response by quoting from a section in the Committee’s report in which it pinpointed exactly which office of the EEOC it wanted to cut and why. Kennedy read to Smith, “Additional cuts in the budget of EEOC are required in areas in which the Commission exceeded the mandate given by Congress. For example, reductions are indicated in the Office of Policy Implementation. OPI has recently begun charting a course with its guidelines which is contrary to or exceed either the expressed language of title VII and other Federal EEO laws or court decisions interpreting these statutes.”

Kennedy then stated, “Those were not the findings of some members of this committee, but it was at least the judgment of a majority,” and asked Smith if EEOC was going beyond the

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56 *Hatch Hearings*, 368..
57 Ibid., 369 and “Aide Calls Sex Harassment Cases ‘Tip of the Iceberg.’”
58 *Hatch Hearings*, 370.
59 Ibid., 371.
Congressional mandate of Title VII.60 Smith seemed to not know exactly how to respond to this question. When pressed by Kennedy about OPI and its development of the sexual harassment guidelines, Smith deflected the issue back on Norton and her tenure at the Commission by stating that the policy had originated in that office but that it was “the political appointees who are members on bipartisan commissions who make the final decisions.”61 He also addressed the budget issue by stating that a cut to the EEOC’s overall budget would lengthen charge processing time, a move that Kennedy recognized would harm not only the individuals bringing charges but the corporations and unions who would also have to wait longer for resolutions. He then closed this line of questioning by commending the EEOC’s guidelines and Smith for his work at the agency.62

**Anti-Feminist and Feminist Views Clash During the Hatch Hearings**

In raising his own criticism of the EEOC, Hatch demonstrated the downside of the institutionalization of sexual harassment once it became a matter of public policy. By calling upon outsiders to testify, and not just the feminists who had first framed the problem of sexual harassment, Hatch invited additional opinions which, in turn, facilitated the Reagan administration’s attack on the EEOC and its anti-discrimination policies and altered how the issue was framed. This is most visible in Phyllis Schlafly’s appearance and testimony before Hatch’s committee. Much like she fought the ERA, Schlafly challenged the EEOC and its guidelines and the feminist framework of sexual harassment because of her opinions on the  

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60 Ibid.  
61 Ibid., 372.  
62 Ibid.
proper roles for women, including whether or not American women should work outside the home, have abortions, or serve in the military.63

When she argued that women who are sexually harassed are essentially “asking for it” by being immoral, Schlafly highlighted the differences between feminists who argued for women’s employment rights and anti-feminists such as herself who wanted to protect women and to build up the image of the dependent housewife. She made this statement when claiming that criminal acts such as statutory rape should most certainly be covered under public policy and differentiating them from “non-criminal sexual harassment on the job.”64 She infuriated feminists by arguing that “non-criminal sexual harassment” was “not a problem for the virtuous woman except in the rarest of cases.”65 Schlafly explained, “When a woman walks into the room, she speaks with a universal body language that most men intuitively understand. Men hardly ever ask sexual favors of women from whom the certain answer is ‘no.’”66 These statements exemplify a debate over the proper roles for women in American society as she implied that working women were not virtuous and should be in the home. More importantly, she also brought an opposing viewpoint into the public arena that competed with how feminists presented the problem of sexual harassment. Even if she was using rhetoric for the purpose of getting people’s attention and may not have truly believed what she said, her remarks nonetheless raised questions about the virtue of working women in general. Her argument was the polar opposite of the sexual harassment activists who framed the problem and who argued that it was caused by capitalism and the patriarchal relationship between men and women.67

63 See Mansbridge, 3, 5, and 13; Rosen, 39; and Chapter One for a discussion on anti-feminists challenging feminists on these three issues.
64 Hatch Hearings, 400.
65 Ibid. and “Aide Calls Sex Harassment Cases ‘Tip of the Iceberg.’”
66 Hatch Hearings, 400.
67 See Chapter Two.
Schlafly also made it appear that women had a choice to stay at home or to work when, as many of the first women to speak out about sexual harassment claimed, this choice was not a luxury that they had.

The two sides collided over the use of the term sexual harassment at the hearings, and their disagreement on the definition of the problem had the potential to confuse the issue and mislead American men and women about sexual harassment and not take it seriously. On one side of the debate was Schlafly, who also claimed before Congress that feminists were sexually harassing the role of motherhood by arguing that “the most cruel and damaging sexual harassment taking place today is the harassment by feminists and their Federal Government allies against the role of motherhood and the role of the dependent wife.” Schlafly stipulated that feminists accomplished this via the women’s movement’s efforts to change social security benefits, to uphold affirmative action policies, to end what she termed the “59 cent fraud,” to continue the child-care tax credits for working mothers, to end pregnancy discrimination at work, and to rid society of sexist language in education and governmental policies, among other efforts that she saw as feminist attempts to decry those who believed in the value of motherhood.

On the other side were feminist activists who, in spite of the conservative turn in American politics, were still fighting to have their voices heard and to make it known throughout society that sexual harassment was a real problem for countless numbers of women in the workplace. For example, Betty Jean Hall, Director of the Oak Ridge, Tennessee, Coal Employment Project, began her testimony by telling the Committee that “sexual harassment is a serious problem which is rampant in all work settings, from underground coal mines to fancy Washington law offices to the restaurants scattered throughout the Nation’s small, medium, and

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68 Hatch Hearings, 397.
69 Ibid., 400-421.
large-sized towns.” In addition, Joan Vermeulen, Director of the Legal Backup Center for the Working Women’s Institute, a national sexual harassment resource center, defended the seriousness of the issue and also testified to the fact that federal courts agreed with the feminist position and had upheld the notion that sexual harassment was a form of sex discrimination.

When the topic of abortion was raised during Congressman Hatch’s hearings on sex discrimination and sexual harassment specifically, witnesses placed it within this context of women’s traditional roles as mothers. Under the heading, “Feminist Harassment of Motherhood Via Pregnancy Legislation,” Schlafly including the following in her written testimony:

One of the most insidious aspects of the feminist harassment of the role of motherhood is through legislation that affects pregnancy. Under feminist demands, the Congress has passed legislation which superficially and temporarily may help mothers while at the same time serving the feminist goal of eliminating the role of motherhood. The feminist tactic is to give short-term childbirth or abortion benefits to a pregnant woman while at the same time financially or legislatively inducing the mother to return to her paid job 3+ months after her baby is born.

In this one instance (among many in her testimony) in which Schlafly changed the word, “harassment,” to mean her argument that feminists “harassed” the role of motherhood, she effectively changed the nature of the debate. Here, the question was not whether or not sexual harassment policies were adequate or necessary remedies. Instead, Schlafly questioned Congress’ policies on abortion and pregnancy discrimination, issues that were very much linked.
to the pro- and anti-ERA campaigns, and less about sexual harassment. This illustrates how Schlafly opposed the feminist framing of sexual harassment as an issue of economic citizenship and then used the term for her own purposes in defending more conservative views of womanhood.

Schlafly’s motivations at the time of the hearings when pushing such ideals was likely due to the fact that support for the ERA was actually on the rise in the summer of 1981. While her biographer and many other historians write that the ERA’s defeat seemed inevitable during this time, according to a July 1981 Gallup poll, the amendment had “greater public support than ever before,”74 with 63 percent of Americans in favor of it and 32 percent opposed.75 Although the poll’s accompanying article did note the unlikelihood of the amendment’s ratification, the poll data showed some interesting results in the numbers of conservatives who supported the ERA, with 58 percent in favor of it and 38 percent opposed. Moderates supported the Amendment at a rate of 53 percent with 30 percent opposed and liberals at a rate of 75 percent with 21 percent opposed. With regards to the debate over women’s roles, the report stated, “Of particular interest is the fact that no significant differences in attitude toward the Amendment are recorded between working women and those not employed outside the home,” and continued, “A small minority of those opposed to the Amendment contend that ‘a woman’s place is in the home.’”76 Another Gallup survey showed that, in 1980, of the 74 percent of women who believed the ideal lifestyle for women included being married with children, 33 percent of that number included a full-time job in that ideal, whereas 41 percent did not. By 1982, the number of women who thought that the ideal lifestyle for women was married with children and a full-time job had risen to 40 percent and the number who believed the ideal did not include a full-

75 Ibid., 23-24.
76 Ibid., 23.
time job had decreased slightly to 39 percent. These numbers indicate that while Schalfly’s STOP ERA movement was successful, she may have seemed out of touch with what many American women believed their ideal lifestyle should be.

If support for the ERA was on the rise, and Schlafly’s views of traditional womanhood put her in the minority of even those women who opposed the amendment, she may have then felt on the defensive when testifying at the Hatch Hearings and even more committed to challenging feminists. By employing such a tactic through her choice of language, Schlafly linked sexual harassment to a string of other feminist issues that her anti-feminist movement had been criticizing with the goal of preventing the ERA’s passage. In particular, the issue of women in the military comprised much of Schlafly’s testimony and lends further support to the notion that she used the government’s sexual harassment debate, and the platform she had in testifying before Congress, to alter the course of the discussion away from the problem of sexual harassment and toward her criticism of the ERA. She not only twisted the language of sexual harassment by accusing feminists of sexually harassing the role of motherhood, Schlafly also refused to use the term as it was originally defined except when she spoke of women in the military. Yet again, Schlafly did not discuss the issue at the heart of the hearing (examining the EEOC’s policy) and instead used her appearance for her own ends in promoting her pro-family argument, including railing against the question of drafting women into the military—a cause that she believed was a feminist goal. In doing so, she revealed her objection to women’s service in the military in the first place. She offered as evidence with her written testimony two different publications about women in the workplace, one depicting an office situation and the other portraying a woman in the armed forces. The first was a National Organization for Women (NOW) Legal Defense and Education Fund advertisement which depicts a man, presumably a

supervisor, pinching a woman on the rear, presumably a secretary, with the caption, “He calls it fun! She calls it sexual harassment.” The second was a cover of a Defense Department publication, *SSAM: Soldier, Sailor, Airman, Marine*, with the headline “Women in Combat!?...Let’s Get Serious,” and a cartoonish drawing of a woman in a bikini top brandishing a Viking-type sword. (See Appendices D and E.)

Schlafly pointed to the NOW ad as an example of how feminists were making a big issue out of something that she did not think was a serious problem and especially that was not one the federal government should have to correct. She told the Senate committee, “What the National Organization for Women is complaining about is illustrated by this picture…which I really do not think is a problem that Congress is capable of solving.” Instead, she believed that the real issue was the problem of women in the military and the potential harassment they faced or, the potential that the presence of, again, non-virtuous, women in the military had in breaking up soldiers’ marriages and posing a threat to American families. Schlafly stated, “Anyone who is trying to make a ‘federal case’ out of the problem of bosses pinching secretaries, and who at the same time is promoting the drafting of women along with men and/or the full sex-integration of combat assignments in the armed services, is playing political games with the term ‘sexual harassment.’” In making the claim that feminists supported the drafting of women, Schlafly may have been referring to the first round of Senator Hatch’s sex discrimination hearings in which Karen Nussbaum, Program Director of Working Women, the National Association of Office Workers, testified on January 28, 1981, and responded to a question about whether or not she agreed with a recent Senate proposal to register American women for the draft. Nussbaum

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78 Ibid., 423.
79 Ibid., 424.
80 Ibid., 463.
81 Ibid., 401-403.
82 Ibid., 401.
answered that she would support this measure only if the ERA passed. However, Schlafly does not explicitly state why she is using this issue to discuss women in the military, other than offering her opinion that the armed forces were the only workplaces that posed a real threat to women in the workplace because of the possibility that they would be sexually harassed by their fellow service personnel. When she discussed the SSAM cover she considered it an example of how men in the military were “lusting to have women drafted into the Army and put in combat and combat-related jobs.”

If Schlafly really wanted to make the sexual harassment of women in the military a core part of her testimony and justify this as the sole way she used the term sexual harassment similar to the feminists who testified, then there was plenty of evidence available to her that she could have used to indicate that sexual harassment in the military was a serious problem. In fact, at the first Congressional hearings on sexual harassment—Senator Hanley’s hearings—there was testimony to support this. Helen Lewis, Executive Director of the D.C. Commission for Women, had reported the results of a small-scale survey completed by 32 workers at Andrews Air Force Base in which all of the respondents except five replied that they had experienced some form of sexual harassment at work. At the Hanley Hearings, Lewis’ remark was reiterated by Louise Smothers of the American Federation of Government Employees, who also reported on cases of sexual harassment among employees at Army and Air Force Exchanges. In addition, the Merit System Protection Board report, Sexual Harassment in the Federal Workplace, the first large-scale scientific study of sexual harassment, had also just been published the month before Schlafly testified. In the report, MSPB found that the majority of sexual harassment victims in

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83 Ibid., 67-68.
84 Ibid., 463.
86 Ibid., 107.
the federal workplace worked for Defense Department agencies, including the Air Force, the Navy, the Marine Corps, and those only identified as “Other Defense Department” workplaces. Schlafly referenced neither of these sources to support her claim that the only type of sexual harassment worth discussing was the sexual harassment of women in the armed forces. Instead, she continued to protest women’s military service by including two examples of sexual harassment in the military that conflated the issue with rape and raised questions about working women’s morality.

First, Schlafly stated, “Nothing in the world would create more sexual harassment than the drafting of 18- to 20-year-old girls into the army. Military policies which force volunteer servicewomen into ‘nontraditional’ assignments have already created a major problem of sexual harassment.” The only evidence she offered to support this claim was a letter from a female soldier to Army Times in which the soldier described what it was like to be a female out in the field, including not having separate shower or sleeping facilities. However, nowhere in this letter did the soldier describe any specific instances of sexual harassment that she had either witnessed or experienced. After referencing the letter, Schlafly noted a report by Stars and Stripes describing the “high rate of rape among American troops stationed in Europe.” Once again, Schlafly confused the issue of sexual harassment and removed it from how feminists defined it, which certainly could include rape, by equating all instances of rape in the armed forces with sexual harassment. According to the feminists who defined the problem, sexual harassment included many different behaviors, with rape being on the extreme end, which

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88 Hatch Hearings, 401.
89 Ibid., 401 and 422.
90 Ibid., 401.
Schlaflly does not mention. More importantly, this distinction bears mention because no one at
the hearings disputed the need for policies against rape. If anything, when rape laws were
mentioned it was in the context of comparing the sensitivity and awareness of the issue to the
problem of sexual harassment. The subject of the hearings was sex discrimination in the
workplace and sexual harassment policies in particular, or more generally, policies under Title
VII of the Civil Rights Act of 1964, as amended. The crimes that Schlaflly mentioned were
possibly those covered under criminal or military rape statutes and were therefore a different
body of law entirely. In equating sexual harassment with rape in such a manner, Schlaflly was
arguing for protections that women already had, and again deflecting the question of the need for
sexual harassment policies to protect working women from non-rape forms of harassment at
work, a protection that women had only had for a few months and which was clearly under
suspicion by the Reagan administration and Senator Hatch who were trying to roll them back.

As Schlaflly’s second example, she discussed a specific case of sexual harassment in the
Navy where one officer was convicted of sexually harassing seven women. In describing this
case, she again mentioned the theme that only “non-virtuous” women were sexually harassed.
Schlaflly stated, “Sexual harassment can also occur when a non-virtuous woman gives off body
language which invites sexual advances, but she chooses to give her favors to Man A but not the
Man B, and he tries to get his share too.” She then noted that of the seven women harassed by
this one officer, two of them “were pregnant by other men.” Had she been interested in really
pointing out that women in the military were at risk of being sexually harassed instead of arguing
against women in the military in the first place or accusing those who were harassed of being

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91 See, for instance, Senator Kennedy’s commentary on this during J. Clay Smith, Jr.’s testimony on pages 368-369
of Hatch Hearings.
92 Hatch Hearings, 402.
93 Ibid.
loose women, her argument would have been relevant to the discussion of sexual harassment policy. In not doing so, Schlafly used her testimony to tell Congress, and the American public who would read about the hearings in mainstream newspapers, that feminists were attacking motherhood, promoting abortion, and arguing that women should be drafted into the military, all of which played into her anti-ERA campaign.

Of the 22 pages that Schlafly submitted with her testimony, she addresses the specific nature of the April 21 hearings in only three of them. When she did discuss sexual harassment and the EEOC’s policy, she began by refuting that such behavior was a problem in the first place. Instead, she argued, “The biggest problem of sex in the workplace is not harassment at all but simply the chemistry that naturally occurs when women and men are put in close proximity day after day, especially if the jobs have other tensions.”94 Schlafly viewed this as an ongoing phenomenon and blamed women with lax morals for changing the nature of the working environment. It was as if she assumed that women in the workplace were overtly sexual or even promiscuous when she stated that such “chemistry has always been present; what’s different today is that (a) there are many more women in the workplace, and (b) some women have abandoned the Commandments against adultery and fornication, and accepted the new notions that any sexual activity in or out of marriage is morally and socially acceptable.”95 She further implied that working women were an affront to the traditional family and used the term “sexual harassment” as merely a revenge tool for when an affair went sour by stating, “Sexual harassment can be the mischievous label applied in hate or revenge when one party wants out of an extra-marital liaison between consenting adults. Neither congress nor EEOC has the

94 Ibid., 401.
95 Ibid.
comence to sit in judgment on the unwitnessed events and decide who was harassing whom.”

In the brief instance in which Schlafly discussed the EEOC Guidelines, she stipulated, “The EEOC regulations for dealing with sexual harassment are ridiculous and unjust. They are ridiculous because there is no way to police the situation fairly, and they are fundamentally unjust because they penalize an innocent bystander, the employer, for an employee’s act over which he had no control.” In this statement, Schlafly clearly showed her roots in the New Right in sharing this opinion espoused by many business and corporate leaders who had written to the EEOC in response to the interim guidelines, as well as other policymakers in the Reagan administration, who protested the guidelines because they believed that employers should not have bear financial responsibility when their employees sexually harassed one another. She also went so far as to call the guidelines “discriminatory” because, in her reading of them, they did not equate with what she saw as the proper role for women. Schlafly explained that “although they prohibit sexual harassment by a supervisor using the power of his job to get sex, they do not prohibit an employee using the power of her sex to get job favors or promotions from her supervisor.” Once again, Schlafly misrepresented certain facts here. While much of the text of the guidelines was devoted to outlining prohibitions of sexual harassment by supervisors and co-workers, the final draft of the guidelines did include a provision in paragraph (g) that recognized the type of discrimination Schlafly mentioned, whereby a third party employee could file a sex discrimination complaint. Paragraph (g) clearly outlines that employers were liable under Title VII in situations “where employment opportunities or benefits are granted because of an

96 Ibid., 402.
97 Ibid., 403.
98 See Chapter Five.
99 Hatch Hearings, 403.
individual’s submission to the employer’s sexual advances or requests for sexual favors” that were “against other persons who were qualified for but denied that employment opportunity or benefit.”

Schlafly followed this misreading of the guidelines by stating her real argument in protection of “the virtuous woman” by writing, “These one-sided, discriminatory regulations are not only unjust to the employer, but they result in substantial discrimination against the virtuous woman. She doesn’t have a sex problem, but she may have a job problem; she will end up being discriminated against because the job or raise or promotion may go to the female who uses her sex to get ahead.” Apparently, Schlafly refused to acknowledge that the sexual harassment of working women was a legitimate form of sex discrimination, and a serious problem for countless numbers of women in the public—including more than just the military—and private employment sectors. Her dismissal of sexual harassment as a “sex problem” of “non-virtuous women” hit upon what Mary Bularzik identified in 1978 as a key “theme in the history of sexual harassment”—the “good girl” versus “bad girl” image of women in the public and private spheres. It also had serious implications for feminists trying to uphold their idea of sexual harassment as a violation of women’s economic citizenship rights. Schlafly sent a clear message to Congress, to the Reagan administration, and to the American public in which she raised doubt about how feminists had first framed sexual harassment. She concluded her brief comments about the EEOC’s sexual harassment policy by asserting, “Sexual harassment in private industry no doubt causes real problems in some cases, but there isn’t a shred of evidence that Congress or

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101 Hatch Hearings, 403.
Schlafly’s motives in raising such doubts as to the EEOC’s responsibility and in speaking out against feminist goals in her testimony did not go unnoticed by audience members at the hearings and by journalists who recorded her comments in the press. One writer labeled Schlafly “the militant opponent of the proposed Federal equal rights amendment” and reported that her remarks about the EEOC guidelines and the feminists’ harassment of motherhood were met with hissing from the audience, underscoring the heated nature of the debate. Another writer, Spencer Rich of the *Washington Post*, referred to Schlafly as “the redoubtable grande dame of conservatism in America” and highlighted her accusations against feminism and social policies such as affirmative action, which she felt injured the role of motherhood. While these are but two examples of how Schlafly’s comments were recorded in the press among general descriptions of the hearings, other responses in the press came in the form of editorials, columns, and letters and offer a much sharper critique of her testimony.

When Schlafly spoke before the Senate committee she was no doubt aware of the differences between her opinions and those of feminists and that her remarks would be met with much criticism by feminists or anyone else supporting rights for women in the workforce. By this time Schlafly was used to battling feminists in the press over the issue of the ERA and was probably not surprised when she was criticized in mainstream newspapers for making the

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103 Hatch Hearings, 403.
104 Ibid.
105 “Aide Calls Sex Harassment Cases ‘Tip of the Iceberg,’” and Hatch Hearings, 397.
statement about virtuous women never experiencing sexual harassment. For example, a column appeared in the *Washington Post* two days after Schlafly’s statement in which the writer, Richard Cohen, proclaimed, “As a public service, I will pinch Phyllis Schlafly. I will do this despite the fact that it is illegal and despite the fact that I have no real urge to do it…but merely to prove to her that there are times when a woman is pinched or touched or fondled or in some other way sexually approached when it is not her fault.” Cohen also criticized Schlafly for failing to admit that sexual harassment does exist and for blaming the women who experienced it. Here, he made a different comparison to rape cases and argued, “It appears that Schlafy would concede from time to time these things [sexual harassment in industry and academia] happened, but when they do, she thinks it is because the woman brought on her own troubles. This is the worst sort of blaming the victim, the sort of reasoning that used to play a prominent role in rape cases.” Cohen also discussed how rape victims’ manner of dress was often called into question by noting, “It also did not seem to matter that a woman has a right to dress and behave as she wants without being raped” and that “Schlafly does not buy this. She would apparently hold a woman responsible for her own rape the same way someone else might hold himself responsible for his own mugging. What she is doing is finding the women who were sexually harassed guilty of being women. It is, in her view, something of a crime.”

Another editorial, bearing the headline “The Mud Slinger,” also linked Schlafly’s comments to “that old and terrible response to rape: ‘She must have asked for it’” and admitted that her remarks were not a surprise. What was surprising to this writer, however, was “that she was asked to air them before a Senate committee” and that, “unlike the other witnesses, Mrs.

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107 Critchlow, 277.
109 Ibid.
110 Ibid.
Schlafly did not come armed with studies, statistics, and expert knowledge of the subject under discussion. All she presented were her opinions, and it is regrettable that she had so tall a soap box for so mean a message.”\textsuperscript{111} In a much more subtle way, \textit{Time} magazine seemed to criticize Schlafly in a small report on the hearings which included mention of her quote about virtuous women and which cited actual statistics about sexual harassment at the workplace. The magazine’s evidence included the MSPB’s results that, of the women employed in the federal workplace, “42% reported such intimidation” and a survey of workers in Schlafly’s home state of Illinois which reported that “a majority of working women were leered at, pawed or propositioned.”\textsuperscript{112}

These are but a few instances in which Schlafly was accused of condemning working women. Because her language was perceived as a criticism of such women, her remarks about sexual harassment also sparked a response from those who, otherwise, would have just disregarded her. For instance, a column appeared in the April 24, 1981 edition of \textit{The Washington Post} under the headline, “A Small Piece of Advice to the Head of the House.” The columnist, Judy Mann, wrote the article as if she were writing a letter to Schlafly’s husband, Fred, telling him that she knew that Phyllis had a reputation for arguing with feminists and making comments that were bound to drive them crazy and that, normally, she ignored Schlafly’s behavior. Then Mann writes, referring to Schlafly’s comment regarding virtuous women, “But this time she turned on women, and really put them down.”\textsuperscript{113}

Merry F. Wittey, of Dover, NJ, wrote a letter to the \textit{New York Times} Living section and also admonished Schlafly for failing to recognize the reality for many working women who have to support themselves by promoting “a load of emotional eyewash about the male being the ideal

breadwinner, with a dependent wife sitting at home.”114 Wittey wrote, “The reality is that men do harass virtuous women sexually, although they may well realize that the answer will be no. The emphasis is on the harassment, not the sexual favor.”115 She closed by calling Schlafly’s own image and reporting into question: “I would be interested to hear Phyllis Schlafly’s arguments against the proposed equal rights amendment and her reasons for idealizing the male breadwinner, backed up with logical reasoning and a perspective on reality. (The reality in her case is presumably that she is not the dependent wife she holds on a pedestal.)”116

Such responses indicate Schlafly’s ability to provoke public debate about sexual harassment, but they also indicate that the issue at times got lost in personal arguments between those who supported working women and those, like Schlafly, who argued that women belonged in the home, which may have kept the problem at the heart of their disagreement out of the public eye. This may very well have been, in some way or another, Schlafly’s intent in attacking working women by raising questions about whether women should be stay-at-home mothers or in the workforce, about polices such as abortion laws and anti-pregnancy discrimination statutes, and about drafting women into the military. Given that debates over these three subjects constituted the main arenas in which the battle over the ERA was fought, it is not surprising that Schlafly would use an audience such as the U.S. Congress to voice her grievances about these issues, which were only tangentially related to sexual harassment and contribute to a general state of confusion or criticism about the problem of sexual harassment and the EEOC’s policy.

The link between the two issues of sexual harassment and the ERA did not go unnoticed by Eleanor Holmes Norton, who testified at the Hatch Hearings just after Schlafly’s panel. Norton, then a fellow at the Urban Institute, appeared before the committee on behalf of 48

115 Ibid.
116 Ibid.
women’s organizations. This list included a variety of different groups, including the Black Women’s Organizing Collective, the Coal Employment Project, the League of Women Voters, the Mexican American Women’s National Association, the National Organization for Women, Women Employed, Working Women, and the Working Women’s Institute. When Norton began her testimony, she noted the historical significance of her appearance in representing “the largest and most diverse group of women’s organizations ever to offer a single piece of congressional testimony” as the organizations had “a combined membership of over 700,000 women and men.”

As Norton spoke she outlined the strong support of women’s organizations for the EEOC’s 1980 sexual harassment guidelines. Her comments serve as a counterpoint to Schlafly’s criticism of the EEOC and of her dismissal of the problem of sexual harassment in general because Norton explained that the confusion over the issue of sexual harassment was not due to a lapse in working women’s morality or the idea that working women “asked for it” by being employed outside of the home. Instead, Norton claimed that the number of cases that the EEOC had handled to that point did “not begin to touch the true incidence of the occurrence” because “an understandable reluctance among many women to come forward in a matter often regarded as personally sensitive and the difficulty of obtaining corroborative proof combine to make sexual harassment matters among the most distasteful and most difficult to prove in antidiscrimination work.”

Clearly, Norton and the membership of the women’s organizations that she represented believed that sexual harassment was a serious problem—a point that some of these groups had been making for over five years and which they believed they had achieved a level of success in addressing with the EEOC guidelines. As this policy came under attack during the hearings,  

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117 Hatch Hearings, 465. See also Baker, The Women’s Movement against Sexual Harassment, 137.  
118 Hatch Hearings, 466.
Norton and the women’s groups responded by reiterating that education was the best method of prevention and one that gave employers the option of notifying their employees that sexual harassment was sex discrimination and thereby preventing future claims or future (costly) legal actions. Even Chairman Hatch agreed with her on this point after Norton spoke about the goal of such education ultimately being “to make the complaint process highly unnecessary to this particular kind of discrimination.”

Hatch remarked, “Basically every witness here has said that it is a matter of education and a matter of getting these guidelines out so people understand and know about them. That will help a lot. So, you make, I think, a very valid point there.”

Here, Hatch seems to agree with Norton and the EEOC’s policy that emphasized corporate responsibility and pro-activeness in preventing sexual harassment. Hatch, along with Senator Kennedy, then claimed that this would only work if the EEOC’s enforcement efforts matched those of corporations in following through with enforcing any and all violations of the guidelines. They raise this point only briefly and seem to believe that the EEOC was doing well in enforcing its policy. Chairman Hatch stated, “I think the point is well made that perhaps there needs to be underlying enforcement. But merely causing businesses to notify their employees and supervisors that these are the guidelines and that the firm’s employees are going to have to live up to them goes some distance toward solving the problems.”

He then went a step further and even admitted that the EEOC guidelines were working by claiming, “I wanted to say that you have made an excellent point here, that the guidelines have contributed to a diminution in sexual harassment because some employers have notified their employees, supervisors, and

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119 Ibid., 467.
120 Ibid.
121 Ibid.
others working for them that they will not tolerate sexual harassment on the job. I think this is a major step in the right direction.”

One indication of how the EEOC had been enforcing its policy throughout this time in the manner that Hatch recognized—by educating employers—is the number of corporations that created their own sexual harassment policies after the EEOC issued its guidelines. When interviewed by the Bureau of National Affairs (BNA), Daniel Leach, the EEOC’s Vice Chairman, maintained that many employers were issuing such policies in compliance with EEOC policy. Leach did not know the exact number of corporate policies, but the BNA reported that there were several major corporations with sexual harassment policies throughout the country, including Pacific Telephone and Telegraph, Equifax, and Bell of Pennsylvania (AT&T). J. Clay Smith, Jr. had also reiterated in his testimony the work the Commission was doing at its Washington, D.C. headquarters in hearing complaints in order to issue “fact-specific decisions” which would “clarify and define” its definition of sexual harassment, which would no doubt help with some of the criticism for the EEOC’s broad definition of sexual harassment in its policy.

Despite the agreement between Norton and the Chairman over the EEOC’s early success in education and enforcement, Norton and the women’s groups disagreed with Chairman Hatch and his committee’s earlier recommendations to drastically cut the EEOC’s budget and render it ineffective. In general, they perceived such actions as attacks on their efforts on behalf of equality for women and took this opportunity to “reiterate [their] continuing resolve to see the ERA become a part of the Constitution.” More specifically, Norton forcefully stated their
opposition to such a large budget cut by claiming, “A 20-percent cut in the Commission budget in a single year would be devastating to all of its operations. Worse, the majority report of this committee proposes to direct cuts on a programmatic basis, reflecting a narrow philosophical view of title VII. This appears to be the first time in the history of the statute that any committee has sought to use the appropriations process to restrain the agency in carrying out its enforcement responsibilities. It is an unworthy and intolerable precedent.” Norton did not elaborate on her meaning in accusing the committee of narrowly viewing Title VII, but in pointing out that the cuts were in areas “that have been most vital to women,” she faulted Hatch’s committee for not seeing how the EEOC’s guidelines were within Title VII’s anti-sex discrimination parameters. Since one of these cuts recommended eliminating OPI, Norton also railed against the Committee for striking the office that issued the guidelines by calling it “an act of supreme irony” that “quite simply ignores the demonstrated fact that the courts have almost always sanctioned EEOC guidelines or, as in the case of sexual harassment, that EEOC has largely memorialized what the courts have already said on a given subject.” Finally, Norton also noted that the Committee was recommending a cut twice as big as the one recommended in the President’s budget, a move she interpreted as the Committee’s “special animus against the EEOC.” Overall, this attempt to limit the agency’s financial backing offers a glimpse into the picture of how some policymakers during the Reagan administration operated from a pro-business standpoint while also highlighting the likely emptiness of Chairman Hatch’s rhetoric on behalf of women’s economic citizenship and praise of the EEOC guidelines. By

126 Ibid., 470.
127 Ibid., 471.
128 Ibid.
129 Ibid., 470.
recommending such a significant budget cut to the EEOC, he was clearly more aligned with pro-business arguments that the EEOC was acting beyond its enforcement authority.

Norton’s points also supported her successor’s earlier comments because Smith had claimed that the budget cuts would set back the EEOC’s efforts to eliminate its case backlog and would result in a new build up of unresolved cases which would certainly lessen women’s employment opportunities. This theme was buttressed by a couple of representatives from women’s group who testified at the hearings immediately after Norton, including Karen Sauvigné and Joan Vermeulen of Working Women’s Institute (WWI). Sauvigné and Vermeulen’s comments before the Committee reiterated WWI’s earliest arguments about how sexual harassment affects women’s economic citizenship. They also responded to Schlafly-like criticism of the framing of sexual harassment as a “natural” outgrowth of men and women working alongside one another instead of a civil rights issue. Finally, Sauvigné and Vermeulen praised the EEOC guidelines and criticized the Reagan administration’s budget cuts.

Sauvigné stated that one of the major “effects of sexual harassment” is “that it causes women to lose jobs.”\textsuperscript{130} As proof of this phenomenon, she offered a 1979 WWI study in which “fully 66 percent of the women who reported instances of sexual harassment to us were fired or forced to quit as a direct result of the sexual harassment.”\textsuperscript{131} Vermeulen also continued to frame the problem as one of women’s economic citizenship rights in limiting women’s access to the workforce when she told the Committee, “Women are fired; they lose promotions and raises; they are forced to quit their jobs because of sexual harassment and their response to it.”\textsuperscript{132}

In comments that sound as if they are a direct counterargument to Schlafly, Vermeulen stated, “In spite of those who would portray it as trivial or as natural to the relationship between

\textsuperscript{130} Ibid., 513. Also see Baker, 137 for a brief discussion of their testimony.
\textsuperscript{131} Hatch Hearings, 513.
\textsuperscript{132} Ibid., 533.
men and women, the courts have understood that its impact is on women’s employment opportunities.”

Sauvigné then claimed that sexual harassment was also related to questions over women’s proper roles in society and that it was a reaction to the increase in women’s workforce participation. She asserted,

Sexual harassment, then, contributes to women’s lower rate of continuous employment, to our situation of having fewer benefits on our jobs, and to keeping us at the bottom of seniority ladders. It serves to reinforce in women the notion that if we value our psychological and physical integrity, we will act within certain proscribed limits both in career choices, such as the industries that we choose to apply for jobs in, or in our personal behavior, such as the way we dress or whom we choose to talk to in our work setting.

Sauvigné continued her remarks regarding the debate over women’s roles by further illustrating that one key difference between how feminists and antifeminists saw women’s workforce participation as one versus economic issues (in the quote above) and thoughts on women’s sexuality and roles as mothers (as Schalfly had outlined). Sauvigné tried to get the issue back to the feminist framing of it and concluded, “Sexual harassment is behavior that keeps women within the confines of our historical role as persons who can change our circumstances only by trading on our sexuality. It, in essence, underscores the traditional notion that women’s primary definition is on the basis of our sexuality.”

When describing their opinion of the EEOC’s work in sexual harassment enforcement, Sauvigné and Vermeulsen supported the EEOC’s policy and criticized the proposed budget cuts to the agency. Sauvigné also outlined the contradiction in the Committee’s proclaimed support for women’s rights at the same time it wanted to limit the EEOC’s power by telling the

133 Ibid.
134 Ibid., 511-512.
135 Ibid., 513.
136 Ibid.
Committee that “it cannot demonstrate its concern for women in the labor force by supporting cutbacks for the budget for EEOC.” Vermeulen stated that the next step should be to push agencies such as the EEOC to enforce women’s Title VII protections and that women’s ability “to utilize these legal protections will be seriously undercut by efforts to restrict affirmative action programs for women or to reduce the EEOC’s budget or limit its authority to act in this area.”

Moreover, she claimed that “the end result of such measures will be to reinforce the inferior position of women in the workplace” and that women would “remain as tokens in certain industries and jobs; we are going to be down at the lower end of the career ladder; and this is going to result in our continued vulnerability to sexual harassment on the job.”

**Conclusion: Aftermath of the Hatch Hearings**

There is little doubt that Hatch’s recommendation to cut OPI was a direct reaction to the sexual harassment guidelines since OPI had issued them. The Reagan administration also recommended that the EEOC be barred from issuing guidelines for one year, an announcement they made only three months after the final sexual harassment guidelines were issued.

Clearly, Hatch’s hearings on both sex discrimination in general and on the sexual harassment guidelines specifically, in addition to the proposed limitations on the EEOC’s resources and authority, illustrate that the Reagan administration was seeking to undo the work that the EEOC had accomplished during the Carter administration and Norton’s tenure at the EEOC. In the weeks during when the hearings took place and in the months after, results of studies measuring corporate opinion of the EEOC guidelines were published. A *Harvard Business Review-Redbook* study found that 44 percent of top management thought that the guidelines were

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137 Ibid., 515.
138 Ibid., 533.
139 Ibid.
“reasonable, necessary,” 27 percent responded that they thought the policy was “reasonable, unnecessary,” 14 percent answered that the guidelines were “unreasonable, very unnecessary,” and only 9 percent thought that they were “highly unreasonable, very unnecessary. The journal also reported that the number of respondents who felt that the guidelines were necessary correlated with the number of those who felt that sexual harassment was a problem. More telling is the figure that 63 percent of top management agreed or partly agreed with this statement: “The amount of sexual harassment at work is greatly exaggerated.” The BNA also surveyed 270 companies and found that 53 percent of them thought that the “degree of employer liability” in the guidelines was “somewhat unreasonable,” as compared to the 11 percent who felt that the liability sections were “completely unreasonable,” the 19 percent who responded that they were “reasonable and sufficient to prevent this form of discrimination,” and the 13 percent who found them “reasonable but insufficient to prevent discrimination by sexual harassment.” Some of the respondents reported that they supported the intent behind the guidelines but not the additional supervisory training that would come with implementing their own policies and preventative measures. Even so, the BNA found that 42 percent of the corporations had written a sexual harassment policy and 27 percent were in the process of doing so. These studies show that, given the chance to voice their opinion, corporations generally opposed the EEOC’s policy regarding employer liability, but many of them were willing to write corporate policies in order to protect their businesses from expensive legal settlements. Others may have been waiting to see what the Reagan administration was going to do with the EEOC and its policy.

142 Ibid., 92.
143 BNA Special Report, 23.
144 Ibid., 23-24 and 26-27.
Later that year, Vice President George Herbert Walker Bush, who headed the president’s Task Force on Regulatory Relief, issued a set of lists of government regulations that were targeted for review. In his third set of these lists, which the Task Force issued on August 12, 1981, Vice President Bush included the EEOC’s sexual harassment guidelines among the policies that the Reagan administration was placing under review for possible alterations or termination.\(^{145}\) Sounding much like Hatch when he began his hearings, the stated goal of the Task Force was to eliminate “‘burdensome, unnecessary or counterproductive Federal regulations’ as a means of stimulating the economy.”\(^{146}\) Not surprisingly, this move was lauded by business interests, such as the National Association of Manufacturers, whose representative, Bob Ragland, told *The Washington Post*, “We say ‘bravo,’…This continues to add credibility to the Reagan administration’s commitment to changing…what up until a year ago was an unchangeable attitude in this town – that government was big brother.”\(^{147}\) On the other hand, leaders of women’s organizations, such as NOW’s Judith Goldsmith, claimed, “The proposed review indicated that, statute by statute and regulation by regulation, the Reagan administration is cutting back the protections we’ve built to prevent sex discrimination.”\(^{148}\)

As the future of the guidelines continued to be debated, so did the link between sexual harassment policy and the ERA. One *Washington Post* columnist, Henry Fairlie, even faulted the feminist movement for confusing the two issues. He seemed to generally support the EEOC Guidelines for “hinging on the right point: the threat to the individual’s employment.” Fairlie then criticized the feminist movement—he used NOW and Lin Farley as examples—for writing


\(^{146}\) Hoffman and Slade, “Ideas & Trends in Summary.”

\(^{147}\) Barringer, “30 More Regulations Targeted for Review.”

\(^{148}\) Ibid.
definitions that conflicted with the EEOC’s sexual harassment definition and were too broad and subjective to have any value. He listed all of the forms of sexual harassment that NOW and Farley outlined, such as behavior that “is offensive or objectionable to the recipient,” “causes the recipient discomfort or humiliation,” “interferes with the recipient’s job performance,” (NOW) and “staring at, commenting upon, or touching a woman’s body” (Farley).¹⁴⁹ Fairlie claimed that this list would be one type of “absurdity” that feminists would add to the ERA if it passed, thereby connecting sexual harassment to the amendment. He blamed feminists for allowing this to happen by not keeping their definition of sexual harassment the same as the EEOC’s and for not framing the nature of the ERA debate about women’s economic issues—which he thought would have helped the pro-ERA campaign’s success. Instead, Fairlie argued that such “absurdity” had “driven many supporters of ERA almost into the arms of Phyllis Schlafly.”¹⁵⁰

The effect the ERA would have had on sexual harassment policy is not clear. Since the EEOC guidelines were issued rather close to the ratification deadline, presumably there was less discussion about sexual harassment than the larger issues that framed the debate over the years. Perhaps the EEOC guidelines would not have been affected by the ERA, since they were written to prevent the harassment of either men or women at the workplace, although framed as a working women’s issue. Legal scholar Russell W. Whittenburg theorized in the spring of 1981 that the ERA’s ratification was unlikely. He reasoned that there was an American “social attitude that values some forms of sexual discrimination.”¹⁵¹ When explaining that sex discrimination and, by extension, inequality, were valued, Whittenburg argued that sexual harassment policies should be separated from anti-discrimination policies and made into their

¹⁵⁰ Ibid.
own laws. Whittenburg believed that this would help make sexual harassment immune to the debate over social values that had hampered the ERA. Regardless of the ERA’s outcome, Whittenburg’s theory illustrates how sexual harassment was connected to the ERA at this time and how one of the core elements of the feminist framing of the problem—that it was sex discrimination—was brought into question because of the ERA debate. In a different way than anti-feminist activists, Whittenburg also questioned the EEOC guidelines by claiming that a new policy was needed.\textsuperscript{152}

The feminist movement did not waver in its support of the guidelines.\textsuperscript{153} Following the hearings, the EEOC’s Vice Chairman, Daniel Leach, told the BNA that the Reagan administration would have to thoroughly explain itself to women if it did not take the issue of sexual harassment as seriously as the Carter administration had. The BNA reported Leach stating, “I don’t think they (the Reagan Administration) are going to have it in their control to diminish the impact of the guidelines,” even if a conservative EEOC chairman is appointed, Leach said. ‘Women are educated now.’\textsuperscript{154} After the Vice President announced that the guidelines were under review, Acting EEOC Chairman Smith reported to the Presidential Task Force on Regulatory Relief in June 1981 that the Commission had only received four comments on the guidelines after the Vice President called on groups to send in their suggestions on the policy.\textsuperscript{155}

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\textsuperscript{152} Ibid. \\
\textsuperscript{153} Baker, 137-140. \\
\textsuperscript{154} BNA Special Report, 8. The BNA also reported feminists’ positive reaction to the guidelines and support for the EEOC. See BNA Special Report, 37-38. \\
\textsuperscript{155} J. Clay Smith, Jr. to James C. Miller III and attached Summary of Comments on EEOC Guidelines/Regulations Sent to the Presidential Task Force on Regulatory Relief, June 30, 1981, Chairman’s Chronological File, 1976-1999, “June 81 Chron,” Box 2, EEOC Records, NARA. The four companies who responded were: the National Association of College and University Attorneys, FACHA (Texas Hospital Association), Whirlpool Corporation, and First International Bancshares, Inc. Two of the companies found the definition too vague (National Association of College and University Attorneys and First International Bancshares), two also thought the EEOC was overreaching
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its guidelines was that they were “guidance” to “assist employers in achieving voluntary compliance and avoiding liability.” He also responded to one of the main criticisms of the EEOC when writing, “The guidelines are both dictated by and consistent with the agency’s enforcement responsibility.” Smith also later contacted one of the president’s advisors and recommended that he not dismiss the guidelines because of support from the women’s movement. On January 26, 1982, he wrote, “I believe the women’s groups are solidly behind the Guidelines” and he cautioned the Reagan administration from creating “a political headache” by taking away a policy that so many women’s groups supported. In the end, the Reagan administration did not eliminate or change or restrict the guidelines in any way, and may very well have avoided a “political headache” from the women’s movement in not doing so.

However, the political headaches for the women’s movement were just beginning. Only about five months later, on June 30, 1982, the ERA’s ratification deadline passed and the amendment went down in defeat, signaling changes to come in which women’s groups would have to confront even more challenges from the Reagan administration and New Right activists such as Schlafly, as they did throughout the Hatch Hearings on sexual harassment.

The debates over the EEOC’s sexual harassment policy during Chairman Hatch’s 1981 Hearings on Sex Discrimination in the Workplace illustrate how, shortly after Ronald Reagan won the election of 1980, the issue of sexual harassment became embroiled in the politics of the 1980s in a way that negatively affected the framing of sexual harassment as a working women’s economic citizenship issue. The hearings brought recognition of the EEOC’s policy, but also

its duties (Whirlpool and First International Bancshares), and one objected to corporate liability for non-employees (FACHA).


158 Baker, 139-140.
much criticism in the form of Phyllis Schlafly’s censure of women in the workforce in general and dismissal of both the problem and the need for federal involvement at the EEOC. By examining the definition, scope, and necessity of the EEOC guidelines at the very same time that his committee recommended budget cuts to the EEOC, Hatch called the EEOC’s policy and overall authority into question. The hearings also drew the problem of sexual harassment into the larger feminist issues of the 1980s, namely the fight for the ERA and the backlash against feminism that figures such as Schlafly represented. Earlier feminist success stories in antidiscrimination and reproductive rights policy, and even the ERA itself, had generated much momentum and support of feminist issues, including the EEOC guidelines. These victories were then met with challenges as the federal government changed hands in the 1980s, just after the guidelines were issued. As Senator Kennedy’s comments at the hearings show, the Republican-controlled administration and Senate wasted no time in seeking to undo gains on behalf of women’s rights and equality. They sought to cripple the EEOC at the time when the agency’s educational and enforcement efforts on behalf of sexual harassment policy were needed the most. Although the Reagan administration and Vice President Bush left the guidelines alone, the seeds they planted in cutting the EEOC’s budget to $140 million159 and questioning its authority signify that this move was more symbolic than an actual support of women’s rights. By leaving the guidelines alone, yet financially strapping the EEOC and cutting or restricting some of its key offices,160 the Reagan administration did not appease women’s organizations as Smith’s letter suggested. Instead, the Reagan administration achieved its main purpose of protecting American

160 OPI was not cut at this time but was later stripped of much of its duties when Clarence Thomas was appointed EEOC Chairman. See Chapter Seven.
businesses from what they would view as expensive liability responsibilities or, at the very least, costly educational and preventative measures. In turn, this decreased the likelihood of the EEOC’s effectiveness in carrying out all of its work, including processing sexual harassment charges, and hampered women’s efforts for anti-discrimination enforcement and full economic citizenship at the workplace. Yet, the guidelines did exist throughout the 1980s, and in much more limited ways, the EEOC did enforce its policy. The next chapter examines this enforcement as well as how the EEOC further changed during the course of the 1980s after Reagan appointed Clarence Thomas to head the agency. Importantly, and not surprisingly, the EEOC’s stance on sexual harassment during the rest of the Reagan years became even more aligned with conservative interests during this time and when the first sexual harassment case, *Meritor v. Vinson*, reached the Supreme Court in 1986.
CHAPTER SEVEN:
EEOC POLICY SHIFTS AND NEW QUESTIONS
RAISED BY MERITOR V. VINSON

At the beginning of the 1980s, the nation was adjusting to the changes that the Reagan administration brought to the country’s political climate and, for the Equal Employment Opportunity Commission (EEOC), to the enforcement of civil rights policy. In addition to the Vice President’s challenge of its 1980 sexual harassment guidelines, the Reagan agenda in the early part of the decade brought much larger changes to the EEOC. This was readily apparent as the agency’s leadership changed hands when Reagan appointed Clarence Thomas to the office of EEOC Chairman in 1982. Thomas, who was once referred to as “a black Reaganite,” agreed with Reagan’s conservative position on key issues such as affirmative action. Turning away from the Carter-era EEOC, Thomas altered EEOC enforcement by emphasizing new methods, raising questions and criticisms about the EEOC’s commitment to enforcing anti-discrimination policies. At the same time, working women were bringing more claims of sexual harassment before the agency and before federal district courts. In light of these developments, Chapter Seven asks the following two questions: What was the impact of 1980s politics on the EEOC’s enforcement of sexual harassment policy? How did changes at the EEOC and in sexual harassment as a Title VII legal claim shape the outcome of the first Supreme Court case on sexual harassment, Meritor v. Vinson, in 1986?

This chapter argues that Reagan and Thomas moved the EEOC in a much more conservative direction by limiting its enforcement activities and seeking to undo the positive gains regarding anti-discrimination enforcement that Eleanor Holmes Norton and the

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Commissioners made in the late 1970s. The New Right’s ascendancy in U.S. politics, including the Reagan administration’s attacks on affirmative action and its overall pro-business attitude, played out at the EEOC as Thomas called for corporations to monitor their own compliance with equal employment opportunity laws. This chapter also asserts that, aside from the EEOC’s alignment with the Reagan administration on general enforcement issues, the political climate of the 1980s brought about a major change in the EEOC’s stance on its sexual harassment policy. By the 1986 Vinson decision it was clear that Thomas’s EEOC was not Norton’s as the agency switched gears and sided with the Reagan administration—and business interests—on the employer liability question. Even as there were positive developments for working women’s economic citizenship in the outcome of the Vinson decision, these changes at the EEOC were in stark contrast to earlier interpretations of its sexual harassment policy and left lingering questions about how that policy would be considered in the future.

In answering these questions, this chapter examines the program evaluation, including judicial review, and policy feedback stages of Graham’s policy process model. First, Chapter Seven measures the EEOC’s continued enforcement of anti-discrimination policies and implementation of its sexual harassment guidelines and how they changed throughout the 1980s. Then, this chapter considers the development of sexual harassment litigation and its relationship to both personnel changes at the EEOC and to the EEOC’s sexual harassment guidelines. Chapter Seven illustrates how, throughout the first half of the decade, new leadership at the Commission, as well as federal district judges and the Supreme Court Justices, would turn to the EEOC guidelines for guidance in the first claims of hostile work environment sexual harassment. In doing so, they evaluated the EEOC’s policy as well as, at least in the case of the new agency leaders, re-considered it and sought to weaken its stance on employer liability. The unintended
consequence revealed throughout this chapter is that when writing the guidelines, the Norton-era EEOC purposely left the definition and employer liability sections open so that each case could be decided on its own merits. This action opened the interpretation of the EEOC’s policy to question and criticism in ways that threatened the very crux of the EEOC’s protection for working women and laid the groundwork for the Supreme Court’s inability to definitively rule on the question of liability in the Vinson decision while upholding the EEOC’s policy that sexual harassment violated Title VII.

**EEOC Leadership and Policy Changes in the 1980s**

The role of the President and the impact of politics on the EEOC are significant to understanding the changes at the agency during this period and have been examined by political scientist B. Dan Wood who argues that “the Reagan selections to lead the EEOC were consistent with his intention of moving the agency in a conservative direction.” Wood notes that Thomas shared Reagan’s conservative point of view, as did another Reagan appointee, Michael Connolly, the EEOC’s general counsel, whom Wood refers to as “controversial” and who began his post at the Commission “by telling his staff that he would no longer be pressing sexual harassment, age discrimination, equal pay, and class action suits.” Generally, Wood explains that presidents have a large role in affecting EEOC policy through their appointment powers, as the president is charged with appointing the EEOC Chair, the five EEOC Commissioners, and the EEOC General Counsel, with the last of these handling the EEOC’s litigation and enforcement strategies. In addition, the president also controls the EEOC’s financial and personnel resources through the Office of Management and Budget (OMB), the agency that works with the president to set the federal budget. Wood also argues that the president provides “policy leadership” to the

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3 Ibid.
EEOC by “monitor[ing] the efficiency of agency operations and their consistency with administration policy” and because the president “is naturally a major source of guidance for the self-interested appointees who plot the direction of the agency.” Wood’s point here is contradicted by Eleanor Holmes Norton who, four years after she left the EEOC, claimed that presidents did not often check in with their appointees. Instead, she claimed, the president’s “assurance of compliance with his policies come largely from choosing people who are in agreement with [his] philosophy.”

Wood also considers the role of the U.S. Congress and the EEOC’s constituency in their abilities to enforce the agency’s policy. The U.S. Congress affects the Commission in the Senate’s approval of presidential appointments as well as through oversight committees and budget allocations. Wood highlights how the President and the Congress are able to have such a widespread impact on the EEOC because of its structural weaknesses, including the high level of interdependence among field investigators, the district offices, and the central offices. Regarding its constituency, Wood asserts that, essentially, the EEOC’s constituency is the American public and because “the agency mission has always been controversial” the “constituency for agency programs” is “weak, at best.” He continues, “Public support for EEO [equal employment opportunity] is weak because, while most Americans agree that employment discrimination is wrong, they do not always agree on what constitutes employment discrimination. The clientele served by the EEOC are voting minorities, usually from the lowest socio-economic strata. They often have little political sophistication.”

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4 Ibid., 506.
7 Ibid., 505-506.
8 Ibid., 507.
9 Ibid.
Hatch hearings, Wood also remarks upon the influence of business interests and observes that “the goal of ending employment discrimination has economic implications that arouse intense opposition from business interests.”

Wood’s arguments regarding the influence of the president and Congress are all the more relevant because the EEOC was in such a state of transition in the early 1980s. In significant ways, the EEOC’s leadership troubles throughout this time are comparable to its management problems in the early 1970s. While there were fewer changeovers in the position of EEOC Chair, there were similar bouts of uncertainty after Eleanor Holmes Norton resigned. The Commission not only underwent that change, but those brought by the Reagan administration’s “conversion” when it evaluated federal programs and proposed budget cuts to the EEOC and other agencies. J. Clay Smith, Jr., who had been Vice Chair of the Commission under Norton, was appointed to the post of Acting Chair by President Reagan after the 1980 election. Smith was a Republican who had first been appointed to serve on the Commission by President Carter in 1978. He was therefore a member of the Commission during Norton’s term as Chair and all of the—as they were hailed by some feminists after her resignation—positive changes to the EEOC, such as streamlining the charge process and eliminating the case backlog. When he testified before Chairman Hatch’s committee during the hearings on sex discrimination, Smith defended the Commission’s guidelines on sexual harassment and argued that the $17 million proposed budget cuts would do serious damage to the work of the Commission by setting back the timeline for eliminating the backlog. Despite his objections, the guidelines remained under

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10 Ibid.
review by the Vice President at the end of the 1982 fiscal year and the agency’s budget appropriations were lower than what President Carter had recommended for the year. Carrie N. Baker argues that the guidelines survived this review and were not altered in 1983 because of feminist support but feminists failed in their inability to counter the Reagan/Thomas efforts to limit their enforcement. The Reagan administration found other ways to render them ineffective by changing EEOC policy and leading the agency in a direction of limited enforcement.

The Reagan administration was opposed to affirmative action and sought to undo this key EEOC policy. Even before his election, Reagan and many of his supporters criticized affirmative action by faulting the use of quotas and timetables for causing “reverse discrimination” against white males who believed that they were denied employment or educational opportunities at the hands of less qualified blacks. Once President, Reagan used the image of Martin Luther King, Jr.’s era of civil rights activism to defend his position on affirmative action by arguing that he sought “color-blind” anti-discriminatory policies. There is no indication that the Reagan administration considered the EEOC’s sexual harassment guidelines in this context. Nevertheless, his position on affirmative action would bring later

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criticism from both civil rights and women’s groups who saw the Reagan administration—including the EEOC leadership—diminishing enforcement of civil rights legislation.\textsuperscript{16}

In terms of enforcement procedures in general, the administration shifted EEOC enforcement away from investigating cases of company-wide, or systemic, discrimination and toward pursuing voluntary compliance, or encouraging companies to comply with anti-discrimination laws on their own and without EEOC pressure. This included all anti-discrimination policies under the EEOC’s purview, such as Title VII, the Equal Pay Act, and the Age Discrimination in Employment Act. Throughout the 1970s, the EEOC had pursued class-action suits as an effective enforcement strategy in order to force corporate compliance with equal employment opportunity laws on behalf of thousands of employees. The move away from systemic discrimination cases came with an emphasis on litigation activities on behalf of individuals instead of a class (or classes) of employees. This, and the focus on voluntary compliance, also turned the agency’s attention away from charge processing and led to a new case backlog.\textsuperscript{17}

The administration’s first opportunity to lead the EEOC in this more conservative direction came when Smith resigned as Acting Chairman. Smith quit these duties in 1982 after leading the agency for only one year and later wrote that he “resigned from the post when it became clear that [his] views on equal employment opportunity, as [he] understood the mandate


\textsuperscript{17} \textit{Business Week}, “The Conservative at the EEOC,” August 9, 1982; Chester A. Higgins, Sr., “An Interview with Clarence Thomas, Chairman, EEOC ‘We Are Going to Enforce the Law!‘” \textit{The Crisis}, 90, no. 2 (February 1983): 56; and Wilentz, 182. Rapid charge processing had been an important part of Norton’s enforcement efforts and backlog reduction at the EEOC. See Deborah Churchman, “Eleanor Norton Reflects on Equal Employment Success,” \textit{Christian Science Monitor}, March 3, 1981.
of the Civil Rights Law of 1964, were different from those of the President.”¹⁸ Smith’s opinion is confirmed by journalist Chester A. Higgins, Sr. who wrote that Reagan viewed Smith as a “very capable” but “presumably ‘liberal’ Republican” and (much in agreement with Norton’s later insight) that the President “sought to fill the post with a black whose ideas were tailored to his own.”¹⁹ Cathie Shattuck, a Reagan appointee to the Commission, became Acting Chair after Smith resigned.²⁰ President Reagan’s first choice for a permanent Chair was William Bell, an African-American business recruiter from Detroit. Reagan quickly withdrew Bell’s nomination after civil rights and women’s groups spoke out strongly against Bell because of his lack of legal or government experience as well as his scant participation in Detroit civil rights organizations.²¹ One member of Reagan’s staff, White House director of personnel E. Pendleton James, defended Bell’s nomination because he was “a conservative Republican and a staunch Reagan supporter,” which one observer noted was “exactly what Reagan wants: someone who is willing to battle civil rights groups and lead the administration’s redefinition of affirmative action.”²² Less than a year later, President Reagan found a Chair who aligned more with his ideals when he appointed Clarence Thomas to the position. Thomas served as EEOC Chair from 1982 until 1990 when he became a U.S. Circuit Court judge. Historian Sean Wilentz writes that, during his tenure at the EEOC, Thomas helped to take care of the “day-to-day gutting of civil rights mandates” such as affirmative action.²³

¹⁹ Higgins, “An Interview with Clarence Thomas,” 54. Higgins was Editorial Director of The Crisis at the time of the interview.
²² “An Unlikely Nominee.”
²³ Wilentz, 180.
Thomas’s rise up from his beginnings as the son of a single mother in a poor family through the ranks as a lawyer to the head of a federal agency was a story that he liked to tell—even using it to compare his achievements with that of his sister and other relatives who remained in the “poverty cycle” that he had escaped. Thomas was born in rural Pinpoint, Georgia, sent to live with his grandfather, attended a Catholic high school and even a seminary for a time, and graduated from Holy Cross and then Yale Law School. He practiced corporate law before serving as a legislative assistant to Senator John Danforth (R-MI). Thomas was then selected for the office of Assistant Secretary of Civil Rights for the Department of Education in 1981. He was still at that post when President Reagan appointed him to head the EEOC in the spring of 1982, when Thomas was 33 years of age.

Although Thomas’s nomination was confirmed by the U.S. Congress, his appointment was not without some of the same criticism leveraged on Bell, particularly because of the issue of affirmative action. Thomas expressed his agreement with Reagan on affirmative action by seeking to eliminate hiring quotas. Thomas also preferred to consider discrimination cases individually, as opposed to Norton’s tactic of grouping cases and processing them as systemic charges of discrimination. In seeking to do away with the hiring quotas, Thomas was accused of working against black people. Thomas responded to this criticism by stating, “I don’t think most people who use the term affirmative action have the slightest idea of what they’re talking about.” Rather than offer his own clear definition of affirmative action, Thomas responded to this criticism by stating emphatically, “My major concern is, and continues to be, the bottom half

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25 Higgins, 50-51, 56; Wilentz, 181; and *Business Week*, “The Conservative at the EEOC.”
26 Wood, 509 and Higgins, 57.
27 Higgins, 51.
of the black society. Show me some policies that are indeed helping the bottom half and you will see me on your side. I am from the bottom half.”

Thomas’s record at the EEOC suggests that he was not, in fact, helping the other half as he dismissed numbers illustrating that the high number of unemployment among blacks was because of race. Thomas also later expressed distrust of statistics as a gauge of discrimination and accused the media of using such numbers to unfairly criticize the agency. Instead, Thomas advocated a passive method of enforcement by waiting for individuals to accuse their employers of discrimination by filing a charge. This stance was very different from Norton’s assertive one in going after employers with systemic charges. When reminded of this difference Thomas accused the Norton EEOC of taking too long to process individual complaints (an average of 250 days) by not giving them enough attention. Thomas did not offer any plan for how he intended to correct this problem, instead, he highlighted Reagan’s plan for having corporations essentially police themselves through voluntary compliance. He reasoned that the EEOC had little choice in this matter because of the agency’s budgetary troubles. Thomas mentioned how, given the EEOC’s lack of financial resources and manpower, the agency would “have to have some way of getting voluntary compliance.” In a manner of double-speak that characterized both Reagan’s position on EEOC enforcement and Thomas’s, Thomas stated that he did not want to give off the impression that, even with such constraints, the EEOC was not going to enforce the law. He asserted, “I guarantee you if some companies are waiting around out there for us to go easy on them, they have another thought coming. We are going to be tough on them. I do not play

28 Ibid., 54.
31 Higgins, 57.
32 Troy, Morning in America, 94.
games. If you are wrong according to the law then that’s it. You can sit around and cry about
how you didn’t mean it and all that, but you disobeyed the law and the law says this.” Thomas
finished, “And we are going to enforce it.”

By the end of 1983, Thomas’s record of enforcing the law was questionable at best. He
had managed to deflect questions away from the fact that he was reorganizing the agency and
eliminating some of its most innovative offices. He created a specific office devoted to
voluntary compliance, the Voluntary Assistance Program and he cut the Office of Systemic
Programs and buried its old duties in a new Office of Program Operations. In addition, during
that year Thomas finally completed what Senator Hatch had set out to do in 1981—close down
the EEOC’s Office of Policy Implementation (OPI). He accomplished this by consolidating
OPI’s functions with the General Counsel’s office and forming a new Office of the Legal
Counsel. Whereas OPI had been in charge of issuing new guidelines in equal employment
opportunity enforcement, the Legal Counsel’s office was responsible only for advising and
offering guidance to the Commission on litigation matters and on existing policies, and not for
creating new ones.

In 1984, Thomas followed these efforts by making litigation synonymous with EEOC
enforcement. Thomas emphasized the EEOC’s Litigation Enforcement Program. This program
involved the EEOC in filing an increasing number of cases each year and to have the full
Commission at the EEOC’s headquarters review every possible case for litigation. Under a
that 2 critical features of a law enforcement program are certainty and predictability of
enforcement in those situations where there is reason to believe that a law EEOC enforces has

33 Higgins, 57.
been violated. Therefore, the Commission has adopted the goal of considering for litigation each case in which merit has been found and conciliation has failed.”35 Thomas claimed that by having each of these cases reviewed at headquarters, he was actually improving the EEOC’s record of enforcement as compared to litigation procedures under Norton. He pointed out that if a case had merit but conciliation failed under the old EEOC methods, then “it passed through countless levels of review before a recommendation was made to the full commission to authorize litigation.”36 What he did not emphasize is the fact that there were only five commissioners who could therefore hear each case at headquarters, and in the old method the, in his opinion, lengthy review process was undertaken by many more staff members. Here he diverted agency resources and attention away from charge-processing and onto trying to push every possible case for litigation. Thomas advocated a new program that was, in his words “a profound departure from the pick and choose approach” of Norton’s.37 The departure here was a way to have fewer staff members at the EEOC spend more time looking at cases, while giving off the appearance that the EEOC’s enforcement efforts were on the rise with the rising number of litigated cases.

All of these changes reveal that the EEOC significantly altered its enforcement policy in the first three years of the Reagan administration and in Thomas’s first two years in charge of the agency. Thomas’s apparent use of rhetoric to play up what little the agency was doing with regards to policy implementation or enforcement is just one indication that the EEOC shifted to a more conservative direction throughout this time. Yet, there are clues that the procedures he

36 Ibid.
37 Ibid.
advocated, particularly voluntary compliance—one that was dependent on businesses actually policing their own anti-discrimination practices instead of the EEOC enforcing these policies and making businesses comply by monitoring them—were inherently unsuccessful at accomplishing anti-discrimination enforcement on behalf of women and minorities. Herbert Hill argued in 1983 that voluntary compliance programs were not “eliminat[ing] patterns of employment discrimination” and that “the underlying reasons for the failure of these programs [was] not hard to find.”

Racial discrimination in employment is deeply institutionalized. Employers and labor unions may make some superficial alteration, initiate a public relations campaign, or announce an education program in response to the nuisance of public exposure and criticism of discriminatory racial practices. But they will not, except under legal compulsion, change the basis on which their institutions have, in their view, functioned quite satisfactorily. Yet so pervasive is the nature of discrimination that only far-reaching, systematic change will eliminate the entrenched racial and sexual job patterns of the past.

Hill also observed that the EEOC was processing fewer cases by 1982, dismissing more cases, and taking longer to process charges than it had in 1981.

Measuring EEOC Enforcement in the Reagan-Thomas Years

EEOC data from throughout this period offer a way to determine Thomas’s record of enforcement activity. Figures on the EEOC’s budget, compliance activity (discrimination charges received and processed by the agency), and litigation procedures illustrate the impact of the Reagan-Thomas changes and where sexual harassment enforcement fit into this overall picture. The EEOC’s budget figures demonstrate that the agency’s fiscal position remained nearly the same between 1981 and 1983. The budget did increase from 1980 to 1992. However,

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39 Ibid., 62-63.
40 Ibid., 55.
a more telling figure that the agency had fewer resources throughout this time and was not allocated enough funds to keep up with inflation rates is found in the number of full-time EEOC staff positions. This number, despite a few fluctuations, decreased overall from 3,390 full-time positions in 1980 to 2,791 full-time staff members in 1992. (See Figure 3.)

**Figure 3. EEOC Budget and Staff Figures, 1980-1992**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Enacted Budget, in millions</th>
<th>Actual Number of Full-time Staff Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>$124.5</td>
<td>3,390</td>
</tr>
<tr>
<td>1981</td>
<td>$144.6</td>
<td>3,358</td>
</tr>
<tr>
<td>1982</td>
<td>$144.7</td>
<td>3,166</td>
</tr>
<tr>
<td>1983</td>
<td>$147.4</td>
<td>3,084</td>
</tr>
<tr>
<td>1984</td>
<td>$154.0</td>
<td>3,044</td>
</tr>
<tr>
<td>1985</td>
<td>$163.6</td>
<td>3,097</td>
</tr>
<tr>
<td>1986</td>
<td>$165.0</td>
<td>3,017</td>
</tr>
<tr>
<td>1987</td>
<td>$169.5</td>
<td>2,941</td>
</tr>
<tr>
<td>1988</td>
<td>$179.8</td>
<td>3,168</td>
</tr>
<tr>
<td>1989</td>
<td>$180.7</td>
<td>2,970</td>
</tr>
<tr>
<td>1990</td>
<td>$184.9</td>
<td>2,853</td>
</tr>
<tr>
<td>1991</td>
<td>$201.9</td>
<td>2,796</td>
</tr>
<tr>
<td>1992</td>
<td>$211.2</td>
<td>2,791</td>
</tr>
</tbody>
</table>

Notwithstanding all of the policy changes, a financially strapped and understaffed EEOC would be stretched thin in enforcing the anti-discrimination legislation that it was responsible for.

The data on compliance activity reveal that the agency’s staff shortage and policy changes did have a negative impact on the number of discrimination charges processed between 1980 and 1992. As Figure 4 illustrates, for much of Thomas’s tenure as Chairman, the EEOC received many more charges per year than it analyzed. The EEOC did not process every charge

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that it received because some charges were sent to the appropriate state or local fair employment practices agency for analysis.\textsuperscript{42}

**Figure 4. EEOC Charge Receipt and Processing Data, 1980-1992**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total Multiple-Issue Charges Received</th>
<th>Total Single-Issue Charges Received</th>
<th>Charges Analyzed</th>
<th>Settlements</th>
<th>No Cause Findings</th>
<th>Unsuccessful Conciliations</th>
<th>Total Admin. Closures</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>90,325</td>
<td>79,868</td>
<td>56,228</td>
<td>16,088</td>
<td>14,013</td>
<td>1,212</td>
<td>19,912</td>
</tr>
<tr>
<td>1981</td>
<td>110,249</td>
<td>94,960</td>
<td>56,128</td>
<td>16,736</td>
<td>18,384</td>
<td>1,520</td>
<td>22,962</td>
</tr>
<tr>
<td>1982</td>
<td>109,491</td>
<td>92,400</td>
<td>54,145</td>
<td>20,043</td>
<td>23,462</td>
<td>1,632</td>
<td>21,916</td>
</tr>
<tr>
<td>1983</td>
<td>201,962</td>
<td>138,678</td>
<td>66,461</td>
<td>19,877</td>
<td>30,570</td>
<td>2,162</td>
<td>16,720</td>
</tr>
<tr>
<td>1984</td>
<td>207,542</td>
<td>138,766</td>
<td>68,874</td>
<td>N.S.D.*</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>55,034**</td>
</tr>
<tr>
<td>1985</td>
<td>221,274</td>
<td>117,204</td>
<td>72,002</td>
<td>22,631</td>
<td>57,537</td>
<td>1,837</td>
<td>26,901</td>
</tr>
<tr>
<td>1986</td>
<td>200,218</td>
<td>105,183</td>
<td>65,666</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>63,446**</td>
</tr>
<tr>
<td>1987</td>
<td>213,129</td>
<td>110,299</td>
<td>62,074</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>53,482**</td>
</tr>
<tr>
<td>1988</td>
<td>212,330</td>
<td>112,946</td>
<td>58,853</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>70,749**</td>
</tr>
<tr>
<td>1989</td>
<td>202,102</td>
<td>106,428</td>
<td>55,952</td>
<td>9,706</td>
<td>35,896</td>
<td>1,450</td>
<td>19,941</td>
</tr>
<tr>
<td>1990</td>
<td>123,139</td>
<td>62,405</td>
<td>59,426</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>N.S.D.</td>
<td>67,415**</td>
</tr>
<tr>
<td>1991</td>
<td>104,297</td>
<td>63,830</td>
<td>62,806</td>
<td>11,032</td>
<td>38,369</td>
<td>Included in settlement no.</td>
<td>14,941</td>
</tr>
<tr>
<td>1992</td>
<td>120,563</td>
<td>72,101</td>
<td>70,399</td>
<td>10,627</td>
<td>41,736</td>
<td>settlement no.</td>
<td>16,003</td>
</tr>
</tbody>
</table>

* N.S.D. stands for “No Specific Data,” indicating an inconsistency with EEOC reporting in previous or following years.
** These numbers were reported as “Charge Closures,” meaning they were not broken down by specific outcomes.\textsuperscript{43}

\textsuperscript{43} U.S. Equal Employment Opportunity Commission, 15\textsuperscript{th} Annual Report: 1980, EEOC Library, 36 and 38; U.S. Equal Employment Opportunity Commission, 16\textsuperscript{th} Annual Report, 5-6 and 141; U.S. Equal Employment Opportunity Commission, 17\textsuperscript{th} Annual Report: FY 1982, 4-5 and 53; U.S. Equal Employment Opportunity Commission, 18\textsuperscript{th} Annual Report: 1983, 10-11 and 58; U.S. Equal Employment Opportunity Commission, 19\textsuperscript{th} Annual Report, EEOC Library, 18-21; U.S. Equal Employment Opportunity Commission, 20\textsuperscript{th} Annual Report, EEOC Library, 12 and 20; U.S. Equal Employment Opportunity Commission, Combined Annual Report, Fiscal Years 1986, 1987, 1988, EEOC Library, 2 and 18; U.S. Equal Employment Opportunity Commission, Fiscal Year 1989 Annual Report, EEOC Library, 8 and 17; U.S. Equal Employment Opportunity Commission, Annual Report for Fiscal Year 1990, EEOC Library, 1 and 17; and U.S. Equal Employment Opportunity Commission, Combined Annual Report, Fiscal Years 1991 and 1992, EEOC Library, 2, 6-7, and 26-33. Because of cases in the charge backlog, the charge analyzed numbers do not add up to the combined total of settlements, no cause findings, unsuccessful conciliations, or total administrative closures. Please note: “Multiple-Issue Charges” refers to the total number of complaints (or charges) the EEOC received that year which alleged discrimination on the basis of more than one issue—wages and race, for example. “Single-Issue Charges” indicates the total number of charges received that alleged discrimination on the basis of a single issue—religion only, for example. “Charges Analyzed” denotes the number of charges resolved that year by the EEOC. “Settlements” includes negotiated settlements, withdrawals with settlements, and conciliation. “No Cause Findings” means that EEOC investigators found no cause for discrimination. “Unsuccessful Conciliations” includes cases in which conciliation was unsuccessful. Finally, “Total Administration Closures” includes those in which the charging party requested a right to sue, the
The remaining charges were investigated by EEOC staff members or were added to the agency’s case backlog. Because the Commission had not eliminated the backlog from even before Norton and Smith’s years as Chair, the fact that it was not matching its charge receipts with its closed charges indicates that Thomas’s procedures to examine individual cases more fully as opposed to Norton’s charge-processing system resulted in another voluminous backlog at the agency. The backlog grew throughout the 1980s to the point where 45,717 cases had accumulated by 1991. Thomas’s motives for allowing such a backlog to accumulate are not clear, however, he often blamed Congress for giving the EEOC too little funding for its enforcement.

The Commission tracked complaints of multiple charges of discrimination, as well as those for single-issue complaints, but reported its compliance data each year according to the number of charges analyzed. The outcome of each charge had several possible scenarios. The more successful result—from a charge filer’s standpoint—is found in the “Settlements” column above. Settlements included negotiated settlements, withdrawal of charge with settlement, and settlement through conciliation. Although the EEOC did not report settlement data for much of the period between 1984 and 1989, the figures indicate decreasing settlements throughout that time when compared to the numbers from 1980-1982. Again, based on the limited data, no cause findings and total administrative closures appear to have risen during this time. There is a notable absence in the data for the outcomes in 1984 and 1986 through 1988, raising the question

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EEOC was unable to locate the charging party, the case was withdrawn without settlement, the EEOC had no jurisdiction, there was a failure to cooperate, or there was a failure to accept full remedy.


46 There is no real explanation in the Annual Reports as to the inconsistency with which the data were reported. When asked about this matter, a current EEOC Library employee speculated that the agency’s lack of funding throughout much of its history likely explains the lack of consistency as well as why some records appear nonexistent.
if the Thomas EEOC did not report these numbers specifically because of its emphasis on litigation or if the numbers of unsuccessful outcomes were far greater than the successful ones.

Turning to the litigation figures, the EEOC offered more consistent statistics regarding its litigation record than for its charge processing while Thomas led the agency. This is not surprising because Thomas made this the primary goal of EEOC enforcement from 1984 on. In an apparent effort to mask its lack of other enforcement in other areas, he hailed the Commission’s efforts here as an example of how well the EEOC was performing in terms of enforcing anti-discrimination policy. 47 Figure 5 reflects the effect of these administration policies and shows that the number of cases the EEOC approved for litigation dramatically decreased from 1981 to 1982 and then steadily increased throughout the mid- to late-1980s before peaking in 1990.48

Figure 5. Number of Cases EEOC Approved for Litigation, 1980-1992

Yet, this figure cannot be looked at without comparing the benefits persons received from litigation to compliance activity, especially since Thomas liked to boast that the Commission’s

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litigation efforts were resulting in millions of dollars awarded to individuals because of its anti-discrimination enforcement. When looking at Figure 6, the number of persons that benefited from compliance activity was always leaps and bounds higher than the number of cases litigated (even if these cases were filed on behalf of multiple claimants).

**Figure 6. Monetary Benefits for EEOC Compliance and Litigation, 1980-1992**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Persons Benefited from Compliance</th>
<th>Monetary Benefits, Compliance, in millions</th>
<th>Number of Cases Approved for Litigation</th>
<th>Monetary Benefits, Litigation, in millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>29,251</td>
<td>$43.1</td>
<td>322</td>
<td>$20.9</td>
</tr>
<tr>
<td>1981</td>
<td>71,848</td>
<td>$91.7</td>
<td>364</td>
<td>$16.2</td>
</tr>
<tr>
<td>1982</td>
<td>51,886</td>
<td>$101.1</td>
<td>112</td>
<td>$33.5</td>
</tr>
<tr>
<td>1983</td>
<td>64,581</td>
<td>$104.4</td>
<td>192</td>
<td>$40.3</td>
</tr>
<tr>
<td>1984</td>
<td>25,578</td>
<td>$107.0</td>
<td>204</td>
<td>$38.8</td>
</tr>
<tr>
<td>1985</td>
<td>30,926</td>
<td>$82.2</td>
<td>277</td>
<td>$54.2</td>
</tr>
<tr>
<td>1986</td>
<td>No data available</td>
<td>$100.4</td>
<td>440</td>
<td>$46.4</td>
</tr>
<tr>
<td>1987</td>
<td>No data available</td>
<td>$75.8</td>
<td>436</td>
<td>$24.8</td>
</tr>
<tr>
<td>1988</td>
<td>No data available</td>
<td>$65.7</td>
<td>486</td>
<td>$55.6</td>
</tr>
<tr>
<td>1989</td>
<td>No data available</td>
<td>$77.4</td>
<td>572</td>
<td>$35.4</td>
</tr>
<tr>
<td>1990</td>
<td>No data available</td>
<td>$77.0</td>
<td>689</td>
<td>$19.3</td>
</tr>
<tr>
<td>1991</td>
<td>8,946</td>
<td>$93.4</td>
<td>595</td>
<td>$96.4</td>
</tr>
<tr>
<td>1992</td>
<td>7,991</td>
<td>$117.7</td>
<td>471</td>
<td>$71.1</td>
</tr>
</tbody>
</table>

The total monetary benefits persons received from compliance activity were also always higher than the total litigants received. Interestingly enough, there was no specific mention of the number of persons who benefited from compliance activities between 1986 and 1990. The low figure of 8,946 in 1991 does indicate that this number decreased dramatically throughout this time as the EEOC shifted its enforcement focus to litigation, likely benefiting far fewer victims.

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of discrimination who may otherwise have seen favorable outcomes in the compliance or charge-filing process.

With regards to sexual harassment policy implementation or anti-discrimination enforcement, Thomas recognized shortly after his appointment to the EEOC that “the number of cases” at the EEOC “indicate[s] there is a problem, a serious problem” with regards to sexual harassment. In the same sentence he also mentioned that the EEOC had “to look into these things to see if our guidelines and regulation address these.” This is notable because Thomas seems to agree with feminists of the time who also argued, throughout the Hatch hearings for instance, that sex discrimination and sexual harassment were serious problems for working women, but he seemed to be unaware of the EEOC’s own policies when he needed to “look into” existing regulations. Since the guidelines were still under Vice Presidential review, it is possible that Thomas had reservations about the policy that he did not express. While the Reagan-Thomas EEOC’s record regarding affirmative action has been heavily criticized, Thomas’s opinion on sexual harassment policy has been given much less attention. If anything, at least on one occasion, Thomas used the EEOC’s enforcement of anti-sexual harassment policy to direct criticism away from its record on affirmative action and argue that the agency was performing well. Regardless, despite Thomas’s personal viewpoints, EEOC enforcement statistics reveal the EEOC received sexual harassment charges at an overall increasing rate throughout this time. See Figure 7 below.

The Commission did not report a figure for 1980, so the 689 sexual harassment charge figure that Acting Chair Smith reported to the Hatch committee cannot be confirmed. The

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51 Higgins, 57.
53 Hatch Hearings, 363.
EEOC was nevertheless focused on anti-sexual harassment enforcement that year because the agency issued a management directive, MD704-Plans for Prevention of Sexual Harassment in the Workplace, to government agencies in which they each had to issue sexual harassment prevention plans. By September 1981, the Commission had received and reviewed 89 such plans. In its 1981 Annual Report, after recording that 4,272 sexual harassment charges were filed during that fiscal year, the Commission was up front in discussing that the sexual harassment guidelines that had recently been issued were then under review by the Vice President. True to the theme of the time, the EEOC also mentioned voluntary compliance when discussing these issues. When Norton was Chair the language of sexual harassment centered on words such as “prevention” and “education”—specific steps that employers could take. Here the EEOC stated, “Consistent with the policy of voluntary compliance under Title VII, the guidelines recognize that the best way to create an environment free of sexual harassment is to apprise employees of the problem and to stress that sexual harassment will not be tolerated.” The continued use of the term “voluntary compliance” demonstrates the EEOC’s use of vague phrases to pressure employers to comply with the law as opposed to its former language of specific policies and prevention procedures.

In terms of enforcement, the EEOC not only issued management directives and encouraged voluntary compliance, but also enforced its sexual harassment guidelines by hearing sexual harassment charges at the EEOC’s national headquarters in Washington, D.C., in which the five Commissioners could weigh in on a complaint. They did this in the three months after

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54 15th Annual Report, 17.
55 16th Annual Report, 141.
56 Ibid., 35.
57 Ibid.
58 In its 1980 Annual Report, issued in September 1981, the EEOC had already begun to use this term when it reported that the interim guidelines would “also provide insulation from enforcement to respondents who attempt voluntarily to bring their employment practices in line with policies outlined in the guidelines.” 15th Annual Report 1980, 8.
the final guidelines were issued and, in doing so, the Commission expanded the types of
discrimination covered under the sexual harassment guidelines. In the two sexual harassment
cases that came before them in 1981, Commission Decisions 81-16 and 81-17, respectively, the
Commissioners decided that “unwelcome homosexual advances” were a form of sexual
harassment under Title VII as was any requirement for employees to wear uniforms that
subjected them to sexually harassing behavior.\textsuperscript{59} By September 1981, the EEOC had also
updated its Compliance Manual and clearly outlined all policies and procedures for handling
sexual harassment charges.\textsuperscript{60} In late 1983-early 1984, two more sexual harassment decisions
came before the Commission at headquarters and, again, offered an opportunity for the EEOC to
lend its expertise to understandings of the problem as a form of sex discrimination. In
Commission Decision No. 84-1, the Commissioners decided that in situations in which “a
charging party participates in the conduct, [such as going along with sexually oriented joking] he
or she has an affirmative duty to notify the alleged harasser that the sexual conduct is
unwelcome.”\textsuperscript{61} In Decision No. 84-3, regarding the case of an employee who was sexually
harassed by a client and subsequently complained to her boss whose action was to fire her, the
Commissioners ruled that the supervisor had violated Title VII. In reporting this decision, the
EEOC noted that it “was the first to address an employer’s responsibility for the harassment of
an employee by a nonemployee” and that the Commission relied on paragraph (e) of the sexual
harassment guidelines, the section on employer liability, in determining the outcome of the
charge.\textsuperscript{62}

\textsuperscript{59} \textit{16th Annual Report}, 37.
\textsuperscript{60} Ibid., 37-38.
\textsuperscript{61} \textit{19th Annual Report}, 28.
\textsuperscript{62} Ibid.
Regarding actual charge figures throughout the 1980s, the agency did not specify the types of charges when reporting its total closure figures, thus it is difficult to determine the level of EEOC enforcement without knowing how many of these cases were actually closed each year. However, it is no doubt significant that the agency consistently received sexual harassment charges throughout the decade. Evidently some workers were getting the message that sexual harassment was sex discrimination and were encouraged to file formal complaints. From 1981 to 1985, the number of sexual harassment charges grew at a steady rate from 4,272 to 7,273. See Figure 7 below. Throughout this time, the EEOC also reported data on the type of employer from which these charges were generated. In all years between 1981 and 1985, the private employer sector generated the overwhelming majority of sexual harassment charges, with an average of 5,053 charges per year. State and local government agencies came in second, with an average of 440 complaints filed by employees in this sector over this five-year period. With a much lower charge average per year was the next sector, public colleges and universities, from which the EEOC received an average of 64 employee complaints. The remaining averages for this period from the sectors that the EEOC categorized are as follows: public elementary and secondary schools: 53, unspecified: 37, unions: 33, private colleges and universities: 17, private elementary and secondary schools: 6, private employment agencies: 6, state employment agencies: 3, and joint apprenticeship committees: 1.

In 1986, the U.S. Senate reconfirmed Clarence Thomas as EEOC Chairman. In addition, the EEOC began to report its charge statistics a bit differently and no longer broke down the sexual harassment charges by employment sector. Instead, the Commission recorded two sets of numbers for sexual harassment charges, one for the number of total sexual harassment charges filed in multiple-issue claims (if a complainant filed a charge as both racial and sex discrimination, for instance, or as both an equal pay and sex discrimination claim) and the total number of sexual harassment charges alone. The EEOC also began to report the percentage of all EEOC charges filed that the sexual harassment claims represented. Figure 7 illustrates that fiscal year 1986 was not only the first year that the EEOC started reporting the figures this way, it was also the year in which the number of sexual harassment charges began to

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Number of Multiple-Issue Sexual Harassment Charges Filed</th>
<th>Number of Single-Issue Sexual Harassment Charges Filed</th>
<th>Percent of Total Single-Issue Charges Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
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<td>No data available</td>
</tr>
<tr>
<td>1981</td>
<td>No data available</td>
<td>4,272</td>
<td>4.5</td>
</tr>
<tr>
<td>1982</td>
<td>No data available</td>
<td>5,110</td>
<td>5.5</td>
</tr>
<tr>
<td>1983</td>
<td>No data available</td>
<td>5,566</td>
<td>4.0</td>
</tr>
<tr>
<td>1984</td>
<td>No data available</td>
<td>6,342</td>
<td>4.6</td>
</tr>
<tr>
<td>1985</td>
<td>No data available</td>
<td>7,273</td>
<td>6.2</td>
</tr>
<tr>
<td>1986</td>
<td>5,699</td>
<td>4,280</td>
<td>4.1</td>
</tr>
<tr>
<td>1987</td>
<td>7,087</td>
<td>5,338</td>
<td>4.8</td>
</tr>
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<td>1988</td>
<td>7,117</td>
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<td>5,264</td>
<td>4.9</td>
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<tr>
<td>1990</td>
<td>4,634</td>
<td>3,217</td>
<td>5.2</td>
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<tr>
<td>1991</td>
<td>3,494</td>
<td>3,364</td>
<td>5.3</td>
</tr>
<tr>
<td>1992</td>
<td>5,907</td>
<td>5,639</td>
<td>7.8</td>
</tr>
</tbody>
</table>
decrease slightly from the 1985 figure of 7,273. The EEOC reported 5,699 sexual harassment charges (multi-issue) and 4,280 (total sexual harassment charges alone), or 4.1 percent of all discrimination charges to the EEOC. The following year, the numbers of charges were up again a bit at 7,087 multi-issue and 5,338 stand-alone charges, representing 4.8 percent of all EEOC charges. This increase may have been a result of the 1986 Meritor v. Vinson Supreme Court decision which upheld the EEOC’s position that sexual harassment violated Title VII. In 1988 and 1989, the number of sexual harassment charges continued to rise, to a number of 7,274 multi-issue and 5,264 stand-alone charges in 1989 (4.9 percent of all charges), before dropping again to 4,634 and 3,317, or 5.2 percent of all charges in 1990. (The percentage increase here, at a time when the number of sexual harassment charges was lower than the previous year, is possibly related to the overall number of all discrimination complaints to the EEOC being lower than it had been.) The number of sexual harassment charges dropped even lower in 1991, to 3,494 and 3,364 (5.3 percent), before rising again to 5,907 and 5,639, or 7.8 percent of all charges in 1992.

Another window into agency enforcement of sexual harassment policy at the EEOC is the number of cases that it litigated between 1981 and 1992, especially since this was the EEOC’s main procedure for anti-discrimination enforcement. Similar to its reporting of charge closures, the EEOC did not specify the type of discrimination that each lawsuit represented in its Annual Reports. However, the EEOC did issue press releases frequently throughout the 1980s, although

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68 Ibid., 18.
69 Ibid., 19.
70 Ibid., 20; Fiscal Year 1989 Annual Report, 17; and Annual Report for Fiscal Year 1990, 17.
not consistently between 1980 and 1984, which offer an idea of the number of sexual harassment cases they were litigating, the type of sexual harassment cases it processed, and the location of the EEOC district offices that were the most active in filing sexual harassment cases with district courts. From 1980 to 1991, the EEOC filed at least 132 sexual harassment cases in federal district courts throughout the country, or an estimated 2.5 percent of the 5160 total suits the EEOC filed in that timeframe. The majority of these cases were suits in which an individual female charging party had been sexually harassed by her male supervisor, although the EEOC did file some class action suits in which multiple plaintiffs complained that they were discriminated against because of sexual harassment and in which women complained of sexual harassment by their male co-workers. After dealing with the sexual harassment, many of the women who complained were, using the EEOC’s terminology, “constructively discharged” (forced to quit) or fired. In the case of one Arizona woman, the EEOC’s court documents read that “the effect of the practices complained of” had “been to deprive [her] of equal employment opportunities and otherwise adversely affect her status as an employee, because of sex and in retaliation for opposing practices made unlawful by Title VII.” Another woman, a clerical employee from the state of Washington, was also fired for seeking an attorney’s advice after she was “frequently subjected to offensive touching, kisses, and suggestive sexual comments.”

Such cases reveal that the EEOC was not pushing the boundaries of its guidelines by avoiding cases of hostile environment sexual harassment. In earlier debates on the guidelines, employer

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73 These numbers are based on tabulations of all of the press releases that mentioned sexual harassment cases from 1980-1991 in the accompanying Press Release binders, EEOC Library. The 5,160 total suits filed is the total from the litigation activities found in Figure 6.
liability for quid pro quo sexual harassment was rarely questioned. This was also the area that federal district courts had recognized as actionable under Title VII first.

These cases are also just two of the many examples in which women were fired that the EEOC included in its press announcements about its sexual harassment litigation. The EEOC also released details of other noteworthy cases, including one in which a Cleveland man was fired from his job for refusing to make false statements during an EEOC investigation of one of his female co-workers’ sexual harassment complaints.⁷⁶ A couple of the lawsuits also involved unions as defendants. In one case, against the American Federation of Government Employees, the EEOC’s San Antonio office filed suit on behalf of a female clerk who claimed that she had been sexually harassed by the local union president who then fired her for refusing to comply with his behavior.⁷⁷ This case is noteworthy because not many of the lawsuits that the EEOC named in its press releases mentioned unions and illustrates that the EEOC’s policy affected both employers and unions. Another lawsuit in Connecticut named an iron workers’ union along with an employer as defendants in a case in which a woman complained that she “was subjected to lewd and offensive behavior on the job and was knowingly assigned to work in the same area as a male co-worker who was awaiting trial for allegedly sexually harassing her.”⁷⁸ The union was named as a defendant because it failed to represent the employee in her complaint.⁷⁹ Two final notable cases involved male employees complaining that they were sexually harassed by other men at work. The first, brought by a man in Huntsville, Alabama, was a case in which this

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⁷⁹ Ibid.
employee was fired for resisting the sexual advances of his male supervisor. The second, a similar case, was filed on behalf of a chef who was fired discharged from his job after refusing his restaurant manager’s sexual advances. These cases offer a glimpse at the direction sexual harassment law would go in the future regarding same-sex harassment cases, however, they also illustrate the EEOC’s possible preference for litigating quid pro quo over the less clear hostile environment cases.

The EEOC also released information about sexual harassment cases that its District Offices were litigating on behalf of female and male employees throughout the U.S., including district, area, and field offices in the following cities: Phoenix, Cleveland, Charlotte, Baltimore, Dallas, Houston, San Antonio, St. Louis, Seattle, Chicago, Los Angeles, Memphis, San Francisco, Indianapolis, Philadelphia, Detroit, Minneapolis, New Orleans, Honolulu, Milwaukee, Miami, Denver, Atlanta, and New York City, plus the national office in Washington, D.C. Of all of the offices that litigated sexual harassment cases throughout this time, none handled more sexual harassment cases than the Phoenix office, which filed at least 16 lawsuits during the 1980s. The Cleveland office came in second with ten cases, followed by the Charlotte office which filed nine, and the Baltimore, Houston, San Antonio, and St. Louis offices, which each filed eight legal suits. Interestingly enough, the offices with the most sexual harassment cases—according to the admittedly incomplete press release files—were not located near EEOC headquarters in Washington, DC, or New York City and Boston, the two cities that had had active women’s organizations dedicated solely to sexual harassment the longest. Chicago, home

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to the group Women Employed which later issued reports on EEOC enforcement in the 1980s, had fewer than half of the cases that Phoenix did. The enforcement at these offices seems to have depended on the work of individual agents and not on any affiliation with the national offices or with sexual harassment groups. Of course, this does not account for the fact that some women may have brought sexual harassment cases on their own or with the assistance of women’s groups and not with the EEOC.

All in all, the cases that the EEOC reported reflect that the courts, in general, were a place where more and more women were seeking Title VII relief for their sexual harassment claims in the years before Vinson. As far as EEOC enforcement was concerned, the recognition on the part of these district offices that these cases were worth filing is notable. While, on the whole, the actual number of cases may have been difficult to determine, the EEOC District Offices did adhere to the sexual harassment guidelines in the 1980s by using them in these cases, after the policy survived the Vice President’s regulatory review. In addition, women employees, at least those who won their cases or had favorable settlements, may have been helped in terms of Chairman Thomas’ focus on litigation. This does not mean that the agency was without criticism for its record on equal employment opportunity enforcement and anti-sexual harassment enforcement in particular. The EEOC chose to highlight cases in its press releases that did not push the envelope with regards to employer liability or hostile work environment harassment. Overall, the EEOC’s policy shift was moving in a direction favorable to employers, as was its stance on its own guidelines regarding employer liability.

83 These numbers were calculated using individual press releases and litigation summaries which mentioned the EEOC office that had participated in the litigation and were found in the EEOC Press Release binders for 1980-1991, EEOC Library. The litigation summaries included the cases counted in Figures 5 and 6 above.
The enforcement figures offer a picture of an agency dramatically changing course with regards to civil right policy. With fewer individuals bringing complaints and those who did seeing a decreasing likelihood of success, the Reagan-Thomas era EEOC was likely to bring a similar downturn for women’s economic citizenship rights. This occurrence did not go unnoticed by the Women Employed Institute, the aforementioned Chicago-based working women’s organization which was devoted to research and education on women’s economic status and employment issues. In 1982, Women Employed published a report, “Women at Work: The Myth of Equal Opportunity,” in which they examined issues of equality between men and women in the workforce and claimed that there was a “crisis” in the enforcement of equal opportunity policies.84 Women Employed argued that “economic equality for women is far from a reality. Sex discrimination continues to be deeply embedded in corporate policies and in individual attitudes and practices. The facts demonstrate that despite all the public attention focused on this issue, far too little progress has been made by either the corporations themselves or through government enforcement of equal opportunity requirements.”85 Returning to what Clarence Thomas had said about voluntary compliance as the one way to focus equal opportunity efforts, Women Employed stated that this was not working at a sufficient level to help women’s employment opportunities because “too few corporations [were] willing to engage voluntarily in meaningful programs to eliminate sex discrimination in their employment practices. Where voluntary programs do exist, real progress is far too slow.”86 In finding fault with voluntary compliance programs, Women Employed asserted that continued enforcement by federal agencies was the best path to solving the problem of women’s discrimination at work. Since the

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85 Ibid.
86 Ibid.
EEOC argued voluntary compliance would help solve the problem of sexual harassment, Women Employed’s study reveals that it was not the best way for the EEOC to enforce its guidelines.

By acknowledging the necessity of continued enforcement, Women Employed stressed their point further by arguing that “improvements that have been made can be attributed to pressure created by the enforcement of equal opportunity laws and regulations by the federal government.”87 Women Employed also revealed why there was a “crisis” in such efforts because of threats by corporations and the Reagan administration. They argued that federal enforcement programs were “currently under attack” by these two groups whose “new agency policies and regulatory proposals [were] designed to undermine existing enforcement mechanisms.”88 They also included the aforementioned budget cuts as part of this problem. In addition, Women Employed pinpointed the EEOC specifically and outlined how the Reagan administration and corporate “attack” was impacting the agency.89 They identified three ways in which setbacks for working women were happening there. First, the organization illustrated how the EEOC’s various personnel problems lessened enforcement, beginning with the lengthy intervals between leadership appointments. Similar to other critics of the Reagan administration, Women Employed also claimed that “many of the appointees who have been named by Reagan have been either hostile to the agency’s mission or incompetent.”90 This, in addition to “constant personnel changes in other top agency posts,” had, in their opinion, “contributed to the confusion that now characterizes the EEOC’s operations.”91

Second, Women Employed highlighted EEOC reorganization and restructuring as problematic in “bury[ing]” the agency’s efforts with regards to cases of systemic discrimination,

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87 Ibid., 19.
88 Ibid.
89 Ibid., 19 and 21.
90 Ibid., 21.
91 Ibid.
which they defined as “company-wide patterns that affect large numbers of employees.”

Women Employed believed this was an “essential” program “if the EEOC is to make any impact beyond individual cases.” Along these lines, Women Employed also highlighted how restructuring the EEOC’s company-wide efforts would threaten the EEOC’s policy implementation function, a piece of the agency which they claimed was “critical.” Here they mentioned the sexual harassment guidelines when noting, “During previous administrations, the EEOC took the lead in defining and expanding the scope of Title VII protections, including its definition of sexual harassment as a form of sex discrimination.” In driving home this point, Women Employed offered the degree to which recent Reagan administration policies were having a negative effect on equal opportunity by mentioning that there had been “substantial enforcement activity” at the EEOC under the Carter administration, but that this “[had] dropped off dramatically” under Reagan because “far fewer individual cases [were] being settled through conciliation” and because “the average benefit to victims of discrimination [had] dropped over 40 percent.”

Finally, Women Employed claimed that the Reagan administration was weakening EEOC enforcement by involving corporations in its functions by taking “the opportunities presented by the Reagan administration to lobby more vigorously for reduced enforcement.”

Women Employed stated that corporations had gotten the administration’s attention by accusing the EEOC and other agencies of being “adversarial with employers and overly sympathetic toward complainants” and by charging that they had “been subjected to harassment by

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92 Ibid., 22.  
93 Ibid.  
94 Ibid.  
95 Ibid.  
96 Ibid.  
97 Ibid.
overzealous officials.”98 Women Employed dismissed these complaints as merely responses to the enforcement of EEO laws.99 They maintained that this was an expected response from corporations but not enough to justify changing EEO programs when they wrote, “Adversarial relationships are bound to result when corporations found to have discriminated refuse to remedy the situation.”100 Women Employed also accused corporations of misusing “statistics showing how little progress has been made toward equal opportunity to argue that the agencies do not work and therefore should be abolished.”101 They again refuted this point by claiming that if, as the corporations were insinuating, they were left to police their own EEO enforcement, this would not work because only a few employers had “developed the kinds of voluntary equal opportunity programs that could produce meaningful results.”102

Overall, the point of Women Employed’s report was that there had already been serious setbacks to women’s achievement of equal opportunity (and thus full economic citizenship) after the first year and a half under the Reagan administration. Women Employed summed up its argument by stating, “The assault on equal employment enforcement constitutes a de facto reversal of a national commitment made in the 1960s to eliminate employment discrimination. The damage currently being done to the federal equal opportunity enforcement mechanisms will set back efforts toward that goal for years to come.”103 Women Employed’s report reveals that, at least in the eyes of this constituency—working women—the EEOC was not meeting this group’s expectations of its enforcement.

98 Ibid.
99 Ibid.
100 Ibid., 23.
101 Ibid.
102 Ibid.
103 Ibid.
According to a 1987 Gallup poll, Women Employed’s fears were not unfounded as only 35 percent of women thought that they had equal job opportunities with men. This was a six percent decrease than what women had responded in 1975. In 1975, the percentage of women who thought men and women did not have equal job opportunities was 46 percent. By 1987, 56 percent of women respondents believed their employment opportunities were not equal to men’s, despite women’s overall increasing workforce participation rate. In the eyes of many women then, the country needed a stronger sense of obligation by the federal government to improve women’s employment status and not the weakening one at the Reagan-Thomas EEOC. The EEOC’s questionable efforts to enforce its anti-discrimination policy generally and sexual harassment policy specifically come more into focus when examining the EEOC’s position on the 1986 Supreme Court case, Meritor v. Vinson. Following the verdict, the EEOC touted the Court’s decision as a victory in the press, but did not mention its departure from its own policy in claiming the case as a success for working women and the EEOC.

Sexual Harassment and the Courts in the 1980s – Before, During, and After Vinson

In the time that had elapsed since Williams v. Saxbe, the 1976 case in which a district court first ruled that sexual harassment constituted sex discrimination, there had been at least seven more successful Title VII rulings in quid pro quo sexual harassment cases by 1983 and

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one unsuccessful quid pro quo Title VII sexual harassment case.\textsuperscript{107} By this time, federal district courts had clearly affirmed that sexual harassment was sex discrimination when it resulted in the forfeiture of some type of employment benefit, such as wages or promotions. If the mid- to late-1970s had been a “testing ground”\textsuperscript{108} for quid pro quo Title VII claims, then the beginning-to-middle years of the next decade would be another one for hostile environment claims. Plaintiffs pushed lower courts in the 1980s for affirmative Title VII judgments regarding this type of sexual harassment, including Mechelle Vinson, whose Supreme Court case dealt with both quid pro quo and hostile work environment sexual harassment.

As late as 1978, federal district courts were unwilling to recognize hostile work environment claims as sexual harassment. In February 1978, the first of these hostile work environment claims came before a district court in Oklahoma with the \textit{Neeley v. American Fidelity Assurance Co.} case. Nancy K. Neeley, a paste-up artist in the Company’s Public Relations Department, alleged that the Department’s supervisor “made sexual remarks, told ‘dirty’ jokes, exhibited pictures of sex activity and affectionately touched the shoulders of some of the female employees” in his office.\textsuperscript{109} In his opinion, District Judge Bohanon noted on two separate occasions that the supervisor never intended his actions to be offensive and that the company had a sexual harassment policy of which the supervisor was aware.\textsuperscript{110} He also stated that Neeley had never complained about the behavior and that she “received normal pay increases and benefits from defendant throughout the period of her employment until she

\textsuperscript{107} \textit{Neidhardt and Marino v. D.H. Holmes Co.}, 21 FEP Cases 452 (E.D. La. 1979). This case was dismissed because a lower court ruled that the plaintiffs had filed a frivolous claim. See also \textit{Neidhart and Marino v. D.H. Holmes Co.; EEOC v. D.H. Holmes Co.}, 701 F.2d 553 (5th Cir. 1983). The EEOC was named as a plaintiff and filed with Neidhardt and Marino in the original lawsuit.

\textsuperscript{108} See Chapter Two.


\textsuperscript{110} Ibid.
resigned on December 14, 1973.”111 Bohanon focused on these last two points when ruling against Neeley because he stated that her employer could not be liable because she had not availed herself of the company’s complaint procedures, which he claimed had been used successfully by past employees, and because “neither continued employment, nor employment related benefits were conditioned upon her acquiescence to the misbehavior” of her supervisor.112 Apparently, because of his second point that no employment benefits were conditioned upon acquiescence to the harassment, even if she had filed a complaint with her company, this court was not ready to recognize hostile work environment sexual harassment as sex discrimination just yet.

The judges in the October 1978 Smith V. Rust Engineering Company case confronted a similar dilemma and, much like Bohanon, could not find sexual harassment discriminatory when it was not made a term or condition of employment. Carol R. Smith alleged that she had been sexually harassed by a co-worker, and because of this, the Alabama District Court dismissed her claim, stating, “Since the uncontroverted facts established conclusively that there was no nexus between the alleged statements and any term or condition of the plaintiff’s employment, the sexual advances and remarks claim fails to state a claim under Title VII.”113

The following year, the District Court for the District of Columbia ruled in Bundy v. Jackson that Sandra Bundy, a District of Columbia Department of Corrections employee, had not been discriminated against because she had “been promoted as fast or faster than similarly situated male employees.”114 Bundy alleged that she had not been promoted fast enough or had been denied promotions altogether because she declined the sexual advances, including

111 Ibid.
112 Ibid and “Sexual Harassment Lands Companies in Court,” Business Week, October 1, 1979, 120.
telephone calls to her home, of three department supervisors.\textsuperscript{115} In his court’s dismissal of the case, District Court Judge George L. Hart, Jr., argued that “there was no harassment of plaintiff because of her prompt and continued rejection of the sexual advances of her male superiors, nor was she ever denied promotions for this reason. Such things were just not taken seriously in the office in which she worked by her superiors. It does not ever appear that plaintiff, herself, took such action as serious – annoying, perhaps, but not serious.”\textsuperscript{116} Hart further claimed that Bundy only filed her complaint in order to receive a promotion and that she had received that promotion because one of her supervisors gave it to her in order “to avoid any adverse publicity in the matter.”\textsuperscript{117}

In 1981, the D.C. Circuit Court of Appeals reversed the District Court’s decision in \textit{Bundy v. Jackson} in the first decision ruling that hostile work environment sexual harassment violated Title VII and was another moment of success for the framing of the problem of as an issue of economic citizenship rights. This court had also decided in favor of another sexual harassment plaintiff in the \textit{Barnes v. Costle} decision.\textsuperscript{118} In \textit{Bundy}, the judges noticed a similarity between the two cases in that Sandra Bundy claimed that she had been delayed or denied promotions but also that she petitioned the court “to extend Barnes by holding that an employer violates Title VII merely by subjecting female employees to sexual harassment, even if the employee’s resistance to that harassment does not cause the employer to deprive her of any tangible job benefits.”\textsuperscript{119} In a further application of Title VII to sexual harassment law, the appellate court did extend Barnes and ruled in Bundy’s favor “that sexual harassment, even if it

\begin{itemize}
\item \textsuperscript{116} \textit{Bundy v. Jackson}, 19 FEP Cases 828 (D.D.C. 1979).
\item \textsuperscript{117} Ibid.
\item \textsuperscript{118} \textit{Barnes v. Costle}, 561 F.2d 983 (D.C. Cir. 1977).
\item \textsuperscript{119} \textit{Bundy v. Jackson}, 641 F.2d 934 (D.C. Cir. 1981).
\end{itemize}
does not result in loss of tangible job benefits, is illegal sex discrimination.”\textsuperscript{120} In making this decision, the Circuit Court referred to relevant racial discrimination cases in which such actions “may reflect no intent to discriminate directly against the company’s minority employees, but in poisoning the atmosphere of employment it violates Title VII” and then asking, “How then can sexual harassment, which injects the most demeaning sexual stereotypes into the general work environment and which always represents an intentional assault on an individual’s innermost privacy, not be illegal?”\textsuperscript{121} Importantly, the Court of Appeals also referenced the 1980 EEOC Guidelines in its decision as “a useful basis for injunctive relief in this case” and applied them to the case by illustrating how they stipulate that her employer was liable for the actions of Bundy’s supervisors. In addition, the Judges wrote in their decision “that the Director of the agency should be ordered to raise affirmatively the subject of sexual harassment with all his employees and inform all employees that sexual harassment violates Title VII of the Civil Rights Act, the Guidelines of the EEOC, the express orders of the Mayor of the District of Columbia, and the policy of the agency itself,” as well as take other preventive measures.\textsuperscript{122}

The Bundy decision laid the groundwork for another Title VII hostile work environment sexual harassment claim that came before the Eleventh Circuit Court of Appeals on behalf of a Florida woman, Barbara Henson. Henson was a dispatcher for the police department in the city of Dundee and filed a sexual harassment suit against the City for alleged sexual harassment by the Dundee chief of police for creating “a hostile and offensive working environment for women in the police station.”\textsuperscript{123} Similar to the D.C. Court of Appeals, the Eleventh Circuit Court also referenced racial discrimination cases regarding Title VII and the work environment, in addition

\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
\textsuperscript{123} Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).
to its mention of *Bundy v. Jackson*. Circuit Judge Vance, who wrote the opinion, stated, “We are bolstered in our conclusion that a hostile or offensive atmosphere created by sexual harassment can, standing alone, constitute a violation of Title VII by a recent decision.” Vance also wrote that, in *Bundy*, “the court found that the principle of law equating illegal sex discrimination with a hostile work environment caused by sexual harassment ‘follows ineluctably from numerous cases finding Title VII violations where an employer created or condoned a substantially [racially] discriminatory work environment, regardless of whether the complaining employees lost any tangible job benefits.’”

Judge Vance also made reference to the EEOC guidelines, particularly section (a), which defines sexual harassment and mentions the phrase “intimidating, hostile, or offensive working environment.” His mention of the EEOC’s sexual harassment policy also provides an illustration of how courts were applying it to cases in the early 1980s and using it as sort of a test when determining if sex discrimination had occurred and whether or not employers were liable. After noting the EEOC’s definition of sexual harassment, Vance also stated, “Of course, neither the courts nor the E.E.O.C. have suggested that every instance of sexual harassment gives rise to a Title VII claim against an employer for a hostile work environment. Rather, the plaintiff must allege and prove a number of elements in order to establish her claim.”

He then listed and explained these five elements:

(1) the employee belongs to a protected group.
(2) the employee was subject to unwelcome sexual harassment.
(3) the harassment complained of was based upon sex.
(4) the harassment complained of affected a “term, condition, or privilege” of employment.

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124 Ibid.
125 Ibid.
126 Ibid.
(5) *Respondeat superior.*

The Eleventh Circuit Court found that “Henson [had] made a prima facie showing of all elements necessary to establish a violation of Title VII” and remanded her case back to the district court for a new trial.

Despite the *Bundy* and *Henson* decisions, the climate surrounding the future of the hostile environment sexual harassment claim was by no means certain. This is not surprising since this was the more complicated of the two types of sexual harassment to identify and prove. At the same time that Bundy and Henson were bringing their cases before federal district and appellate courts, Mechelle Vinson was doing the same with her charge of sexual harassment. The path of the *Meritor v. Vinson* case from the lower courts to the Supreme Court began in 1978 when Vinson, a bank teller from Washington, D.C., filed a civil lawsuit in the U.S. District Court for the District of Columbia. Vinson filed a claim against her former boss, Sidney Taylor, and the bank where she had worked for four years, then named Capital City Savings and Loan Association. In her complaint she alleged that Taylor sexually harassed her by implying that if she did not have sex with him she would risk losing her job. Vinson and Taylor did have a sexual relationship, but Vinson and her attorney maintained in her complaint that Taylor “forced the Plaintiff to have sexual intercourse with him using the threat that if she refused she would be terminated from her employment.” This represented the quid pro quo aspect of Vinson’s sexual harassment claim.

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127 Ibid. Judge Vance noted that, under respondeat superior, an employer is liable if they “knew or should of known of the harassment in question and failed to take prompt remedial action.”

128 Ibid.


Vinson’s case included the charge of hostile work environment sexual harassment in addition to the quid pro quo allegations because of the actions of one of her attorneys, John Marshall Meisburg, Jr. Meisburg, a former employee of the EEOC’s Atlanta office, filed the charge as one of hostile environment sexual harassment as well. Although Vinson’s lawsuit was less clear in this regard than her complaint of quid pro quo harassment, Meisburg filed the charge as both forms of sexual harassment because Vinson claimed that throughout the last two of her four years working for Taylor that she had “constantly been subjected to sexual harassment.”131

Similar to Bundy and Henson, these allegations of both quid pro quo and hostile environment sexual harassment, in addition to the charge that the bank, and not just Taylor, was legally responsible for the sexual harassment, formed the crux of Vinson’s argument that Taylor and Capital City had violated Title VII by discriminating against her on account of her sex.

On February 26, 1980, Judge John Garrett Penn issued his opinion on behalf of the D.C. District Court. Again, much like the District Court Judges in the earlier hostile environment cases, Judge Penn interpreted Vinson’s case as if it were only a charge of quid pro quo harassment and, in doing so, ruled only on the claim that Taylor had forced Vinson to have sexual intercourse with him. Judge Penn considered the sexual relationship a “voluntary one” and ruled that Vinson had not been sexually harassed and therefore was not a victim of sex discrimination.132 Following the District Court’s decision, Vinson appealed to the D.C. Court of Appeals. The appellate court announced its ruling on January 22, 1985, and reversed the lower court’s judgment on the grounds that the case should be sent back to the District Court and reconsidered with regards to the hostile environment claim. This court also disagreed with Judge Penn’s decision that “voluntary” sexual relationships automatically negated the existence of

131 Quoted in Cochran, 62.
sexual harassment by claiming that he erred in focusing on this aspect of the case and not whether Vinson’s compliance had been a “condition of an individual’s employment” as stated in the EEOC guidelines. In response to this ruling, the defense sought to have the case heard by the Supreme Court, a request that was granted on October 7, 1985.133

During the months leading up to the Supreme Court’s decision, many Washington observers weighed in about the case, with one even noting that it reached the Court at a time when sexual harassment charges to the EEOC were on the rise; indeed, approximately 300 sexual harassment cases were decided in the federal court system between 1980 and 1986.134 The case also attracted support for both Vinson and the bank. Paula Dwyer of Business Week counted representatives of feminist organizations, labor unions and Congress among Vinson’s supporters in her efforts to win a new trial, damages, and legal fees.135 On the bank’s side, now known as Meritor Savings Bank, were employers, the U.S. Chamber of Commerce, and the Reagan Administration. Dwyer claimed that the question regarding liability that was before the Court was what troubled this group, particularly employers, and wrote that they “fear that a decision in Vinson’s favor will make it nearly impossible for them to protect against liability.” She also claimed, “The Chamber wants the court to relieve employers of any liability unless employees first give management a chance to correct the alleged misconduct,” a remark that Vinson’s attorney, Patricia J. Barry called “ridiculous.”136 Vinson’s supporters did not just worry about the Supreme Court’s pending decision on the question of liability with regards to sexual harassment. As Dwyer recounted, they also feared that the Court would “reject altogether the theory that sexual harassment is a form of sex discrimination, thus destroying the legal basis

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135 Ibid.
136 Ibid.
for future lawsuits.”137 Given the conservative tone of the time and the backlash against feminism, in addition to the overall novelty of sexual harassment law, these fears were not unfounded.

The supporters on both sides not only spoke to the press but filed amicus curiae briefs for consideration by the Court. In all, of the ten briefs submitted as friends of the court, seven were in support of Vinson and two supported the bank. Vinson’s supporters included feminist groups and women’s legal organizations, specifically the Working Women’s Institute (WWI)138, the Women’s Legal Defense Fund, the Women’s Bar Association of Massachusetts, Minnesota Women Lawyers, Inc., the Women Lawyers Association of Michigan, the Colorado Women’s Bar Association, and the Women’s Bar Association of the State of New York; unions and women’s labor organizations, including the American Federation of Labor and Congress of Industrial Organizations, the Coal Employment Project, the Coalition of Labor Union Women, and the National Education Association; twenty-nine members of Congress139; and human rights commissions from New Jersey, California, Connecticut, Illinois, Minnesota, New Mexico, New York, Vermont, and Pennsylvania. Meritor Savings Bank’s supporters included the Trustees of Boston University, the Equal Employment Advisory Council, and, most dramatically, as part of a

137 Ibid.
138 WWI submitted a brief on behalf of its organization and 13 others, including the Committee Against Sexual Harassment (Sacramento, California); Connecticut Women’s Educational and Legal Fund and Women’s Rights Committee of the New York Lawyers’ Association; New York Committee on Pay Equity and Women on the Job of Port Washington, New York; Women’s Alliance for Job Equity of Philadelphia; Women in Self-Help (WISH) of the New York State Displaced Homemaker Program; New York Women Against Rape (NYWAR) and Women’s Counseling Project; Non-Traditional Employment for Women (NEW); Sisterhood of Black Single Mothers (Brooklyn, New York); Women’s Rights Project of the Instituto Puertoriqueno de Derechos Civiles; and Workers Defense League.
139 This list included one Senator, Paul Simon (D-IL), and the following 28 members of the House of Representatives: Augustus F. Hawkins (D-CA), Hamilton Fish, Jr. (R-NY), Lane Evans (D-IL), Charles A. Hayes (D-IL), Mike Synar (D-OK), Patricia Schroeder (D-CO), Barbara Boxer (D-CA), Robert J. Mrazek (D-NY), Olympia J. Snowe (R-ME), Sala Burton (D-CA), Claudine Schneider (R-RI), Don Edwards (D-CA), Mary Rose Oakar (D-OH), Jim Moody (D-WI), Barbara A. Mikulski (D-MD), Geo. W. Crockett, Jr. (D-MI), John R. McKernan, Jr. (R-ME), Howard L. Berman (D-CA), Donald V. Drellums (D-CA), Mickey Leland (D-TX), Bruce A. Morrison (D-CT), William L. (Bill) Clay (D-MO), Barbara B. Kennelly (D-CT), Julian C. Dixon (D-CA), Cardiss Collins (D-IL), Nancy L. Johnson (R-CT), Bill Green (R-NY), and Bob Edgar (D-PA).
joint brief for the U.S. government, the EEOC. In filing this brief with the Reagan administration, the EEOC clearly demonstrated its changed political position and worked to narrow the scope of its own guidelines.

The EEOC/U.S. government brief indicated how much the agency had changed since the Carter administration, and above all how responsive the EEOC had become to the business community. The changes in American politics that had occurred by 1986, a Democratic President to a Republican one, a liberal to a conservative political climate, an era of increased civil rights protections and feminist activism to a decade full of criticism of policies such as affirmative action and the backlash against the feminist movement, no doubt influenced the EEOC’s position. In the late 1970s, Eleanor Holmes Norton appeared to direct the EEOC in a way that was, if not antagonistic to, at least separate from business interests. Here, the EEOC’s brief was clearly influenced by the conservative Reagan administration and the interests of employers, given its focus on the question of when employers should be liable in hostile work environment sexual harassment claims.

In their brief, submitted by counsel for the Solicitor General’s Office, the Attorney General’s Office, the Department of Justice, and the EEOC, the EEOC and the federal government stated their interests as friends of the court as due to the EEOC’s congressionally mandated role in enforcing Title VII and the Attorney General’s responsibility for enforcing Title VII for government agencies as well as the United State government’s “strong interest in ensuring the fair and balanced enforcement of the federal civil rights laws.” They stated three questions that the *Vinson* case presented:

1. Whether unwelcome sexual advances by a supervisor toward

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a subordinate female employee, which create an intimidating, hostile, or offensive working environment, constitute employment discrimination on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 et seq.

2. Whether the court of appeals erred in determining that respondent could show a violation of Title VII in this case, where the district court has found that any sexual relationship between respondent and her supervisor “was a voluntary one” and that finding was not clearly erroneous.

3. Whether an employer can be held strictly liable for an offensive working environment created by a supervisor’s sexual advances, where the employer does not know of, and could not reasonably have known of, the supervisor’s misconduct.142

Regarding the first question, the EEOC and the U.S. government agreed “with the court of appeals that proof of a sexually hostile work environment establishes” sex discrimination under Title VII.143 In agreeing with the appellate court on this aspect of the Vinson case, they also recognized the economic component of sexual harassment by writing that it “may pose substantial barriers to the victim’s professional advancement, and may create such indignities and such intolerable working conditions as to force a woman to abandon her job” and that it “impos[ed] economic costs” on women as well as psychological costs.144 The authors of the brief also referenced the 1980 EEOC guidelines in explaining how hostile environment sexual harassment violated Title VII and mentioned that the guidelines had been used by several courts, including those in the Henson and Bundy cases, in determining this legal precedent. In pulling apart the relevant sections of the guidelines and relating them to the Vinson case, they wrote, “As they apply to the charges at issue in this case, the guidelines provide that such sexual misconduct constitutes prohibited ‘sexual harassment,’ whether or not it is directly tied to the grant or denial of an economic quid pro quo, where ‘such conduct has the purpose or effect of unreasonably

142 Ibid.
143 Ibid.
144 Ibid.
The federal government and the EEOC then turned to their second question of the case by stating that, while the lower courts had recognized hostile environment harassment as a prohibited form of sex discrimination, these types of cases were “distinct in Title VII jurisprudence, both in their theoretical formulation and in the practical problems they pose.” In answering this question, they focused on whether or not Vinson could prove that there was a hostile working environment at the bank given the voluntariness of her prior relationship with Taylor. The government and the EEOC believed that “the court of appeals erred” when “reversing the district court’s determination that respondent failed to prove her case here. While unwelcome sexual advances may create a hostile work environment, consensual sexual relationships do not provide a basis for Title VII liability.” The appellate court had claimed that the district court had focused too much on this aspect of the case and it seems as if the EEOC and the federal government did the same in devoting much of their brief to such a discussion on “voluntary” and “unwelcome” behavior. They clearly believed that Vinson had welcomed Taylor’s advances and that she therefore had no grounds for a hostile environment claim and that the district court had been correct in dismissing her claim because she failed to prove any sexual harassment had occurred. In doing so, they affirmed Phyllis Schlafly’s view of sexual harassment in which women brought the problem upon themselves. Catharine MacKinnon took Schlafly to task for such statements and argued that they perpetuated

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145 Ibid.
146 Ibid.
147 Ibid.
148 Ibid. and Cochran, 98-100.
discriminatory views of women that relegate them to separate spheres.\textsuperscript{149} In making this argument the U.S. government and the EEOC appeared to be thinking from the mindset of employers, and not necessarily from the viewpoint of a civil rights enforcement agency. They stated in their brief, “In its insensitivity to these concerns, the court of appeals appears to have endorsed a view of sexual harassment that would allow Title VII actions to be based on purely personal and consensual relationships between co-workers. Such an approach not only would unfairly subject employers to liability for an ill-defined class of activities, but would intrude improperly and unnecessarily upon the privacy of individuals involved in such relationships.”\textsuperscript{150}

To give further proof for their position that Vinson had not been sexually harassed by Taylor, the U.S. government and the EEOC also referenced studies in which women who had been sexually harassed reported physical and psychological problems, which she had never claimed. They also mentioned testimony from the district court trial about Vinson’s “sexually provocative dress and publicly-expressed sexual fantasies” and disagreed with the appeals court that these issues were irrelevant to claims about unwelcome sexual harassment.\textsuperscript{151} In doing so, they made what Patricia Barry referred to as “the classic ‘Scarlet Woman’ defense.”\textsuperscript{152}

The federal government and the EEOC stated their position about Vinson’s inability to prove her case due to the voluntary nature of her relationship with her supervisor even more emphatically when turning to the third question about employer liability in such cases. They wrote,

\begin{quote}
Since, in our view of the case, Vinson failed to prove a claim of sexual harassment against anyone, there is no need for this Court, any more than there was for the district court, to
\end{quote}


\textsuperscript{151} Ibid.

\textsuperscript{152} Dwyer, “Sexual Harassment: Companies Could Be Liable.”
consider the question of the bank’s liability. If the Court should reach this question, however, it should reverse the judgment of the court of appeals and remand the case for the district court to apply what we believe to be the proper standard for employer liability. The court of appeals’ theory of strict employer liability in ‘hostile environment’ cases such as this one is erroneous as a matter of statutory construction and common sense, and would seriously disserve the remedial purpose of Title VII.153

The EEOC and the U.S. government added the fact that Vinson had never complained to anyone about the alleged harassment when they argued that “an employer should not be liable unless it knew or had reason to know of the sexually offensive atmosphere.”154 The question of liability is where the Reagan-era EEOC under Clarence Thomas is most unlike that of the Carter-era EEOC under Eleanor Holmes Norton.155 When Norton testified before the Hanley subcommittee in September 1980, she defended the application of strict liability with regards to Title VII sexual harassment cases by claiming, “An employer is liable if a supervisor or an agent violates Title VII, regardless of knowledge or other mitigating factors. Both the Commission and the courts have held so for years. This degree of strict liability is well-established in case law and is in keeping with the general standard of employer liability for the acts of agents and supervisory employees.”156

In addition to dismissing strict liability in their brief, the federal government and the EEOC also stated how they believed employers should be able to avoid liability altogether by writing that “an employer in our view should generally be able to insulate itself from liability by publicizing a policy against sexual harassment and implementing a procedure designed to resolve

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154 Ibid.
155 See Cochran 99-100 for a brief mention of this point.
sexual harassment complaints.” On its surface, this argument on behalf of employers having and enforcing sexual harassment policies appears to agree with section (f) of the guidelines regarding education and prevention, however, this interpretation is also somewhat different than even the more conservative J. Clay Smith, Jr.’s, description of this principle in 1981. He stated, “This subsection contains the major thrust of the guidelines, that is, ‘Prevention is the best tool for the elimination of sexual harassment.’ The suggestions offered in this subsection give employers assistance in preventing an invidious form of discrimination that inflicts substantial psychological damage to its victims, in addition to the monetary damage that it inflicts.”

Smith did not claim that employers could avoid liability altogether, only that sexual harassment policies and procedures would assist employers in preventing harassment and, in a sense, helping them to also avoid liability. He did not equate having a policy with zero liability for sexual harassment claims. In separate instances, both he and Norton defended the Commission’s position on liability when the guidelines were written. In the case of liability when the harassment was committed by a non-employee, Norton stated that “liability will be determined on a case-by-case basis.” Smith also stipulated that the position of the EEOC was not specifically to spell out the types of policies and procedures for employers to avoid liability, as “each workplace [was] unique” and would need to be considered individually. The question of liability, therefore, is clearly more complicated than the federal government and the EEOC were trying to make it sound five years later in their Vinson brief.

When the Supreme Court weighed the case, the EEOC and U.S. government brief figured prominently in the Meritor v. Vinson ruling. In the Court’s judgment, penned by Justice William

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158 Hatch Hearings, 341.
159 Ibid., 339-342 and 1980 Hanley Hearings, 41.
160 1980 Hanley Hearings, 42.
161 Hatch Hearings, 341.
Rehnquist, the Justices quickly determined that hostile environment sexual harassment violated Title VII and upheld the appellate court’s decision. In doing so, Rehnquist rejected the bank’s view that Title VII violations were only for “tangible” economic losses and wrote that “the language of Title VII is not limited to ‘economic’ or ‘tangible’ discrimination. The phrase ‘terms, conditions, or privileges of employment’ evinces a congressional intent ‘to strike at the entire spectrum of disparate treatment of men and women’ in employment” and the bank had “pointed to nothing in the Act to suggest that Congress contemplated the limitation urged here.”\(^{162}\) Rehnquist also referenced the 1980 EEOC Guidelines in the Court’s analysis of hostile work environment harassment and stated, as his second point for upholding the Court of Appeals’ decision, how “in 1980 the EEOC issued Guidelines specifying that ‘sexual harassment,’ as there defined, is a form of sex discrimination prohibited by Title VII” and that the guidelines “fully support the view that harassment leading to noneconomic injury can violate Title VII.”\(^ {163}\) Rehnquist continued, “Relevant to the charges at issue in this case, the Guidelines provide that such sexual misconduct constitutes prohibited ‘sexual harassment,’ whether or not it is directly linked to the grant or denial of an economic *quid pro quo*, where ‘such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.’”\(^ {164}\) The Court’s decision on this matter solidified the precedents in *Bundy* and *Henson* that hostile environment harassment was a form of sex discrimination, and in doing so, the Supreme Court also spoke out once and for all that it agreed that quid pro quo harassment, which had been considered a form of sex discrimination consistently by lower courts for a decade, also violated Title VII. The Court affirmed the importance of women’s economic citizenship when Rehnquist quoted the District


\(^{163}\) Ibid.

\(^{164}\) Ibid.
Court’s ruling in Vinson’s case, adding his own emphasis to the statement: “It is without question that sexual harassment of female employees in which they are asked or required to submit to sexual demands as a condition to obtain employment or to maintain employment or to obtain promotions falls within protection of Title VII.” This long-awaited decision was hailed by feminist groups as a victory.

When it came to the issue of employer liability, however, the Court declined to rule on this issue and remanded the case back to the Court of Appeals to decide this question. In coming to this decision, Rehnquist relied on the EEOC/government brief. He explained,

The EEOC suggests that when a sexual harassment claim rests exclusively on a “hostile environment” theory, however, the usual basis for a finding of agency will often disappear. In that case, the EEOC believes, agency principles lead to “a rule that asks whether a victim of sexual harassment had reasonably available an avenue of complaint regarding such harassment, and if available and utilized, whether that procedure was reasonably responsive to the employee’s complaint. If the employer has an expressed policy against sexual harassment and has implemented a procedure specifically designed to resolve sexual harassment claims, and if the victim does not take advantage of that procedure, the employer should be shielded from liability absent actual knowledge of the sexually hostile environment (obtained, e.g., by the filing of a charge with the EEOC or a comparable state agency). In all other cases, the employer will be liable if it has actual knowledge of the harassment or if, considering all the facts of the case, the victim in question had no reasonably available avenue for making his or her complaint known to appropriate management officials.”

On this latter point, Rehnquist focused on the fact that the position the EEOC stated in the brief was “in some tension with the EEOC Guidelines, which hold an employer liable for the acts of its agents without regard to notice.” Rehnquist then added, “The Guidelines do require, however, an ‘[examination of] the circumstances of the particular employment

165 Ibid.
166 Cochran, 121.
167 Ibid.
168 Ibid.
relationship and the job [functions] performed by the individual in determining whether an individual acts in either a supervisory or agency capacity."\textsuperscript{169} The liability issue was difficult to resolve, he concluded, given that the Court was still unsure that Taylor’s advances were unwelcome, since this matter had never been adequately addressed by the lower courts. This is one reason why the Court remanded this question back to the appellate court. Confusing the matter even further, Rehnquist claimed that the Court “agree[d] with the EEOC that Congress wanted courts to look to agency principles for guidance in this area” and that “absence of notice to an employer does not necessarily insulate that employer from liability.”\textsuperscript{170}

In declining to address this question completely, the Court appears to have taken the stance that Smith mentioned much earlier, that these cases needed to be determined on a “case-by-case” basis, leaving the liability question open for future courts to decide. In this case, the very basis that the bank (and the EEOC and U.S. federal government) argued should shield Meritor from liability, the bank’s grievance procedure, did not even mention sexual harassment. Rehnquist did not miss this fact of the case and he also mentioned that Meritor’s grievance procedures would have required Vinson to complain to her immediate supervisor, Taylor, also her alleged harasser. Rehnquist then chided the bank for having such a weak complaint procedure in stating, “Since Taylor was the alleged perpetrator, it is not altogether surprising that respondent failed to invoke the procedure and report her grievances to him. Petitioner’s contention that respondent’s failure should insulate it from liability might be substantially stronger if its procedures were better calculated to encourage victims of harassment to come forward.”\textsuperscript{171} Here, Rehnquist aligned himself with the very reasoning behind the guidelines in the first place that Norton had argued for six years prior to the Court’s decision. The whole point

\textsuperscript{169} Ibid.
\textsuperscript{170} Ibid.
\textsuperscript{171} Ibid.
behind the guidelines was not to shield employers from liability but to encourage them to prevent the problem in the first place, and if that did not happen, to encourage women to stand up for their rights and use the Title VII protections available to them, such as the EEOC’s policy, in keeping their economic opportunities wide open.

In significant ways, the Supreme Court’s judgment in the Vinson case was a victory for working women and economic citizenship because the Court upheld both the 1980 EEOC Guidelines and the appellate court’s position that both quid pro quo and hostile work environment harassment violated Title VII. Even Vinson’s attorney seemed surprised that a conservative such as Rehnquist wrote a decision that was hailed so positively by feminist groups. Other observers believed that Rehnquist struck middle ground by not deciding on liability.\footnote{Cochran, 121.}

Feminist anxiety over women’s rights cases that came before the Court later that year demonstrate that, even with the Vinson decision, Rehnquist was not viewed as a friend of feminists. Law professor Susan Deller Ross told Business Week the following October that, as chief justice, Rehnquist was “a disaster for women.”\footnote{Paula Dwyer, “Women’s-Rights Cases May Show Where the Court is Headed,” \textit{Business Week}, October 6, 1986.} Vinson resolved earlier feminist fears that the Court would reverse the earlier rulings on sexual harassment and erase this issue from Title VII anti-discrimination protections, but left open the question of employer liability for future courts to decide.

The Supreme Court remanded this aspect of Vinson’s case back to the Court of Appeals, which in turn later remanded it back to Judge Penn at the district court, where the proceedings languished in motion decisions until 1991.\footnote{Cochran, 122.} Here the record falls silent because the case settled
out of court on August 22, 1991 and the records are sealed as to any final determination of damages.\textsuperscript{175}

In a pair of decisions it issued in 1998, however, the Supreme Court again weighed the issue of employer liability and ruled that, in cases of hostile environment sexual harassment, an employer could avoid liability by proving an affirmative defense. This was different from the EEOC’s original emphasis on strict liability—in which employers were responsible if they knew or should have known of the behavior—in that the Court stipulated two ways to form the affirmative defense: by taking “reasonable care to prevent sexually harassing behavior” and by proving “the employee failed to take advantage of corrective opportunities provided by the employer.”\textsuperscript{176}  As a result, the EEOC removed its paragraph on strict liability from subsection (c) of its guidelines in a victory for the business sector that had challenged this section of the guidelines since the interim comment period in 1998.\textsuperscript{177}

Conclusion

Clearly, the latter half of the 1980s was one of ups and downs with regards to U.S. women’s opportunities for full economic citizenship without the problem of sexual harassment. Clarence Thomas brought new ideas to the EEOC, which aligned him with a very fiscally and socially conservative Reagan administration that often left him, as well as the EEOC, at odds with the Commission’s earlier stances on civil rights enforcement and affirmative action and sexual harassment policies. Near the middle of Reagan’s second term as President, Thomas expressed his awareness to the President that his alliance with the administration had not endeared him to the very constituency that he was serving as EEOC Chair. Thomas wrote a

\textsuperscript{175} Ibid., 126-127.
\textsuperscript{176} Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998); and Cochran, 143. There is no affirmative defense option for quid pro quo sexual harassment cases.
\textsuperscript{177} All other sections of the guidelines remain unchanged.
letter to Ronald Reagan about affirmative action and stated that, when urging Reagan to oppose quotas or goals and timetables Thomas would “certainly alienate [him]self further from [his] race.”

Even though Thomas’s letter hints at a tone of regret, it is a rather small gesture when compared to his actions at the EEOC in changing its direction away from effective civil rights enforcement procedures. In other words, Thomas led the EEOC away from everything it was designed to uphold.

That the mid- to late-1980s was a tough period for working women and sexual harassment is overshadowed by the victory in the Vinson case but not by the problems faced by women’s groups, especially the two dedicated solely to sexual harassment. Some could argue that the decade began on a positive note with the release of the major motion picture, Nine to Five, starring Jane Fonda, Dolly Parton, and Lily Tomlin, and depicting what were clearly acts of sexual harassment, although the term is never used in the film. In Jane Fonda’s commentary in the 25th anniversary DVD edition of the film she explains this somewhat by stating that “at the time this movie was made the word ‘sexual harassment’ didn’t exist yet” and “there was no name for what went on.”

Technically, the name did exist when the film was in production in the late 1970s, however, Fonda’s comment illustrates that it may not have made it to Hollywood by that point. She does credit the film with raising awareness of working women’s issues in general but overstates its influence a bit when claiming, “That was what was so important about the film. It’s a comedy but it exposed issues that office workers had been trying to get on the map for a long time. The movie showed that they were real. You know, so it was the beginning of them


starting to do something about it. It really started a movement.”¹⁸⁰ *Nine to Five* was based on the Boston working women’s organization of the same name, 9to5, and the group often used the film, and Fonda’s support, in promoting both their organization and working women’s rights.¹⁸¹ However, both Working Women’s Institute (WWI) in New York City and the Alliance Against Sexual Coercion (AASC) in Boston folded before the end of the decade. After 12 years of raising awareness, compiling legal resources, and conducting training on the problem, WWI closed its doors in 1987, just one year after the Supreme Court’s *Vinson* decision, after some key members left and their training opportunities waned.¹⁸² In a similar story, the members of AASC, which had been dedicated to a more grassroots-style of organizing, had officially shut down their organization in 1984 because of a lack of funds.¹⁸³ That both of these important groups did not make it out of the decade is telling about the atmosphere for women and feminism in particular in American society and about the state of organized feminism in the mid-1980s.

Many of the changes that were taking place by the time Phyllis Schlafly’s anti-feminist movement killed the Equal Rights Amendment’s passage in 1981 had trickled to the point where all forms of feminist activism faced a similar backlash and many had been repressed or overcome by the New Right’s ascendance. The tough economic times throughout the Reagan administration did not help the matter either in that many of the smaller organizations such as WWI and AASC could not overcome both the backlash and the financial constraints that they

¹⁸⁰ Ibid.
¹⁸¹ A few examples of this are: a meeting that 9to5 held in which Fonda spoke before 10,000 women office workers, an organization pamphlet 9to5 issued with the caption, “Coming Soon…Nine to Five the film about office workers starring Jane Fonda, Lily Tomlin, Dolly Parton. And now the Movement Behind the Movie,” and the “Office Party of the Year” premiere benefit party 9to5 held in honor of the film’s release. Sources, in order: “Work in Progress” newsletter, November 1979, Box 1, Series I. Administrative, Folder: Working Women, newsletters, leaflets, 1979-80, n.d. (19); “Office Party of the Year” flyer, Box 5, Series VII. Publications, etc., Folder: Meeting/Rally/Conference Announcements, 1973-80, n.d. (125); and “Coming Soon” pamphlet, Box 5, Series VII. Publications, etc., Folder 125, 9to5, National Association of Working Women (U.S.) Records, 1972-1986; 82-M189—86-M213, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Mass.
¹⁸² Baker, 154.
¹⁸³ Ibid., 152.
faced throughout the decade.\textsuperscript{184} All in all, the 1980s began with the EEOC guidelines standing on firm ground, and then they were contested as the feminist framework of the problem of sexual harassment as a violation of women’s economic citizenship rights was challenged by anti-feminists and conservative policymakers. The decade ended with the EEOC guidelines and the feminist movement—although changed—still standing, but each only on much shakier ground.

\textsuperscript{184} Ibid., 152-153.
CONCLUSION:
ANITA HILL AND THE RE-SHAPING OF SEXUAL HARASSMENT DISCOURSE

Eleanor Holmes Norton recounts a dramatic story when, on the morning of the Senate vote for Clarence Thomas’s nomination to the Supreme Court, she and six other women members of the House of Representatives\(^1\) stormed the Capitol steps to confront the Senate Democratic Caucus. The women wanted to pressure the Democratic Senators to call a special round of hearings to allow Anita Hill to testify before the Senate Judiciary Committee, the committee responsible for conducting Thomas’s nomination hearings.\(^2\) She remembers, “I walked for the guidelines, I walked for the EEOC, I walked for women, I walked for Anita Hill.”\(^3\) Hill, a University of Oklahoma law professor, alleged that Thomas had sexually harassed her when she worked for him at the EEOC in the early 1980s. Norton and her colleagues had been silenced by Republican members of the House when they tried to persuade the House to call the hearings. At first, they faced a similar rejection by the Senate when the Democratic Caucus would not speak with them. The women stood their ground and warned the caucus (speaking through an aide) that the media gathered outside of the Capitol had recorded the women’s walk and knew exactly why they went to the Senate’s doors. The women got their meeting. Later that day Thomas requested a delay in the vote in order to respond to the charges. The Senate then reluctantly agreed and then held the hearings during which, for the first time, the issue of sexual harassment became part of a nationally televised event.\(^4\)

\(^1\) Norton was elected to serve as the non-voting representative of the District of Columbia in November 1990.


\(^3\) Quoted in Lester, *Eleanor Holmes Norton*, 282.

If the sexual harassment framework had become contested and obscured by the backlash that the second-wave feminist movement in general faced throughout the 1980s, then Anita Hill’s testimony before the Senate Judiciary Committee brought it into the public eye again and in ways that it had never been before. A year after her testimony, sexual harassment complaints to the Equal Employment Opportunity Commission (EEOC) were on the rise and would later reach record numbers (from 3,364 charges in 1991 to 5,907 in 1992 and then peaking in 1997 at 15,889 charges). The issue was also on the lips of countless Americans who had watched Hill’s testimony—the televised coverage of which out-rated the Major League Baseball playoffs. As many scholars have recognized, Anita Hill brought the issue of sexual harassment into the mainstream.

The concluding chapter of this dissertation examines the Hill-Thomas scandal and how it changed sexual harassment discourse, arguing that the event both upheld and altered the way that sexual harassment was framed as an issue of women’s economic citizenship. As a feminist issue, Anita Hill’s testimony rekindled activism on women’s issues broadly and on the problem of sexual harassment specifically. Because of this, it also reveals the limitations of Sidney Tarrow’s model of contentious politics and a shortcoming of the cycles of contention theory—what happens when an event sparks renewed focus on an issue that had once been

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repressed by policymakers and challengers in a countermovement? Does a movement backtrack in the cycles and start over, or are other modes of analysis needed? Here, the cycles of contention/policy process model still holds when analyzing the history of a policy, but falls short when examining the relationship of that policy to the American public after such an event occurs. The shortcoming lays in its inadequacy to reflect the standpoint of working women and feminists from the period of the policy’s origins to after an unexpected incident changes the context of a problem’s framework. In significant ways, the Anita Hill-Clarence Thomas scandal reflects the history of sexual harassment policy as viewed through the Sidney Tarrow/Hugh Davis Graham social movement cycle and policy process model. Yet, in other ways, it changed how sexual harassment was understood as a problem of gender, race, and power as it had not been when feminists first framed the issue.

The first two chapters of this dissertation illustrated how women entered the workforce in record numbers in the 1970s and how the combined existence of anti-employment discrimination legislation and the second wave feminist movement spurred both the framing of and activism on this issue. Working women and feminists framed sexual harassment as an issue of women’s economic citizenship rights and saw rapid success in the recognition of this problem as a violation of Title VII of the Civil Rights Act of 1964, as amended. Their frame was quickly publicized by new feminist movement organizations such as the Working Women’s Institute (WWI) and the Alliance Against Sexual Coercion (AASC) and then later, more established organizations such as the National Organization for Women (NOW) and Ms. magazine. Anita Hill’s testimony before the Senate Judiciary Committee reinforced how feminists had originally framed the problem as sex discrimination by reviving feminist activism on sexual harassment.8

Yet, her testimony also changed the framework for understanding the problem of sexual harassment as, in the months and years after the event, activists and theorists discussed the relationship between race and gender and sexual harassment.

Hill’s accusations of sexual harassment against Clarence Thomas caused many African-Americans to view her as a traitor to the black race. Scholars have argued that when she spoke out about the sexual harassment she had experienced ten years prior to Thomas’s nomination, Americans did not have the context to view what happened to her—as a form of black on black sexualized violence—in the same way that they viewed the images of violence by whites against blacks. Historian Deborah Gray White argues that when Thomas responded to Hill’s accusations by denying them and claiming that the media circus and Senate hearings she caused amounted to a “high-tech lynching,” he called forth images of black sexualized violence that Americans were familiar with. In doing so, Thomas garnered sympathy from the black community and caused a division in support between himself and Hill because many blacks and conservatives disbelieved her and criticized her for trying to prevent a black man from rising to a high post in the judiciary. The Hill-Thomas hearings, then, led to a new realization of the intersectionality between race, gender, and sexual harassment as well as the legacy of slavery in America and lingering stereotypes of black men and black women.

Harassment: Candid Advice from 9to5, the National Association of Working Women (New York: John Wiley & Sons, Inc., 1992). Much of the January/February 1992 issue of Ms. magazine is also devoted to Anita Hill and the issue of sexual harassment.

9 White, Too Heavy a Load, 13-15.
10 Senate Committee on the Judiciary, Nomination of Clarence Thomas to be Associate Justice of the Supreme Court of the United States Part 4 of 4 Parts, 102nd Cong., 1 sess., 1991, 157. (Hereafter cited as Thomas Nomination Hearings.)
hearings became, Thomas was seen as the victim and Hill the temptress or “Jezebel,” rendering her experiences invisible and silencing her ability to speak about her own victimization. Had she been white, they argued, this would not have occurred because the violence against black women had historically been overshadowed by racist violence against black men’s supposed threat to white women’s sexuality.\textsuperscript{12} The event also drew criticism from scholars who faulted the earliest legal theorists to frame sexual harassment, such as Catharine MacKinnon, for not recognizing these important differences between the histories of white women and women of color in American society.\textsuperscript{13}

Aside from the hearings leading feminist scholars to re-frame the issue of sexual harassment in ways that considered the different work experiences between black and white women due to the legacy of slavery, the outcome of the Hill-Thomas hearings also set a political agenda for women’s rights activists. These activists responded to the Senate’s vote—a 52 to 48 vote to confirm Thomas’s nomination to the Supreme Court—by faulting the Senate for not representing women and for not taking the problem of sexual harassment seriously.\textsuperscript{14}

Throughout the hearings members of the Judiciary committee dismissed Hill’s allegations by accusing her of perjury, of copying part of her story from the book, \textit{The Exorcist}, and of waiting


\textsuperscript{14} Flax, 4-5.
too long to tell anyone about the alleged harassment for it to be believable.\textsuperscript{15} In 1991 only two U.S. Senators were women—a fact that feminists blamed for allowing such testimony and questioning of Hill. During the months after the Senate vote, women’s organizations turned their attention toward the 1992 congressional elections with the goal of electing more women to the Senate. Women’s organizations such as the National Women’s Political Caucus and Emily’s List (an organization devoted to electing women Democratic candidates to office) saw their contribution and membership figures quadruple or rise even higher in the year after the hearings.\textsuperscript{16} Their efforts paid off the following November when 117 women ran for Congress and won a record six seats in the Senate and 42 in the House in what came to be known as the “Year of the Woman.”\textsuperscript{17} Such a response also likely caused the fact that, in 1992, more Americans believed Hill’s side of the story than Thomas’s. According to an October 1992 Gallup poll, 43 percent of respondents found Hill more believable than Thomas, whom only 39 percent believed. One year earlier, only 29 percent had believed Hill while 48 percent had found Thomas believable.\textsuperscript{18}

Chapters Three through Five analyzed the first stage of increased information and interaction about the problem of sexual harassment as well as the design, enactment, and

\textsuperscript{15} \textit{Thomas Nomination Hearings}, 134-135, 206-207, and 230-231. Republican Senator Arlen Specter of Pennsylvania accused Hill of perjury and doubted her allegations because of the length of time that had lapsed between when Thomas supposedly harassed her and the hearings. In response to Hill’s allegation that Thomas once asked in front of Hill, “Who has put pubic hair on my Coke,” Republican Senator Orrin Hatch of Utah read the following passage from the \textit{The Exorcist}: “Dennings had remarked to him, in passing, said Sharon, that there appeared to be ‘an alien public hair floating around in my gin.’”


\textsuperscript{17} Freedman, 291 and Norton, 242-245.

implementation of the first federal sexual harassment policy at the EEOC. These chapters argued that Congress listened to feminists and then called on the EEOC to design a sexual harassment policy for the federal government and private businesses. In doing so, the EEOC, under the leadership of Chair Norton, crafted its policy with women’s economic citizenship in mind and not with the interests of the business community who had objected to the EEOC’s stance on employer liability. The EEOC then worked to implement its policy by educating the public about sexual harassment. The Hill-Thomas hearings brought a reverse situation with regards to an increased interaction and information stage about the issue of sexual harassment. Instead of feminists publicizing an issue which then became recognized by Congress, because of Hill’s accusations, Congress (albeit reluctantly) held extra hearings on Thomas’s nomination that then sparked an overwhelming amount of public discussion and debate about sexual harassment.19

In the hearings’ wake, businesses did more readily accept that they had to confront the issue of sexual harassment by issuing their own policies. All of the press surrounding the spike in complaints to the EEOC likely put employers on notice that it would be in their best interest to have sexual harassment procedures—if not necessarily for prevention, then to avoid costly liability penalties. The passage of the Civil Rights Act of 1991 also gave employers incentive to do so because the legislation included provisions for compensatory and punitive damages under Title VII claims.20 Before the 1991 Act, claimants alleging quid pro quo sexual harassment could sue only for lost wages. Those filing for hostile environment claims could only seek court

injunctions ordering the employers to stop the harassment. This too changed with the 1991 Act. While no doubt a positive step for working women in that corporations were finally issuing more policies and recognizing the issue, lingering criticism of the EEOC’s policy on employer liability and confusion over the issue of when behavior constituted sexual harassment remained. Small businesses in particular were confused about how to proceed, believing the problem only to exist in large corporations. Although lower courts or the Supreme Court had yet to make a definitive determination on employer liability following the 1986 Vinson decision, legal scholar Susan Deller Ross argues that the Supreme Court did uphold its decision in Vinson as well as the EEOC guidelines with regards to hostile environment sexual harassment—part of Hill’s allegations against Thomas. In its 1993 Harris v. Forklift Systems, Inc. decision, the Court rejected the employer’s defense that Theresa Harris had not been discriminated against because she did not experience psychological trauma due to sexual harassment. The Court—applying a narrow interpretation of the EEOC guidelines in her favor—disagreed and ruled that the harassment she experienced, including unwanted sexual innuendos and requests from the company’s president to retrieve change from his pants pocket, was reasonable enough to constitute an actionable offense under Title VII.

Chapters Six and Seven examined the institutionalization, facilitation, and repression phases of Tarrow’s model, as well as the program evaluation and policy feedback stages of

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Graham’s policy process. These chapters considered the polarized debate over sexual harassment following the rise of the New Right and Ronald Reagan’s election to the presidency in 1980. Then, the final chapter analyzed the EEOC’s record of enforcement of civil rights legislation throughout Reagan’s presidency and Clarence Thomas’s tenure as EEOC Chairman. Chapter Six argued that, unlike the Carter administration and Norton’s EEOC, the Reagan administration repressed feminist arguments about sexual harassment and attempted to rollback the 1980 EEOC guidelines on sexual harassment. In addition, this chapter asserted that anti-feminists challenged the feminist framework of sexual harassment as an issue of economic citizenship. Chapter Seven argued that Reagan and Thomas opposed important anti-discrimination legislation such as affirmative action and sought to render the EEOC’s enforcement of such policies ineffective. Thomas successfully weakened the EEOC by increasing its case backlog, emphasizing a limited enforcement strategy focused on litigation as opposed to charge processing, and narrowing the agency’s interpretation of its own sexual harassment guidelines in the Vinson case. The chapter closed by illustrating that these changes left the Supreme Court unable to decide on the question of employer liability until the 1998 cases Burlington Industries, Inc. v. Ellerth and Faragher v. City of Boca Raton—when Thomas was on the Court. In this pair of decisions, the Court turned away from the EEOC’s guidelines and weakened employer liability for sexual harassment. The EEOC subsequently changed its guidelines and removed a core part of the original feminist intent by deleting the paragraph outlining strict employer liability.

Again, the Hill-Thomas hearings illuminated these events and demonstrated that, with the renewed focus on women’s issues after Thomas was nominated to the Supreme Court, the fault lines between feminists and anti-feminists regarding sexual harassment remained drawn. Just as
feminist organizations went after Senators that had not supported Hill in the next year’s elections, Phyllis Schlafly proclaimed that her Eagle Forum would also target anyone who had voted against Thomas.\textsuperscript{24} Schlafly had even led supporters in cheering Thomas on as he approached the hearing room on the morning of October 11, 1991. Reflecting her prior battle against feminist over the Equal Rights Amendment, Schlafly claimed to want “justice” and “to support an honorable man who the pro-abortion feminists are trying to crucify.”\textsuperscript{25} New groups of women were also inspired by the hearings to take a more conservative stance against feminists in their communities. For instance, membership in the Concerned Women for America grew throughout that time to include over 600,000 members and a budget of $10 million dollars—reportedly surpassing NOW’s membership of under 300,000 and its $8 million budget.\textsuperscript{26} Other feminist critics such as Camille Paglia emerged who criticized Hill for not coming forward sooner and by making her out to be a career opportunist.\textsuperscript{27} A few years later, a sharper, more academic critique came from Daphne Patai who argued that the fervor of reformers in what she termed the “Sexual Harassment Industry” was leading women to fear men at the workplace and at school. Patai included Catharine MacKinnon in that group and argued that it imposed a view of women as victims on American society.\textsuperscript{28} All in all, the Hill-Thomas hearings inspired continuing challenges to the feminist framework of sexual harassment.

In addition, the hearings also illustrate the lingering effects of Thomas’s anti-enforcement of EEOC policy in the 1980s. A representative of NOW and at least one attorney remarked that, for all of the women filing charges of sexual harassment with the EEOC after Professor Hill

\textsuperscript{24} Price, “Women Against Thomas.”
\textsuperscript{25} Gosselin, “A Day of Charges and Denials.”
came forward, the EEOC would not find any merit to the claims of a large majority of them. Instead, the EEOC would give the claimant a letter to sue without waiting for an investigation into their claim. Kim Keller of the American Federation of State, County and Municipal Employees remarked, “When I send my client to the EEOC, I understand that I am not sending my client there for justice.” Similar to other times throughout the EEOC’s history, just when working women needed the agency the most, it proved ineffective.

Much can be gleaned by looking at the Hill-Thomas hearings and the history of sexual harassment policy. While in many ways, the renewed focus on sexual harassment policy after the event left the feminist framework of sexual harassment as an issue of economic citizenship intact, it also revealed that it was still being challenged by anti-feminists, policymakers, and federal courts. Although the EEOC guidelines still stand, they too, are altered and, like the agency itself, have been changed as a result of the political developments of the past 28 years. Because women continue to experience this problem, it is all the more important for the EEOC to continue to enforce its policies and educate women about their rights.

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APPENDIX A. U.S. WOMEN’S LABOR FORCE PARTICIPATION, 1975-1992

Number of Employed Women

Number of Women in Civilian Noninstitutional Population

Federal employees have a grave responsibility under the Federal code of conduct and ethics for maintaining high standards of honesty, integrity, impartiality and conduct to assure proper performance of the Government’s business and the maintenance of confidence of the American people. Any employee conduct which violates this code cannot be condoned.

Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment debilitates morale and interferes in the work productivity of its victims and co-workers.

Sexual harassment is a prohibited personnel practices when it results in discrimination for or against an employee on the basis of conduct not related to performance, such as the taking or refusal to take a personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures.

Specifically, sexual harassment is deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.

Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary, or job of an employee is engaging in sexual harassment. Similarly, an employee of an agency who behaves in this manner in the process of conducting agency business is engaging in sexual harassment.

Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere in work productivity is also engaging in sexual harassment.

It is the policy of the Office of Personnel Management (OPM) that sexual harassment is unacceptable conduct in the workplace and will not be condoned. Personnel management within the Federal sector shall be implemented free from prohibited personnel practices and consistent with merit system principles, as outlined in the provisions of the Civil Service Reform Act of 1978. All Federal employees should avoid conduct which undermines these merit principles. At the same time, it is not the intent of OPM to regulate the social interactions or relationships freely entered into by Federal employees.

Complaints of harassment should be examined impartially and resolved promptly. The Equal Employment Opportunity Commission will be issuing a directive that will define sexual harassment prohibited by title VII of the Civil Rights Act and distinguish it from related behavior which does not violate title VII.

Source: OPM Policy Statement and Definition on Sexual Harassment, “Sexual Harassment,” Box 17, Domestic Policy Staff, Kathryne Bernick Files, Jimmy Carter Library.
APPENDIX C. EEOC GUIDELINES ON DISCRIMINATION BECAUSE OF SEX, ISSUED IN INTERIM FORM, APRIL 11, 1980, AND IN FINAL FORM, NOVEMBER 10, 1980

The following shows the original guidelines and the edited version, indicated by the notations:

**Part 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX**

§ 1604.11 Sexual harassment.

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

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

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

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

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

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

1 The principles involved here continue to apply to race, color, religion or national origin.
(g) Other related practices: Where employment opportunities or benefits are granted because of an individual’s submission to the employer’s sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.