PEER-TO-PEER SEXUAL HARASSMENT IN UNIVERSITY-OWNED HOUSING

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This ethnography scrutinizes the debate over sexual harassment law, tracks how the United States Supreme Court assesses the debate through relevant cases, and, finally, examines the application of sexual harassment law and the ensuing debate within the university setting, using my own sexual harassment experience and interviews at the University of California, Santa Barbara. In selecting subjects, two types of people were considered: those who create and implement sexual harassment policy, and those who apply and enforce the policy. These observations illustrate that a gap exists between the creation and the enforcement of sexual harassment policy that can possibly be remedied by more help, more education and more awareness.

THE COMPLEXITY OF SEXUAL HARASSMENT LAW

Richard Olmstead argues, "hostile environment harassment law should be deemed unconstitutional as it applies to speech," because "it impugns on the freedom that is so deeply cherished by all Americans."[1] Yet, Anita Superson claims that sexual harassment is "by far the most pervasive form of discrimination against women."[2] These comments illustrate how sexual harassment is quite controversial, especially concerning the issue of public or private domains. Does the government have the right to restrict one's speech to protect another from the effects of a hostile environment? Does sexual harassment law "chill" the work place or learning environment to the point where a free exchange of ideas is no longer possible? Trying to answer these questions causes numerous obstacles in writing and enforcing sexual harassment law. Furthermore, disputes over defining sexual harassment law and appropriate remedies constantly emerge. Yet, even if solid sexual harassment law is in place,

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enforcers of the policy may not be able or willing to recognize occurrences of sexual harassment due to their own gender biases and socialization.

Working and learning environments are at the center of this controversy. The Supreme Court, however, has answered this debate by adhering to the Civil Rights Act of 1964, stating that equal access to education and employment are fundamental individual rights, and that these opportunities cannot be seized if the environment is hostile and discriminatory. Consequently, educational facilities and employers are now required to have an in-house policy and resolution process for sexual harassment and other forms of discrimination. Nevertheless, the controversy over sexual harassment law still rages and can be observed in the application of sexual harassment policy. This ethnography attempts to scrutinize the debate over sexual harassment law, to track how the United States Supreme Court assesses the debate through relevant cases, and, finally, to examine the application of sexual harassment law and the ensuing debate within the university setting, using my own sexual harassment experience and interviews at the University of California, Santa Barbara.

In order to fully understand the construction of sexual harassment policy at the university level, it is important to comprehend federal and case law as well as their effects on university policy. As an ethnography, this paper uses the qualitative research approach to observe the application of sexual harassment policy; it does not isolate particular correlations. Furthermore, actually interviewing the designers and enforcers of university policy is essential. Although I create my own theory and apply it, it is only applicable to the particular circumstances I endured and is by no means a universal statement. As a result, this study does not contain controls or other scientific variables. Archival research and interview subjects were not selected at random, but instead, deliberately selected due to their relevance or position. [3] In selecting subjects, two types of people were considered: those who create and implement sexual harassment policy, and those who apply and enforce the policy. The Sexual Harassment Officer and Sexual Harassment Prevention Coordinator were chosen for their role in designing and establishing the policy and procedure. To the contrary, resident assistants, individuals who live in the residence halls and have authority over resident conduct, were chosen as representatives of enforcers of sexual harassment policy in a university setting. Only four resident assistants were interviewed due to time constraint.

Although this paper recognizes the ongoing controversy over sexual harassment law, rather than argue for a specific side in the debate, this work analyzes the application of sexual harassment law in a university

setting in addition to the potential effect of the sexual harassment on encouraging or inhibiting the application of such policy.

Many have asked: "What is the point if the paper does not argue a position on sexual harassment?" Yet, how can anyone argue for one side or another unless they understand the true definition and application of sexual harassment law? Many negative misconceptions exist about sexual harassment. Some believe it is only applied in cases of men sexually harassing women, or that it chills a working or learning environment to the point where any form of sexual contact is prohibited. As this work will illustrate, the application of sexual harassment law is complex and understanding the actual function of sexual harassment policy in a university setting is essential to making an informed decision concerning the need and results of sexual harassment law.

THE DEBATE OVER FUNDAMENTAL PERSONAL RIGHTS

Sexual Harassment Law Violates Free Speech and Enterprise

Some individuals contend that sexual harassment laws inhibit the free exchange of ideas due to the ambiguity of sexual harassment policy, which causes the environment to become chilled. Furthermore, scholars such as Marianne Jennings assert sexual harassment laws are actually counterintuitive not only because they have a chilling effect on men, but also because such laws assume that women are incapable of dealing with unwanted advances from others. Individuals using this perspective therefore argue that sexual harassment laws should be unconstitutional because they inhibit the free exchange of ideas and are not effective.[4]

Michael McDonald and Richard Olmstead are examples of scholars against sexual harassment laws, claiming that such laws violate free speech. This is detrimental on an individual as well as on a larger scale since it not only violates a fundamental personal right but also inhibits the free exchange of ideas.[5] For instance, McDonald and Olmstead maintain that there has been an overreaction concerning sexual harassment laws, resulting in suppression of speech that is not harmful or directed at a specific person or group.[6] They claim that civil rights legislation does not necessarily have to restrict speech and, in actuality, restricting such speech causes greater social harm than sex discrimination and therefore sexual harassment law should be deemed unconstitutional.[7]

Similarly, Clay Reynolds and Elizabeth Larson expand on the above argument, claiming that the suppression of speech through sexual harassment laws is especially harmful to academic freedom and free enterprise.[8] Reynolds asserts, "there is no statute of limitations of a careless comment or a thoughtless gesture, an off-color joke, or the reading

aloud of unpublished material," which unfortunately chills the university environment causing the free exchange of ideas that is so essential to academic growth to be lost.[9] Larson, however, focuses on the cost of enforcing sexual harassment law to businesses and argues that such costs injure free enterprise. She emphasizes that this social cost is greater than any potential benefits gained from sexual harassment enforcement since the economy affects every sector of society, not just women.[10] Yet, one could argue that these claims do not account for the different types of sexual harassment. "Hostile environment" sexual harassment, which is arguably subjective, is only one type of sexual harassment. For example, "de facto" sexual harassment, which constitutes acts that are considered sexual harassment irrespective of pervasiveness, such as quid-pro-quo harassment[11], does not necessarily "chill" or inhibit the free exchange of ideas because such acts are blatantly discriminatory on the justifcation that free speech does not enter into the equation. These assertions, however, exemplify the complexities of sexual harassment law and the many nuances of the ongoing debate.

Sexual Harassment Equals Sex Discrimination

Using the feminist sociological lens, we can view sexual harassment as a form of sex discrimination because, according to Catharine MacKinnon, it "mutes victims socially through the violation itself."[12] Feminists like MacKinnon argue that sexual harassment violates its victims' fundamental personal right of equal access to employment and education by either making their advancements or benefits contingent upon their sexuality, and by creating a hostile environment that inhibits work and promotion. MacKinnon maintains that even though the right to free speech is curtailed under sexual harassment law, a greater fundamental personal right is lost if sexual harassment is allowed to continue.

In addition, Kathryn Lewis claims "young women report that sexual harassment embarrasses them, makes them self-conscious, less confident in their abilities, and even afraid. Consequently, a young woman's ability to receive the same education as males is affected."[13] Receiving an equal education is essential to receiving equal employment, which in turn affects financial status. Unequal education continually keeps women at a lower social status. Lewis thus asserts that sexual harassment law is a vital tool to aid women in having equal access to employment and education because sex discrimination has a greater social harm than the speech that is lost as a result.

A study done by Lisa Wilson and David Taylor at the Northern Illinois University College of Law enforces this perspective. Between 1997 and 2000, the percentage of enrolled female students dropped from fifty-one to thirty-three percent.[14] As a result, college administrators became

alarmed and launched a study to informally question students of both sexes concerning the classroom environment. Women reported higher levels of gender hostility and harassment, as well as a loss of confidence and desire to participate in class compared to male students.[15] One can thus conclude that the hostile classroom environment at this law school is one reason why the population of female students declined. Consequently, in this particular study, women were not given the same education as men, therefore demonstrating a need for sexual harassment laws.

In addition, allowing sexual harassment to continue not only affects a woman's equal access to employment or education, but also invalidates and trivializes a woman's experience with sexual harassment and, according to Tianna McClure, permits such treatment to continue."[16] McClure sites many incidents of students not punished for such behavior; the behavior escalated until the victim eventually had to leave school. For instance, Alma McGowen was tormented for years. Once, during her seventh grade science class while the teacher was out of the room, "other students grabbed her hair and yanked off her shirt. It was only when a male student began to take off his pants saying that he was going to have sex with McGowen did another student intervene. The school simply responded by speaking with the boys.[17] Appallingly, the above incident was not isolated. Furthermore, McGowen stated that whenever she complained to a school official about her harassment, the behavior escalated because the school did not actually punish the students. She eventually had to leave school. As this case illustrates, allowing sexual harassment to continue for the sake of freedom of speech is completely inappropriate. When do one person's rights end and another's begin? McClure thus emphasizes that the importance of sexual harassment law not only allows women to achieve greater equality with men, but sometimes protects them from emotional and physical harm.

The above arguments exemplify the numerous caveats of sexual harassment law. At the center of this debate is the issue concerning fundamental personal rights. Which right takes precedence over the other and why? Finding answers to this and similar questions has proven quite difficult, and many questions remained unanswered. As a result, obstacles arise in writing and enforcing sexual harassment policy. The effects of this debate can be seen in sexual harassment policy, United States Supreme Court cases beginning in 1986, and other sexual harassment policy, like that at the University of California, where attempts are made to answer the above questions.

SEXUAL HARASSMENT LAW: AN EVER-EVOLVING ORGANISM

Original Legislation

Sexual harassment law is a modern phenomenon—the result of 1964 Civil Rights Act, specifically Title VII—which sets standards for equal employment opportunities. For example, this Title clearly states:

> a) [Sexual discrimination] shall be an unlawful employment practice for an employer
> b) (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...[18]

While this act lays the foundation for equal access to employment, it fails to extend equal access to education. Therefore, in 1972, Congress passed the Education Amendments which, under Title IX, granted equal access to education in federally funded institutions regardless of gender, race, religion, and numerous other characteristics.[19] These titles are particularly important to the creation of sexual harassment law because, although they do not specifically create such law, they establish a framework for writing and enforcing laws designed to counter education and employment discrimination based on gender by granting equal access.

However, the term equal access is vague. What constitutes education and employment discrimination? What are the characteristics of equal access? What factors inhibit or encourage equal access? Although many opponents of sexual harassment law despise the broad, vague nature of the aforementioned legislation, those qualities have given policy makers and policy enforcers enough latitude to adapt and fight discrimination as society changes. For example, just because a woman is hired does not mean she has equal access to employment when compared to a man. An employee may experience forms of harassment or discrimination once hired, such as quid pro quo harassment, benefits or promotions for sexual favors, or s/he may have to work in a hostile environment. Modern sexual harassment law, therefore, emerged out of the application of Title VII to cases of sex discrimination as seen in a series of important Supreme Court cases during the 1980s and 1990s.

Supreme Court Cases: Reinforcing Title VII and IX

Sexual harassment law gained tremendous momentum in *Meritor Savings Bank, FSB v. Vinson, et al.* (1986).[20] In this case, a bank teller was

repeatedly asked for sexual favors by the vice president of the bank, until she finally agreed out of fear of losing her job. She eventually won her case at the Supreme Court level, and more importantly, this case created a strong foundation and precedent for future sexual harassment law and enforcement. In writing the opinion, Chief Justice Rehnquist concurs with the Court of Appeals, "that unwelcome sexual advances that create an offensive or hostile working environment violate Title VII," of the 1964 Civil Rights Act, because "without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminates' on the basis of sex."[21] Justice Rehnquist continued to explain that unwanted sexual advances must be "severe and/or pervasive"[22] in order to be deemed sexual harassment that is actionable under the law. By declaring that unwanted sexual advances and a hostile environment constitute sex discrimination, this opinion lays a solid foundation for fighting sex discrimination that may not directly involve the hiring or pay of an employee, but rather affect such elements of employment by creating an intolerable work environment. Yet, although this case is vital in creating a backdrop for sexual harassment law, it does not narrowly define the conditions and standards of writing as well as enforcing sexual harassment law because it does provide a frame of reference. For example, who determines what is severe and/or pervasive?

Fortunately, subsequent Supreme Court cases further refine the definition of sexual harassment. In *Oncale v. Sundowner* (1998), a man sued his employer for sexual harassment charges because his fellow male employees repeatedly harassed him with sexual comments and threatened him with rape.[23] This situation breaks new ground, not only because it involves a male victim, but also because it contains same-sex harassment. Prior to this case, sexual harassment was only thought to encompass males sexually harassing females or an individual harassing a member of the other sex. Although this opinion clearly states that men and women are equally protected under Title VII, the obstacle arises in the application of sexual harassment. For instance, the main counterargument in this case is that the harassment did not occur simply because of the victim's sex, since he is male and because his harassers are of the same sex. Sexualizing a man has drastically different effects than sexualizing a woman due to the variations in male and female sexuality in our society. It is generally assumed that men enjoy sexual attention. As a result, how can a man claim that he is being harassed simply because he is a male, when it is assumed men enjoy sexual attention? Although no one would label the behavior in *Oncale* positive, this difference raises a debate concerning whether or not such harassment is based upon the fact the victim had a penis, which would thus make his experience a form of sexual harassment. However, the victim won his suit because, following the reasoning in *Price Waterhouse v. Hopkins* (1989), he was sexually harassed because his gender did not match his actions.[24] This case thus broadens the

foundation of sexual harassment law to include men and same-sex harassment despite the fact sexual harassment is generally thought of as a protection for women from men.[25]

Narrowing the Focus: Institutional Remedying and Responsibility for Sexual Harassment

While the above Supreme Court cases involve broadening the scope of individuals protected by sexual harassment law, the next cases emphasize an institution's role in preventing and remedying sexual harassment within its jurisdiction. *Franklin v. Gwinett County Public Schoo*ls (1992), *Harris v. Forklift Systems Inc*. (1993), and *Davis v. Monroe County School Board* (1999) are Supreme Court cases that address significant issues of sexual harassment law that have arisen in recent years. These cases are also important in understanding sexual harassment and how it is enforced in institutions rather than in a court of law.

In 1992, twenty years after the passage of the Education Amendments, Title IX came under Supreme Court scrutiny concerning the award of damages to victims of sexual harassment under its jurisdiction in *Franklin v. Gwinnet County Public Schools*. After all, students do not receive wages for attending school, so why should they receive the same protection as those under Title VII who are discriminated against at work? The controversy began when Franklin, a high school student, alleged that she had been the victim of sexual harassment and abuse by one of her teachers. The instructor agreed to resign, under the condition that all pending investigations by the school be dropped; the school concurred. Unsatisfied, the student sued the school to seek damages for her treatment. The district and appellate courts both agreed that Title IX did not grant the victim cause to seek monetary compensation. The Supreme Court, however, took a different stance in ruling that Title IX did in fact provide the victim with the cause to seek compensation because "the assertion that Title IX remedies should nevertheless be limited to backpay and prospective relief diverges from this Court's traditional approach to deciding what remedies are available for violation of a federal right."[26] Since this case entitles student victims of sexual harassment to claim damages, it is thus significant in drawing the boundaries of sexual harassment law because it aids in identifying the responsibility of an institution, in this situation a school, to prevent and remedy sexual harassment within its borders.

Another significant case in defining sexual harassment is *Harris v. Forklift Systems Inc*. (1993). Harris, a former employee of Forklift Systems, Inc., accused her former employer of sexual harassment, claiming she was the recipient of unwanted sexual innuendoes and sexist insults in front of her co-workers. In this unanimous decision, the Supreme Court reversed and

remanded the District court and the Court of Appeals decisions, and broke new ground by stating that "conduct need not 'seriously affect an employee's psychological wellbeing or lead the plaintiff to 'suffer injury,'" but instead must meet the reasonable woman standard. [27] Reaffirming this standard is important because it dispels many of the arguments that sexual harassment law is superfluous and exaggerated. Rather, this case explains how sexual harassment is not about sex but, like other forms of sexual assault, is an assertion of power. Sexual harassment is not about being offended; actions become sexual harassment when the work environment becomes intolerable and advancement impossible, not necessarily when one's feelings are hurt or when one is offended, although the two often coincide. Moreover, the ruling in this case is crucial in delimiting business responsibility in sexual harassment issues. By fleshing out the definition of the "reasonable woman" standard and what constitutes sexual harassment, the Supreme Court is essentially telling companies that, even though they are responsible for preventing and remedying sexual harassment, they are not responsible for creating completely inoffensive environments. This case is therefore important in the evolutionary scheme of sexual harassment law, because it reinforces the standards of what constitutes sexual harassment law and differentiates between sexual harassment and infringing on freedom of expression, which is beneficial to companies' creation of sexual harassment policy.

Peer-to-Peer Sexual Harassment

Davis v. Monroe County Board of Education (1999) is a crucial case in defining peer-to-peer harassment, the appropriate remedies for sexual harassment under Title IX, and the institutional responsibility to administer those remedies. As a fifth grade student, LaShonda Davis received persistent unwanted sexual advances by a classmate. Upon filing suit in the Federal District court, the court decided that peer-to-peer harassment did not constitute a cause of action. Yet, the Court of Appeals and the Supreme Court both agreed that Title IX did grant such cause of action even in the case of peer-to-peer sexual harassment, but only if deliberately indifferent.[28] While most courts and policy makers agreed that schools have a duty to protect students from any form of harassment, courts held that only teacher-student sexual harassment was actionable due to the power difference between the two parties. This case thus expands sexual harassment law and offers greater protection for victims by granting the option to sue for damages. Furthermore, by including peer-to-peer harassment as an actionable form of sexual harassment, student contact and school liability is changed. Davis asserts that unwanted sexual advances or harassment based on gender between peers in not a normal part of student interaction and, furthermore, schools have a responsibility to prevent and remedy such behavior. *Davis* is therefore a landmark case

because it changes the social perspective on appropriate child behavior and relations.

Hence, these cases, as well as similar state-level decisions, answer the sexual harassment debate by stating that a hostile environment and other forms of sexual harassment in an education or employment setting violate a fundamental personal right as established in Title VII and IX. Although these Supreme Court decisions made it easier to write a sexual harassment policy by delimiting remedies and responsibility standards, enforcement problems can arise, as exemplified by my own experience of sexual harassment at the University of California, Santa Barbara.

UNIVERSITY OF CALIFORNIA SEXUAL HARASSMENT POLICY

University of California Sexual Assault/Harassment Policy and Procedure

The University of California Regents have defined sexual harassment as "unwelcome sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature when:

> · Submission to such conduct is made either explicitly or implicitly a term or condition of instruction, employment or participation in any University activity;
> · Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affect an individual; or
> · Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive university environment."[29]

The University of California continues to place emphasis on the totality of circumstances, including the nature, frequency, and context, when deciding if behavior constitutes sexual harassment.[30] This policy is similar to the standards of the 1964 Civil Rights Act as well as those decided by Supreme Court cases. Consequently, what constitutes sexual harassment in a university setting is similar to the definition of sexual harassment externally.

Educational and employment settings, however, are required to have an in-house procedure to manage sexual harassment problems in addition to a standing sexual harassment policy. Each campus in the University of California has its own specific sexual assault and harassment procedure. At each individual University of California campus, varying procedures are offered depending on the circumstances. For instance, if someone is

sexually assaulted or harassed, the University instructs the survivor to get to a safe place, call a personal friend to help, and then goes on to list a number of options for remedying the situation, such as calling the police and the Women's Center.[31] The University's personal sexual assault and harassment procedure therefore meets the standards outlined in federal and state law, as well as Supreme Court cases. But who designs and enforces this policy? What are the main goals of the creators of this policy and procedure? How is this policy applied in the university setting? All of these important questions could only be answered by speaking with the actual creators and implementers of the policy.[32]

Interviews: Sexual Harassment University Administrators

I interviewed Judy Guillermo-Newton, the University of California's Sexual Harassment Prevention Coordinator on the Santa Barbara campus, and Paula Rudolph, the University of California's Sexual Harassment Officer and Title IX Coordinator for the Santa Barbara campus, to garner a complete understanding of the process of creating and implementing sexual harassment policy at the University of California, Santa Barbara. [33]

Judy Guillermo-Newton

"What I do is try to do is educate faculty, staff and students about sexual harassment," said Guillermo-Newton when asked about her role in the university's sexual harassment policy and procedure.[34] By educating faculty through seminars and students by being a guest lecturer in certain classes, she is making faculty and students aware of the policy and, thus, further cementing the policy in the University's social fabric. However, she explained, "educating women that they don't have to take it" is the important part of preventing sexual harassment because it further solidifies the fact that sexual harassment is wrong.

Guillermo-Newton is also important in implementing the University's sexual harassment policy because she is often the "punishment" of policy violators. She described how "people who commit infractions, such as [your resident director] will often have to come see her as their punishment. It's weird having people coming to see you be a punishment, but often times it is enough of a deterrent for violators and potential violators."[35]

Therefore, as a Sexual Harassment Prevention Coordinator, Guillermo-Newton plays a crucial role in executing sexual harassment policy. Codifying the policy and procedure is only half the battle; incorporating and hopefully embedding the policy in the University's social landscape is the other essential element in having a sexual harassment code that can successfully prevent and remedy problems.

Paula Rudolph

"As the Sexual Harassment Officer here, my primary role is hearing and resolving formal complaints. I deal with specific situations," Rudolph explains.[36] While this position is a form of enforcing sexual harassment policy, decisions she makes are also a form of precedent because they set the standard for lower level decisions at the University concerning sexual harassment. Furthermore, most problems that cannot be solved through lower level administration methods move upward to her. In addition to all these duties, she also compiles statistics concerning sexual harassment and adjusts the University's sexual harassment policy accordingly. "The policy should probably be rewritten again; it has to be done every few years."[37] As these quotes display, sexual harassment complaints and resolutions greatly influence sexual harassment policy. Although this method is effective in tailoring the policy and procedure to the needs of the institution, a major problem arises since "studies show that only ten percent of all incidents are actually reported," says Rudolph.[38]
Since the cases Rudolph handles are not completely representative of the problems that arise on campus, she must use her own knowledge and judgment when writing the University's sexual harassment code. The effects of the unresolved debate come into play and, therefore, have the potential to influence sexual harassment policy and procedure. Rudolph, with her knowledge and experience, is thus vital to the creation of sexual harassment policy.

Resident Assistants as Enforcers of Sexual Harassment Policy

While the interviews with Guillermo-Newton and Rudolph described the creation of University code, the interviews with Resident Assistants provided a wealth of information concerning the application of sexual harassment policy. Compared to Guillermo-Newton and Rudolph, resident assistants see many more incidents of sexual harassment, and have to make more decisions about sexual harassment enforcement. As a result, the effects of the sexual harassment debate are strikingly apparent. For instance, while the administrators had plenty to say, interviewing the resident assistants was like pulling teeth. The participants were perfectly willing, but many did not know how to answer the questions. This illustrates a gap between the creation of sexual harassment policy and enforcing said policy in the residence halls. For example, when asked, "what is your personal definition of sexual harassment?" it took many participants a few minutes to think before they actually responded. Yet, each resident assistant received training on the University's sexual harassment policy and procedure. In addition, all four participants defined sexual harassment as an action committed by men against women, when the Supreme Court already acknowledged that same-sex sexual harassment is actionable in a court of law. As a result, same-sex harassment might be overlooked if it

occurred in the residence halls here, since those in charge of applying policy do not necessarily agree with or understand how such policy should be implemented. While resident assistants cannot be expected to have the same breadth of knowledge as Supreme Court Justices, they should at least be familiar with the definition of sexual harassment and what actions or situations constitute sexual harassment.

Conflict over what constitutes sexual harassment was also quite apparent in the interviews. For instance, when asked if sexual harassment had occurred on their floor, one participant responded "sure, guys will shout expletives at the girls and there are the ever-present penis drawings on they don't mean anything by it."[39] However, Guillermo-Newton and Rudolph would probably find the above incidents to be sexual harassment, depending on the frequency. These discrepancies clearly display how the questions of the ongoing debate affect enforcement of sexual harassment policy. Furthermore, my personal experience with sexual harassment provides a lucid example of such conflict.

SEXUAL HARASSMENT AT THE UNIVERSITY OF CALIFORNIA: MY EXPERIENCE[40]

The letter arrived about three weeks before school started. I ripped open the envelope and anxiously scanned the letter. Santa Barbara Residence Hall, room 1234, single.[41] Wait, I thought, the 1200s hall? That's an all boy floor! All the better. I squealed and ran inside to tell my mother. I had finally escaped the horror of roommate hell, but something worse was going to take its place.

My job as a resident computer consultant required I move in a week early for training purposes. Everything went smoothly. I made new friends and enjoyed my experience. I did not think anything would change when the other residents moved onto my floor. I was looking forward to meeting them. Being the only woman on the floor did not bother me. I was excited. When the men who were in triples moved in on the following Saturday. I left my door open when I was there, but spent most of time helping people set up their computers for the network here as a part of my job. No one stopped to introduce themselves. I chalked it up to being the first day and went to bed early since the rest of the residents moved in the next day and I would be setting up computers all day.

At the end of the following day, my hall had a mandatory meeting. My resident assistant, Ethan, embarrassed me by saying "Natalie is the only woman on the floor, so you better treat her right." I thought my hall mates would pay heed to his words. Yet, the next morning, upon opening my door, I realized my Smurf nametag, which had my name and hometown neatly displayed, now said, "Natalie Pitre, Upland, California, I like to

suck cock." Slightly annoyed, I took down the sign and decided it was nothing more than drunken antics. I had penises drawn on my door numerous times when I lived on an all female floor; why should this be any different? Within the next month I would see how different this living experience was about to become.

I have always been passionate about women's issues and consider myself a staunch feminist. As a result, I did not foresee any harm in putting up feminist signs espousing my beliefs, and some quotes I found poignant, particularly "well-behaved women rarely make history."[42] After a hall meeting a week later, I returned to my room to find someone had added on to my quote. It now read: "well-behaved rarely make history, women never make history bitch." I told Ethan, and he documented and photographed the display. I thought I would be clever and put up a response. I covered the addition with a sign that read "why do some men find being misogynistic funny?" Satisfied, I tried to go to sleep.

That night, around midnight, I heard a soft scratching noise and laughter at my door. I flung open the door to find three men standing, one of whom was my neighbor, and one man crouched, writing on my new sign.

"May I help you?" I coyly inquired. The man who was writing and two of the men took off running down the hall into the men's restroom. I asked my neighbor, Eric, who the men were but he denied any knowledge of their identities. I knew he was lying, so I calmly walked down the hall to Ethan's room but, halfway there, I changed my mind. After all, it was midnight. On the way back to my room, the man poked his head out of the restroom, and I heard him ask his friends, who were still standing by the restroom, "Where is she?" Upon seeing me, he ran back into the bathroom, and his friends stopped me. "Are you insecure about your rights or something?" one of them asked. "No…"

Before I could respond further, the author came out of the bathroom in tears and began to apologize profusely. I accepted his apology and walked back to my room, thinking it was isolated incident. "The Twenty-First Amendment gave women the right to vote. I understand how women have been oppressed for so long, and I wanted to say I was sorry again because I did not think you fully understood how sorry I was. I just got caught up in peer pressure. It was a joke, and I am sorry you took it personally. My name is Ryan by the way," he said.

"Nice to meet you Ryan. Actually it was the Nineteenth Amendment that gave women the right to vote, the Twenty-First Amendment repealed prohibition. I am a Law and Society major," I explained.

Despite his heartfelt apology, I told Ethan about the events of the previous night. He documented it and got the person's full name. A week passed, and Ethan eventually reported back to me explaining how both Ryan and Eric met with the resident director, James, and also received ten hours of Men Against Rape as an educational assignment as well as community service. Satisfied, I went home for the weekend, confident that the harassment would cease.

My experience came up during my weekly meetings with Professor Susan Dalton. She listened and was appalled that nothing had been done and that the situation had been allowed to escalate to the present level. She told me that I was being sexually harassed and referred me to Paula Rudolph, the University's Sexual Harassment Officer and Title IX Coordinator. I was shocked. I was being sexually harassed? I acknowledged that I was being harassed because of my gender, but I still did not recognize the behavior as sexual harassment. However, understanding that this behavior was sexual harassment lifted a tremendous burden off my shoulders. I realized I was not at fault and that I had been acting from my gender role by accepting responsibility and by allowing such behavior to continue.

ANALYSIS AND DIRECTIONS FOR THE FUTURE

Sexual harassment is a hotly debated subject. Debates over the multitude of caveats surrounding sexual harassment law cause problems in writing and enforcing sexual harassment law, as exemplified by the interviews and my own experience. Although these instances do not display universal problems with sexual harassment code, they are crucial because they could possibly enlighten a fellow student or a Resident Assistant at another campus, even this one, thus improving sexual harassment policy. At the end of each interview, I asked each participant how they would change the University's sexual harassment policy, if at all. Each replied that more help, more education and more awareness, are needed. In my research, I have come to the same conclusion. The debate over sexual harassment raises many questions, most of which remain unanswered, and more education and awareness are the only way we can attempt to answer those questions. Until that time, the debate and its questions will continue to obstruct the creation and enforcement of sexual harassment policy, causing the problem to continue, and allowing people to continue being sexually harassed.

Endnotes

[1] Richard Olmstead, "In Defense of the Indenfensible: Title IX Hostile Environment Claims Unconstitutionally Restrict Free Speech,"

Ohio Northern University Law Review 27 (2001): 691-719.

[2] Anita Superson, "A Feminist Definition of Sexual Harassment," *Sex, Morality, and the Law*. (New York: Routledge, 1999): 354-367.

[3] Moreover, all interview subjects willingly participated. The identities of sexual harassment administrators were disclosed because they are identified with their titles, whereas the identities of resident assistants were not given to protect them since they actually have to live in the residence halls and thus they are taking higher risks by participating.

[4] Marianne M. Jennings, "The Extent of Sexual Harassment is Exaggerated," *Sexual Harassment: Current Controversies*. (San Diego, California: Greenhaven Press, 1999): 50-52.

[5] Michael McDonald, "Overreaction to Sexual Harassment Violates Free Speech," *Sexual Harassment: Current Controveries.* (San Diego, California: Greenhaven Press, 1999): 72-77. Olmstead, 691.

[6] Ibid.

[7] Ibid.

[8] Clay Reynolds, "Frivolous Sexual Harassment Charges Impair Academic Freedom," *Sexual Harassment: Current Controversies.* (San Diego, California: Greenhaven Press, 1999): 62-71. / Elizabeth Larson, "The Exaggeration of Sexual Harassment is Costly to Business," *Sexual Harassment: Current Controversies*. (San Diego, California: Greenhaven Press, 1999): 53-61.

[9] Reynolds, 65.

[10] Larson, 53.

[11] Quid pro quo harassment literally means "this for that" harassment. This form of sexual harassment usually involves a subordinate being offered a promotion or benefits for sexual favors.

[12] Catherine MacKinnon, "Sexual Harassment: Its First Decade in Court," *Feminist Jurisprudence*. (New York: Oxford University Press. Patricia Smith (ed)., 1993): 145-157.

[13] Kathryn Lewis, "The Evolution Theory and Peer Sexual Harassment Suggestions for Schools in Light of the Davis v. Monroe Decision," *University of Missouri at Kansas City Law Review* 68 (2000): 745-770.

[14] David Taylor, and Lisa Wilson, "Surveying Gender Bias at One Midwestern Law School," *American University Journal of Gender, Social Policy & the Law* 9 (1999): 251-284.

[15] Taylor and Wilson, 262.

[16] Tianna McClure, "Boys Will Be Boys: Peer Sexual Harassment in Schools and the Implications of Davis v. Monroe County," *Hastings Women's Law Journal* 12 (2001): 95-120.

[17] Ibid.

[18] *Civil Rights Act, U.S. Code*, vol. 28, sec 241-247 (1964).

[19] *Education Amendments*, U.S. Code, vol. 20, sec 1681-1688 (1972).

[20] *Meritor Savings Bank, FSB v. Vinson,* 106 Sup. Ct. 2399 (1986).

[22] Ibid.

[22] Ibid.

[23] *Oncale v. Sundowner,* 118 Sup. Ct. 998 (1998).

[24] *Price Waterhouse v. Hopkins,* 109 Sup. Ct. 1775 (1989). This case involved a woman being told was not feminine enough to become a partner her CPA firm. She sued and won.

[25] Despite this advance, in the *Postmaster* case, the Supreme Court ruled and sexual orientation was not protected under Title VII.

[26] *Franklin v. Gwinnett County Public Schools*, 112 Sup. Ct. 1028 (1992).

[27] *Harris v. Forklift Systems, Inc*., 114 Sup. Ct. 367 (1993). The Court developed the "reasonable woman" standard instead if a reasonable person standard in this case because women and men are not "similarly situated." The majority argued that women are usually more sensitive to unwanted sexually advances because they are the primary victims of rape and sexual assault. Consequently, using a "reasonable person" standard in evaluating the severity or persistence of sexual harassment would ignore this inequality.

[28] *Davis v. Monroe County Board of Education*, 119 Sup. Ct. 1661 (1999).

[29] "UCSB Policies Issued by Academic Affairs," 2 April 1999. http://ucsbuxa.ucsb.edu/policies/vcaa/vcaa/vc-acad-affairs-policies.html (4 March 2002).

[30] Ibid.

[31] Ibid.

[32] See Appendix for complete interview questions.

[33] The Sexual Harassment Officer and Sexual Harassment Prevention Coordinator were chosen for their role in designing and establishing the policy and procedure. To the contrary, resident assistants, individuals who live in the residence halls and have authority over resident conduct, where chosen as representatives of enforcers of sexual harassment policy in a university setting. Only four resident assistants were interviewed due to time constraint.

[34] Judith Guillermo-Newton, interview by author, Santa Barbara, CA. 15 February 2003.

[35] Ibid.

[36] Paula Rudolph, interview by author, Santa Barbara, CA. 27 February 2002.

[37] Ibid.

[38] Ibid.

[39] Anonymous Resident Assistant, interview by author, in person, Santa Barbara, CA. 6 March 2002.

[40] This is my experience that occurred Fall 2001 and Winter 2002.

[41] All names of places and people have been changed for confidentiality reasons.

[42] Quote by historian Laurel Thatcher Ulrich.

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Appendix

Personal Interview Questions – University Sexual Harassment Administrators

1. What is your role in creating sexual harassment policy at this University?
2. What is your role in enforcing sexual harassment policy at this University?
3. What would you change, if anything, about the University sexual harassment policy?
4. What would you change, if anything, concerning the resolution procedure for sexual harassment?
5. What is the most common form of sexual harassment you have encountered at this University?

Personal Interview Questions – University Resident Assistants

1. What is your personal definition of sexual harassment?
2. Are you familiar with the University definition of sexual harassment?
3. What training concerning sexual harassment did you receive prior to employment?
4. What is your role in enforcing this university's sexual harassment policy?
5. Have you encountered sexual harassment on your floor as a resident assistant?
6. If yes, what specific situations occurred, and how did you handle them?