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# JAIL BULLETIN

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NUMBER 47

November, 1988

The Jail Bulletin is a monthly feature of the Crime Commission Update. The Bulletin may be used as a supplement to your jail in-service training program if officers study the material and complete the attached "open book" quiz. The Bulletin and quiz may be reproduced for use by your staff. We welcome any jail training materials you would like to contribute to the Bulletin.

## HARASSMENT IN THE WORKPLACE - PART I

What happens when harassment, sexual or otherwise, takes place at work:

1. Decreased productivity
2. Tarnished reputation
3. Costly litigation
4. Economic and time losses
5. High turnover
6. Low morale

One fact is clear, harassment on the basis of sex or otherwise, is a violation of section 703, Title VII, of the Civil Rights Act of 1964. The Federal Register of November 10, 1980, reaffirmed and established a final amendment to guide on discrimination because of sex, which states that sexual harassment is an unlawful employment practice and defined it 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 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 creative environment."

The United States Supreme Court has held (Meritor Savings Bank vs. Vinson, July 19, 1986) that Title VII of the 1964 Civil Rights Act prohibits harassment in a "working environment," even if the employee bringing suit suffers no economic or job benefit losses as a result of such harassment. The District of Columbia Circuit of Appeals reinstated Vinson's complaint holding Vinson has a Title VII claim because of pervasive on-the-job sexual harassment "that illegally poisoned the psychological and emotional work environment." The Supreme Court ruled Congress intended Title VII to prohibit psychological or emotional harm suffered by an employee as the result of a work environment tainted by sexual or other unlawful harassment.

Thus, the Supreme Court held that Title VII is not limited to economic or sexual discrimination, but it also guarantees "employees the right to work in an environment free from discrimination, intimidation, ridicule, and insult."

The Court rejected the employer's contention that because the employee had failed to complain to management, it was unfair to hold the employer liable for a problem of which it was unaware and would have corrected if the facts had been brought to their attention. Management should have known what their employees were doing, especially their supervisors. The Equal Employment Opportunity Commission (EEOC) and the Courts are strict in their interpretations of Title VII, and are quite willing to find that an employer knew or should have known what was going on.

There are several key words regarding the definition of sexual harassment and they are:

- Repeated and/or unwanted;
- Verbal and/or physical;
- Workplace (as opposed to outside the workplace);
- Harasser/Harassor (the person who creates the problem); and
- Harassee (the person who defines the problem).

These words state what is being done, who is doing it, how it is being done, whom it is being done to, where it is being done, and who defines the problem. There is no intention of regulating one's behavior outside the organization, but anything that affects the work environment and organizational productivity is rightly the concern of management.

Harassment may include:

- Verbal harassment or abuse;
- Racial or ethnic slurs;
- Subtle pressure for sexual activity;
- Sexist remarks about your clothing, body, or sexual activities;
- Unnecessary touching, patting, or pinching;
- Leering/ogling at an individual's body;
- Constant brushing against individual's body;
- Demanding sexual favors accompanied by implied or overt threats concerning your job, promotions, evaluations, etc.;

- Sex-oriented verbal kidding, teasing, lewd dialogue such as jokes or stories;
- Posting or distribution of derogatory bulletins, pictures, cartoons; or
- Physical assault.

NOTE: It is important to remember that the recipient (harassee) defines the problem through their selective perception. What bothers one person does not bother another so we must be sensitive to others' feelings and/or situations.

There are three important points to keep in mind as we review the problems of sexual harassment and develop strategies to deal with it.

First, sexual harassment may have more to do with power than sex. Power means the ability to influence, affect, or control someone in the work environment . . . Power to hire or fire, to promote, to transfer, to assign tasks, . . . Power to determine the climate or the environment and/or relationships with supervisors, co-workers, and inmates.

Secondly, because of the way our work culture has been structured, men are generally in positions of power. This is the reason why nearly all sexual harassment incidents involve a man as a harasser and a woman as the harassee. Even when men are not in official positions of power, their harassing behavior creates a hostile or intimidating environment for women that become the targets of their perceived power. Research (NYU Law Review, 1976) has shown that 90% of the reported cases involve men as the harassers of women. Of the remaining 10%, 1% of the reported cases involve women harassing men. However, the law covers all forms of sexual harassment: men harassing women, women harassing men, men harassing men, and women harassing women.

There is also the phenomenon of reverse harassment, as in a recent Federal Court where one woman, who had never been approached sexually in her employment, was passed over for promotion in favor of another woman who had agreed to her supervisor's sexual conditions. The woman who had never been approached won her case.

The third point to consider is that the statistics describe how many women are being harassed, not how many men are doing the harassing. Not all men, not even most men, are harassers. Sexual harassment is a pattern of behavior in some men and in some women.

It is interesting to note that when some men are questioned about conditions of harassment, they define it in a different way than women. For example, some men consider heavy perfume or "provocative" clothing on women as sexual harassment (the "they are asking for it" syndrome). Social conditioning and peer pressure has sometimes perpetuated this myth.

## WHY ARE PEOPLE SO RESISTANT TO DISCUSSING SEXUAL HARASSMENT?

1. The hostile, defensive, ridiculing response that the subject "sexual harassment" brings out in people seems to indicate that most people cannot imagine themselves being criticized for something they have done which was not intended as harassment, but in fun.
2. Historically, men and women have not criticized each other's sexual behavior.
3. Some people excuse their own behavior by refusing to admit this behavior is deeply offensive to others.
4. In "Sexual Harassment on the Job," Backhouse and Cohen state: "Male sexuality is equated with power, virility, strength and domination. In fact, men rarely suffer censure from aggressive sexual behavior (boys will be boys!). Their peers offer encouragement, admiration, and accolades for sexual conquest."
5. There are many people who never engage in sexual harassment. Their ethical standards and their personal code of morality preclude extramarital sex or aggressive unsolicited sexual attention; sex is not an expression of power but rather a part of a healthy interpersonal relationship.

## WHY ARE WE TALKING ABOUT SEXUAL HARASSMENT NOW?

1. There are more women working now (especially in criminal justice) so there are more male-female interactions.
2. A healthy, productive (budget-conscious) organization needs employees who exhibit positive behavior toward one another.
3. Tort and Contract Law - Civil suits are available in state courts under tort and contract theories for individuals who want to recover damages for intentional wrongful harm done by the harassor and the organization. The plaintiff (harassee) can recover compensatory damages to relieve the loss they have suffered, damages for pain and suffering, and punitive damages to punish the harassor for their conduct. There are several tort theories including assault, battery, intentional infliction of emotional distress, outrageous conduct, intentional interference with an employment relationship, and defamation which could be applied in sex harassment cases.

The Western Electric Case, *Kyrizai vs. Western Electric*/461 F. Supp. 894 (DNJ1978), is one of the largest settlements ever imposed, \$8.5 million in back wages to females PLUS individual male employees were required to pay separate money damages directly to Kyriazi for the sexual harassment which they perpetuated.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspection.

SUBJECT: HARASSMENT IN THE WORKPLACE  
PART I  
NUMBER: 47

NAME \_\_\_\_\_  
DATE \_\_\_\_\_

1. The Supreme Court has ruled that harassment in the working environment is not acceptable even if the employee bringing suit suffers no economic or job benefit losses.

\_\_\_\_\_ TRUE                  \_\_\_\_\_ FALSE

2. Most cases of sexual harassment involve \_\_\_\_\_ harassing \_\_\_\_\_.

3. According to the Supreme Court, if an employee fails to complain to management, it is unfair to hold the employer liable for a problem of which it is unaware.

\_\_\_\_\_ TRUE                  \_\_\_\_\_ FALSE

4. Harassment may include (List 6)

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CREDIT: 1/2 HOUR CREDIT FOR JAIL IN-SERVICE TRAINING REQUIREMENT.

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.

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1. The Supreme Court has ruled that harassment in the working environment is not acceptable even if the employee bringing suit suffers no economic or job benefit losses.

XX TRUE                      \_\_\_\_\_ FALSE

2. Most cases of sexual harassment involve MEN harassing WOMEN.

3. According to the Supreme Court, if an employee fails to complain to management, it is unfair to hold the employer liable for a problem of which it is unaware.

\_\_\_\_\_ TRUE                      XX FALSE

4. Harassment may include (List 6)

VERBAL HARASSMENT OR ABUSE; RACIAL OR ETHNIC SLURS, SEXIST REMARKS;  
UNNECESSARY TOUCHING, PATTING OR PUNCHING, LEERING/OGLING;  
CONSTANT BRUSHING AGAINST INDIVIDUALS BODY; DEMANDING SEXUAL FAVORS  
ACCOMPANIED BY IMPLIED OR OVERT THREATS CONCERNING YOUR JOB, PROMOTIONS,  
EVALUATIONS, ETC.; SEX ORIENTED VERBAL KIDDING, TEASING, LEWD DIALOGUE  
SUCH AS JOKES OR STORIES; POSTING OR DISTRIBUTION OF DEROGATORY BULLETINS  
PICTURES, OR CARTOONS; OR PHYSICAL ASSAULT.

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