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Dealing With Harassment: A Systems Approach

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People who are concerned about harassment often feel they "know what is best" for a person who has been harassed. But those who have actually been harassed often have very strong—and different—points of view about what they are willing to do. Thus, procedures for dealing with harassment must first take into account the wide range of interests of various complainants—or complainants will not take action. This chapter explores the pros and cons of many possible elements of a complaint system. I conclude by recommending an integrated dispute resolution systems approach, which provides options for complainants, respondents, bystanders, and supervisors.

DESIGNING AND REVIEWING HARASSMENT POLICIES AND PROCEDURES

Employers large and small are designing and reviewing harassment policies and procedures—and are surprised by the difficulty of the task. Such review is in fact objectively difficult, because there is no ideal way to resolve the complex and painful problem of harassment. It is possible to deal better with harassment now than in the past. I recommend an integrated, systems approach to conflict management—especially for

large enterprises but also for small ones. A systems approach provides options and choices for complainants and, to some degree, for supervisors and respondents.

An integrated conflict management system, in my view, has a number of specific characteristics. In the language of dispute resolution systems design, there should be "multiple access points" for people with concerns and grievances. These gatekeepers should include people of different races and genders. The gatekeepers should include resource people who concentrate on providing interest-based options as well as those who handle rights-based options. For example, a medium- or large-sized organization might have an ombudsperson as one of the options for managing conflict. Some options should be interest-based and some rights-based (or based on rights and power). A complainant may in many circumstances either loop *forward* from an interest-based option to a rights-based option, or loop *back* from a rights-based option to an interest-based option. Options are often available in parallel, rather than designated as steps of a grievance procedure. Options in the system are initially available for *complainant* choice for most problems—rather than solely at *complaint handler's* choice, which used to be the common mode for a nonunion environment, and rather than a *single grievance channel*, which is the classic mode in a unionized environment. At the end of the line, there is an option that takes investigation or decision making, or both, out of the line of supervision. The system is open to managers with concerns, as well as employees. It takes virtually every kind of concern that is of interest to people in the organization, including, for example, disputes between coworkers and between fellow managers, teammates, and groups, as well as classic concerns about discrimination, conditions of employment, and termination. There is an overall value system with respect to conflict management derived from the core values and human resource strategy of the organization, which is backed by top managers and taught to both employees and managers. With respect to harassment and discrimination, there is explicit recognition of the rights and responsibilities of four groups: complainants, respondents, supervisors, and bystanders.

This chapter first states why I believe that there is no single correct policy or procedure for harassment, and suggests why the process of conflict management systems design is difficult for employers. I discuss the rationale for a systems approach. I set forth major issues that must be addressed in taking this path as well as some pros and cons attached

to major issues in harassment system design—which are excellent topics for research.

Since 1973, I have been an ombudsperson,¹ working and teaching within a research university, and also consulting to corporations, academic institutions, and government agencies. (An ombudsperson is a conflict management professional, designated as neutral, who has all the functions of any complaint handler, except those of formal investigation and adjudication, and who offers confidentiality under all but potentially catastrophic circumstances.) I am a general ombudsperson, but about half of the concerns that come to me deal with harassment, discrimination, or some other kind of workplace mistreatment. Counting many calls from outside my own institution, I estimate that in the last 23 years I have helped with or consulted on some 8,000-9,000 complaints, concerns, and questions about various kinds of harassment, discrimination, and workplace mistreatment²—and about how an employer should deal with these problems. I have also helped hundreds of institutions and government agencies to design and set up complaint systems to help deal with harassment. This chapter is drawn from analysis of this experience. From a scholarly point of view, the points made in this chapter may be considered hypotheses in a field with virtually no large-scale research.

THERE IS NO PERFECT POLICY OR PROCEDURE

Many writers have attempted to describe "the right" policy and procedure for dealing with harassment. I believe that there is no perfect policy or procedure. This is true for at least three reasons. First, it is nearly impossible to design a complaint system that users will think is satisfactory. Once harassment has occurred, it is difficult to bring about any resolution that is wholly positive. This virtually guarantees that harassment policies and complaint systems have an unsatisfactory reputation. In an ideal system, a high proportion of complainants would feel satisfied, most respondents would feel fairly treated, and most complaint handlers would feel they acted fairly. In actuality, the complainant's pain is often long lasting. Any steps that can be taken after harassment has occurred may lead to feelings of more injury. The evidence is often only one person's word against another, so one party

may feel mistreated and the complaint handler unsure about what is fair. Often, the best that an employer feels it can do is to minimize pain and loss—for the harassed person and for others who have been affected—and perhaps learn how to do better in the future.

The second reason there is no perfect system is that institutions differ. They have different missions, for example, “readiness” in the armed forces, education and research in a university. They are subject to different laws and rules and traditions, in different industries, different states and countries.

The third reason is that different people have very different ideas about what constitutes a good system. It is therefore not possible to design a policy or procedure, even within a single workplace, that everybody will find acceptable. One might, for example, think that most people could at least agree about prevention programs—almost everyone believes in prevention—but even here there is sharp disagreement about whether to take a legalistic approach or an educational approach, a narrow punitive approach or a broad positive approach. Controversy is even more fierce with respect to complaint handling. As we shall see, people disagree about how broad a harassment policy should be and whether there should be a central office or EEO function for dealing with all complaints.

In particular, responsible people disagree about how much choice a complainant should have—of resource persons and of options—for dealing with harassment. Probably the most serious differences occur between those who believe in offering *interest-based options* for most noncriminal harassment (a direct approach from the offended person to the offender, a go-between, classic mediation, a generic approach, systems change, or even avoidance) and those who believe in options based on *rights or rights and power* (investigation and adjudication; complaint to a government agency, the security department, police, a court; or even “just firing people” who are alleged to have harassed). Consider the following true story.

“Can I tell you my story?” asks a caller from out of state. “I came in early to the office and I overheard a secretary talking on the phone, about a colleague of mine. I could hear her saying that she was being brushed against, crowded, and stared at. She said that my colleague is deliberately trying to make her blush with many kinds of sexual comments. He laughs at her, trying to get a rise out of her. She said that he is very careful to do

it only when they are alone together. She keeps asking him to stop it. But yesterday he put out his hand to take a paper from her—and then put his hands up under her breasts and held them there. She was crying on the phone. She told her friend that she was going to try for a transfer.

“I walked quietly to my own office without saying anything to this secretary because she was crying so hard and seemed so upset. At nine o’clock I called our General Counsel’s office. Fortunately I did not mention anybody’s name though they tried to find out who I am. They said I am required immediately to call the EEO Office and that EEO in turn is required to institute a fair, prompt, and thorough investigation. So I went back to the secretary to talk with her. She was stunned to think that I had overheard her. She pleaded with me to keep my mouth shut. She said it would be ‘his word against hers.’ She is afraid that somehow he will get back at her covertly. She is desperately worried about not having anyone else know the story—she is especially concerned that her husband must never hear about this.

“We talked it over at lunchtime. She said she did not want to get anyone in trouble, she did not want an investigation, all she ever wanted was for the behavior to stop. She was *extremely* upset with me for eavesdropping. She says there is absolutely nothing that anyone can do, and that I have to keep quiet about this until she can get a transfer. She is working on a degree and does not want anything to derail her—especially in this economic climate. She is worried about her references, and she is beside herself about what her husband—and his family—might do.

“Our Total Quality Management training program says that I am supposed to think of our employees as one group of ‘customers.’ So here I am required by company policy to ignore the wishes of a ‘customer’ and—so to speak—to turn her in—in a circumstance where she feels that the personal and professional consequences might be really terrible for her. I cannot believe this is happening. Can you help me?”

As this case makes clear, harassment can raise agonizing dilemmas. In this example, a staff person believes that her employer cannot protect her from personal or professional injury if the eavesdropping manager “turns her in.” On the other hand, taking no action in a harassment case may lead to continued abuse by a grossly irresponsible supervisor, serious damage of persons thereby abused, and a costly suit against the employer. It may also lead to loss of image for the company, agency, or university as a responsible institution. It is therefore essential to start with the premise that harassment issues are complex. This means listening to those who will be affected.

IDENTIFY THE STAKEHOLDERS

An institution that is reviewing complaint procedures or designing a system may inadvertently have the interests of just one or another group clearly in mind. It is important to identify *all* those whose interests are at stake.

Groups Focused on a Rights-Based Procedure

There may be institutional lawyers whose interest, by their ethics, lies in protecting the employer and who lobby for mandatory reporting, formal investigation, and careful record keeping with respect to harassment concerns. In addition, there may be others in the institution—some of whom have been harassed—who also want mandatory investigation and adjudication of all complaints. Their focus is often on punishment, on defining and announcing sanctions against those who harass. These two sets of stakeholders are likely to use quite broad definitions of harassment, which include offensive speech and expression, although they are often focused only on sexual harassment. There are also men and women who are primarily concerned for the rights of alleged offenders. The focus of this group is likely to be defined as “justice for all disputants.” They typically prefer rather narrowly written policies. In addition, for most organizations, there are regulatory agencies and external constituencies whose guidelines and outlook must be considered and whose primary focus is on adjudicating rights.

Groups Primarily Focused on Interest-Based Procedures

There is always a great silent pool of women and men who have been or will be harassed whose interests lie, at least in the beginning, in having choices about what to do—including having choices that do not involve investigation or at least do not involve punishment. There are usually people of different nationalities, colors, and religions who want to have a broadly defined harassment policy that includes harassment and discrimination against all legally protected groups but that provides interest-based options for different subcultures. There frequently are people who feel strongly about free speech who insist on interest-based

options, because they feel that harassment by means of speech, graffiti, and posters should never be punished.

Groups Focused on Power-Based Procedures

There may be senior managers who believe that sexualization and harassment in the workplace must be eliminated by any means necessary—including simply firing people about whom such a concern is raised, or by getting rid of complainants, or by making settlements even if they are inappropriate. In addition, there may be managers who do not care about harassment and want to ignore the subject. These groups typically just want options based on management power. Finally, there may be security personnel or police who want to discuss power-based procedures that increase safety, as well as rights-based procedures.

Some of the points of view discussed in this chapter may not be acceptable to a committee that is reviewing harassment procedures or designing a system. Discussion of the questions below will, however, at least permit better informed policy making.

SPECIFIC OR GENERAL POLICY AND PROCEDURES

Specific Policies

Those who argue for specific policies (for example, solely about sexual harassment or racial harassment) often note that there are differences with respect to the origins, manifestations, and effects of sexism, racism, and other kinds of mistreatment—and therefore each kind of harassment should be dealt with separately. They may argue that specific policies convey more of a sense of urgency about one particular kind of harassment. Narrow definitions of proscribed behavior are sometimes thought to be more easily understood. Policies that deal with all types of harassment and policies that deal with a wide range of severity of offense may be attacked as “too vague.” Sometimes senior management cares most about just one kind of harassment and would prefer to concentrate on the issue of most concern to them. Sometimes stakeholders such as lesbians, gays and bisexuals, or men and women of color are incensed about their particular issue, usually because there

has been a recent crisis. These people may not want institutional effort, airtime, or their own scarce resources dissipated over a wide range of problems. Finally, some managers who want to limit complaints will oppose having "plain workplace mistreatment" included in a harassment policy.

General Policies

Those who argue for general policies often point out that general policies are used by more complainants and therefore are likely to be more widely understood. They may note the recent emphasis of the U.S. Equal Employment Opportunity Commission (EEOC) on addressing harassment against all legally protected groups. General policies may be seen as fairer and less invidious in coverage. There is less backlash from white males where employer policies protect everyone against all workplace abuse and mistreatment, in addition to specific protections with respect to race, age, religion, gender, and so on. A general harassment policy also provides for more choice for individuals. For example, a woman of color may ask that persistent questions about her sexuality or an indecent assault be seen as racism—rather than sexism—for the purpose of devising an appropriate remedy. Having a general policy may avoid certain semantic disagreements ("This is not sexual harassment, this is homophobia") and help focus attention on unreasonably offensive behavior rather than permitting people to avoid a problem by quarreling over terms. General policies appear more appropriate for small enterprises that would not want to have separate policies about each form of abuse. Having a general policy has also proved helpful in certain institutions in providing coverage to emergent groups such as gays, lesbians and bisexuals, and Muslims.

All Policies

All policies should define harassment. All policies should provide examples of the discrimination that will be covered, such as cultural, religious, racial, sexual, age, sexual orientation, and disability harassment. All policies should describe management responsibilities that per se are not harassment, such as negative performance evaluations and work assignments. All policies should proscribe reprisal for bringing a complaint in good faith. Helpful resource personnel and their characteristics—that is, who can keep the complainant's confidence, who must

act if notified—and the options available for dealing with harassment should be listed specifically. All policies should be addressed explicitly to at least four groups: complainants, respondents, supervisors, and bystanders.

WHAT OPTIONS SHOULD BE PROVIDED?

Providing Only Investigation and Adjudication

In some workplaces, there is only one option for a complainant—rights-based, win-lose investigation and adjudication. In some workplaces, such as the one in the opening story, this option is mandatory, meaning that anyone who hears of harassment must report it, and all reports must be investigated. Rights-based procedures usually follow specified steps. The complaint and outcome are usually in writing and recorded formally. Some employers insist on a finding—either the complaint is substantiated or it is not. And in some workplaces, there are only two possible outcomes—the alleged offender is guilty or innocent. Some employers provide for degrees of substantiation—that is, a concern may be affirmed in whole or in part or not affirmed. Other employers also provide for the possibility that there is simply not enough evidence to come to a conclusion, in which case some keep records of the case and some do not. Some keep harassment complaint records in the files of the alleged offender. Some keep them in the file of the complainant—a practice sharply criticized by some observers and seen as fair by others.

The rationale for providing a single, rights-based option includes the following points: It will be easily understood; it will provide justice; repeat offenders can be tracked; the process is easily monitored by senior administrators; and managers are more easily held accountable.

There are a number of problems with providing only a win-lose, rights-based procedure. Many people (e.g., Gadlin, 1991; Rowe, 1990b)—especially those of certain cultural backgrounds and especially women (e.g., Gwartney-Gibbs, & Lach, 1991, 1992; Lewin, 1990; Riger, 1991)—deeply dislike win-lose procedures. I believe that a major reason is that rights-based procedures are thought to polarize issues and affect workplace harmony and career relationships. In addition, an adjudicatory option may not be adequate for subtle or covert discrimination, free speech issues, and the fear of reprisal.

A rights-based procedure will not deal well with subtle or covert discrimination (see Gwartney-Gibbs & Lach, 1991; Rowe, 1990a)—which in my experience is often as damaging as other forms of harassment, especially on a cumulative basis—because of the problem of inadequate evidence. And even though the EEOC guidelines do include matters of speech in the definition of harassment, some complainants and some employers do not believe in using formal procedures with respect to offenses that are matters of speech and expression. Finally, although many institutions try hard to prevent reprisal, it is in fact impossible for an employer to prevent many forms of reprisal. Examples include covert repercussions and cold shouldering or abuse from peers, family, and colleagues in other institutions.

For these and other reasons, formal grievance procedures are used only rarely by comparison with the proportions of women and men who report on anonymous surveys that they have been harassed. It is not unusual, however, to find employers who offer only win-lose, rights-based procedures, despite the fact that it is widely understood that such procedures are used comparatively rarely. (Some employers have told me that they prefer offering only a rights-based procedure to discourage concerns about harassment.)

Providing Only Interest-Based Procedures

Most employers deal relatively informally with virtually all non-criminal harassment and with some harassment that might be criminal in nature. In many small enterprises, there is no tradition of rights-based, win-lose grievance handling, and harassment is dealt with informally, as are all other issues. Many problems are addressed by discussion or reassigning job responsibilities. Interest-based procedures, such as discussion with or between the parties, usually depend on local management style and skill, and often there are no records. The usual rationale for such a model is that many harassment concerns derive from misunderstandings or ignorance and many offenders will straighten up if they are told to do so. Moreover, it is often impossible to know who is telling the truth.

For many reasons, it is unsatisfactory to provide only interest-based options. A small but significant percentage of complainants are only satisfied with win-lose, rights-based processes. In addition, some respondents prefer a rights-based process, when they think this provides the best chance to clear their reputations. Many people believe that all

civil rights offenses or at least egregious offenses should be dealt with on the basis of rights (Edelman, Erlanger, & Lande, 1993). In addition, many people believe in having a rights-based, adjudicatory option available, even if they personally would never use it, because this “conveys a message” about the commitment of the employer to deal with harassment. Finally, exclusive reliance on interest-based procedures may contribute to the invisibility of harassment, and complaints of harassment may be discouraged when each offended person thinks she or he is “the only one.”

In sum, no single option is right for most complainants. Without a choice of options, many complainants either do nothing about harassment—some suffer acutely in silence—or leave the situation they are in by quitting or transfer. Where there are options, complainants’ choices will depend on their perceptions of their evidence, their perceptions of the employer’s commitment to maintain a harassment-free and reprisal-free environment, their judgment of the integrity and impartiality of the gatekeepers (Gwartney-Gibbs & Lach, 1991), their wish to safeguard their privacy, their cultural background, the nature of their family and career relationships, their personal histories of abuse or efficacy, their best alternatives to dispute resolution, and other factors.

AN INTEGRATED DISPUTE RESOLUTION SYSTEM

Many employers, both large and small, have turned to providing multiple options within a system. There are five common modes for harassment dispute resolution: (a) direct approach from complainant to respondent in person or on paper; (b) informal third-party intervention; (c) generic (interest-based) approaches and system change; (d) classic (formal) mediation by a designated neutral third party; and (e) rights-based investigation and adjudication (and appeals).

The Direct Approach

Where the complainant particularly wishes to protect her or his relationships and/or privacy, feels that there is little evidence beyond her or his personal testimony, thinks that there may have been misunderstanding, or otherwise simply prefers this option, the complainant may decide to raise the matter directly to the offender. This may happen

whether or not the employer "provides" this option. It is a great deal easier, however, for most harassed people and for bystanders to use a direct approach where the employer specifically approves of and encourages such action. It also helps if the employer expects respondents who are approached responsibly to respond responsibly. Large employers should provide off-the-record counseling for complainants to support this option. Counseling is useful both to be sure the complainant knows about all her or his options before choosing this one—and to prepare for this option.

The direct approach often works well with matters of speech and expression and with subtle harassment—possibly because many offenses of this type really do derive from failure by offenders to understand the importance of the offenses. This option usually safeguards the rights and interests of respondents, as well as those of complainants, because miscommunications may be resolved and no employer record will be made of the complaint.

The direct approach is often effective in North America but is not universally helpful. It does not necessarily appeal to people of every background. For example, some cultures expect use of a go-between. In some milieus, only one version of this option may work well—some traditions favor communications in writing, some favor face-to-face contact.

Informal Third-Party Intervention

Where the complainant wishes help, she or he may turn to a trusted mentor, an immediate supervisor, an ombudsperson, a human resource manager, even a family friend or member of the family to intervene informally. Here the goal is not to establish right or wrong, or to punish wrongdoing, but simply to resolve the problem on the basis of the interests of the parties. The third party may sit down with first one and then the other party. The intermediary might agree, if asked, to separate the work of the parties—or might just have a heart-to-heart talk with the offender. This mode is preferred in many cultural traditions. The option is widely used in blue-, pink-, and white-collar employment and is common in small as well as large work units.

If the informal third party is a supervisor or human resource manager, then informal third-party intervention should have the explicit approval of the employer. It will work best where the complaint handler has had adequate training. Such training should include specification of the

main goals: Complaint handlers should be explicitly held to a standard (a) that any alleged harassment must stop and (b) that there may be no reprisal for complaints made in good faith. It will also help the institution to monitor the workplace if complaint handlers get training on how to report identity-free, statistical records on informal harassment complaints. Complaint handlers should also be taught about safeguarding the rights and interests of both parties. For example, although it should be possible for a supervisor to solve a problem informally by taking corrective action that is not disciplinary in nature, I believe that no disciplinary action should be taken against an alleged offender without a fair investigation. In addition, complainants should not be transferred to alleviate tension—unless they ask for a transfer or the situation is an emergency—without a fair investigation.

Generic Approaches and Systems Change

Where a complainant especially dreads reprisal, or loss of relationships and privacy, is concerned about not being able to prove that harassment took place, is concerned about a group of offenders, wants to protect others in the future, believes in education of offenders, or otherwise simply prefers this option, an employer can provide a generic option. Here the relevant department head need not necessarily know the identities of the complainant or the alleged offender(s) but is informed in some responsible way—as, for example, by an ombudsperson—that there is a concern in a certain work area. The department head might then bring in a film or workshop or skit or posters, or might talk about the employer's harassment policy (with some generic examples) at the next department meeting. Whoever knows about the original concern would follow up to see that the alleged harassment had stopped and that there was no reported reprisal, and would keep a statistical record, without names, for an annual report. This option often works well with matters of speech and with subtle harassment. It is a good addition to other prevention programs in the workplace, and usually protects the rights and interests of both complainant and respondent.

In addition, an employer may make changes in the workplace in response to an individual complaint. Examples include increasing the number of women and/or people of color assigned in a certain workplace, successfully recruiting a senior woman manager or a senior black manager for the area, stating clear expectations about professional

behavior on business trips, curtailing the use of alcohol at workplace parties, and so on.

Classic Mediation

A number of employers provide for the possibility of classic formal mediation by a professional neutral who is following a publicly available set of ground rules. Typically, this option is purely voluntary for all parties to the complaint. The settlement, if any, is agreed to and belongs to the parties. It is not dictated, monitored, or enforced by the mediator—who typically asks at the beginning for a formal agreement that the mediator and his or her records will not be called if the case is later reopened. The settlement is usually not kept or enforced by the employer—unless such an agreement is part of the settlement reached by the parties. The employer in fact may not even know of the existence of the complaint if the parties choose an in-house mediator. Exceptions occur where employers offer this option only after formal investigation of the facts of the case, or after termination.

This option is sometimes initiated by complainants who particularly wish to safeguard the relationship, and safeguard their privacy, who believe that they do not have enough evidence to prevail in a formal grievance, or simply believe in classic mediation as a form of dispute resolution. Sometimes a complainant asks for mediation because it seems the most likely mode to get a harasser to agree to stop offending in general as well as in the specific case. Both parties may agree to mediate, and comply with a mediated settlement, if they see all other options as worse alternatives. This option is likely to protect the rights and interests of both parties, if it is maintained by the employer as a purely voluntary option, because either party may later choose a different option if mediation proves unsatisfactory.

Formal Investigation and Adjudication

A rights-based option (a formal grievance procedure) should offer investigation, adjudication, and the possibility of appeal. Some grievance procedures separate investigation from decision making, to provide more objectivity, so different people perform each of these tasks. Some grievance procedures use an outside arbitrator, peer review, or a board of appeal to decide cases in the last stage of appeal.

Some organizations that have their own security or sworn police force also offer a second alternative that is based on rights (and on power). A complainant who fears for her or his safety, for example, may approach a police or security officer at the workplace to ask that a harasser be called in for questioning, for a warning, for investigation, or for other appropriate action. Some workplace police and security departments will support employees in seeking a restraining order, enforce trespassing orders, and so forth. Except for emergency action, workplace security and police departments ordinarily coordinate with the employer's interest and rights-based procedures.

A fair investigation is required if the employer is to take disciplinary action against an offender. Typically, a rights-based option is used for the most serious offenses (including allegations of reprisal) and for repeat offenses. It may also be used as the last step in a complaint process. I believe, however, that this option should also be available as a first step to any complainant or respondent who can demonstrate reasonable cause and who prefers an investigative approach. This is because there is a small but significant group of complainants who do not believe in interest-based approaches for harassment, because respondents may wish to have their names formally cleared, because society has an interest in having some allegations of illegal behavior investigated formally to provide a publicly available record, and because most criminal offenses warrant a formal approach.

There are a number of controversial issues that need to be addressed in developing this option. The first deals with the standard of proof used in the judgment of whether or not harassment took place. Some employers say they rely on the civil standard of preponderance of the evidence, and thus determine whether it is "more likely than not" that harassment took place. This standard permits judgments to be made on the basis of "he said/she said" evidence; the decision maker simply decides who is the more credible disputant. Theoretically, this standard—because it sets a low requirement for proof—should lead to more mistakes in judgment, especially in workplaces where the employer insists that a finding be made one way or the other. This standard is therefore sometimes thought to be unfair to complainants and sometimes to respondents. It is, however, the standard used by courts in most harassment cases, and is thought by most observers to be the most appropriate for employers. Employers, however, often use higher standards, closer to clear and convincing evidence. Employers sometimes explain this behavior in terms of not wishing to put anyone's job at risk on the basis

of lesser proof. Some employers even use the criminal standard—that is, “beyond a reasonable doubt”—for harassment that would not be considered criminal in nature. In time, legislatures may specify the standard for employers.

Some employers de facto use a different standard of proof where the alleged offender is seen as particularly valuable to the institution—a practice open to sharp criticism. And many employers mix together the issue of how much evidence should decide if harassment actually took place with the issue of how much evidence should result in serious sanctions. Thus a complaint of serious harassment may be lightly punished if the evidence is considered weak but may be more seriously punished if the evidence is strong. This practice may seem to be reasonable—but to many it appears unjust, especially with respect to offenders who admit to the behavior that was the subject of a complaint. This practice may also foster dishonesty on the part of offenders.

How an adjudicatory procedure will deal with concerns of harassment will also depend on how thoroughly the employer investigates a complaint. It is common for employers simply to talk with complainant and respondent, to evaluate the evidence brought by each, and decide the matter on the basis of this investigation. This is sometimes appropriate and sometimes not. Because the complainant and the institution often do not know whether there have been other people offended by the same offender—and because some investigators are very skeptical of complainants or of respondents—the thoroughness of investigations is important to findings of guilt or innocence. On the other hand, the employer who investigates very thoroughly—a really thorough investigation might even require calling former employees and clients or alumni—risks endangering the privacy and reputations of the complainant and respondent and also risks serious upset in the workplace and more suits by respondents.

The potential effects of the standard of proof and the thoroughness of investigations matter enormously to a complainant. They also matter to the respondent; however, the effect on the complainant may determine whether an offense gets surfaced and, therefore, is of first priority for systems design. A complainant whose only option is a rights-based procedure with a de facto high standard of proof typically will not wish to come forward at all—unless it is the rare case where he or she happens to have a great deal of evidence in addition to his or her word. (In my experience, complainants with a great deal of evidence are more willing

to use rights-based procedures.) In the common situation where there is only “he said/she said” evidence, some complainants who decide that they must make a complaint will prefer very thorough investigations that look determinedly for other persons who have been offended. On the other hand, because they fear losing their privacy, some complainants avoid bringing a complaint where the employer is known to do thorough investigations in every case. The thoroughness question therefore needs evaluation on a case-by-case basis, preferably including discussion at least with the complainant.

Another issue, especially important in a rights-based option, is that of accompaniment, that is, the possibility for any party in a dispute to be accompanied by another member of the organization. I believe that people who are harassed recover faster and do better if they are assisted by a sympathetic, responsible, and knowledgeable person. This is also true in my experience for respondents. Some employers permit attorneys to be present in internal procedures; most do not. Some employers have an advocacy program or designate a trained manager to assist each disputant. Some employers permit the advocate or assistant to represent the disputant, although many do not. Many permit an “accompanying person” who typically does not represent the disputant but is available for support and advice. It is essential with advocacy and assistance programs that roles are clearly defined, that staff are well trained with respect to policy, procedures, and law, and that they know about various kinds of harassment and their effects, understand the possible effects of any prior abuse of the complainant, and understand their own legal position and possible vulnerability. If advocates are made available by the employer, many people feel that they should be made available to both sides.

CENTRALIZED OR DECENTRALIZED STRUCTURES

Centralized Responsibility

Many employers have addressed discrimination and harassment complaints by setting up a centralized office or EEO function with trained counselor/investigators. This model is often associated with mandatory investigation and mandatory adjudication of all complaints. Skillful,

central EEO staff, however, also can provide some informal options for complaint resolution.

A centralized structure has several advantages. It is easy to find for those in trouble. Those who staff the office usually acquire a good deal of experience. Complaints are generally treated in a consistent fashion, which is a virtue for adjudicatory procedures. People who seek help from a central office usually will not have to be referred elsewhere and therefore need not tell their story over and over. Central record keeping provides one way to identify repeat offenders. In addition, a central office can help to interact constructively with repeat complainers. Records are easily compared from year to year. People with serious harassment complaints often feel there will be less conflict of interest if their concerns are dealt with outside ordinary lines of supervision.

Some employers consider it an advantage of the centralized EEO structure that supervisors do not have to spend time thinking about discrimination and harassment because responsibility has been delegated to specialists. The complexities of dealing with complainants and respondents, especially in the context of proliferating harassment laws and regulation, need not be learned by supervisors or other human resource staff. On the other hand, the same points are seen as serious disadvantages by those who feel that a true equal opportunity world requires skill and commitment from everyone in the workplace.

Other shortcomings of centralization include the fact that where EEO staff perform variously as confidential counselors, quasi-mediators, and investigators who are also compliance officers, complainants may be misled about the degree of impartiality and confidentiality that is being offered (see Edelman, Petterson, Chambliss, & Erlanger, 1991; Edelman et al., 1993). It also may be impossible for the complainant who goes to a central office with rigid rules to obtain her or his own choice of option for dealing with the complaint. Over time, central office staff may be tagged as advocates for complainants, or as advocates for one protected group, or as advocates for management, under circumstances that provide no alternatives.

Centralized offices and EEO staff usually work to protect the privacy of those who have contact with the office, as much as possible. A system with a centralized office, however, typically cannot guarantee confidentiality to any complainant or respondent for at least two reasons. First, the office is usually required to respond to any concerns it hears about, whether or not the offended person wants the office involved. In addi-

tion, the central office is generally expected to keep records with names, and these records may be subject to review inside and outside the institution.

Public access to harassment records is seen by some people as an asset and therefore an important reason to have a central office. Proponents of record keeping believe that employer accountability requires court and agency access to information on all harassment concerns. Opponents tend to believe that no records with names should be kept by an employer when a complaint is settled on the basis of interests, and some feel that no records should be kept if an investigated complaint is found to be without merit. Opponents therefore may not favor a centralized EEO function.

Decentralized Responsibility

A decentralized system—where all supervisors and human resource staff are explicitly held accountable for preventing and dealing with harassment problems—also has advantages. Many people believe that discrimination and harassment are management responsibilities that ought not be completely delegated—at least not in the initial phases of concern or complaint. In the increasingly diverse workplaces of the future, every worker and manager will need to acquire a basic understanding of discrimination law and human sensibilities with respect to race, gender, religion, disability, color, age, nationality, sexual orientation, and other differences. This point of view is consonant with contemporary management theories of decentralization of responsibility. Those who hold this view often point out that it is impossible to centrally monitor all the perfidies and meanness that can happen in a workplace—so even if all supervisors do not manage harassment perfectly, and keep only statistical records of complaints settled on the basis of interests, it is better to hold responsible as many people as possible.

A decentralized model is capable of dealing with many more offenses than are central offices because supervisors and human resource managers are available as complaint handlers. Moreover, my experience suggests that many people who feel harassed initially prefer to go to someone they know. Some resent being told they only have a single option; they may want a local supervisor, local-area human resource specialist, employee assistance practitioner, or ombudsperson. This is especially true when the only evidence is of a “he said/she said” variety,

or the problem is subtle or embarrassing or a matter of free speech in an institution that emphasizes free speech. There also may be resistance to a central office if the office staff are of just one race or gender or religion. Finally, two common problems with centralization—the perception that the central staff are management flunkies or that they do not have much power vis-à-vis senior supervisors—may disappear in a decentralized model.

Typically, the decentralized model provides a range of interest-based options for the complainant. Many complainants precisely do not want a “similar and consistent approach” to be taken to their unique concern. Custom-tailored solutions are more easily provided within the line of supervision than by a central office. A local supervisor may provide the best protection from reprisal. In addition, many people who feel harassed will not report the matter at all if a central record with their name will be made of their concern, so they prefer the possibility of local-area, interest-based resolution that may stay off the record.

On the other hand, in a decentralized model, it can be confusing to find out who has what responsibility, and record keeping may not be complete. Different supervisors have different levels of skill in dealing with harassment and may not acquire enough experience—or may just not want to spend the time that is needed—to do well. People who feel that all complaints should be dealt with in exactly the same way, whatever the severity of the offense, will dislike decentralization of responsibility. And decentralized structures are open to the perception of conflict of interest (“my supervisor will not take action against his friend”) whether or not real conflicts of interest exist.

A Decentralized Model With a Central Office

An employer can combine advantages of both models in a systems approach. Most complainants will then have a choice of options, especially with offenses that are not egregious and where there has been no known repetition of offenses. The central office may gather name-free statistics about interest-based problem resolution from supervisors, may coordinate or handle formal investigations and appeals, and may keep records of rights-based actions. In addition, the central office can coordinate AA/EEO compliance requirements, provide training and advice for other complaint handlers, disseminate clear and detailed information about policy and procedures, and advise on policy.

INCREASING THE REPORTING RATE

Respect the Wishes of the Complainant When Possible

Employers commonly wish that people who are harassed would come forward within the workplace, rather than going outside, and that they would do so more promptly than is often the case. These employers must provide complainants not just with options but with a *choice* of options, except in the most serious cases, such as criminal assault, reprisal, or repeat offense. Too often, employers say they are “providing options” when in fact the options exist for complaint handlers rather than for complainants. For example, in a system with mandatory investigation of all harassment concerns, the complaint handler not only investigates, with or without the permission of the complainant, but then may decide, after the investigation, whether there will be an attempt at reconciliation. I believe, by contrast, that even in egregious cases such as criminal behavior, when an investigation must go forward despite the complainant’s wishes, the employer should at least offer options about how this will be done—for example, the steps that will be taken to protect privacy, or the nature of further contact between the parties.

Deal With Fear of Reprisal in Policy and Procedures

Managers who are dealing for the first time with the topic of harassment may very much underestimate concerns about reprisal. Sometimes there is hesitation about adding this issue to policies on harassment (“Reprisal is a different topic and does not belong in the harassment policy”). In my experience, almost all complainants and potential witnesses consider and fear reprisal. I believe more people will come forward with concerns about harassment—or be a witness in a formal hearing—if the policy defines reprisal to be as serious an offense as harassment. It can also be argued that harassment and reprisal are similar, in being offensive, hostile, intimidating, and unreasonably disruptive, which makes such a definition reasonable. On the other hand, it is ultimately not possible to protect complainants or witnesses—or respondents—against every kind of reprisal (see Coles, 1986; Gadlin, 1991; Gutek, 1985; Gwartney-Gibbs & Lach, 1991; Lewin, 1990; Riger, 1991; Rowe, 1990b). Reprisal is often very subtle

and may simply lie in support not given or opportunities not provided rather than in provable injury. An institution therefore should not "guarantee freedom from all reprisal" in its policy, because doing so may mislead a complainant.

Fear of reprisal may depend in part on the complainant's view of her or his evidence. Complainants who have convincing proof of offenses against them are often less worried about reprisal than are complainants in a "he said/she said" situation. Totally convincing proof is, however, quite rare, which means that an employer that wants complainants to come forward must also keep in mind fear of reprisal as it designs its procedures. An employer should proscribe reprisal whether a complaint is handled on the basis of rights or interests—and whether a formal grievance is found to have been justified or unjustified or not proven—so long as the complaint is not found to have been malicious.

In particular, the employer should take very seriously the need to educate its supervisors about reprisal as well as harassment. It should require its supervisors to have an explicit plan to prevent reprisal before dealing with a complaint of harassment—at least by warning all concerned against retaliation. Supervisors should treat reprisal in the same way that they are required to deal with harassment, should follow up after intervention to ask if there has been reprisal, and should take serious action against those proven to have retaliated against a complainant, a witness, or an alleged offender.

The importance of perceived and real reprisal is a major reason an institution should provide interest-based options, because classic mediation, the generic approach, and systems change appear least likely to provoke reprisal, and the direct approach and informal intervention usually are reported to be safe and effective.

Provide Confidential Advice

Many people want a resource person who will not talk or take action without permission. One way to increase the reporting rate in every kind of system is to provide an ombudsperson who has been trained with respect to harassment. Ombudspeople should be designated as neutrals. There should be a formal agreement that the ombudsperson will not be called on the employer's behalf in any formal hearing in or outside the organization, and that the employer will attempt to quash any subpoena against the ombuds office.

Line managers typically are not permitted to keep harassment discussions completely confidential. Moreover, many people believe that supervisors and human resource managers in fact should be required to act, at least where serious offenses, threats, reprisal, and repeated offenses are alleged—even if the complainant demurs—and that they should not be required to maintain complete confidentiality. But many people also believe that there should be a designated person who will keep confidence in all but catastrophic cases—hence the need for an ombudsperson.

In addition, an employer may provide a hot line for anonymous callers. In ordinary circumstances, persons staffing the hot line should not accept complaints about individuals but simply offer options. Experience indicates that hot lines are used by persons in all four roles—complainants, respondents, bystanders, and supervisors—and can provide essential support to people in great distress. Hot lines and ombudspeople who accept anonymous calls often hear of serious events from people who greatly fear loss of privacy. These callers may then learn of a responsible option they can use.

SPECIAL ISSUES

Privacy Versus Right to Know

A difficult question faced by all employers is how much, if at all, to publicize actions taken in response to harassment. Many employers never speak in public about individual personnel matters. These employers will not wish to do so about harassment matters either. There is an argument that it is hard for a harassed person to come forward if she or he does not know of any case that appeared to be settled fairly and with appropriate action taken against the harasser (see Edelman et al., 1993). If the employer publicizes a case where someone is punished, however, many other people will refuse to come forward, not wishing to be the cause of someone's punishment or not wishing to lose their privacy in the same way.

In any case, an employer should be straightforward about its policies, be forthcoming about its procedures, and publicize aggregate statistics. It may let the community know in general that people can be and are fired for harassment. It may also give the proportions of known con-

cerns and complaints that get settled through rights-based or interest-based options.

Free Speech

In my experience, harassment by means of speech is frequently as disruptive and damaging to targets and bystanders as are forms of harassment like touching. The EEOC specifically mentions offensive expression as potential harassment and has indicated concern about protection of bystanders as well as targets. However, controversies about free speech are far from settled in the United States. Many specific questions have not yet been answered. Will private employers be brought under the same rules as public employers? After a person has been reasonably put on notice about her or his offensive speech, is it then acceptable to bring charges of harassment if the offending person repeats the behavior? Can a bystander bring a charge? Is the situation different if the offensive speaker is a supervisor, or a person of the same race or religion?

Until there is clearer consensus from the courts, I believe that institutions should explicitly ask members of their communities to avoid putting the essential rights of free expression and freedom from harassment to a balancing test. Those who are concerned about free speech should be asked not to test the issue by gratuitous insult. And those who are offended by speech should be encouraged to try interest-based options—at least until it is clear that informal options have failed.

Consensual Relationships Between Supervisor and Supervisee

A consensual sexual relationship between a supervisor and supervisee can give rise to harassment complaints in several different ways. The most important is where the relationship was in fact not completely welcome to one party. In addition, a consensual relationship may become distasteful to one party and not to the other, who may continue to pursue—and thereby harass—the person who has lost interest. Third parties may complain of favoritism and may sometimes claim sexual harassment if a party in the relationship appears to benefit in an unfair way. Consensual relationships may also give rise to complaints of

harassment if the behavior between the parties—such as making love indiscreetly in the office—is considered unreasonably disruptive and offensive by third parties. Thus, while some employers decline to have any policy with respect to this situation—usually on grounds of not wishing to invade the privacy of anyone in the workplace—it makes sense for all employers at least to consider the issue.

Some employers deal with the question of supervisor-supervisee consensual relationships as a form of harassment, or proscribe all senior-junior relationships in their harassment policies whether the senior supervises the junior person or not. The usual rationale for doing so is that there can be no such thing as a truly consensual relationship between people of unequal power. This possibility is often discussed where there are trainees, or students, or other young people reporting to older people of different status. There are shortcomings in such policies. The first is that, although the general public often disapproves of dating relationships at work, the public usually does not think of consensual relationships as harassment and may also resent implicit invasions of privacy and free expression. In addition, *universal* no-dating policies may appear to protect the employer but cannot be effectively implemented—and they encourage dishonesty.

Another option is to deal with consensual, supervisee-supervisor sexual relationships in a conflict of interest policy. An emergent question is whether dotted-line supervision—for example, where there are cross-functional teams, and people work for more than one team leader—should be included in such policies. The logic for suggesting that personal relationships pose the potential for conflict of interest, when they occur within any type of supervision, is that favoritism distorts meritocratic relationships. In addition, there may be less tension and backlash when supervisor-supervisee consensual relationships are dealt with in a conflict of interest policy, because almost everybody is against conflicts of interest.

Under a conflict of interest policy, a typical employer will not punish supervisors and supervisees who fall in love with each other but will, instead, help find alternative supervision for the junior party over a reasonable period of time. The rationale is that the personal relationship is not a problem *per se* but that the problem lies with the existence of a personal relationship within a supervisory relationship. A conflict of interest policy should require both parties to seek advice if a conflict of interest of this sort arises.

Vendors and Clients, Patients, Donors, and Visitors

Harassment by outsiders is a serious problem. In some institutions, the majority of serious harassment is thought to originate with people who do not work for the employer. Managers and employees typically feel very uncomfortable complaining against those on whom the institution depends, such as clients, customers, and donors. The employer might consider brainstorming with employees at various levels to identify the kinds of harassment received from outsiders and to elicit suggestions for how to prevent and deal with such harassment. The employer will not necessarily be able to prevent reprisal by an outside offender, against a complainant, or against the institution itself. These problems need to be discussed openly. It is important to include examples of outsider harassment in policy and in training programs. It is essential to train supervisors about the importance of listening sympathetically to those who speak up in this situation.

Cross-Cultural Miscommunication and Intragroup Harassment

Globalization of the economy, and increasing diversity in the labor force of virtually every country, guarantees that employers, especially multinational employers, will encounter cross-cultural harassment—including complicated harassment where religion, gender, class, race, and nationality are all involved. I recommend thorough discussion of local norms with respect to male-female and cross-cultural relations in each country where a United States institution employs people. Variations from any U.S. norms, and the laws governing U.S. companies overseas, need to be discussed explicitly. Unless thorough discussions produce agreed-upon local policy within each country, a U.S. employer should, courteously, try to follow U.S. law and custom.

In any situation where intragroup harassment is alleged, and the employer does not have appropriate experts among its complaint handlers, such expertise should be sought, at least on a consulting basis. Great harm can be caused to complainants and others attached to a case if the employer takes the wrong step—especially in a case involving strong traditionalist or fundamentalist beliefs and practices. Where intragroup harassment can be anticipated, the employer should plan explicitly for interest-based options, appropriate complaint handlers, training, case examples for discussion, and local language materials.

Explicit consideration should be given to prevention of reprisal with respect to intragroup harassment.

Cross-Complaints, Countercharges, Multiple Concerns, and Criminal Behavior

People accused of harassment often bring countercharges. It may seem appropriate to deal with both complaints together, and occasionally the circumstances of the case—for example, an allegation of reprisal—may make it sensible to deal with such charges simultaneously. This is especially true if both sets of concerns have been raised informally to a supervisor or to a peer for that person's recommendation or disposition. It is important for the employer to recognize, however, that one instance of unacceptable behavior does not justify another. Thus an employer should in each case consider dealing separately with formal charges and countercharges. On the other hand, multiple, simultaneous complaints against the same person usually should be dealt with together.

A substantial number of concerns about harassment are raised together with serious concerns of other types—for example, with concerns about conflict of interest, favoritism, threats, theft of intellectual property, academic misconduct, fraud, defamation, invasion of privacy, or the like. The employer that only has a specific policy about one or another form of harassment will probably not wish to deal with multiple kinds of concerns together. But it is sometimes easier to resolve all allegations of unacceptable behavior together, especially if the issues are linked.

The question of how to deal with criminal behavior needs to be reviewed explicitly. Some institutions refer all concerns about criminal behavior to law enforcement authorities. Other employers handle a wide variety of behaviors that might be construed as criminal. If this question has not been thought through, then the review of harassment policy should be used as an opportunity to review policy about criminal behavior.

Difficult and Dangerous Situations

Harassment of a difficult and/or dangerous nature is being reported more frequently. Such harassment includes stalking, people who "won't let go of a grievance" and are vengeful and disruptive, people who are followed to work by frightening strangers or estranged friends or family

members, assaults, repeated obscene calls, threats, and the like. Complaint handlers should call security experts or others with special expertise in these areas—protecting privacy where possible.

All employers including small ones should consider having a plan for dealing with difficult cases. Larger institutions need an ongoing “problem assessment group” for a number of reasons. Exceptionally difficult harassment problems are becoming more common. The most difficult problems need various different kinds of expertise—for example, from human resource managers, ombudspople, security, equal opportunity specialists, employee assistance and other health care practitioners, legal counsel, and senior line managers. In academic and other residential institutions, this list might include persons responsible for housing. Just recognizing the most difficult problems may require information from various functions in the organization, each of which has picked up a fragment of data. Dealing with the most difficult problems will often need the involvement of various functions inside the organization, and sometimes their professional contacts outside the organization. It is helpful in a crisis if the relevant group of managers has been meeting together regularly and is used to working with each other and learning from each other.

Monitoring

Yet another reason for an ongoing group is that the managers in a given workplace who have an interest in harassment need to be up to date about the problems the employer is facing, and they need to know if new kinds of problems are occurring. This group should monitor the conflict management system, receive regular statistical reports, design training, and work on continuous improvement.

PREVENTION PROGRAMS

The most important function of a dispute resolution system is prevention. Here, too, there are different views about implementation. Some employers train everyone regularly with respect to the employer’s definition of harassment and complaint system options; some train only a few. Some such programs concentrate on consciousness-raising and sensitivity training; some focus on the law. Some are led by EEO specialists and some are led by the CEO or other senior managers. Some programs concentrate on team building with people of different races

and genders dependent on each other for their success—where one person cannot succeed as an individual but only as a member of a diverse group. Some encourage bystanders as well as supervisors to intervene against harassment, if they can do so appropriately. Some programs sandwich diversity issues in with general management issues. Some are intentionally funny and upbeat about diversity; some are earnest. Some programs are oriented positively (the gains from diversity) and others negatively (do not harass or you will be punished).

Having observed programs in a variety of settings with diverse policies and complaint systems, I believe that we know very little about “what works” in even one setting, let alone whether an apparently successful program can be successfully transplanted elsewhere. For example, what is success? It clearly is possible to reduce the number of reports of harassment, especially in a draconian, single-option system; but does this mean there is less harassment? Could a program stop most harassment but produce a hidden backlash such that many whites and many males stop affirmative action recruitment and mentoring?

I believe employers should consider broadly focused, positively oriented diversity programs and specific training about harassment. I believe in regular programming constructed around a variety of workshops, films, discussion groups, posters, skits, and so on that occur in a wide assortment of settings—so that people do not get bored. Good settings include department meetings, optional lunch meetings for secretaries, retreats, orientation programs, and training for those to be promoted. It helps if senior managers frequently talk about “diversity on the team,” recruitment, networks, mentoring, and harassment, in many settings. Respectful humor definitely helps.

I believe that the employer’s written materials on harassment should be addressed explicitly and simultaneously to four roles in a workplace—the complainant, the respondent, the bystander, and the supervisor—not just to one of these roles. It is common for people in one role not to know the rights and options of people in other roles, and people may find themselves in any of these four positions. Bystanders should not be overlooked; they are frequently effective in stopping both harassment and reprisal.

CONCLUSION

The employer who sets up an integrated dispute resolution system, with ongoing prevention efforts, should expect a relatively high report-

ing rate of relatively low-level concerns that can be settled satisfactorily on the basis of the interests of those involved. There will be a few serious complaints that require a rights-based procedure—investigation and adjudication. There will be a few difficult and/or dangerous cases—that cannot easily be prevented by training programs—which may be brought to light at an early stage, and dealt with more effectively, than would be the case without an integrated system.

I believe in providing options. In the case cited at the beginning of the chapter, the support staff person should have been able to seek help off the record, for example, from an ombudsperson. A generic approach—for example, a departmental training program proposed by the ombudsperson—might have helped stop the problem, at less cost to the woman's peace of mind and at no cost to the rights of the alleged offender. Alternatively, an early informal discussion by the ombudsperson with the offender might have stopped the harassment, if the complainant had requested such an option. An ombudsperson might have helped provide support to the complainant until she could transfer, if she insisted on transfer. A trusted HR manager might have been able to expedite a transfer. After the transfer, the complainant might have agreed to permit a discussion with the alleged offender or might have agreed to a formal complaint and investigation. There may have been custom-tailored options available.

I sympathize with those who believe that the rights of all parties are often best served by investigation and adjudication, especially where there are allegations of unwanted assault and repeated offenses. However, the first issue—both for society and for employers—is to persuade those who feel harassed to decide to take action. To persuade the majority of those who are harassed actually to take effective action, employers must respect the wishes of complainants and provide multiple access points and many options. I believe this is best done within a comprehensive systems approach.

NOTES

1. Many male and female ombudspeople in North America have changed to the use of the terms *ombud* or *ombuds* or *ombudsperson* rather than the term *ombudsman* (see Rowe, M. P., Options, functions, and skills: What an organizational ombudsman might want to know, *Negotiation Journal*, Vol. 11(2), 1995).

2. MIT may have been the first major institution—starting in 1973—to design policies and procedures with respect to sexual harassment.

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