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University of Washington

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ACADEMIC SEXUAL HARASSMENT;
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by

JULIANA EVAN HOLWAY PICKRELL

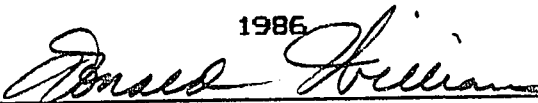
A dissertation submitted in partial fulfillment
of the requirements for the degree of

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1986

Approved by



Donald Williams
Chair of Supervisory Committee

Program Authorized
to Offer Degree College of Education

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Abstract

**ACADEMIC SEXUAL HARASSMENT:
SEXUAL HARASSMENT OF STUDENTS**

by Juliana Evan Holway Pickrell

Chairperson of the Supervisory Committee:
Professor Donald Williams
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This study examines remedies for sexual harassment of students in the college or university setting. As an instrument to promote social change, the law can reflect changes in attitudes or can be a means of enforcing desired change. Harassment of students may be intellectual or physical, including words and actions which demean or insult women, unwanted touching, and seductive behavior. Academic sexual harassment occurs when the following elements are present: (1) Offensive or objectionable, sex-based behavior (words or actions) occurs in an academic relationship or context. (2) The sexuality or sexual identity of the victim is the motivating factor for the conduct. (3) The conduct was unwelcome, inappropriate, or exploitative. (4) The conduct has the purpose or effect of unreasonably interfering with the student's full enjoyment of educational benefits, climate, or opportunities. Sources of remedy include statutes, civil suits (in tort or breach of contract), administrative policy and procedures, criminal sanctions, and personal responses. Each has advantages and limitations. A combination of remedies, aggressively pursued, would be necessary to enforce the desired change in attitudes and behavior.

Statutes which prohibit sex discrimination also require the institution to establish a policy and grievance procedures with appropriate sanctions, to prevent illegal sexual harassment. Students should keep good written records as evidence of the harassing behavior, the student's objections, and complaints to the proper authorities. If the institution's internal grievance procedures do not provide relief, legal action is recommended.

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Chapter 1. Introduction

This study examines and analyzes remedies for sexual harassment of students in the college or university setting. The intent is threefold: (a) to determine the essential components of academic sexual harassment, (b) to identify and study the suggested or available remedies for sexual harassment and (c) to analyze the applicability and suitability of such remedies in the university setting. The study considers remedies in particular for harassment of female students by male faculty.

Commentators do not agree on a comprehensive definition of "sexual harassment." (Deane and Tillar, 1981). Reports estimate that sexual harassment affects between 25% to 90% of all women at some time during their lives, although the precise numbers depend upon the definition used. (Ch.4) In its broadest sense, sexual harassment is any objectionable and inappropriate emphasis on the sexual identity of one person by another. This includes physical and verbal sexual advances towards women, as well as discouraging and demeaning statements about women, or differential and demeaning treatment of women.

The study treats sexual harassment as a form of sex-based discrimination, in line with current legal thought. Anti-discrimination statutes prohibit discrimination on the basis of sex, but they do not mention or define "sexual harassment." The federal statute which prohibits sex discrimination against students is TITLE IX of the Higher

Education Amendments of 1972, 20 U.S.C. Sec 1681{}). Other statutes, which prohibit discrimination in employment on the basis of sex, are interpreted through regulation to include sexual harassment of employees. The federal statute which prohibits sex discrimination in employment is TITLE VII. (TITLE VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sec. 200(e), et seq.)

Catharine MacKinnon, in the book Sexual Harassment of Working Women (1979), explained the theory that sexual harassment is a form of sex discrimination. The behavior which is included in the concept "sexual harassment" follows from stereotypical attitudes about women, and thus can be identified as a societal act of discrimination - harassment of a person because she is a woman. This approach to sexual harassment is in sharp contrast to the traditional approach which places the emphasis on individual actions and personal misbehavior. MacKinnon argued that when the harassing male is in a position to control the job or education of the female, it is the harasser, not the harassed person, who must be held accountable.

Sexual harassment has been called a "hidden" form of discrimination (Sandler 1978), because its existence and destructive effects previously have been officially ignored. Without an acceptable definition, neither faculty, students, nor administration can determine clearly whether an incident is "sexual harassment" in the correct meaning of the term. Anecdotal evidence indicates that the problem of sexual harassment of female students is widespread, but of uncertain

dimensions. Examination of the literature indicates confusion and disagreement on effective and appropriate procedures for resolution of the problem.

Good educational policy, as well as obedience to the law, would suggest that unfair treatment in the form of sexual harassment of students, should be eliminated from the university community. Fair treatment includes not only equal standards for admission, but equal treatment of students once admitted. (Powers, 1979) Nevertheless, sexual harassment appears to be a frequent obstacle to the full participation of women in the educational process (Till, 1980, Benson and Thomson, 1979). (See Ch. 3) To comply with legal and ethical requirements, university administrators, faculty, and students must have the ability to determine what specific behavior and what types of situations will be considered sexual harassment in higher education, and what is the appropriate remedy to sexual harassment when it occurs.

STATEMENT OF PURPOSE:

The study examines the range of behavior and situations which should be included in the correct definition of sexual harassment, and the range of remedies which can be recommended. The conclusion will present an accurate and useable definition of sexual harassment in higher education, and an evaluation of remedies for sexual harassment of students in higher education.

The study provides basic information necessary for decision making within the university. Administrative planning to avoid liability for this form of sex

discrimination is inhibited partly by lack of agreement on definitions. Once an operational definition is established, students, faculty, and administrators can evaluate their rights and obligations, and plan their actions accordingly.

THEORY:

This study considers the role of the law as an instrument to promote social change. The law can reflect changes in attitudes, or can be a means of enforcing desired change. In the report on a study of the implementation of statutory changes in the treatment of rape, one group (Marsh, Geist & Caplan, 1982, p.xi) wrote that,

The reciprocal influence of the law, of the administrative organization, and of reform groups is obvious but is neither well understood nor well documented. Theories of power in America are only beginning to account for the impact of social movements and the role of law as an instrument used by these groups to promote social change.

Jo Freeman (1975) studied the women's movement as an example of a social movement. She identified three conditions necessary for successful social change through the political process:

- (1) Statutory law and judicial interpretation that represent a public commitment to change and specify the means and directions of changes as thoroughly as possible;
- (2) energetic administrative enforcement and implementation coupled with a sympathetic understanding of the ramifications of the beneficiary's problems;
- (3) active, organized effort by the beneficiaries to encourage and facilitate their members taking advantage of special programs as well as make demands on the system to improve these programs.

The study uses this analytical framework to examine

these elements.:

Question 1: Is the presently existing legal framework adequate to meet the desired goals? Existing statutes prohibiting discrimination presumably reflect a public policy commitment to change. The study looks at judicial interpretation of the statutes with respect to sexual harassment. Statutes and court interpretations which directly address discrimination on the basis of sex are examined. Other means of enforcement of legal rights also are examined, including those aspects of the law which purport to protect equal rights.

Question 2: Assuming an appropriate legal framework, how would the law be enforced, and what are the enforcement mechanisms which might be used to achieve the desired goals? The study provides guidelines by which the second element, implementation and enforcement by an administrative structure, can be judged. A research of the literature indicates that the problem of sexual harassment of women has heretofore officially been ignored. The study examines the potential usefulness of administrative enforcement in bringing relief to individuals, and in changing the social climate.

Question 3: Under the current legal framework, to what extent can existing remedies be utilized to effect change? The conclusion evaluates presently available remedies, under existing law. It gives suggestions as to the outcomes which an active, organized effort by the beneficiaries, as suggested both by Freeman (1975), and Marsh, Geist and Caplan

(1982), might be expected to achieve, and what improvements might be recommended.

The purpose of the study is an evaluation of how adequately the existing law can serve to reduce the persistence of this particular form of sex discrimination. Eisenstein (1983, p.XVII), in a summary of contemporary feminist thought, wrote that

I am arguing that the achievement of full freedom for women (all women, not a privileged few) presupposes such profound economic, social, and political changes that, were such a historical development to take place, the present status quo could not and would not survive.

Participation of women in higher education is an important element in improvement of the position of women in American society. (Crocker and Simon, 1982, p.6) Historically, sex discrimination, both direct and indirect, by colleges and universities has prevented women from enjoying the full advantages of higher education.

The rationale for denying women an equal education is vague, but its destructive presence is all too clear. . . Discrimination against women, in contrast to that against minorities, is still overt and socially acceptable within the academic community. (Kanowitz, 1973, p.580)

The higher education experience is particularly important. First, it provides the educational opportunities and training for future leadership positions. Not incidentally, that training is instrumental as a model for future behavior and relationships. The university environment should be

devoid of sexual intimidation so that (women) may contribute to academic endeavor free of this gender-based barrier to equal employment. (Myers,

1980, p.6)

Elimination of unfair obstacles to the education of women is considered necessary to female occupational and educational advancement. (Crocker and Simon, 1982, p.6)

This logic is well expressed by Gelb and Palley (1982, p.2):

To change the society in which one lives, it is first necessary to modify the belief system of the people living in that society. One institution for transforming belief systems is the school. Thus, to alter beliefs regarding equal opportunities for women one available route is education.

Statutes which prohibit sex discrimination are presumably intended to correct the problem, and should change and improve the position of women in the United States.

Implementation and enforcement of the statutes is meant to benefit women, both as a group and individually.

Mere enforcement of statutes by means of lawsuits is not in itself sufficient to bring the desired changes. Marsh et al (1982), Freeman (1975), and MacKinnon (1979) agreed that a change of responses and attitudes within the organization is necessary for elimination of sex discrimination. One step in advancement of the place of women is to remove restrictions and obstacles to advancement. Another is to set standards of behavior towards women which are fair, courteous, and respectful of their legal rights.

If, in fact, the historical function of sexual harassment has been to maintain women workers as an exploited class, then attempts to provide equal access to professional opportunities in higher education are impeded by the negative career effects of that harassment. (Myers, 1980, p. 47)

A prime necessity to full achievement of these goals seems to be recognition and elimination of sexual harassment

in all its forms.

Chapter 2. Procedures

The study consists of an examination of sexual harassment as a social problem, as a problem in education, and as a legal issue. The study further identifies remedies available to address this problem. The research includes examination of both legal research and other literature dealing with education, sexual harassment, and discrimination. Underlying premises are:

1. Sexual harassment has been a continuing problem for women, but has been called by other names.
2. Perceptions of appropriate sex roles and behavior have changed or are changing.
3. Sexual harassment has become an educational issue (rather than merely a women's problem) as women seek full participation in higher education.

The factors which contribute to the persistence of sexual harassment in American higher education were identified in a preliminary search of the literature as: legal and social treatment of women as a separate, subordinate class; the traditional subordinate and secondary position of women in American higher education; perception of inappropriate sexualization of educational relationships as "normal" or "consensual" human behavior; and confusion or misunderstanding about the responsibility of the university, as an institution, in dealing with unfair treatment of students.

The research and conclusions are divided into three parts:

- (1) Sexual harassment: Chapter three - background - deals

with the underlying basis of sexual harassment of women: social stereotypes of masculine and feminine behavior, and the secondary or subordinate position of women in institutions of higher education. Chapter four - elements - discusses existing definitions of sexual harassment, and extracts the elements of sexual harassment in education.

(2) Remedies: Chapter five - describes statutory and civil remedies, and suggests some of the problems in finding a legal remedy for the harm to a student. Chapter six - Describes administrative and individual remedies under the existing law.

(3) Conclusion: Chapter seven - conclusion - provides a summary of the necessary elements of remediable sexual harassment of students, and recommendations for remedies. From this last section, the availability of an adequate remedy can be determined.

The initial bibliography for this research was compiled by utilizing the following indices:

1. Readers Guide to Periodical Literature
2. Education Index
3. Sociology Index
4. Psychology Index
5. Index of Dissertations

The initial bibliography for material on sexual harassment was compiled by utilizing the Index to Legal Periodicals. As material was discovered which was considered of importance to this study, the cases and articles mentioned in footnotes and bibliographies were researched to obtain

additional references. Cases relating to education, employment discrimination, (both racial and sex-based discrimination), and sexual harassment were included. The cases were located and summarized from reports in the National Reporter System, including Federal Reporter, Federal Supplement, Supreme Court Reporter, and the regional reporters, such as Washington Reports and Washington Appellate Reports. Shepard's Citations were consulted to determine what further action was taken on each case. Federal statutes are found in United States Code. The most current developments were obtained from Law Review Digest and U.S. Law Week. Text books and legal treatises on education and civil rights law were researched under different topics, and references checked.

Unpublished materials were provided by many people, including Dr. Helen Remick, Equal Employment Officer, and Dr. Joan Martin, former Ombudsman for Sexual Harassment of the University of Washington, Dr. Sybil Weir, Associate Dean for Faculty Affairs of San Jose State University, the University of Washington Women's Commission, and the Women's Law Center in Seattle. Informal interviews were conducted with students and university administrators, which provided insights into problems and concerns when dealing with sexual harassment of students.

Chapter 3. Sexual Harassment - Background and Experience

I. Introduction

(F)emale students have long been subject to subtle and not-so-subtle sexual overtures from male professors, but only recently has there been a serious discussion of eliminating the problem. (Middleton, 1980, p.1)

Perceptions of appropriate sex roles are learned from infancy on and are a product of the child's interaction both with males and females. Men and women alike learn these roles. Their behavior and expectations of themselves and of other persons are guided by these perceptions, which become dysfunctional when carried into a sex-neutral situation, such as employment or education. The concept of sexual harassment requires a change in common ways of looking at male/female relationships, at the place of women in American society, and at the place of women in higher education.

A wide range of behavior is included in this study. The behavior may be personal, as when a professor makes romantic or sexual overtures to one or more students. It may be impersonal, as when a lecturer uses illustrative examples which demean or ridicule women as a group, or counsels women to adopt stereotyped limitations to achievement. The effect on the woman may be to create feelings of inadequacy, humiliation, anger, or hopelessness. The consequences to her education may be to drop a class, change her program of studies, or lower her educational aspirations; and often results in severe damage both to her self esteem and to the educational process. The common effect is that the student,

because she is a woman, is placed in a situation which interferes with that student's full enjoyment of educational benefits, climate, or opportunities (Till, 1980).

Researchers have examined the victims in an unsuccessful attempt to explain specific instances of reported harassment in terms of the victims' personality and attitudes (Tarr 1981). The position of power of the harasser was the one element which correlated with the harassment. Dzeich and Weiner (1984) observed that women who appear to be isolated, and without a peer support system, frequently are vulnerable to faculty manipulation. This would appear to support the claim of MacKinnon (1979) that men harass women because they are women, and because the men have the power to do so.

Male faculty attitudes can translate into severe psychological harassment and intimidation or humiliation for female students (Beckman, 1970; Campbell, 1973). Safilios-Rothschild (1975, p.83) wrote that such behavior, because it is subtle and frequent, can be stressful and irritating, and constitutes the underlying reason for women dropping out of graduate school in higher proportions than men.

The situations analyzed in this study were limited to interactions between male faculty and female students. The traditional societal context is present in the faculty - student relationship: (a) Male faculty hold positions of power in relation to female students, because of their position in the institutional hierarchy. (b) Women traditionally have been segregated as subordinate and lesser

participants in the university community.

II. Women in society: The sociology of "female".

Stereotypical myths prevail about the passive nature of women, and about proper power relationships between male and female. They include stereotypes about the nature of women, male/female relationships, and womens nurturing role.

A. Stereotypes

Maccoby & Jacklin (1974) concluded that most cultural stereotypes of differences between men and women are not substantiated by scientific findings. Variations between individuals of either sex are much greater and more important than sex differences.

Stereotype 1: The nature of women.

In the social sciences, the male model has stereotypically been considered to be the "normal", and supposed "female characteristics" as "deviant and unimportant" (Gilligan, 1983, p.220), as the "other" (de Beauvoir, 1952), or as perhaps failure of development (Gilligan, 1983; Bartlett & Cambor, 1974)). Broverman, Broverman, Clarkson, Rosenkrantz & Vogel (1970, p.3) found that women are seen as "normal" if they are obedient, dependent, easily influenced, not self-confident, and emotional. The "healthy adult," however, showed stereotypical "male personality" characteristics. Ferdinand (1964) wrote that the feminine personality, when found in a male, was pathological and might be connected with "potency disturbances."

Henley (1977) wrote that "feminine" actions include

smiling, listening with apparent interest, not interrupting, and being interrupted by men. These characteristics are what men expect, and "it is this loss that men bemoan when they claim feminists are not feminine" (Henley, 1977, p.37).

Research on advertising repeats consistent themes of sex stereotyping: a woman's place is in the home, women do not make important decisions or do important things, women are dependent and need men's protection, men regard women primarily as sexual objects (Courtney & Whipple, 1983).

Stereotype 2: Male / female relationships.

A major substantive element in the social meaning of masculinity, what men learn makes them "a man," is sexual conquest of women; in turn women's femininity is defined in terms of acquiescence to male sexual advances. Social expectations, backed by a variety of sanctions ranging from rape to job reprisals to guilt manipulation, enforce these models by which both sexes learn to act out, and thereby become, the sex they are assigned (MacKinnon, 1979, p.78).

Women are seen in this stereotype as naturally subordinate to men (de Beauvoir, 1952) and clearly limited to a supporting role (Miller & Mothner, 1971). In the terms of this myth or stereotype, a woman's feeling of self-worth is dependent on male approval, and is achieved by her appearance and demeanor and by serving and nurturing others either at home, or in the workplace (Farley, 1978; Tarr, 1981). Women desire only vicarious achievement, derived through their assistance and supportive services to a male: husband, son, father, employer, supervisor (Gump, 1972). Turner (1964) followed the stereotype when he attempted to determine female ambition, not in terms of a woman's own accomplishments but

by asking the preferred occupation of whatever man she might marry!

When in direct competition with a man, the woman, according to this stereotype, must not win (Eisenstein, 1983; Myrdal, 1944; Horner (1975). The "conquest" of women is an important component of male rivalry (Stockard and Johnson, 1979), as well as in the development of dysfunctional sexual relationships (Masters & Johnson, 1976). In this context sexual aggression towards women, even when an abuse of a position of power, can be identified as a stereotypical male act rather than as individual misbehavior.

Stereotype 3: Place of women - nurturing roles.

Another stereotypical role of a woman in our society, that of wife, has been assumed, according to Collins (1971), to precede all other adult roles. The acceptance of such role has included the related responsibilities of housewife and mother (Conable, 1977). Somehow the appropriate function of women in care and training of their children has inappropriately been perceived to determine the personality characteristics, interpersonal relationships, and ambition of all adult women.

The female sex-role requirement of wife and mother extends beyond the home, limiting the occupational role of women to that of helper and provider of services (Epstein, C., 1970). Tarr (1981) wrote that in general, men expect from women on the job the same nurturing and supportive behavior as found in the traditional role of housewife and

mother. Tarr agreed with MacKinnon (1979) in claiming that men perceive their own stereotypic role in the work setting to be sexually aggressive around women, competitive, ambitious, assertive, and confident.

B. Power differences.

Because assertions of male dominance are socially sanctioned, because men normally hold high rank at work, because work is a source of income, and because society trains women to be "nice," few women object to male invasiveness unless it is profoundly disturbing (Farley, 1978, p.23).

MacKinnon (1979), Farley (1978), and others wrote that elements of power are important ingredients in sexual harassment. One source of power is social power - the high value placed upon maleness (Henley & Freeman, 1976). Another source is the power of authority, based upon relative positions within the hierarchical structure of an organization. The faculty-student relationship is by its very nature one of "professional dominance." Miller & Mothner (1971) observed that when women students relate to male faculty, they are subjected to a kind of "double dominance," one professional, the other sexual.

Women are economically vulnerable to pressures because, historically, female employment has been concentrated almost exclusively in low-wage occupations in low-wage industries, a process called "stratification" (Schneppner, 1977; Collins, 1971). Within almost any organizational structure, women are concentrated in the lower levels of status, rewards, and authority, and are most often under the direct supervision of a male (Collins, 1971; Grimm, 1978, p.193; Cleland, 1971).

Because of their higher positions in the hierarchy, men make the decisions about what behavior is acceptable or appropriate (MacKinnon, 1979).

III. History of education and women

Sexual harassment is possible because of women's historically subordinate position in higher education and because of the need some men have to act out their privilege and power in insidious and blatant ways with women and at the expense of women (Blanshan, 1983, p.16).

In America, until recently a college was free to exclude women entirely (Brubacher & Rudy, 1968; Rudolph, 1962), to limit the number of women admitted, or to have separate and higher standards for admission of women (Newcomer, 1968). Women in colonial America were excluded completely from higher education, for instance, but received training at home for the domestic arts, or more formal education from tutors or male relatives who attended college (Newcomer, 1959).

Despite the many obstacles, women were eager for a college education (Thwing, 1894, p.9). The first college to accept women was Oberlin, which admitted women first to its preparatory school in 1833, and four years later to college classes (Campbell, 1933, p.1). Newcomer (1959, p.1) called the Oberlin coeducation "the first authentic instance of women being permitted to obtain a college education equivalent to that of men." The women were not admitted on an equal basis with the male students, but were required to provide domestic services for the male students: waiting on table, washing dishes, scrubbing floors, and mending clothes for their fellow male students (Fletcher, 1943; Brubacher &

Rudy, 1968).

After the Civil War, when more colleges were established, women were admitted into some state universities and land-grant colleges on a co-educational basis (Rudolph, 1962, p.314). The term "co-ed", as used by Fletcher, (1938), refers to women but not to men, and emphasizes the separate role of women. The broadening of opportunities appears to have come about for financial reasons, as much as because of a right of women to education. The rapidly expanding college system could not obtain sufficient male students to fill the schools (Newcomer, 1959).

Co-education was debated on two grounds: (a) Would the women ruin things for the men by intellectual inferiority, or by studying too hard? (Newman, 1957, p.302) (b) Should women be protected from harassment by men, by keeping the women separate from men?:

Repeated efforts for women to secure admission to the old, prestigious colleges were resisted strongly. Eventually, "coordinate" colleges were established, to form a "women's branch" of the colleges (Rudolph, 1962).

By the twentieth century, state college systems admitted women as well as men. As the century progressed, women gained increasing acceptance within public and private higher education to the point where many of the historically male institutions - Harvard and Dartmouth among them - accepted women on an equal status with men. In recent years, in fact, women student enrollment at the undergraduate level has

exceeded male enrollment in American higher education. With these increasing numbers, the problem of sexual harassment and remedies for its elimination have become all the more important.

Chapter 4. Academic Sexual Harassment - the Elements

I. Introduction - In General

The literature addresses various aspects of sexual harassment, but a single, comprehensive definition is necessary. The correct definition includes the full range of offensive behavior, both physical, verbal, and intellectual, which may be called "sexual harassment". It must also include the context and circumstances of harassment that give rise to the term "academic" sexual harassment. The National Advisory Council on Women's Education Programs (Till, 1980, p.7) adopted a working definition of academic sexual harassment:

Academic sexual harassment is the use of authority to emphasize the sexuality or sexual identity of a student in a manner which prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities.

Sexual harassment is but a new term for a serious and pervasive problem in education (Sandler, 1978; Till, 1981) as well as in employment (Farley, 1978; Collins & Blodgett, 1981; Merit Systems Report, 1980). Surveys and commentators agree that sexual harassment affects a large proportion of women, and is detrimental to the education process (Till, 1981; Benson and Thomson, 1979). Although the surveys differ in the conduct reported, they seem to concentrate upon physical behavior and inappropriate sexual remarks. Another portion of the literature deals with "consensual relationships", and considers the element of power with

regard to the seductive or romantic behavior of a professor. A third, important category of demeaning behavior, might be called intellectual harassment, or "gender harassment" (Franklin et al, 1981).

For many the most difficult kind of behavior to include as a form of sexual harassment was verbal harassment or abuse, by which students often mean pejorative (sexist or stereotyped) assumptions made about women as a group in classrooms or other learning environments by persons in positions of authority (Franklin et al, 1981, p.4).

The intellectual trivialization of women, according to Safran (1983), begins in elementary school or earlier, with repeated suggestions that males are valued for their accomplishments, but that women are expected only to watch, admire, and help men. The intellectual devaluing of women continues throughout the educational process, with suggestions that certain disciplines are not appropriate for women (Feldman, 1974), that women cannot think the way a discipline requires (Till, 1981), and that they will not be accepted in the employment market even if they complete the program (Carnegie Council, 1975). Women have been advised and counseled, both formally and informally, to take certain courses and to avoid others (such as mathematics), with the consequence that they may not meet requirements for desirable academic programs. As described by Freeman (1975), women report that professors have different expectations about their performance than about the performance of male students - expectations based not on their ability as individuals but on the fact that they are women. One consequence is that both men and women often

feel that the presence of women in higher education is on sufferance, not as a right, and that they will be judged more on their pleasing demeanor than on their competitive accomplishments.

Estimates of the prevalence of sexual harassment, and the types of behavior reported in the accompanying literature, are listed below. The surveys cannot be considered authoritative, because they either inquire about one limited aspect of sexual harassment, or use general terminology with no specific meaning. Much discussion originally concentrated on sexual contact between faculty and students, ranging from sexual innuendos, unwelcome touching, to solicitation of sexual favors with inappropriate academic rewards and punishments. With greater understanding of the problem, however, the definition has been expanded to the broad range of intellectual harassment which formerly was called "mere" discriminatory behavior:

A report by the Federal Merit Systems Protection Board (1980) to a committee of the U.S. House of Representatives stated that no aspect of Federal employment is free from sexual harassment, which directly affects 42% of the 694,000 women surveyed.

In a study more relevant to higher education, Benson and Thomson (1979) wrote that 30% of the University of California students surveyed had experienced "unwanted and objectionable sexual behavior" by at least one male instructor either at Berkeley or at a school from which they had transferred.

Pope, Levenson, and Schover (1979, p.685) inquired only about the existence of sexual relations between graduate students and their supervising faculty, They found that 25% of a sample of female psychologists had sexual relations with their instructor when they were graduate students.

A case study at the University of Rhode Island (Lott, Reilly and Howard, 1982), asked questions based on the legal definitions for rape and assault, and concluded that sexual assaults occur on campus with about the same frequency as in the general public. They also inquired about sexual intimidation, concluding that it was rare.

The National Advisory Council on Women's Educational Programs (Till, 1980) found that when students were allowed to define harassing behavior, the definition was broadened to include not only openly sexual behavior, but a range of statements, comments, jokes and other demonstrations of a demeaning perception of and attitude towards female students.

When the problem is in the form of sexual invitations or demands, the victim is sometimes improperly blamed for her predicament with the suggestion that she "asked for it" by her actions, apparel, or demeanor (Dziech and Weiner, 1984). The students interviewed by Lott, et al (1982) expressed the belief that a woman who does not carefully guard against assault must expect to be assaulted, and thereby "asks for it." Examples of "inviting" behavior by the victim were consumption of alcohol or drugs, or staying at a party past a

given hour. Even though the student may blame herself for not avoiding the harassment, she nevertheless quickly recognizes that she has been wronged. The problem of intellectual harassment is sometimes improperly distinguished as a separate problem. The victimized woman may not properly identify the harm until much later. Assumptions about the proper subordinate position of women, and of limited intellectual capabilities of women, become self-fulfilling predictions when they limit the ability of women to compete successfully in academic endeavors. These assumptions lead to attitudes that the disruption of a woman's academic career is not a serious loss, and that she must not antagonize anyone by "unfeminine", controversial or challenging behavior.

II. Definitions:

The statutes usually recommended as remedies to sexual harassment do not use the words "sexual harassment". Federal and state statutes prohibit "discrimination" on the basis of "sex", without definition of the terms.

Congress chose neither to enumerate specific discriminatory practices, nor to elucidate in extenso the parameter of such nefarious activities. Rather, it pursued the path of wisdom by being unrestrictive, knowing that constant change is the order of our day and that the seemingly reasonable practices of the present can easily become the injustices of tomorrow (Rogers v. EEOC, 1971, p.238).

Dictionaries define "harassment" in general, and "discrimination", but do not define sexual harassment:

a. Harassment:

Harassment: used in variety of legal contexts to describe words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person (Black's Law Dictionary, 1979).

Harass: To disturb or irritate persistently. . . Harass implies systematic persecution by besetting with annoyances, threats, or demands (American Heritage Dictionary, 1979).

b. Discrimination:

An act based on prejudice (American Heritage dictionary, 1979).

A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored (Baker V. California Land Title Co.; Black's Dictionary, 1979).

Case law provides a definition of sex discrimination:

Sex discrimination within the meaning of Title VII is not limited to disparate treatment founded solely or categorically on gender. Rather, discrimination is sex discrimination whenever sex is for no legitimate reason a substantial factor in the discrimination (Bundy v. Jackson, 1981).

c. Sexual harassment:

The term "sexual harassment" is not found in the 1979 edition of Black's Law Dictionary. The probable reason is that the term as a legal concept is fairly new, and the definition is still being developed.

EEOC regulations define sexual harassment as a form of sex discrimination in employment, in violation of Title VII. This definition lends itself to adaptation to a higher education setting (EEOC Guidelines, 19 CFR 1604.11):

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The agency will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. A state may choose to adopt similar guidelines to interpret state anti-discrimination statutes (Fox, 1984).

A Federal court (Bundy v. Jackson, 1981) found sexual harassment when

the sexually stereotyped insults and demeaning propositions to which (the employee) was indisputably subjected and which caused her anxiety and debilitation illegally poisoned that environment.

A Washington State Court identified an "egregious pattern of conduct" as sexual harassment. The offensive behavior was unwanted touching; however, the discussion of a harassing environment could apply equally well to some instances of verbal or intellectual harassment. The court listed the elements necessary to prove a sexually harassing work environment (Glasgow v. Pacific, 1985, p.406:

(1). The victim is subjected to offensive acts or behavior, including either verbal or physical conduct.

(2). The harassment was unwelcome. . . and (the woman) regarded the conduct as undesirable or

offensive.

(3). The harassment was because of sex. . . (T)he gender of the victim (is) the motivating factor for the unlawful discrimination.

(4). The harassment affected the terms or conditions of employment. . .

(5). The harassment is imputed to the employer

In this case, as in many others, the offensive behavior included mainly touching and sexually suggestive remarks. Yet element 4 describes a general oppressive or hostile atmosphere in which the woman endures a "discriminatory environment." A discriminatory environment, by the same token, could include the full range of demeaning statements or jokes about women, as well as specifically sexual conduct. The last element tells when the employer can be held responsible for the discriminatory actions of its employees, and cannot ignore their behavior because it is "personal."

III. Elements of academic sexual harassment

The elements of academic sexual harassment are in many ways similar to sexual harassment in the workplace. An important distinction is in the power relationship of the parties. The employment relationship is fairly well structured, and is regulated by law, whereas authority lines in higher education are often ambiguous or diffuse (Dzeich & Weiner, 1984). The consequence is a tremendous disparity in apparent power between faculty and students. In the theory of sexual harassment, an important ingredient is the power of the harasser to impose his behavior on the less powerful woman (Farley, 1978; MacKinnon, 1979). The objectionable

conduct has been called a form of violence which is used against women as an instrument of social control and a symbol of male superiority (Polansky, 1980; Farley, 1978).

Questions regarding power lie at the heart of many discussions of gender relations. The issues related to power involve the ability to act autonomously, to command compliance from others or to control their actions (Hirschon, 1984, p.1).

Element 1: Offensive or objectionable behavior by faculty, including either verbal or physical conduct.

Harassing behavior in the academic context is that which is offensive, demeaning, or inappropriate, and which the student must endure because she is a student (Dzeich & Weiner, 1984; Till, 1980). The conduct may be unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature (EEOC Guidelines, 19 CFR 1604.11). It may be harassment "by omission", that is, by avoiding or refusing to acknowledge the victim because she is a woman. The behavior may be directed toward individuals, or may be directed toward women as a group. It may be in the form of physical overtures, humor, anger, hostility, paternalism, or other demonstration of a demeaning attitude towards women.

A definition of sexual harassment strictly in terms of sexual activity is incomplete because it ignores the discouraging and isolating effects of intellectual harassment. The National Advisory Council on Women's Educational Programs (Till, 1980), began with a very limited definition:

While it's more than a wink yet not a seduction, considerable difference of opinion exists in the literature about both the essential nature and delineations of sexual harassment (Till, 1980, p.4).

The activities suggested by the victim-generated definition were more inclusive than had been anticipated. Students reported distressing incidents including, but not limited to physical or verbal sexual advances. Perhaps more disturbing to the students, were demeaning or hostile statements about the academic endeavors appropriate for women. Intellectual harassment enforces sex roles by means of verbal abuse, ridicule, or humiliation of the female, to remind her of her inferior status (Farley, 1978). This conduct was called "gender harassment" by Franklin et al. (1981), because it does not involve physical sexual activity. Women are belittled (Beckman, 1970); ignored, even when they represent 25 percent of the student body (Safilios-Rothschild, 1975); spotlighted with irony, amusement, or anger; stereotyped; or rejected as intellectual beings (Campbell, 1973). Students report unfair grading practices (Alexander v. Yale, 1977) or having the professor ridicule, embarrass, or totally ignore the student as retaliation (Till, 1981; Dzeich & Weiner, 1984). Counselors can harass women by encouraging them to pursue the lower achievement goals thought appropriate for women. Women who are interested in medicine have been counseled to try nursing first and then consider medicine (Sheppard & Sheppard, 1951).

Element 2: The sexuality or sexual identity of the victim is

the motivating factor for the conduct.

The behavior includes a variety of conduct which sexualizes a formal, sex-neutral academic relationship. The sexual identity of the victim is the motivating factor for the conduct when the person is treated primarily as representative of the class "women", rather than as an individual student. The sexuality of the victim is the motivating factor when attention is focused on the victim as a "sex object" or upon her reproductive capabilities, regardless of whether the purpose is domination, enforcement of stereotypes, or sexual gratification (MacKinnon, 1979, p.178). A Federal court standard for determining that discrimination is based on sex is:

(D)iscrimination is sex discrimination whenever sex is for no legitimate reason a substantial factor in the discrimination (Barnes v. Costle, 1977, p.990 and n.50).

Behavior is said to be gender-based when it either "protects" women because of their inferiority or assumes women as a group have certain characteristics. Justice O'Connor limited the use of sex stereotypes to classify students in her opinion on Hogan v. Mississippi (1982, p.B4670):

Although the test for determining the validity of a gender-based classification is straightforward, it must be applied free of fixed notions concerning the roles and abilities of males and females. Care must be taken in ascertaining whether the objective (of the sex-based classification) reflects archaic and stereotypic notions. Thus, if the statutory objective is to exclude or "protect" members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.

Whether the behavior is requesting sexual favors,

unwelcome touching of women, remarking on the sexual conduct of the women, making disparaging remarks about the intellectual or academic abilities of women, the conduct can be said to be based on sex. Any academic decision is based on sex, when it involves stereotypical perceptions of appropriate "feminine" behavior.

(S)o long as sex is a factor in the application of (an employers decision) such application involves a discrimination based on sex (Bundy v. Jackson (1981) citing 29 C.F.R. Sec. 1604.4(a), 1979).

Element 3: The conduct was unwelcome, inappropriate, or exploitative. It is inappropriate behavior for a classroom situation, or for an educational relationship.

The perception of the student must determine whether the conduct was unwelcome (Till, 1980). If the student is made to feel uncomfortable, or that special pressures are placed upon her because she is a woman, the behavior can be called unwelcome. Unwanted touching, sexual demands, and insulting jokes and statements would be in this category.

It can reasonably be said that when a faculty person is in a position to influence the educational benefits to the student, any sex-based or differential treatment of a student is inappropriate and unacceptable. Aggressively sexual or hostile behavior towards women is readily recognized as inappropriate and unacceptable. As between professor and student, any "romantic" or seductive behavior can also be described as inappropriate or exploitative. The more impersonal conduct such as ridiculing or disparaging the academic abilities of women in general is also harassment of

a more invidious nature. Because of her subordinate position, the student may not challenge the conduct or statements, but may nevertheless be deeply offended.

Element 4: The conduct has the purpose or effect of unreasonably interfering with the student's full enjoyment of educational benefits, climate, or opportunities, or the effect of such harassment is detrimental to the education process.

a. Submission to such conduct is made either explicitly or implicitly a term of condition of an individual's educational benefits. The student, because of her role as student, must tolerate the behavior regardless of her personal preferences (Dzeich & Weiner, 1984; Till, 1980; Myers, 1980). In many instances, the women are expected to respond with good natured tolerance, with the implicit understanding that she will be penalized for showing anger or for challenging inappropriate behavior. The closer the academic relationship, the greater the necessity for sex-neutral conduct by the professor, no matter how he perceives the student or her conduct. Crocker and Simon (1982, p.11-12) explained the power problem:

If he is, for example, chairman of a graduate student's dissertation committee, he wields almost unlimited power over her future in a highly competitive academic job market. If he is the only person who teaches a subject that an undergraduate is required to take for her major field, he can become an immovable obstacle to her plans.

b. Submission to or rejection of such conduct by an individual is or can be used as the basis for academic

decisions affecting such individual. It includes supposedly "academic" conduct or decision-making which is in reality based on a perception of the victim's apparent sexual availability, sexual attractiveness, lack of sexual attractiveness (Winks, 1982), or on her "feminine" intellectual characteristics. This may take the form of changing grades because of a student's compliance or lack of compliance with sex-related expectations of the professor, such as lowering the grade of a woman who challenges his statements.

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic progress and goals. More subtle, but perhaps more damaging, are detrimental effects on references, recommendations for graduate programs or for advantageous job opportunities, or even personal contacts with the professor on a sex-neutral basis. The student may avoid a teacher who is known as a harasser or a program which is reputed to tolerate harassment of women. Alternatively, faculty may inappropriately avoid individual contacts with female students. The consequence of the harassment may be to lower the woman's goals, limiting her to inferior programs and ultimately to inferior employment after graduation.

d. Such conduct has the purpose or effect of creating an intimidating, hostile, offensive, or demeaning academic environment. The cases which deal with sexual harassment of employees use a standard that the harassment affected the

terms or conditions of employment, and require that the harassment be part of the employee's job environment (EEOC Regs, CFR 1604.11). Academic sexual harassment is that to which a student is subjected as part of the higher education environment. The standard for judging a harassing job environment (Glasgow v. Georgia-Pacific, 1985, p.406) must be modified only slightly to describe a harassing academic environment:

The harassment must be (is) sufficiently pervasive so as to alter the conditions of employment (education) and create an abusive employment (education) environment. . . The harassment must be (is) sufficiently severe and persistent to seriously affect the emotional or psychological well being of an employee (a student).

A discriminatory environment is created by words and actions which utilize a demeaning stereotypical perception of a protected group (Rogers v.EEOC, 1971), and which isolate, embarrass, or humiliate women. An accumulation of acts, none of which individually may qualify as illegal discrimination, can add up to a general atmosphere of harassment (Dzeich & Weiner, 1984). Very often, male faculty attitudes translate into "severe psychological harassment and intimidation" (Franklin et al, 1981) or humiliation for students (Beckman, 1970; Campbell, 1973). The intimidating environment (Bundy v. Jackson, 1981) places the student at risk with regard to educational decisions or educational opportunities. The student (and others) may wonder if the student will be fairly evaluated (Crocker and Simon, p. 11-12).

The rationale for denying women an equal education is vague, but its destructive presence is all too

clear. . . Discrimination against women, in contrast to that against minorities, is still overt and socially acceptable within the academic community (Kanowitz, 1973, p.580).

A discriminatory academic environment can be found when students are subjected to conduct such as statements that generally demean women, undue familiarity or unsolicited touching, even if there are no identifiable, specific harms to the education benefits. Derogatory names can create an intimidating environment, comparable to that created by use of the words "nigger" or "sambo" (EEOC Decision 72-0779, CCH EEOC Dec para 6331), by telling Polish jokes (CCH EEOC Dec. P 6085 (1969), or by a supervisor's act of addressing a black employee as "boy" while not addressing white employees in the same fashion (EEOC Decision 72-0957, CCH EEOC DEC. Paragraph 6346). The same reasoning could apply by analogy to use of the term "girls", with reference to female students, while using the term "men" to refer to male students.

Element 5: The harassment is imputed to the institution.

The institution may assume responsibility for elimination of sexual harassment by policy statements and by the establishment and implementation of grievance procedures. On the basis of this policy, it can deal with offenses within the guidelines of its internal procedures (Academe, 1983). Legal determination of institutional liability is important when students allege violation of their right to a harassment-free educational experience.

A commonsense definition might state that the institution must be held responsible for providing a

discrimination-free environment if the student is enrolled in an institution, the harassing faculty are employed by the institution, and the institution enforces faculty authority over the student. A determination must be made whether the offender is acting within the scope of his employment authority. A second determination is whether the institution appears to approve of or support the offending behavior. A third factor is whether the affected student complained, and the response to that complaint. In each instance, the question is whether the institution can be held liable for the behavior of individual employees.

Legal guidelines and court decisions provide specific standards by which institutional responsibility might be determined. Cases which deal with sexual harassment can apply, in some instances, equally well to the education environment or to the work environment. In Washington State, to hold an institution responsible for the discriminatory environment created by employees of the institution, the harmed person must show that the institution authorized, knew, or should have known of the harassment and failed to take reasonably prompt and adequate corrective action. This may be shown by proving that complaints were made to the institution through higher managerial or supervisory personnel, or by proving such a pervasiveness of sexual harassment within the institution as to create an inference of the institution's knowledge or constructive knowledge of it. The victim must also show that the institution's

remedial action was not of such a nature as to have been reasonably calculated to end the harassment (Glasgow v. Georgia-Pacific, 1985, p.407).

The term "strict liability" would be used to state that an institution is responsible for a discriminatory environment regardless of whether it knew or should have known of the offending conduct (Henderson v. Pennwalt Corp, 1985, p.550). The current interpretation of law, however, is that the institution is liable for sexual harassment "only if. . . the higher management knew or failed to take prompt remedial action" (Henderson v. Pennwalt Corp, 1985, n.4).

The offensive behavior may come from a person with institutional authority, such as that of a supervisor over a subordinate (Miller v. Bank of America, 1979), or of a professor over a student (Alexander v. Yale, 1977). The employer can also be held responsible when the offensive behavior comes from peers of the victims, such as fellow employees (Continental Can Co. v. Minnesota, 1980) or fellow students, or even outside persons (EEOC v. Sage Realty, 1981), if a special relationship forces the victim to endure the behavior. For example, an employer was held responsible when a Mexican-American was

subjected to continuous humiliation and embarrassment by reason of racial jokes, slurs and comments made in his presence by agents and employees of the defendant corporation on the job site and during working hours (Contreras v. Crown-Zellerbach, 1977, p.736).

Actions of an employer's agents and employees, "while acting within the scope of their employment," are held to a

higher standard of responsibility than are actions of persons who are not in positions of authority (Contreras v. Crown Zellerbach, 1977, p.736). The Washington Supreme Court explained:

When one in a position of authority, actual or apparent, over another has allegedly (engaged in outrageous conduct), this abusive position gives added impetus to the claim of outrageous behavior. Restatement (Second) of Torts Sec. 46, comment 3. The relationship between the parties is a significant factor in determining whether liability should be imposed. Alcorn v. Anbro Eng's, Inc., 1970, p.498 n.2. (Contreras v. Crown Zellerbach, 1977, p.741. emphasis added.)

In the case of academic sexual harassment, the harassment could be imputed to the university as employer of the faculty, and for allowing a discriminatory atmosphere to become a condition of education (Rogers v. EEOC, 1972). An employer can be held responsible when a complaint was made and ignored, as in Bundy v. Jackson (1981, Note 8, p.40):

The employer, in full knowledge of the alleged offense and having received a formal complaint, was in the best position to correct the offenses, yet impeded the complaint - and even abetted the offenses. [Note 8, p.40, Bundy v. Jackson, 1981.]

If a complaint is made to a person in authority, and that person does nothing to investigate the complaint, but considers the whole matter trivial, the lack of effective response may compound the victim's difficulty in obtaining relief from harassment. That lack of response can be said to compound the violation of applicable anti-discrimination statutes (Bundy v. Jackson, 1981; Miller v. Bank of America, 1977).

Analysis of the facts and circumstances of any incident can be used to determine when the behavior is part of an academic environment which the student must endure. When abuse of students is practiced unchecked, when complaints are ignored or disbelieved, the university appears to authorize and even sanction the harassment. The members of the institution who ignore harassment or who blame the victim, or refuse to act upon complaints, thus become a part of the pattern of harassment.

Summary:

Academic sexual harassment occurs when the following elements are present:

1. Offensive or objectionable, sex-based behavior occurs in an academic relationship or context. The behavior may be words or actions.

2. The sexuality or sexual identity of the victim is the motivating factor for the conduct.

a. Female students and male students are treated differently; or

b. The conduct is motivated by sex-role stereotypes, about the appropriate roles, ability, or nature of women; or

c. The conduct is motivated by perceptions of sexual availability, sexual attractiveness, or perceived lack of sexual attractiveness of the victim, or the usefulness of the woman to male purposes.

3. The conduct was unwelcome, inappropriate, or exploitative.

a. The conduct is unwanted or unwelcomed by the victim, regardless of the perception of the harasser.

b. The behavior is inappropriate for a classroom situation, or for an educational relationship.

c. An institutional power disparity exists which renders freely given consent unlikely.

d. The conduct offers or implies inappropriate educational rewards or punishment.

4. The conduct has the purpose or effect of unreasonably

interfering with the student's full enjoyment of educational benefits, climate, or opportunities.

a. Submission to such conduct is made either explicitly or implicitly a term of condition of an individual's educational benefits.

b. Submission to or rejection of such conduct by an individual is or can be used as the basis for academic decisions affecting such individual.

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic progress and goals, or

d. Such conduct has the purpose or effect of creating an intimidating, hostile, offensive, or demeaning academic environment.

The harassment can be imputed to the institution (a) when the harassing person is acting within the scope of his position as employee of the institution, or (b) the institution is responsible for the discriminatory environment created by employees of the institution, because management persons authorized, knew, or should have known, of the harassment and failed to take reasonably prompt and adequate corrective action. This knowledge may be shown by proving that complaints were made to the institution through appropriate personnel. Another way is by proving such a pervasiveness of sexual harassment within the institution as to create an inference of the institution's knowledge or constructive knowledge of it, and that the institution's remedial action was not of such a nature as to have been reasonably calculated to end the harassment.

Chapter 5. Legal remedies: statutory and civil

(T)he principle which regulates the existing social relations between the two sexes - the legal subordination of one sex to the other - is wrong in itself, and now one of the chief hindrances to human improvement; and . . . it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other (John Stuart Mills, *The Subjection of Women*, in Rossi (ed), 1970, p.125).

Conditions identified by Jo Freeman (1975) as necessary for successful social change through the political framework include favorable statutory law, judicial interpretation, energetic administrative enforcement, and a sympathetic understanding of the student's problems. This chapter will discuss legal remedies, including the legal framework of discrimination statutes and civil actions. Remedies for sexual harassment, for purposes of this study, means the enforcement mechanisms by which an individual may eliminate the negative effects of offensive behavior directed by male faculty towards female students. The assumption is that social change is achieved when individual participants perceive harassing behavior as intolerable in and of itself. At that point, the harassed person will seek relief with the expectation of obtaining the desired relief. Potential harassers will be fully aware that their behavior will result in penalties to the harasser. Persons in positions of authority will assure students of an academic environment free from sexual harassment.

I. Theory of Remedies

Discussion of remedies concerns the nature and scope of

the relief to be given a person once she has established a substantive right (Dobbs, 1983, p.1). The selection of remedies is best examined in the context of the goals to be attained, and the value judgments involved (Thompson & Sebert, 1983, p.1-1). Franklin (1981) wrote that the fundamental issue within a university is

(T)o unmask and combat sexism in all its pernicious forms instead of validating and propagating attitudes that damage women's minds and spirits. . . (and) . . . to provide a healthy learning environment for all students (Franklin, et al, 1981, p.15).

The creation of remedies for discriminatory practices involves the value judgment

that discrimination because of sex, race, religion, or ethnicity is wrong in defined areas, so wrong that the legal system must intervene (Thompson & Sebert, 1983, p.1-2).

This legal principle declares both an obligation not to discriminate in defined areas and a "protectible interest" in freedom from discrimination (Thompson & Sebert, 1983). A remedy is the means of enforcing an obligation to protect this interest. Without means of enforcement, there would be in fact no legal protection (Thompson & Sebert, 1983, p. 1-2). The term remedy includes the relief to victims of harassment and/or sanctions to an offender.

The remedies and enforcement mechanisms suggested in the literature range from accepting an unchangeable situation to recommendations of legal or criminal action. Each suggested remedy has some advantages and some limitations which should be noted. Each remedy is limited first by the definition

used to determine the wrong to be corrected. The relevant definition of sexual harassment may be limited to only one form of harassment, or might include the full range of unwanted and inappropriate sexualization of academic relationships. For instance, if only physical contact is called "sexual harassment" (Simon and Forrest, 1983, p. 24), then all other types, such as continuous derogatory and demeaning jokes about female anatomy (Simon and Forrest, 1983, p.27; Montgomery, 1980), or constant references to the supposed intellectual inadequacies of women, might not be addressed.

The remedies vary in procedures, outcome, and cost to the student in time, money, and emotional involvement. The desired outcome may be relief for the individual student who has been victimized, and involves problems of how to remedy lost opportunities and how to identify and avoid retaliation for complaining. Alternatively, the desired outcome may be to change the educational climate within an institution, providing sex-neutral opportunities for students. Each remedy has available to it specific kinds of enforcement mechanisms or penalties.

II. Types of remedies

Criminal law, which provides much of the regulation of relationships in a social order (Thompson & Seburt, 1983), also serves to punish. Clark describes the punitive and deterrent purpose of criminal sanctions:

The core concept of punishment is relatively simple and well accepted. H.L.A. Hart and Herbert Packer

have described it as having a dominant purpose of retribution, meaning: the desire to hurt a law violator for no reason but revenge, or deterrence, meaning: the desire to influence his future conduct or that of others who fear similar harm (Clark, 1975, p.384, emphasis added).

Civil remedies have been established to provide personal redress for wrongs committed, and may be granted or denied in accordance with public policy. Four major categories of judicial remedies are (a) damage remedies, (b) restitutionary remedies, (c) coercive remedies, and (d) declaratory remedies (Dobbs, 1973). Elements to consider include the serious nature of the wrong, and the way society views such matters (Curlender v. Bio-Science Laboratories, 1980).

(a). The damages remedy is a money remedy, and the goal is to make good the losses of the injured party (Dobbs, 1973). The amount may be nominal (a small, token amount) or general. A court may award extra or punitive damages, which are imposed to punish or deter,

because the defendant has acted in a manner which exceeds the normal standards of decent conduct between individuals (O'Connell, 1985, p.59).

(b). Restitution is restoration, and may or may not involve a money recovery (Dobbs, 1973). The Restatement of Restitution (p.595) provides that

Actions for restitution have for their primary purpose taking from the defendant and restoring to the plaintiff something to which the plaintiff is entitled, or if this is not done, causing the defendant to pay the plaintiff an amount which will restore the plaintiff to the position he was before the defendant received the benefit.

In torts, restitution is essentially the measure of damages.

In contracts, a person is entitled to be placed in the

position she would have been if there had been no breach of the contract (Dobbs, 1973).

(c). The primary coercive remedy is the injunction, which commands the defendant to act or to avoid acting in a certain way (Dobbs, 1973, p.2). An injunction is backed by the contempt power of the court. A person who wilfully disobeys may be jailed or fined or otherwise sanctioned for "contempt" (Dobbs, 1973, p.2), even though the original offense would not warrant that penalty. An administrative tribunal could order a party to "Cease and Desist" from the unfair practice (WAC 162-08-298.3).

(d). A declaratory remedy serves the purpose of judicial identification and statement of a person's rights. It is often used to test the constitutionality of a statute (Dobbs, 1973, p.12; O'Connell, 1985, p.7).

An appropriate remedy might provide some combination of relief for the student and sanctions for the offending parties. This combination is in line with the objectives of anti-discrimination statutes, stated in the Washington Administrative Code (WAC 162-08-298.2):

An order should generally both eliminate the effects of an unfair practice and prevent the recurrence of the unfair practice. The effects of an unfair practice are eliminated by restoring the victims of the unfair practice as nearly as possible to the position they would have been in if the unfair practice had not occurred. It is appropriate to eliminate the effects of the unfair practice on persons other than the complainant or complainants, and to consider the deterrent effect of an order on persons other than respondent or respondents. The objective of the law is to eliminate and prevent discrimination, not merely to provide treatment for victims of discrimination (emphasis

added).

III. Elements of relief

In theory, the remedy would touch on some combination of the following elements:

(a). Relief for the student:

The first goal is to stop the harassment, that is, change the behavior of the offending party. The relief additionally should deal directly, within the limits of institutional practice, with any immediate consequence or penalty to the student. Any suggestion of specific academic changes gives rise to questions about implementation: who would make the changes, and what would be the acceptable standards for decision. A prompt response is important, partly because of possibly irreparable damage to educational progress, and partly because of the deterrent effect on other, potential harassers. Students complain about a generalized demeaning stereotype perception of women students (Ch4), expressed and enforced by many members of the university community. Relief from such multiple and cumulative acts must be carefully constructed. The student must be assured of continued guidance and counseling, friendly contact with faculty, and that she will not be isolated because she complained. Serious problems arise in determining how to limit long-term negative effects to the student, within the contemporary academic framework.

Money awards to the victim are scant remedy for an education disrupted, but serve as a powerful reminder that

harassment is taken seriously. Money awards to victims of sexual harassment in employment have reached substantial dollar sums. A recent Federal court granted \$500,000 for emotional distress, outrage, and defamation plus \$38,000 in lost wages and an attorneys fee of \$71,640 to a former bank employee who was subjected to "ridicule, humiliation, embarrassing jokes and advances from her fellow workers" (Paty v. Puget Sound National Bank, 1984). A Washington State court awarded an employee/plaintiff damages of \$46,875 plus costs and attorneys fees of \$17,275 (Glasgow v. Georgia-Pacific, 1985, at p.404).

(b). Sanctions for the harassing faculty:

One goal is to provide relief for an individual grievant who has been victimized, and possibly to punish the offender. The offender(s) could be given a direct order: Stop the offending behavior, and correct any unfair evaluations or references. Enforcement or punishment could be by job sanctions such as loss of pay or notations in the personnel file. Institutional procedures for discipline or termination of faculty would also be available. Further requirements could include an apology or cash forfeiture (damages) to the student, without reimbursement from the employer.

A second purpose is to direct the course of conduct of individuals in the future, to eliminate the victimizing behavior. This may not benefit the student who has already been damaged, but could encourage changes of attitudes and behavior both by students and by faculty. Sanctions against

employees who contribute indirectly to harassment by failing to respond to complaints, or who ignore a "poisonous environment" might include salary adjustments, loss of administrative position, loss of promotion possibilities, pay forfeiture or fines.

(c). Sanctions against the university, or against individuals within the university community:

The university's response to a specific incident can become part of the injury, if the university fails to take appropriate action to redress the effects of the incident (Crocker and Simon, 1982, p. 12, Glasgow v. Georgia-Pacific, 1985), or appears to condone the harassment. In such cases, the university itself could be liable for its own wrongdoing. Alternatively, the university can be held responsible, in certain cases, for the actions of its employees on the "respondeat superior" doctrine that a master/employer is liable for the wrongful acts of its servant/employee (Thompson v. Grays Harbor Hospital, 1983). The standards for deciding liability of the employer may vary according to the employment relationship of the harassed person and the harasser. If the harasser is a supervisor, manager, or agent, the employer can be held responsible, whether it knew or should have known of the harassment (29 CFR Sec. 1604.11.c), and even if the employer had a policy against sexual harassment (Miller v. Bank of America, 1979). The employer will be held liable if it knew or should have known about the harassment and failed to take prompt and

appropriate corrective action if the harasser is a coworker (29 CFR Sec. 1604.11.(e); Kyriaszi v. Western Electric Co., 1978; Continental Can, 1980), or even a non-employee (29 CFR Sec. 1604.11(e); EEOC v. Sage Realty Corp., 1981). The issue of whether the employer must have actual knowledge of the harassment must be clarified by the courts (see Glasgow v. Georgia Pacific, 1985).

This vicarious liability theory would apply when the relation of "master and servant" existed between university and the offending professor, at the time of the injury complained of, in respect to the very transaction from which it arose (Cameron V. Downs, 1982). It does not apply when the professor is acting outside the legitimate scope of his authority. Early cases rejected sexual harassment claims as not being an issue of employer liability, but rather a manifestation of the "personal proclivity" of the harassing supervisor (Corne v. Bausch & Lomb, 1975). Recent decisions, however, have held the employer responsible for a discriminatory employment environment (Glasgow v. Georgia-Pacific, 1985) caused by the misbehavior of employees.

Penalties to the university might include withholding of support funds by the granting agency, financial penalties to the institution as well as to individuals, holding individual persons responsible for the discriminatory behavior, injury to the reputation of the university and of individuals, or even court-supervised establishment of an effective and

responsive grievance procedure (Bundy v. Jackson, 1981).

Each element of a proposed remedy presents questions of implementation, such as under what circumstances could funds to the university be cut off? What is the appropriate balance between the students' rights to an educational environment free from discrimination, faculty employment rights, and the institutional need for orderly procedures? How shall the rights of each party be balanced against the costs to each party?

Some sort of record or report should be made known, to give notice to potential harassers and their employers or supervisors that harassment will not be tolerated.

The remainder of this chapter describes mechanisms available to achieve the remedies.

IV. Sources of Remedy:

Immediate, clearly articulated rejection (or objection) appears to be the most effective "coping" response, but this is not always perceived as realistically available because of the relative authority position of many principals - e.g., where the faculty member is head of the victim's major department" (Till, p.26).

The means of enforcing a right to study free from sexual harassment include (a) statutory remedies, (b) civil remedies, (c) internal administrative procedures, (d) criminal remedies, (e) informal solutions.

A. Statutory Remedies

Avenues of legal remedies available to a victim of sexual harassment include both federal and state statutes which prohibit sex discrimination. The statutes prohibit

discrimination with non-specific language which, for enforcement, must be interpreted by administrative agencies or the courts. If legal action is necessary, the courts have the power to enforce the rulings of federal agencies. By implication, individuals may also bring a private law suit under the anti-discrimination statutes. Enforcement of anti-discrimination statutes has provided legal discussion and analysis of the concept "sexual harassment". Federal court decisions and EEOC regulations agree that sexual harassment is a form of illegal sex discrimination (Bundy v. Jackson, 1981; EEOC v. Sage Realty Corp, 1981; Alexander v. Yale, 1977). Although many cases involved harassment of employees, the analysis of sexual harassment and employer liability can be applied by analogy to the university setting, and to the harassment of students as well as employees (Alexander v. Yale, 1977).

1). TITLE VII of the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.) prohibits discrimination in employment based on sex, race, national origin, or religion. Title VII applies only to the employment relation, and therefore will be of use to a student only in the employment capacity such as research assistant or teaching assistant. Concepts developed under Title VII will be of use to a student as such only by analogy.

Title VII is enforced by the U.S. Equal Employment Opportunity Commission (EEOC) (42 U.S.C. Section 2000e). The EEOC, which enforces Title VII through institutional

compliance review and individual complaint, relies upon negotiations and agreements for most enforcement (Thomas, 1982). The administrative process is begun by filing a charge of discrimination with the EEOC within 180 days of the most recent act of discrimination (29 C.F.R. Section 1601). The charge must be filed with an appropriate state or local agency, such as the Washington State Human Rights Commission, within 300 days, and before it can be filed with the EEOC (EEOC Compliance Manual, 29 C.F.R. Section 1601).

The EEOC investigates the charges of discrimination and makes a finding on the merits of the charge. The agency can bring suit on behalf of the complainant, at no cost to the complainant. The enforcing agency, not the individual complainant, will control any litigation or complaint management in which it is involved. If the victim decides to pursue a private civil suit, the information obtained is available. This can represent a considerable savings in money.

The victim has a right to file a private lawsuit in federal court (Williams v. Saxbe, 1976) after obtaining a Notice of Right to Sue from the agency. The complainant must show damage, but damages are proven merely by showing that the defendant's conduct subjected her to deprivation of her civil rights (Miles v. F.E.R.M. Enterprises, Inc., 1981). No adverse employment consequences other than a persistent discriminatory work condition need be shown (Bundy v. Jackson, 1981; Henderson v. Pennwalt Corp., 1985; Glasgow v.

Georgia-Pacific Corp., 1985), although early sexual harassment cases involved job penalties when the woman rejected sexual demands of supervisors (eg. Barnes v. Costle, 1977).

The employer can be held liable for sexual harassment in the workplace. Under the anti-discrimination statutes, the employer has a duty

to take prompt and appropriate action when it knows or should know of co-employees' conduct in the workplace amounting to sexual harassment (Continental Can Co., 1980 p.149).

The employer has available to it full knowledge of the offense, especially if it has received a formal complaint, and is in the best position to correct the offenses (Bundy v. Jackson, 1981, Note 8, p.40). The university, as an employer, also can control the environment by control of employees.

Under Title VII administrative and judicial remedies are equitable in nature. 42 U.S.C Sec. 2000e-5(g). No punitive or compensatory damages are recoverable for a Title VII action. Monetary awards to the charging party consist of the equitable remedy of restitution for economic loss. Remedies available under Title VII include injunctive and affirmative relief such as back pay plus interest for any wages lost as a result of the discrimination, reinstatement, hiring or promotion to make the plaintiff whole. The successful plaintiff is eligible for attorneys' fees awards under the Attorneys Fees Award Act of 1980 (Larson, 1981).

Effectiveness of this remedy:

Title VII can help a student in her role as employee, on the same terms that it can be used to help any other employee. It cannot be used to remedy a purely academic wrong to a student. The concepts developed, however, can be helpful in analyzing sexual harassment as form of illegal sex discrimination.

2). TITLE IX of the Education Amendments of 1972, (20 U.S.C. 1681 et seq,) prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance (Grove City College v. Bell, 1984).

Title IX prohibits discrimination with regards to employees (North Haven Board of Education v. Bell, 1982) or to students (Cannon v. University of Chicago, 1979; Alexander v. Yale, 1977). It states that

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . (exceptions omitted)" (20 U.S.C. Sec. 1681, 1976).

"Sexual harassment" is not addressed in the words of the statute, which prohibit only "discrimination", and give government agencies the responsibility of enforcement. University liability for harassment of students is implied by the regulations and by court decisions. Title IX can be implemented by more than one agency and states that a Federal department or agency

which is empowered to extend Federal financial assistance to any education program or activity. . is authorized and directed to effectuate the provisions of section 901 [20 USCS Sec. 1681]. . . by issuing rules, regulations, or orders of general

applicability. . .

Title IX is enforced by the Office for Civil Rights (OCR), Department of Education, which adopted and recodified HEW regulations on Title IX on May 9, 1980, at 34 C.F.R. Sec. 106. The formal sanction available in the administrative enforcement of Title IX is the termination of federal funding. Compliance with the requirements is by

(1) the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or

2) by any other means authorized by law (20 U.S.C. Sec. 1682).

A complaint may be filed with the necessary agency. OCR will investigate the charge and make a finding. Commentators state that the agencies can require the institution to correct the problem or face cut-off of Federal funds (eg. Till, 1980, P.35). Use of this statute to bring relief is limited by the generalized wording of the statute, and the drastic nature of the remedy available. The court in Romeo Community Schools v. HEW (1979, p.583) was concerned that total termination of federal funds would unnecessarily deprive students of an education, and was reluctant to use that remedy.

An individual may file a private lawsuit against an educational institution for sex discrimination on the basis

of Title IX. An implied cause of action (individual right to sue) under Title IX was first recognized in the 1979 case of Cannon v. University of Chicago, which established that an individual has a private right of action. The Supreme Court rejected the argument that termination of funding was intended to be the sole remedy under Title IX, and said that the complainant met the requirements for an implied cause of action as established in Cort v. Ash (1975). In Cannon, the court held that the female surgical nurse who sought admission to medical school was a member of the class the statute was designed to help; that a private remedy was consistent with the purpose of the statute; that legislative intent to allow a private cause of action was present; and that allowing a private suit would not invade exclusive state rights. The court noted that Title IX sought to accomplish two major objectives:

Congress wanted to avoid the use of federal resources to support discriminatory practices: [and] second, it wanted to provide individual citizens effective protection against those practices (Cannon v. University of Chicago, 1979. p.1961).

Sexual harassment of a student was recognized as a cause of action in Alexander v. Yale (1977). The court said that

(A)cademic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education (Alexander v. Yale, 1977, p.4).

Effectiveness of this remedy:

Remedies available under Title IX for employees are similar to those available under Title VII; employment or reinstatement, back pay and benefits, and future compliance.

Under Title IX, as a remedy for harassment of students, a court may enjoin the institution to make some changes which bring relief to the student and neutralize the professor's ability to do harm, as well as institution-wide changes such as installing and implementing a responsive grievance procedure (Bundy v. Jackson, 1981), or other appropriate relief (Womens Law Center, 1984). Suit by the government could result in injunctive relief, damages, and attorneys fees. If the institution refuses to remedy the situation, its federal funds may be cut off by the issuing agency. This authority has not yet been exercised.

The information obtained in the agency investigation is available to the victim for use in a civil suit. This would help defray the expense of litigation. If the plaintiff prevails, the successful plaintiff is eligible for attorneys' fees awards under the Attorneys Fees Act (Larson, 1981).

The case Alexander v. Yale, (1977, 1980) dealt with sexual harassment of students, and demonstrates the problems of enforcement and providing remedies. One important problem is to determine who has "standing" to bring suit. In a common law action, only an injured party may bring suit, but in education, persons may be adversely affected even though they are not the target of the inappropriate conduct. For instance, fellow students may observe the victim's distress and consequently may themselves feel intimidated. Faculty may experience student distrust due to conduct of other persons. The plaintiffs in Alexander v. Yale, (1977)

included a male faculty member, and several women students or former students. Their complaint alleged instances of sexual harassment of women students by male faculty members. The plaintiff professor claimed his teaching efforts had been hampered by an atmosphere which created distrust of male professors. One woman reported great emotional distress as confidante to another woman who had been subjected to sexual pressures from a professor. A second woman was rebuffed when she attempted to complain on behalf of other students. The court said none of these people suffered a personal deprivation of rights protected by Title IX, and that

No judicial enforcement of Title IX could properly extend to such imponderables as atmosphere or vicariously experienced wrong. . .

No relief was granted in this case for the following reasons:

- (1) Three of the parties did not personally experience the sexual demands of professors, and had no cause of action.
- (2) One woman dropped a program because of sexual demands of a supervisor, but because she failed to register a complaint to the university, and because the court said damage to her career was speculative, she had no claim.
- (3) One woman claimed she unfairly received a low grade when she refused a professor's sexual advances. By the time of the last court decision, she had graduated, and her complaint was dismissed as moot (Alexander v. Yale, 1980).

Till (1980, p.35) warned that Title IX was a risky source of remedy, because of limited case law interpretation

of the statute. Since 1981, however, case law has provided analysis of sexual harassment of female employees, and the principles can be applied as well to harassment of students. The limits of that institutional responsibility, and the precise fact situation which will trigger enforcement, have not been determined. If discrimination can be proven, then the damage is presumed to follow (Miles v. F.E.R.M. Enterprises, Inc. 1981). The presumption of damage eases the student's burden of proving she has been damaged by the offensive conduct.

Analysis of Title IX shows questions of standing to bring suit, coverage, and remedies, and creates uncertainty as exactly when Title IX can be used to challenge discriminatory practices. Questions yet to be answered involve the jurisdictional requirement of federal funding of a program: what is a "program or activity?", what is "Federal financial assistance?" and "who are the intended beneficiaries?" in the meaning of Title IX. The Supreme Court in Grove City College v. Bell, (1984), said that the wording of Title IX is "program - specific", which apparently means that the only programs which must refrain from discrimination are those which directly receive federal funds. It could also mean that the remedy would only apply when Federal funds are directed to the program which permits the prohibited discrimination. The specific meaning of the word "program" in this context has not yet been defined by statute or by court decision. An unfavorable judicial

interpretation could mean that this statute will protect students only under very limited circumstances.

3). State Statutes: A state may have its own policy regarding discrimination. It can guard liberties more carefully than does the federal government, but cannot act contrary to federal law. The State of Washington has a statute which prohibits sex discrimination in employment, and in public accommodations, including any education institution (RCW 49.60.040).

The implementation of state statutes is determined by the individual state. In Washington, the enforcement body is the Washington State Human Rights Commission (WHRC). The Law against Discrimination RCW 49.60, was passed and the Human Rights Commission created in 1949. The law originally prohibited discrimination in employment only on the basis of race, creed, color, and national origin. Subsequent amendments have been passed which prohibit sex discrimination (1971) and marital status discrimination (1973). The Washington State Human Rights Commission has adopted the EEOC Guidelines which define sexual harassment in employment, and holds the employer responsible . .

for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of its occurrence (Washington State Human Rights Commission Policy on Sexual Harassment).

A Washington Court recently stated in Henderson v. Pennwalt (1985) that an employer is liable for a hostile work

environment caused by a supervisory employee's sexual harassment only if it knew or should have known of the harassment and failed to take reasonably prompt and adequate corrective action. It is an unfair practice for any person

to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying. . . with the Law Against Discrimination (RCW 49.60.220).

Retaliation is prohibited, and it is in itself an unfair practice

to discharge, expel, or otherwise discriminate against any person because he has opposed any practices forbidden by this chapter, or because he has filed a charge, testified, or assisted in any proceeding under this chapter (RCW 49.60.210. See e.g., Kinney v. Bausch, 1975).

Retaliation is a separate offense from the original discriminatory act. A party can be found not to have committed the charged unfair practice, but still be guilty of retaliating against the complainant for filing the charge (Minor v. Eastern Washington State College, 1975; \$1,000 damages for retaliation).

An individual may file a complaint with the Commission, or the person's attorney may file on her behalf. No third party complaints may be taken, but the Commission may initiate a complaint when there is reason to believe that any person has been engaged or is engaging in an unfair practice (RCW 49.60.230).

Remedies available under RCW 49.60 include administrative remedies which may be enforced by a court, and any equitable remedy available under Title VII. The Human

Rights Commission can investigate the complaint, attempt to settle the differences, and issue a finding of fact. It can reach a conciliation agreement with the respondent to eliminate the unfair practice (WAC 162-08-102, -104, -106, -109). The WHRC can award only restitution as a monetary remedy (Human Rights Commission v. Cheney School District No. 30, 1982). General damages are available in judicial proceedings (Ellingson v. Spokane Mortgage Co., 1978). Individual remedies for the complainant, in employment, might include hiring, reinstatement, promotion, back pay, back benefits, reinstated seniority, and costs of mental health counseling or therapy.

Conciliation agreements can contain provisions designed to eliminate practices which have resulted in the unfair practice identified in the investigation or complaint. The Commission does not have authority under RCW 49.60.250 to award damages for pain and mental suffering in its conciliation agreement and tribunal orders (ex rel Spangenberg v. Cheney School District No. 30, 1982).

The civil remedies of injunctive relief and damages may be awarded by the court in cases arising out of RCW 49.60.030. Washington case law defines actual damages to include damages for humiliation, pain, and mental suffering in a civil action (Ellington v. Spokane Mortgage Co., 1978; Washington State Human Rights Commission, ex rel. Spangenberg v. Cheney School District No. 30, 1982). In Ellis v. Tacoma Police Department, (1984) a Pierce County Superior Court jury

awarded \$150,000 for mental anguish in a sexual harassment case. Attorney's fees may be awarded to a plaintiff if she is the prevailing party. RCW 49.60.030(2).

Effectiveness of this remedy:

Remedies under state statutes are not available if the enforcing commission lacks jurisdiction over the subject matter, or if the complaint was not filed within the necessary time. State remedies may differ from those under federal statute, in the coverage, or in the administrative requirements. In some instances a person might be required to submit a complaint to the proper agency before a civil suit is filed. In Washington, under RCW 49.60, there are far fewer procedural requirements than under Title VII; for example civil suits can be filed directly in state court. The time limit for filing a complaint in state civil court is limited, and the individual need not file a charge with the agency during the specified time. The evidence obtained in the agency investigation is available for further action at no cost to the student. The person who misses the time deadline must choose another course of action.

The statutory remedies have the advantage of dealing with sexual harassment as a wrong in itself. Student complaints to the appropriate enforcement agency could result in increased enforcement of anti-discrimination policies, such as requiring the institution to establish a responsive grievance procedure, and to apply appropriate sanctions to offenders. If a consequence of the harassment is to

undermine the student's qualification for admission to a desirable program or job, the remedy is difficult to obtain. Perhaps the most pertinent remedy would be to require the institution to provide the student time and opportunity to study without harassment.

B. Civil suit

Civil remedies or common law remedies are available to the injured party who files a civil action in a state court. They may be used as an alternative to statutory remedies or in addition to statutory remedies. In concluding that Title IX contained an implied private cause of action, the Supreme Court noted that Title IX sought to accomplish two major objectives:

Congress wanted to avoid the use of federal resources to support discriminatory practices: [and] second, it wanted to provide individual citizens effective protection against those practices (Cannon v. University of Chicago, 1979, p. 1961).

Information obtained by an agency investigation can be made available for use in a private suit, thus reducing the costs to the individual of litigation. Tort is the primary basis for a civil cause of action. Broadly speaking, a tort is a civil wrong, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. Each named tort has a list of elements which must be proved, or no remedy is available. The complaining party (plaintiff) must establish that the defendant had a duty, breached the duty, and that the plaintiff was injured as a consequence of that breach. The basis for tort liability may

be (a) intent of the defendant to interfere with the plaintiff's interests, an "intentional" tort (b) negligent interference with plaintiff's protected interest, "a negligence" tort, or (c) strict liability. Strict liability is "without fault," and the defendant is held liable even without wrongful intent or any negligence, very often for reasons of policy (Prosser, 1971, p.26-27). Courts have not been willing to find strict liability for sexual harassment, but have found the institution liable when it "knew or should have known" of the harassment and failed to act appropriately. University knowledge of the existence of harassment may be difficult to establish unless students effectively register complaints.

At present, sexual harassment is not a recognized tort. Because Title IX is based on the public policy that allows women equal access to higher education, interference with that protected education interest could, as a matter of public policy, become a newly created tort of academic sexual harassment. The interest to be protected is the right to benefit from participation in an institution's academic activities without harassment because of sexual identity. The conduct, which amounts to sexual harassment, interferes with the protected right. Specific academic damage can be shown, or can, as a matter of law, be proven merely by showing that the defendant's conduct subjected her to deprivation of her civil rights (Miles v. F.E.R.M. Enterprises, Inc., 1981).

A basic theory of tort law is that a court is free to provide a remedy for any behavior of individuals which offends public policy (Prosser, 1971, p.3). The courts thus will provide a remedy if a person commits an act which is "unreasonable, or socially harmful, from the point of view of the community" (Prosser, 1971, p.7). A court can determine whether public policy has been violated by analyzing statutes which provide insight into community concerns (Prosser, 1971, p.190-191).

Winks wrote (1982, p.473) that in instances of sexual contact, the elements of torts are easily proved, if teacher and student stand in such a relationship that the law will impose on one responsibility for the exercise of care toward the other (Winks, 1982, p.473). The relationship between the teacher and student has been analogized to the fiduciary relationship between a guardian and his ward (Prosser, 1971). Faculty can be shown to owe to the student a duty to conform to a particular standard of conduct, and that duty is breached by sexual improprieties. The student is said to suffer harm which is caused by the faculty conduct (Winks, 1982, p.473). The elements would be more difficult to prove in cases of intellectual harassment of the sort which purports to protect women from unnecessarily difficult courses, or when the woman fails to show disapproval of otherwise inappropriate sexual conduct.

Effectiveness of this remedy:

Tort law is particularly suited for sexual harassment

cases, as it is a flexible and evolving doctrine (Montgomery, 1980, p.885) and a court may allow a tort action even if the particular cause of action has not been recognized before.

New and nameless torts are being recognized constantly, and the progress of the common law is marked by many cases of first impression, in which the court has struck out boldly to create a new cause of action, where none had been recognized before. . . . The law of torts is anything but static, and the limits of its development are never set. When it becomes clear that the plaintiff's interests are entitled to legal protection against the conduct of the defendant, the mere fact that the claim is novel will not of itself operate as a bar to the remedy (Prosser, 1971, p.3-4).

The injured party may name as defendant the employer or the university, the harasser, and any supervisory or management person who knew of the harassment and failed to take appropriate action, depending upon the circumstances. In each instance, whether she will recover damages or get any remedy depends upon findings of liability, and the defendant's ability to pay a judgment.

The institution itself can be held accountable for the actions of its employees on a "respondeat superior" theory, if it can be shown that the instructor acted in the course of his employment. The issue of whether the professor is acting within the scope of his employment might depend on the institutional relationship of the parties, the location of the action, the real or apparent ability of the professor to harm the student, and whether the student is required to tolerate the behavior because of her role of student.

The action is brought only by a damaged party, and the defendant is one or more individuals or the organization,

individually or as a group ("jointly or severally"). Remedies include all of the remedies available under the statutory claims, and in addition, money damages including damages for emotional distress or humiliation. The sanctions available are injunctions to do or to refrain from doing some specific act, and financial compensation for any losses or for physical, emotional, and mental injury.

One important form of remedy for a tort is an injunction, granted in a court of equity, before any damage occurs, while another is the restitution of what has been wrongfully taken, and still another is self-help by the injured party (Prosser, 1971, p.2).

On occasion, punitive damages or "exemplary damages" may be awarded

where the defendant's wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime. . . Such damages are given to the plaintiff over and above the full compensation for his injuries, for the purpose of punishing the defendant, or teaching him not to do it again, and of deterring others from following his example (Prosser, 1971, p.9).

Punitive damages may have the additional purpose of reimbursing the plaintiff for elements of damage which are not legally compensable, such as (her) wounded feelings or the expenses of suit (Prosser, 1971, p.9). As an example, when a mental health counselor "made romantic and sexual advances toward (a female client), and drew her into a sexual relationship", the supervisor was found to be negligent, and the woman was awarded \$150,000 compensatory damages plus psychotherapy costs of about \$6,000 (Jerrie Simmons v. U.S., 1985).

Basic principles of tort law which might support the recognition of sexual harassment as a cause of action in tort include intentional infliction of emotional distress (outrage), assault, battery, malicious interference with contract, and fraud and deceit (Montgomery, 1981).

a. Assault and battery:

Sexual overtures if unwanted can constitute assault, an anticipation of touching. If actual unpermitted touching occurs, the tort of battery is committed, because the interest invaded is the victim's

interest in freedom from intentional and unpermitted contacts with [her] person (Prosser, 1971, note 25, p.34).

A cause of action for battery is established when it is shown that the man did some act

"intending to cause a harmful or offensive contact or apprehension of a harmful or offensive contact" (Restatement, (Second) of Torts, 1977 [hereinafter cited as Restatement, 1977] Note 48, Sec. 13).

This cause of action might be appropriate to the professor who sneaks a kiss, pats a knee, or routinely puts his arms around female students. The test is that the touching itself is intentional, regardless of whether he intended the unfortunate consequence of offending the woman (see eg. Prosser, 1971, p.36 "taking indecent liberties with a woman without her consent"). Some courts originally dismissed sex discrimination claims on the basis that the sexual harassment was a tort and not discrimination within the meaning of Title VII. One example is Tomkins v. Public Service Electric & Gas Co. (1976, reversed in 1977), where the district court ruled

that Title VII was

not intended to provide a federal tort remedy for what amounts to physical attack motivated by sexual desire on the part of a supervisor and which happened to occur in a corporate corridor rather than a back alley".

As early as the turn of the century, Washington courts allowed recovery in tort for "putting hands upon a female with a view to violate her person" (Houge v. Iderhoff, 1914; see also Kline v. Kline, 1902, Ragsdale v. Ezell, 1899). In Ragsdale, damages of \$700 were awarded for forcible and unwanted hugging and kissing.

b. Intentional infliction of emotional distress (outrage).

The interest invaded when a woman is inflicted with emotional distress is her peace of mind (Prosser, note 25, p.41). This interest is invaded by

conduct which goes beyond all possible bounds of decency and . . . [is] regarded as atrocious, and utterly intolerable in a civilized society." (Restatement, 1977, Sec. 46, Comment (d)).

In the context of sexual harassment in the college, it can be argued that certain inappropriate sex-based conduct is outrageous per se. The basic test for liability requires a plaintiff to demonstrate:

(1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct (Fletcher v. Western Nat'l Life Ins Co., 1970, p.394).

A person other than the immediate victim of the

objectionable conduct, (a third party), may have a claim if the conduct causes severe emotional distress (Restatement, 1977, Sec. 46(2)(b), Contreras v. Crown Zellerbach Corp., 1977, P.737, n.1). Presence at the time when the outrageous conduct occurred is a crucial element of a claim for outrage when the conduct is directed at a third person (Restatement, 1977, Sec. 46(2)(a), Lund v. Caple, 1984, p.742). In Alexander v. Yale (1980), several parties unsuccessfully claimed injury caused by the harassment of another person, but were not themselves subjected to sexual demands.

Recent cases have held that sexual harassment is actionable even when limited to verbal overtures rather than actual physical conduct (See eg. Bundy v. Jackson, 1981, Henderson v. Pennwalt, 1985). The courts balance the severity of the injuries and distress suffered by the plaintiff and the outrageousness of the defendant's conduct. In some states, a person can recover for emotional distress where there has been no physical injury as a result of the defendant's acts (Alcorn v. Anbro, 1970). The Washington Supreme Court has said that

When one in a position of authority, actual or apparent, over another has allegedly made racial slurs and jokes and comments, this abusive position gives added impetus to the claim of outrageous behavior (Contreras v. Crown Zellerbach, 1977, p.741, citing Restatement (1977) Sec. 46, comment e).

The injury may easily be established when physical harm results from the acts of the defendant. Physical harm includes the physical consequences of shock to the nervous

system, bodily illness, and physical injury, such as physical illness, shock, nausea and insomnia (Alcorn v. Anbro, 1970). Even without a physical reaction, the unpleasant emotional reactions to the conduct may be sufficient. Words alone, without other outrageous acts could be sufficient in certain circumstances to justify a cause of action for the intentional infliction of emotional distress (Alcorn v. Anbro, 1970). If racial epithets and slurs are particularly outrageous to a person of color (Contreras, 1977, p.741, Alcorn, 1970, p.498-499), then sexual epithets and slurs may also be considered as abusive, insulting, outrageous conduct (Montgomery, 1980). This is speculative, however, for use of the terms "girl", "broad", or jokes about female anatomy or female sexual behavior have not yet been held to be outrageous conduct.

The relationship between the parties is a significant factor in determining whether liability should be imposed (Contreras v. Zellerbach, 1977, p.741). When there is a special relationship between the parties or when there is an invasion of a property interest, a lesser showing of severe emotional distress might be required. The Restatement, (1977), reports that

"where there is a special relation between the parties. . . there may be recovery for insults not amounting to extreme outrage. . . The extreme and outrageous character of the conduct may arise from an abuse by the actor of a position, or a relation with the other, which gives him actual or apparent authority over the other, or power to affect his interests (Sec. 46, comment (d) and (3).

Arguably, the faculty/student relationship could qualify as a

special relationship which entitles a person to greater protection from insult and outrage than a non-student (Montgomery, 1980, citing to Alcorn v. Anbro, 1977). The employment interest, when it includes an expectancy of continued employment (as with tenure), has been recognized as a property interest by the Supreme Court (Perry v. Sinderman, 1972; Board of Regents v. Roth, 1972) but the higher education interest has not been granted that status (Goss v. Lopez, 1975).

c. Malicious interference with contractual relationships.

It is necessary to show 1) there was a contract at the time of the harassment; 2) the defendant knew there was a contract; 3) the acts of the defendant induced the breach of the contract; 4) the act which induced the breach was intentional and 5) either a benefit or a different, non-adverse result would have occurred except for the interference of the third party (Freed v. Manchester, 1958). The relationship between student and university increasingly is seen as a contractual relationship (Carr v. St. Johns University, 1962; Healy v. Larson, 1971; Kaplan, 1978, pp. 175 - 182). If a contract relationship can be shown between the student and the school, then actions of a third party which interrupt or interfere with the education process, interfere with that contract as well. If the college is induced to take actions detrimental to the student, at the instigation of the harasser, such action would be breach of

contract by the University. An injured student would bring an action against the faculty person for interfering with her contract with the institution.

d. Fraud and deceit:

To establish a cause of action for fraud and deceit, the complaint must show a misrepresentation of fact, that the plaintiff took action because of the supposed facts, and was injured. Without actual misrepresentation, courts may be unwilling to conclude that any implied representation has been breached by acts of sexual harassment. A misrepresentation is fraudulent if the person making the misrepresentation (a) knows or believes that the matter is not as represented, (b) does not have the confidence in the accuracy of his representation that he states or implies or (c) knows that he does not have the basis for his representation that he states or implies (Restatement, 1977, note 48, Sec. 526). In the catalogue, or at time of admissions, the college may make representations to the woman that the college is committed to fair treatment and equal opportunity for women, that there is no discrimination against women, or that the woman will find this a good college to attend. A cause of action for fraud may arise if the university is aware that women are subjected to sexual harassment by faculty or other employees and does not inform the woman of this fact at the time of admission (Montgomery, 1981). Effectiveness of this remedy:

Tort remedies may be useful in prevention of harassment,

by shifting the costs of offensive conduct from the victim to the offenders. A private tort action, with traditional avenues of relief, provides a familiar legal framework for both the attorney who represents the student and the courts (Winks, 1982). A student could not find immediate academic relief in a tort action. Awards of damages can reach sizeable amounts. Although a money payment is not adequate replacement for lost education opportunities, the large damage awards emphasize the public policy against sexual harassment. Damage awards can be an indication of social change in that they recognize that the harassment can cause measurable damage to a woman. The possibility of a tort action could cause change in the way individuals perceive harassing conduct, and respond to complaints about sexual harassment.

Catharine MacKinnon (1979, pp.164 - 174) wrote that current tort theories are inadequate in that they look for damage that fits into a certain legal theory. Unless a tort of sexual harassment is recognized, tort action is useful only where the fact situation fits into a specific tort category. In addition, tort theory treats the offense as as a personal interaction, whereas discrimination theory more appropriately examines the injury to the person as a representative of the group "women" (MacKinnon, 1979, p.172). The usual standard for determination of torts is the "ordinary man". In this situation, however, the "ordinary woman" standard would probably be required to determine the

injury, because women and men often perceive their interactions in a different manner (MacKinnon, 1979).

Breach of contract is a cause of action in itself (McCarthy, 1985). A breach of contract action is possible because the relationship between student and university is primarily contractual in nature. The specific terms of the implied contract are to be found in the university bulletin and other publications distributed to the student (Marquez v. University of Washington, 1982, p.305; Maas v. Gonzaga, 1980). Each school is required by Title IX of the Education Amendments of 1972 to display a notice to the public that it does not discriminate on the basis of sex. Sexual harassment would constitute a breach of the contract between the school and the students (Women's Law Center, 1984; Montgomery, 1980).

Courts have recently begun to recognize an implied covenant of good faith and fair dealing in employment relationships, even in the absence of a written contract. Sexual harassment in the workplace, or retaliatory action for having refused or complained, is a violation of the covenant of good faith and fair dealing (Women's Law Center, 1984), and could apply to the student/ employee, such as a teaching assistant. The same argument could be made as to an implied covenant of good faith and fair dealing as regards students. If a student felt obliged to drop a class, or to change her major program because of harassment, the contract between the student and the college would be compromised. The student

would bring an action against the institution for permitting harassment in breach of an education contract.

Although recorded cases have not yet dealt with these specific issues, contract enforcement seems to have great potential as a remedy for arbitrary or discriminatory activities of faculty. The usual remedy for breach of contract is payment of money to "make the complaining person whole", although the court can also order equitable remedies (Corbin, 1952, p.294). Difficulty might arise in establishing the money amount of damage to the student. In a contract action, the plaintiff cannot recover punitive damages or compensation for mental suffering, but on occasion can be awarded "specific performance" of the contract.

Summary: A variety of legal actions could help students find relief. The cumulative effect of successful lawsuits would be to establish that students need not passively tolerate sexual harassment. Additionally, both the institution, and faculty would be put on notice that they can be held liable for faculty misbehavior. Quick relief to a student is not available by this means, however, for the process can take years. The time required for a lawsuit varies, but where damages are sought, a two to three year period is not unreasonable. Additional limitations are the high cost of a lawsuit and the time involved, although evidence obtained in an agency investigation can lessen the cost to the individual, and damage awards can reimburse the amount of

costs and attorneys fees.

Willingness of courts to decide in favor of women students, and against actions of male professors, has not yet been established. In the past, courts have not been responsive to women's complaints about unequal or unfair treatment (Sachs and Wilson, 1978, Johnston and Knapp, 1971). The Supreme Court in 1875 (Minor v. Happersett) held that the Fourteenth Amendment to the Constitution assures voting privileges only to men. Women obtained the right to vote only by adoption of the Nineteenth Amendment to the Constitution (Thomas, 1982, p.3). The Supreme Court in 1873 confirmed the ability of a state to restrict employment opportunities of qualified women (Bradwell v. Illinois, S.Ct.1873). Even today, a challenge to the constitutionality of gender-based state action is not subject to the "strict scrutiny" test used to evaluate race discrimination. For instance, a woman defendant could not persuade the Supreme Court in 1961 (Hoyt v. Florida) that her conviction by an all-male jury denied her constitutional rights to due process and equal protection (Thomas, 1982, P.1). In 1975, however, the Court overruled this decision, in the case Taylor v. Louisiana, to hold that all defendants, male and female, are deprived of the right to an impartial trial by jury of their peers if women are not included in the jury panel. Not until 1971, in Reed v. Reed did the Supreme court find a gender based state action was in violation of the equal protection clause of the Constitution. Courts after 1971 began to

recognize that sex discrimination has been codified into law because of an "unconscious acceptance of sexual assumptions" (Thomas, 1982, p. 94). Specific statutory changes have been necessary to clarify and protect the rights of women. Nevertheless, court decisions can favorably interpret and implement statutes, to provide effective protection.

Perhaps more difficult to overcome is the traditional reluctance of courts to interfere in "academic" decisions (eg. Paulsen v. Golden Gate University, 1979; University of Missouri v. Horowitz, 1978; Cannon v. University of Chicago, 1979). Traditionally, evaluation decisions by faculty are treated as academic decisions, and are subject to review on the basis of procedures, but not on the basis of content (University of Missouri v. Horowitz, 1978). The courts hesitate to interfere with the traditional independence of academic institutions, or to second-guess institution personnel, who have the ability and training to make academic judgments (eg. Lieberman v. Gant, 1980). Should a court determine that harassment had caused detrimental consequences, the remedy probably would be to order the institution to correct the situation.

Case law indicates many women believe that the "academic" judgements are heavily influenced by bias against women. This deference could protect faculty who seek to shield unfair procedures or exploitive behavior with the protection of "academic freedom". The student might have difficulty in proving that subjective judgments of faculty

were in fact unfair and discriminatory, or that their inappropriate behavior caused injury. Whether legal discrimination analysis can pierce this "veil of protection" remains to be seen. The student might be successful in proving offensive behavior, but would have difficulty in proving unfair evaluation of her work if proper procedures had been followed. If, because of harassment, she failed to qualify for a desirable program, or failed to apply to the program she otherwise would have selected, the proof of damage would be difficult.

Chapter 6. Remedies: administrative, personal, and criminal

Although the legal system may penalize instances of harassment, prevention is the desired goal. This chapter discusses internal policy and grievance procedures, some personal solutions to harassing behavior, and criminal penalties. Each can provide means of enforcing desired change, and rapidly can reflect changes in attitude toward harassment of students. The individual student would first look to personal solutions, then to the institution's administrative procedures to solve problems caused by the harassing behavior. Till (1981) suggested a variety of possible legal actions, but recommended an effective grievance procedure within the institution as a necessary mechanism for relief. Federal statutes, both Title VII and Title IX, provide a legal requirement for the institution to become involved with prevention and remedy of sexual harassment.

A. Administrative remedies: Internal policy and grievance procedures.

The responsibility of a university as an employer is found in regulations formulated to implement TITLE VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of sex:

Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their

right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned. 29 CFR 1604.11(f).

EEOC regulations which define sexual harassment (29 CFR 1604.11A), also hold an employer responsible for employee misbehavior (29 CFR 1604.11 (d) and (e)). To avoid liability for the actions of its employees, an employer is obliged to have effective procedures for handling complaints of sexual harassment and to be certain that employees are aware of them (Sexual harassment, 1983). The grievance procedure must be both used and usable, not merely a published statement of company policy (Miller v. Bank of America, 1979).

Under TITLE IX of the Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682 (called TITLE IX), colleges are required to adopt and publish a grievance procedure providing for prompt and equitable resolution of student and employee complaints of sex discrimination (Brandenburg, 1982, p.325). The statute does not use the words "grievance procedures" but implementing regulations state (34 CFR Sec. 106.8.a) that the university

shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. (The university) shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

In addition, the regulations require (34 CFR Section 106.8(b) that the university

shall adopt and publish grievance procedures

providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

Within the legal requirements, the specific characteristics of a university sexual harassment policy are determined by the individual university:

Though an understanding of the law is . . . crucial to the establishment of disciplinary and grievance systems, the law by no means rigidly controls their form and operation. To a large extent the kind of systems adopted will depend on the institution's notions of good administrative practice (Kaplan, 1978, p. 299-301).

In a leading federal case, the court ordered, as part of the remedy, that the employer establish an effective grievance procedure under the continued supervision of the court (Bundy v. Jackson, 1981, at Note 15). The federal court ruled that the woman had been forced to work in a "substantially discriminatory work environment" of sexually harassing behavior or activity. The employer had permitted sexual harassment of employees, and had created or condoned a discriminatory environment, similar to the environment created by ethnic or racial slurs. Since students, as well as employees, are protected from discrimination by statutes, the same reasoning should apply to a sexually harassing environment in education. The plaintiffs in Alexander v. Yale (1977) asked for relief in the form of an order

requiring defendant (university) to institute and continue a mechanism for receiving, investigating and adjudicating complaints of sexual harassment (Alexander v. Yale, 1977, p.3).

The Bundy opinion described the purpose and the necessary organizational structure of the grievance

procedures. The opinion emphasized that the goal of the EEOC guidelines is preventive and goes beyond merely developing a procedure for processing complaints. An employer may negate liability by taking immediate and appropriate corrective action when it learns of any illegal harassment, but the employer should fashion rules within its firm or agency to ensure that such corrective action never becomes necessary (Bundy v. Jackson, 1981, p.43).

To prevent or discourage harassment, the employer should affirmatively raise the question of sexual harassment and should inform all employees that sexual harassment is in violation of statute and of company policy. The employer should also establish and publicize a scheme whereby harassed employees may complain to the top administrator immediately and confidentially, and should promptly take all necessary steps to investigate and correct any harassment, including warnings and appropriate discipline directed at the offending party. Additionally, the employer should generally develop other means of preventing harassment within the organization.

To deal with instances of sexual harassment, the employer should establish a prompt and effective procedure for hearing, adjudicating, and remedying complaints of sexual harassment within the organization. The procedures must guarantee the complainant a prompt and effective investigation, an opportunity for informal adjustment of the discrimination, and, if necessary, a formal evidentiary

hearing.

The employer is required to take disciplinary action against any employee found to have committed discriminatory acts. The employer additionally must inform an individual denied relief of his or her right to file an action in the District Court (Bundy v. Jackson, 1981).

In the one reported federal case dealing with sexual harassment of students (Alexander v. Yale, 1980), part of the relief requested was an order enjoining the university to institute a procedure for receiving and investigating complaints of sexual harassment. When Yale established a set of procedures for hearing such complaints, the court said the desired relief had already been achieved, rendering that complaint moot (Yale v. Alexander, 1980, P.184).

Variation is possible between institutions in the effectiveness of the internal procedures. Within the legal requirements, the specific characteristics of a university sexual harassment policy are determined by the individual university:

Though an understanding of the law is . . . crucial to the establishment of disciplinary and grievance systems, the law by no means rigidly controls their form and operation. To a large extent the kind of systems adopted will depend on the institution's notions of good administrative practice (Kaplan, 1978, p. 299-301).

The problems of standing to bring suit, which limit access to the courts for enforcement of anti-discrimination statutes, do not appear within the institution. Faculty who observe destructive or exploitative conduct by their

colleagues (Dzeich & Weiner, 1984) cannot find a remedy in court (Alexander v. Yale, 1977) unless they can show injury to themselves. They could, however, easily raise the issue within the framework of institutional sexual harassment policy and procedures. Observers complain about the absence of an appropriate policy and procedures (Alexander v. Yale University, 1977, p.2), or the possibility that the grievance procedure has only the intention or effect of protecting existing relationships against change.

The procedures for resolution of a harassment problem within the university can be non-adversarial, which is the preference of most parties (Brandenburg, 1982, p.327). Simons and Crocker (1979, p.23, note 82) recommended specific details such as continued processing of complaints of students who have graduated; protection against reprisals; a realistic time period for students to file complaints; appropriate allocation of the investigative and adjudicative roles within the procedure; and a method of reconciling the confidentiality interests of both students and faculty members, with the necessities of full investigation and fair hearing and the effective publication of the results of investigations.

The university can provide academic corrective action allowing immediate relief to the aggrieved students. Herein lies the greatest freedom of a grievance procedure. The actions necessary to correct an academic wrong can be accomplished within the limitations of academic procedures

(Brandenberg, 1982, p.326, Till, 1981). The Yale Board (Brandenberg, 1982) had the power to determine that an equitable resolution of a complaint would include arrangements such as allowing a student to change sections, extend a deadline, or change of the reader or supervisor for an assignment or activity. In contrast, the courts are reluctant to interfere with decisions characterized as "academic." An indication of social change would be the weight accorded the rights of female students as compared to the employment rights of male faculty members.

Sanctions or penalties to offending faculty are any penalties used in instances of breach of ethical standards and or the institution's regulations, including job-related penalties which may have a financial effect, such as unpaid leave of absence, fines, or termination of employment (Academe, 1983). An effective policy against sexual harassment will establish grounds for termination of faculty tenure (Dzeich, 1984, p.200). Proven offenses could become a part of the employment record, and could be considered in employment promotion decisions. The university could adjust job assignments or promotion opportunities. It cannot provide punitive damages or criminal penalties.

Effectiveness of this remedy:

Internal administrative procedures can provide information to determine the extent and nature of the institution's problem of sexual harassment. If written records are kept of all complaints, even informal complaints,

the resulting data can be used to identify and document the behavior of repeated offenders. Record keeping on complaints and respondents would provide data used to determine a possible pattern of conduct by one person (Dzeich and Weiner, 1984, p.201). Evidence of offensive behavior over time, towards a number of women, can be used to support corrective actions against the offender.

Remedies are limited to what can be enforced within the university, and would not extend beyond the limits of the institution. Enforcement authority of the university is limited to employment and academically related matters. Any penalties to a faculty member, however, would require careful attention to procedural rules to protect his employment rights. Remedies are dependent upon enforcement within the academic community. No criminal penalties are available. The institution cannot order money awards from another party to a student.

Students' use of a grievance procedure will be limited by their knowledge of the existence of the procedure and their perceptions of its effectiveness. A student who is experiencing sexual harassment might be discouraged from filing a complaint if the process were seen as non-responsive. The process must protect a complaining student against reprisal, either by the offender or his colleagues. Students might hesitate to increase their problems by being labeled "troublemakers." Oshinsky (1979) found that many students (70% of students surveyed) did not

feel free to report incidents of sexual harassment to officials (Meek and Lynch, 1983, p.31). The student will have to decide whether she believes that the institution, which allowed the harassing professor to exploit his position, will now deal in a fair and unbiased manner. The wording of policy statements could suggest that the University's commitment to action against sexual harassment might not be sincere (Brandenburg, 1982). For instance, a very limited definition of the harm to be remedied, or an undue emphasis upon "false accusations" (Blanshan, 1983, p.19), will limit the program's effectiveness.

Commentators agree that the most effective solution to the sexual harassment of students would be an effective and sensitive institutional grievance procedure, accompanied by a policy statement that such behavior will not be tolerated, and providing suitable penalties for violations.

B. Criminal statutes including rape:

Discussion of sexual harassment as a form of criminal behavior is useful mainly as a "consciousness-raising" device, to emphasize the exploitive nature of some faculty/student relationships. Such discussions are probably most helpful in testing the perceptions of students who believe they unknowingly provoked the inappropriate faculty conduct, and who either cooperated or did not strenuously object. Analysis of rape law often has been used to illustrate the difficulty of enforcing women's personal rights (Brownmiller, 1975; Marsh et al, 1982).

The elements of each crime are spelled out in state law, and do not specifically include discrimination. The specific definitions of criminal acts vary by state, but usually include sexual assault, assault, and battery claims. Usually, any explicitly sexual acts - from fondling to self-exposure to rape, may be prosecuted by states as sex crimes. Legal definitions list the behavior, and standards for determining consent to the activity or degree of force used to extract compliance. Commentators (Brownmiller, 1975, note 2 at 256; Weisel, 1977) have argued that some faculty activities might be punished as rape or assault, even if the action does not fall within statutory descriptions:

All rape is an exercise in power, but some rapists have an edge that is more than physical. They operate within an institutionalized setting that works to their advantage and in which a victim has little chance to redress her grievance. . . . But rapists may also operate within an emotional setting or within a dependent relationship that provides a hierarchical, authoritarian structure of its own that weakens a victim's resistance, distorts her perspective and confounds her will (Brownmiller, at 256, or Bantam version, 1976, p.283).

As a practical solution, criminal prosecutions are unlikely, and would be considered only when the facts are particularly egregious. The victim must report such assaults to the police, who investigate and make a report to the local prosecutor. Prosecution is at the discretion of the public prosecutor. If the prosecutor takes the case to trial, the victim serves as a witness for the prosecution, and does not bear any legal expenses involved in the trial (Women's Law Center, 1984). The time required for prosecution is about

one year, although the defendant is entitled to a speedy trial. Great emotional strain can be expected in a criminal trial, and the publicity involved could be embarrassing or uncomfortable for the student. The defendant can expect considerable protection of his rights to due process, since imprisonment is a possible penalty.

A defense against criminal charges could involve discussion of the victim's "reputation" or her sexual activity, although the evidence requirements are determined by the individual state. A key element of the crime is force, or non-consent, which must be proved by the prosecutor. The defense of "consent" would almost certainly be an issue when a continuing, albeit exploitative, faculty/student relationship is involved. Information about the victim's past relationship with the offender may, under limited circumstances, be introduced to prove consent (RCW 9.79.150(2)). In Washington, the word "consent" is defined to mean

at the time of the act of sexual intercourse there are actual words or conduct indicating freely given agreement to have sexual intercourse (RCW 9.79.140).

Consent is not possible when the person is mentally disabled by drugs or alcohol. The defendant will introduce evidence to establish that consent was in fact given.

Words of denial are not sufficient to establish non-consent. That a woman may have meant "yes" when she was screaming "no" is an integral part of the law of rape (Thomas, 1982, p.329).

In some states, including the state of Washington, the

rules of evidence have been changed to eliminate the requirement that the testimony of the victim be corroborated (RCW 9.79.150(1)). In addition, evidence about the victim's past sexual behavior is no longer admissible on the issue of credibility (State v. Hudlow, 1983). Two former legal myths about rape are:

(1) sexually active women lie, and cannot be taken at their word. This is called "the victim's general credibility for truth and veracity" (State v. Hudlow, 1983, p.8).

It is a matter of common knowledge that the bad character of a man for chastity does not even in the remotest degree affect his character for truth, when based upon that alone, while it does that of a woman (State v. Sibley, 1895).

(2) a sexually active woman probably consented to the behavior at issue. This is called "a propensity to consent" (State v. Wilmoth, 1982) based upon the assumption that

a woman's consent to have sex with one or more men makes her somehow more likely to consent to other man (State v. Hudlow, 1983, p.10).

In Washington, "assault" is an attempt, with unlawful force, to inflict bodily injury upon another, accompanied by the apparent present ability to give effect to that attempt (State v. Jimerson, 1980). The Model Penal Code (Sec. 213.4. Official Proposed Draft, 1962) defines assault as follows:

(A) person who subjects another . . . to any sexual contact is guilty of sexual assault, a misdemeanor, if; (1) he knows that the contact is offensive to the other person or. . . (5) he has substantially impaired the other person's power to appraise or control. . . her conduct by administering or employing. . . other means for the purpose of preventing resistance.

As a penalty, the defendant can receive a prison

sentence, fine, or some lesser penalty. The parameters of the penalty are determined by statute, with each sentence determined by the judge. The victim is not compensated, but might receive protection against future occurrences by the same person. A criminal conviction does not provide a remedy to the victim for education related damages, job related damages, or financial losses.

Compensation for the victim is unlikely, unless state statutes allow compensation. Prosecution of a criminal offense is unlikely without witnesses and strong corroboration. Till wrote, (1980, part II, p.35) that convicted offenders from upper socio-economic classes, such as faculty members, are likely to receive suspended sentences or court ordered therapy rather than a prison sentence, even where rape is involved. Some commentators have stated their belief that there exists a bias of law against the claims of women (Johnston and Knapp, 1971; Sachs and Wilson, 1978), especially in sex-related matters, which, if present, could make this remedy extremely unsatisfactory.

The difficulty of securing corroborative evidence, the fallacious inference that because a woman does not forcefully resist she has consented to the rape, plus severe penalty upon conviction, combine to make rape convictions extremely low in proportion to estimated occurrence of the crime (Thomas, 1982, p.331).

A strong indication of social change would be the application of criminal sanctions to instances of physical sexual harassment. Changes in the law, and in attitudes towards domestic violence and sexual abuse of women, suggest that

this remedy could be appropriate in limited fact situations.

E. Personal Solutions

These responses involve the individual actions of persons affected by sexual harassment

(a) Coping: Many women report they use personal "coping" solutions such as denial, avoidance, or flight (Till, 1980; Franklin, 1981). The student either tries to tolerate the offensive behavior, or leaves the situation.

When women are treated in a sexually demeaning and harassing way on the job by men, many of them feel powerless. They simply are afraid of the outcome of saying "no," a word they understand connotes power and control. Their "no," if expressed at all, comes out indirectly, as a laugh, or gentle teasing intended to indicate disapproval (Tarr 1981, p. 34).

Denial involves such techniques as refusing to admit that harassment exists, trying to ignore the offensive behavior, or personally assuming responsibility for the behavior of the other party (Harbinger, 1982). Women deal with harassment by pretending not to notice, dressing with modesty, telling the harasser his behavior is unwelcome, and using humor (Evans-Wagner 1980, p.77). To avoid confrontation, a woman may remain silent, smile and say nothing, giggle, or try to avoid being alone with the harasser (Evans-Wagner, 1980; Harbinger, 1982; Livingston, 1982).

Because assertions of male dominance are socially sanctioned, because men normally hold high rank at work, because work is a source of income, and because society trains women to be "nice," few women object to male invasiveness unless it is profoundly disturbing (Farley, 1978, p. 23).

Some women resort to flight; that is, they leave the scene to escape the harassment (Harvard Women L.J., 1980) or quit their jobs because they can no longer endure the work conditions. Women who remain because of economic considerations, and women who are afraid to take action to stop the offensive behavior, are forced to tolerate frequent assaults on their dignity and sense of self-worth (Montgomery at 881; Farley note 1 at 21-22; MacKinnon note 1 at 40).

Students report dropping courses (Till, 1980), or changing majors to escape from small departments where they cannot avoid a particular professor (Franklin, 1981). Still others drop out of programs or leave school (Alexander v. Yale University, 1980, p.181). Alternatively, a person could seek out counseling as to how she should deal with the problem or seek the assistance of a sympathetic member of the university community (Dzeich, 1984).

Effectiveness of this remedy:

Coping mechanisms appear to have little success in stopping harassment. Trying to ignore the offensive behavior not only is ineffective, but it may inadvertently act to increase the behavior (Franklin et al, p.40, 1981; Dullea, 1983, note 6). Conduct intended to convey indirect disapproval, or "feminine" responses as smiles or giggles may be perceived by the harasser as showing approval, or as a "come-on" (Tarr, 1981, p.35; Henley, 1977). Flight from sexual harassment is an inappropriate basis for any such academic decision. The woman who drops a class or avoids a

specific teacher is effectively deprived of an educational opportunity (Franklin, et al, 1981). Comments and complaints suggest that this "remedy" might be as common as harassment itself (Till, 1980; Franklin, 1981).

(b) Self-help: The victim may speak directly to the harasser and inform the person that the behavior is unwelcome and must stop immediately. The harasser should be told why his actions are offensive, how the victim feels, and what changes in behavior are required (Women's Law Center, 1984).

Sexual Harassment in the Workplace, a brochure by Women Workers United, recommended disapproving responses:

Don't smile; don't look away; stare right back;
 don't let someone lean on you or get too close -
 remove yourself, stand up; confront the harasser
 right away - "Don't touch me; I don't touch you."
 demand respect, embarrass the harasser in front of
 his peers (Stover and Gillies, 1979, pp.27-28).

Dr. Mary Rowe of MIT recommended (Kraft, 1984) that a letter be written to the harasser, listing the specific offensive actions, describing "how the writer feels about the facts as she sees them" (Dullea, 1983, p.4), and concluding with a statement of what the writer wants to happen next. A duplicate copy should be kept.

Dr. Lois Price-Spratlin of the University of Washington (personal communication, July, 1985) has recommended a similar approach. The complainant should deliver the letter in a public setting, such as after class, rather than in the privacy of the professor's office. The open response, she believes, emphasizes the impersonal, discriminatory character of the harassing behavior.

Students may form action groups which can remind the institution that the problem must be remedied, and can offer support to victims (Franklin, 1981). They may discuss the problems within their institution, and attempt as a group to find remedies.

Effectiveness of this remedy:

Self-help is potentially quick and inexpensive. It can leave both parties with reputation and self-esteem intact. Direct action, such as the written letter, may be effective with a person who is not consciously and purposely a harasser (Dullea, 1983), by calling attention to the undesirable behavior. The letter, if effective, will avoid the negative effects upon the victim which might arise from a formal complaint, such as loss of privacy, loss of professional credibility, and reputation as a troublemaker (Dullea, 1983). Dr. Mary Rowe (Dullea, 1983, p.4) listed some advantages of the direct letter approach: It calls attention to the offensive behavior, and places it in a perspective which the harasser may not have considered. The written words clearly state that the woman's "no" does not mean "yes". In most instances noted by Dr. Rowe, the result of the letter is that the harassment has stopped. The victim's self-esteem may be improved with the act of stating to the harasser and to herself that she does not deserve such treatment (Dullea, 1983).

The main limitation of self help is that it depends upon voluntary cooperation for effectiveness. The student has no

coercive powers, and direct action could lead to retaliation or further harassment. Locke argued (Dullea, 1983) that a letter written directly to the harasser could create more problems if the intent of the harasser is aggressive, rather than sexual. If the harasser is mentally disturbed, she stated, knowledge that the harassment bothers the victim would lead to escalation of the behavior.

Students who communicate to the instructor that his sexual attentions are unacceptable have been successful only part of the time (Benson & Thompson, 1979). The professor's relative power over the student was the apparent determining factor in whether self-help is successful. The indications of power were the tenured status of the professor, student and professor in the same field, and student aspirations for graduate school (Winks, 1982, n.214). A student study reported that when all three conditions were present, the harassment stopped only half of the time (Benson & Thompson, 1979), even though the student objected.

The harasser could stop the complained-of offensive behavior, and retaliate indirectly by lowering a grade, providing unfavorable references, or by ignoring a student. The student who speaks out could be ridiculed, embarrassed, or otherwise tormented by the harasser. Students fear retaliation by a professor both directly, and through his informal contacts with other faculty. Dr. Joan Martin of the University of Washington (personal communications, 1982) stated, however, that students over-emphasize the influence

of an individual faculty member within a department.

It can reasonably be said that an institution of higher education has both legal and ethical obligations to eliminate all traces of sexual harassment within the organization. A variety of remedies is available, both the institution and the individual, for addressing a variety of factual situations.

Chapter 7: Conclusion

Discrimination is too well rooted in our society to be eliminated merely by forbidding intentional bias. If the law is to have any meaning for those groups against whom discrimination has been aimed, the law must prohibit those methods of discrimination which have become institutionalized and no longer require the active bias of individuals (Brachtenbach, J. Shannon v. Pay 'N Save, 1985, p.739).

This chapter summarizes a theory of remedies for sexual harassment within the academic context. The comprehensive definition of academic sexual harassment should provide a clear understanding of the wrong to be remedied. The three conditions which precede social change (Freeman, 1975; Marsh et al, 1982) are discussed with reference to institutions of higher education. Finally, suggestions are made for actions which might promote desired changes within the existing legal framework.

The remedy selected for a specific instance of academic sexual harassment will depend upon the facts of the situation. Although the elements of academic harassment remain constant, access to remedies will vary according to the type or nature of the harassment, the relationship within the institutional framework of the harasser and the victim, the current development of case law, and the responsiveness or climate within the institution. Both the immediate benefits to the affected student and the long term goal of elimination of a sexually harassing environment are critical.

DEFINITION:

The elements of academic sexual harassment were developed in Chapter 4. Academic sexual harassment occurs when the following elements are present:

(a) Offensive or objectionable sex-based words, actions, or conduct in an academic relationship or context.

(b) The sexuality or sexual identity of the victim(s) is the motivating factor for the conduct.

1. Female students and male students are treated differently, or
2. The conduct is motivated by sex-role stereotypes about the appropriate roles, ability or nature of women, or
3. The conduct is motivated by perceptions of sexual availability, sexual attractiveness, a perceived lack of sexual attractiveness of the victim, or the usefulness of the woman to male purposes.

(c) The conduct was unwelcome, inappropriate, or exploitative.

1. The conduct is unwanted or unwelcomed by the victim, or
2. The behavior is inappropriate for a classroom situation, or for an educational relationship, or
3. An institutional power disparity exists which renders freely given consent to or rejection of the behavior impossible.
4. The conduct offers or implies inappropriate educational rewards or punishment.

(d) The conduct has the purpose or effect of unreasonably interfering with the student's full enjoyment of educational benefits, climate, or opportunities.

1. Submission to such conduct is made either explicitly or implicitly a term of condition of an individual's educational benefits, or
2. Submission to or rejection of such conduct by an individual is used or can be used as the basis for academic decisions affecting such individual, or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic progress, or
4. Such conduct has the purpose or effect of creating an intimidating, hostile, offensive, or demeaning academic environment.

Conditions necessary for social change:

Chapter 3 described the prevalence of sex discrimination in general American attitudes, and within higher education. The problem of sexual harassment may appear in any aspect of the education process, so that no single remedy will suffice. The solution to the harassment problems of an individual student will differ from the institutional solution. The individual student lacks power, and usually must look to others to obtain fair treatment. The institution potentially has the ability to enforce its remedy within the organization.

For the purpose of this study, some indications of the desired social change would be: statements and actions on behalf of the institution which clearly express disapproval both of sexual harassment and of the harasser (Blanshan, 1983); a clear signal that women as individuals or as a group can effectively complain about harassment when it occurs (Meek and Lynch, 1983); protection of a woman from either the negative effects of the harassment or retribution for complaints (Meek and Lynch, 1983); and law enforcement which is sympathetic to the right of a woman to be free from harassment (Marsh, Geist, and Caplan, 1982). Prevention of harassment is the desired goal (CFR 1604.11 (f), Franklin et al, 1981). When a student must resort to legal action, the damaging effects have already occurred. Remedies, to be truly effective, should create an institutional climate which clearly will not condone sexual harassment.

Freeman identified three conditions which must precede social change. Each is discussed below in the form of answers to questions formulated in Chapter One.

Question 1: Is the presently existing legal framework adequate to meet the desired goals?

The legal framework has limited ability, even with vigorous enforcement, to address effectively the problem of sexual harassment. Existing statutes do not name or define sexual harassment, although the concept of discrimination now includes, through judicial interpretation, both inappropriate sexual behavior and a sex-based discriminatory environment. Enforcement depends upon favorable interpretations, and is far from certain.

The injury done by sexual harassment is appropriately conceptualized as "sex discrimination", because discrimination analysis treats the harassment as stereotypical social behavior, rather than an individual, personal problem (MacKinnon, 1979). Both the speed and vigor of agency enforcement depend upon government policy and the amount of funding available. This, in turn, is a political decision which is subject to change. An important limitation on the usefulness of each statute is its coverage, and what fact situation will call a given statute into play. For each statute, the questions are: who is protected, what specific actions or fact situations are prohibited, to what organizations or individuals does it apply, what remedy is available?

Additional questions are, how will the remedy correct the damage to the student's educational opportunities, will the remedy change a discriminatory environment, how will the remedy impact the institution's internal procedures?

Title IX has been recommended as the means of enforcing a public policy against sex discrimination in education. Since it applies only to programs receiving federal funds, some institutions or portions of institutions may not be covered. Since the stated remedy is withholding of funds, the individual student cannot expect much help. When the problems of one student are balanced against the problems caused by withholding of funds, she can expect strong opposition to her claims. In addition, withholding of funds probably would not restore her damaged educational opportunities.

Lack of case law, and apparent limited application to individual student complaints, lead to a conclusion that Title IX is an unsatisfactory source of remedy. The case Alexander v. Yale (1977) pointed out some of the limitations to enforcement of Title IX, but need not be interpreted to say that no remedy is available. This case was decided before the clarification of the "discriminatory environment" theory of sexual harassment had been determined by the courts. While the current status of the law indicates that a student complaint might be heard, the matter will remain uncertain until further judicial or legislative clarification takes

place. TITLE IX will require modification in order to address student complaints.

Enforcement of anti-discrimination statutes can place pressure on an institution to prevent sexual harassment of students, and to solve quickly any problems which arise. Such statutes provide necessary justification for the institution to demand changes in internal procedures and standards. If in the past, faculty have ignored improper conduct towards female students, the changing legal requirements no longer permit such an attitude.

A civil suit has been said to offer promise for drastic change in the educational environment because it imposes a duty on all employers to eliminate sexual harassment and to act on complaints of sexual harassment (Montgomery, 1980, p.905). Since the EEOC and reviewing courts have accepted sexual harassment as included within Title VII prohibitions, courts have continued to acknowledge the existence of a separate or concurrent tort claim arising out of such conduct (See. eg. Barnes v. Costle, concurring opinion of Judge MacKinnon).

Question 2: Assuming an appropriate legal framework, how would the law be enforced, and what are the enforcement mechanisms which might be used to achieve the desired goals?

The institution has an apparent legal obligation under Title IX to provide responsive policy and procedures

(t)o unmask and combat sexism in all its pernicious forms instead of validating and

propagating attitudes that damage women's minds and spirits. . . (and) . . . to provide a healthy learning environment for all students. (Franklin, et al, 1981, p.15)

To be effective, information about the policy and procedures, and knowledge that they will be actively used, must be readily available both to students and to faculty. A sensitive and responsive policy and grievance system are important tools in elimination of sexual harassment within an institution.

If the internal procedure is properly functioning, it can provide appropriate educational remedies, and can operate in an informal, non-adversarial manner with a minimum of delay. The important characteristic of an internal grievance system is its flexibility. At its best, an internal program would bring quick and effective relief from offensive behavior or exploitation of students.

The academic community, with its knowledge of academic standards and procedures, can enforce ethical standards which prohibit exploitation of students, who should not have the total burden of initiating action with the organization. Members of the educational community must assume an obligation to identify abuses which occur over time, and which create a pattern of behavior that an individual student may be slow to recognize. Institutions which have not established the necessary mechanisms have a responsibility to do so.

If the institution clearly will not tolerate sexual harassment of students, it has the power to enforce such a

policy. In any action taken against offending tenured faculty, careful attention must be paid to procedures which fully protect the rights of all parties. Tenured faculty have no more right, however, to exploit or to disparage students than they have rights to breach any other ethical or policy standards. A court observed that "responsible conduct upon the part of a teacher, even at the college level, excludes meretricious relationships with his students" (Compton Junior College v. Stubblefield, 1971, p.826).

Breach of professional ethics in this matter can receive treatment similar to that used for other violations such as plagiarism or falsification of research data.

Legal remedies do not accommodate the time schedule of a student. The student may not fully recognize the harm done until later, perhaps even after she has either graduated or withdrawn. This is particularly true if she is young, inexperienced, and in new surroundings. Neither the legal structure, nor administrative procedures provide a remedy for a former student. The student seems to have a choice of time-consuming complaint procedures which interrupt or disturb her studies, or tolerating what she must in order to finish her studies.

More research should be done on the characteristics of grievance procedures, the extent used, and the perceptions of harassment within a school. One factor to consider would be the personal characteristics and position in the institutional hierarchy of the persons receiving and

investigating complaints. Another would be determination of how the institution can best provide sanctions or relief within existing procedures. Still another factor would be how treatment of offenders differs based upon rank, closeness of control over the student's education opportunities, or field of study.

Question 3: Under the current legal framework, to what extent can existing remedies be utilized to effect change?

Those who would actively pursue a goal of eliminating the detrimental effects of sexual harassment should persist in their efforts. An individual may be reluctant to stand out as a solitary objector in a hostile environment, unless she considers her situation so desperate that she has nothing to lose from a complaint. A group effort, however, would call attention to the existence of a problem within the institution, or demonstrate the limits to effectiveness of an existing program.

To enforce a right to be free of academic sexual harassment, students must select the remedy or remedies that will best serve their needs. The remedy for a specific incident of sexual harassment would depend upon the surrounding facts and circumstances, and the continuing relationships within the university. The remedies and enforcement mechanisms suggested in the literature range from accepting an unchangeable situation, to recommendations of legal action. A person

may seek relief through a combination of the remedies, which are not exclusive.

Enforcement seems to require that the offended student, as beneficiary of the protective statutes, must take affirmative action in most instances. She is left with a careful juggling act, to anticipate problems and quickly judge who cannot be trusted, to concentrate her energies on appropriate academic goals, and to overcome her "feminine" training by registering complaints in an appropriately forceful manner. In most instances, the student should have help in evaluating her options quickly. With proper support, and with a sensitive internal remedial procedure, the harassment should cease, leaving her free to enjoy the educational benefits of the institution.

Some remedy should be available for third persons, such as fellow students, who are harmed indirectly by the sexual harassment. Faculty who receive informal complaints, or who observe abusive behavior over time, should have access to relief.

Existing remedies within the institution can promote change by clearly indicating that sexual harassment will not be tolerated. A sympathetic response to complaints, prompt investigation of the facts, and appropriate sanctions for offenders, will make known that students must be treated with appropriate professional courtesy.

SUMMARY

Suggestions are offered for responses to the problem of sexual harassment of students by faculty in colleges or university.

Individual actions;

The student should notify the harasser that the sex-based conduct is unwelcome and inappropriate. Even apparently trivial incidents - which can have a negative cumulative effect - need not be tolerated. The notice may be in person, either verbally or in writing. If the objectionable conduct has occurred in private, the secrecy may be removed by having another person present during the conversation.

A journal should be kept, reciting the facts of each incident, including the behavior, the circumstances, the names of any persons who are present, and whether they observed or overheard the offensive behavior (Women's Law Center, 1984). Copies should be saved of any correspondence and notes summarizing any meetings or incidents. Any procedure to remedy sexual harassment requires good evidence and factual information. The documentation is important regardless of whether the conduct is a private seductive conversation or public ridicule. By openly and publicly documenting offensive behavior, the student can signal both her disapproval and her intention to halt such conduct.

Careful documentation at the first hint of a problem may appear to be an over-reaction, and an unnecessary expenditure

of time and effort. Experience has shown, however, that such effort is seldom wasted. If a student feels uncomfortable, but is not sure that a formal complaint is justified, a written log can help her to decide if a pattern of harassment is developing. The use of a letter to the offender has served to halt harassing behavior, and copies of the letter create a record of each incident. If a student endures numerous offensive incidents over an extended period of time, or from a number of people, the written log and copies of written complaints can save time and energy should the situation become intolerable.

Assertive action by the student can be effective if both parties believe that her requests will be supported by the institution or by the law. The action, if unsuccessful in itself, can show that she considered the conduct objectionable, and that the harasser was aware that his conduct was offensive.

Students may gather together to share information. When a single individual sexually harasses a number of persons, persuading each that she has somehow provoked the attention, students may combine their efforts to demand relief. Sharing of information can remove the secrecy that protects such activity.

Institutional actions:

The second step is to complain within the institution's procedures. The success of this remedy depends upon commitment of the institution to the elimination of

harassment of students. The definition of sexual harassment should include not only inappropriate romantic overtures and insulting conduct, but also demeaning statements and attitudes which relegate women to an inferior position. The institutional program should state a definition of sexual harassment, the existence of fair procedures, and the decision-making authority of people responsible for implementing the policy. The details should show the commitment of the university to enforcement of the procedures (Simon and Forrest, 1983). Policy and procedures should be well publicized. Complaints should be carefully investigated, and not turned lightly aside. Careful attention to procedures will protect the rights of faculty and students.

Remedies, to be effective, should be predictable and certain. One requirement is that the wrong be identified clearly and unambiguously, so that all parties are certain when an offense is committed. The goal of remedies is to stop the offending behavior, to indicate clearly and promptly that it will not be tolerated, and to minimize damaging effects to the students involved. Furthermore, the perpetrator, rather than the victim, must be held responsible for harassing activity.

If the environment within the institution is such that faculty can act in an unfair manner without challenge, or if students feel that their grievances are treated as trivial, a prompt formal complaint to the necessary government agency

should be filed. Although the agency has limited enforcement powers, it can apply pressure to the institution to provide a sensitive policy and procedure for dealing with sexual harassment. A single complaint may elicit no response, unless the facts are particularly abusive. Multiple complaints from numerous people may tend to establish the existence of a discriminatory pattern of behavior at a given institution, or indicate the lack of adequate responsive mechanisms.

The criminal charges remedy is used to punish the offender for his behavior, and to show clearly that public policy will not condone the behavior. It is available only when the nature of the offense meets specific legal requirements. Because of the stigma attached, and the drastic nature of the remedies, it seldom will be successful in cases involving faculty (Till, 1980). Nevertheless, when the facts warrant such action, criminal charges should be filed.

Each of the avenues of redress suggested in this study may provide appropriate remedies to sexual harassment of students. Personal actions by a student will be effective to the degree that both parties recognize the support of enforcement mechanisms. Individual actions, in themselves, provide evidence necessary to the enforcement mechanisms developed by the institution. Those mechanisms, in turn, may well determine the extent to which social change related to sexual harassment does occur.

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