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Interview with Anne Carter

by Rachel McCulloch, Brandeis University

Anne Carter is the Fred C. Hecht Professor Emerita at Brandeis University and the 2008 recipient of the Carolyn Shaw Bell Award. She is an exceptional person who managed to do all the "normal" things in a distinguished academic career in economics long before it became normal for women to do them. Here she recalls her early experiences.

You attended Queens College in New York during World War II. When did you begin to consider a career in economics?

Looking back on it, I can see that my father's fate in the early 1930s explains a lot, but the truth is that I blundered into economics. I entered college at 16. I loved everything I studied—it was all great—but I decided to become a doctor. When I announced myself to the

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TOP TEN TIPS ON HOW TO GET FUNDING

by Julia Lane, NSF Program Director

Dr. Lane has received numerous grants from NSF, Sloan, Sage, Rockefeller, World Bank as well as many national and international agencies. This article represents Dr. Lane's views not necessarily those of the NSF.

1. Make a cost/benefit decision. Decide whether you want to go after external funding. As Dan Hamermesh once told me, there are two units of academic currency: articles and grants. The opportunity cost of writing a competitive grant proposal is high, and you may be better suited to writing articles.

2. Make yourself valuable. Develop a set of demonstrable core competencies through your publications. Your cv is your portfolio of skill sets, and you will be judged on your

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Sexual Harassment[1]

Joni Hersch,
Professor of Law and Economics, Vanderbilt University Law School

Suppose your supervisor repeatedly asks you for a date, routinely describes in detail pornographic movies he has seen, informs you that his penis is larger than normal and of the pleasures he had given to women with oral sex, and asks you who put a pubic hair on his Coke can.[2] Is this sexual harassment? Can you do anything about it?

Sexual harassment is covered under employment discrimination laws. Federal laws prohibit discrimination in the workplace on the basis of race, sex, national origin, color, religion (under Title VII of the Civil Rights Act of 1964), age (under the Age Discrimination in Employment Act of 1967), and disability status (under the Americans with Disabilities Act of 1990). Workplace harassment is a form of discrimination because it alters the "terms, conditions, or privileges of employment" and interferes unreasonably with the ability of those in the protected classes to perform their jobs. Workplace harassment does not have to cause a tangible or economic loss to violate antidiscrimination laws. Universities are bound by the same federal antidiscrimination laws as are any other private or government employer.

The discussion here describes sexual harassment discrimination. Sexual harassment is a violation of Title VII. The critical issue under Title VII is whether, because of sex, members of one sex are treated worse in the terms and conditions of employment than are members of the other sex. So, for instance, bullying alone is not discriminatory harassment if the bully mistreats everyone or if the treatment is out of personal animosity rather than because of sex. Same-sex harassment is a violation of Title VII, although sexual orientation is not separately protected. Courts are now grappling with whether discrimination on the basis of sexual orientation is a form of sex discrimination and therefore covered under Title VII. Some states and many employers (including universities) have policies prohibiting harassment on the basis of sexual orientation. Some do not.

What is sexual harassment?

Initially, sexual harassment was not defined or specifically covered under Title VII. In 1980 the Equal Employment Opportunity Commission (EEOC) issued "Guidelines on Discrimination Because of Sex," which designated sexual harassment as a violation of Title VII and defined the two categories of sexual harassment, quid pro quo and hostile work environment, that are violations of Title VII. The specific language is as follows:

> Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or impliedly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a 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 environment.

Quid pro quo harassment occurs when a supervisor engages in activities that fall into the first two categories. Note the requirement that the harassment is linked to a tangible employment action, such as hiring, firing, compensation, and failing to promote. Only supervisors can be liable for quid pro quo harassment. An example would be a department chair whose support for an assistant professor's tenure case is made contingent on a sexual relationship.

Hostile work environment harassment by coworkers and supervisors that does not involve tangible employment actions falls into the third category. Examples include coworkers who tell obscene jokes, make sexual suggestions or requests for sex, or routinely make demeaning comments about women's

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ability to perform jobs because of their sex. If a supervisor threatens to make tangible employment actions based on sexual favors but does not fulfill the threat, the harassment also falls into the third category.

Not all unpleasant work conduct based on sex will reach the standard to be considered harassment. The behavior must be severe or pervasive as well as unwelcome. One instance may be enough if it is severe (e.g., rape) but otherwise even several instances may not be enough to support a claim of discrimination. Simple teasing, offhand remarks, and isolated incidents are generally not sufficient to support a discrimination claim. But the harassing behavior does not have to reach the level to cause the victim to suffer psychological harm. The Supreme Court recognizes the inherent lack of precision in identifying whether abusive conduct meets the threshold to violate Title VII, noting that this can be determined only by looking at all the circumstances.

Employers' liability

The major distinction in whether the employer is definitely liable for the harassment is which category the case falls into. If the supervisor engages in quid pro quo discrimination, the employer is strictly liable. The employer cannot escape liability even by claiming that the victim voluntarily engaged in a sexual relationship—the key is whether the sexual activity was unwelcome. (However, courts may take into account the victim's dress or speech in determining whether the advances were welcome.)

Under certain conditions, the employer has a possible defense against liability for hostile work environment harassment. The defense has two parts. First, the employer took reasonable care to prevent harassment (such as disseminating a policy against harassment and establishing reporting procedures) and promptly corrects any sexually harassing behavior. Second, the employee unreasonably failed to take advantage of the employer's preventive or corrective opportunities. That is, if the employer does an investigation and takes steps to stop the harassment, then the employer may be able to avoid liability. The employee is only entitled to relief if she takes advantage of the employer's procedures and remedies. This is a policy derived from the duty to avoid or mitigate harm in the theory of damages.

Legal options

Hostile work environment discrimination is where the majority of the litigation takes place. Since most employers (and most or all universities) have clear policies, the current litigation arises over the effectiveness of employers' policies to eliminate harassment. Generally, employers will bring in an outside investigator. A frequent outcome is that the outside investigator will find that the employer did make appropriate and effective efforts.

You must exhaust all internal procedures before going further. But if you still consider the harassment to exist, before you can file a lawsuit you must first file a charge with the EEOC or with the corresponding state or local Fair Employment Practices Agency. At this stage you need to be aware of the time limits on filing. If the harassment is a discrete act so that a single date can be identified, then the clock starts on that date and you have either 180 days or 300 days to file a claim with the EEOC. (The longer time holds if the state has a law prohibiting the type of discrimination.) Quid pro quo discrimination will typically have a discrete date. Because hostile work environment claims are based on a series of separate acts that in combination are considered to be a single unlawful employment practice, the clock for filing starts with any of the acts that are part of the claim. In litigation, there will be questions of whether the charge was filed within the proper time frame in addition to questions of whether the harassment was severe and pervasive.

After the charge is filed, the EEOC will investigate and attempt to resolve the claim without litigation. If the EEOC is not able to successfully resolve the case, the agency may bring suit in federal court. In most cases, the EEOC will not sue and will issue a 'right to sue' notice. You will then have 90 days to file a private lawsuit.

There are several remedies available in cases of employment discrimination, whether the case is resolved by mediation, by settlement, or by litigation. Employers can be ordered to put in place more effective policies. Other remedies include back pay, reinstatement in the job, promotion, and front pay. You can also receive compensation for medical expenses (such as psychiatric treatment) and for noneconomic damages (pain and suffering). If your claim is a Title VII claim, you can receive punitive damages up to a maximum of $300,000 if your

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Sexual Harassment

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employer has 500 or more employees. Title VII also provides for the losing party to pay attorneys' fees.

In terms of what documentation you would need if your case goes to trial, it helps to take into consideration the type of questions you will be asked in an investigation. These include questions about the incidents such as the following:

Who are you complaining about, does he or she have a supervisory role over your work, what are the specific acts, when and where did they take place, what happened just before the incident, how did you react, how did the incident end, how did you feel about the incident, do you have any tangible evidence, are there any witnesses, did you tell anyone about the incident, do you know anyone else who has had similar experiences, do you know of any motive for the alleged acts? If there was a delay in reporting the incident, you may be asked to explain why you waited.

Witnesses will be asked similar questions as well as whether they have observed any inappropriate sex-based behavior in the workplace and whether they have observed any conflict between the parties. A Supreme Court decision reached in 2009 bars retaliation against witnesses who answer questions during the employer's investigation.

If you retain an attorney, the attorney will ask you to provide the written complaint to your employer and any other correspondence, as well as any other documents related to the alleged harassment (e.g., correspondence to and from the harasser). Although your employer will have a report of their investigation into your complaint, courts have not resolved whether the employer is obligated to allow claimants to see the report.

Sexual harassment in universities

Nearly 14,000 charges of sexual harassment were filed with the EEOC in 2008. How many of these charges involve universities is not known. Most sexual harassment claims involve a small number of victims and are resolved confidentially by universities. However, some sexual harassment charges do become publicly reported, as in the following cases.

In 2007, the University of Missouri at Kansas City settled for $1.1 million a sexual harassment lawsuit brought in 2006 by two female employees, a graduate student and an associate professor of psychology. The women claimed that the directors of their lab created a hostile work environment by such behavior as describing their sexual fantasies involving women who worked in the lab and making sex jokes involving hot dogs, bananas, and Atomic Fire Ball candies. Surprisingly, UMKC did not have in place a formal policy concerning sexual harassment or training procedures prior to the lawsuit. After the settlement, the university undertook an investigation, and although the investigation was deemed by the university to be inconclusive about whether there was a hostile work environment at the lab, the two directors of the lab agreed to resign their tenured positions.

Also in 2007, Eastern Oregon University settled a claim for $150,000 brought by a staff employee who claimed to be raped by an administrator during a business trip. A professor filed a lawsuit claiming she also was raped by the same administrator during the same business trip.

Concluding thoughts

While we hope that sexual harassment is a thing of the past, there is ample evidence that it still exists. Pay and promotion disparities on the basis of sex are far easier to quantify and have commanded systematic scrutiny within universities. But a hostile work environment can reinforce pay and promotion disparities by affecting your actual productivity and your colleagues' perceptions of your productivity. For your benefit and for the benefit of society, if you are the victim of sexual harassment, report the treatment to your employer.

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[1]Many thanks to my colleague Professor Robert Belton.

[2]Professor Anita Hill during Clarence Thomas's 1991 confirmation hearings on his appointment to the Supreme Court describing Justice Thomas's treatment of her as her supervisor at the Department of Education and the Equal Employment Opportunity Commission in 1981–82.

Would I Do It Again?

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extensive sexual harassment as a physician. As the years passed by, taking a leave and finding another job became the obvious choice for me.

The academic endeavor was affected. Graduate students became afraid to be seen talking with me. I discontinued directing dissertations because of the actual or feared retribution the students might face. Some alleged victims and faculty left the university considerably damaged by the experience.

My disappointment is that it is not obvious that my advocacy made conditions substantially better for students. Sure, there were changes around the edges, but that is not enough.

I have absolutely no regrets about becoming an advocate. Would I do it a second time? I am not sure.