

People Working Together
A Report on Sexual Harassment

July 1993

Review Committee on Sexual Harassment
New Jersey Department of Personnel

New Jersey State Library

Jim Florio
Governor

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PREFACE

The issue of people working together is vital to the public sector workplace. Governor Jim Florio recognizes the importance of working relationships and directed me, through Executive Order 88, to direct a study of the issue. Working through the Personnel Advisory Board of the Department of Personnel, the Review Committee on Sexual Harassment was created to study the issue and make recommendations as to how to improve the working relationships of men and women.

Sexual harassment occurs in most State agencies, departments, authorities and instrumentalities -- as well as in the private sector. It is a serious problem in our state and in our nation. It is behavior that we cannot tolerate. Since the State of New Jersey is the single largest employer in the state, we must be in the forefront of providing workplaces where men and women can work together with mutual respect. The establishment of this Review Committee is proof of the Governor's commitment and this department's commitment to the principles of true equality and respect in the workplace.

A handwritten signature in black ink, appearing to read 'Anthony J. Ciarino', with a long horizontal flourish extending to the right.

Anthony J. Ciarino
Department of Personnel

III. METHODOLOGY AND APPROACH

Executive Order 88 (see Appendix A) directs the Commissioner of Personnel to conduct "...a comprehensive review of the State's current policies, practices and procedures for eradicating sexual harassment from the government workplace." The Executive Order further requires a report to be submitted to Governor Florio no later than July 4, 1993, setting forth findings and recommendations resulting from the review.

Personnel Commissioner Anthony J. Cimino called upon the State Personnel Advisory Board to take the lead in conducting the review. In addition, he requested that members of the Affirmative Action community, legal experts, training directors and State agencies and authorities directly concerned with gender-related issues be represented on the reviewing group. The result was the formation of the Governor's Review Committee on Sexual Harassment.

The Review Committee's goal is to satisfy the directives contained in the Executive Order. It was necessary to complete the review within the 90-day time frame specified, yet ensure that a broad enough scope of information was gathered so that a thorough evaluation could be made and recommendations for change, where necessary, could be determined.

Beginning with its organizational meeting, the Committee recognized that there was much information of value already available. However, it could not be blind to the opportunity to improve existing practices and procedures. Based on the available information, the Committee could not assume that the existing policies and procedures were effective in dealing with sexual harassment in the workplace.

With those thoughts in mind, the Committee determined that a thorough review of administrative policies and procedures in those agencies covered by Executive Order 88 was required; that other statutes and regulations covering employees in those agencies needed to be examined; and that current training initiatives in the area of sexual harassment must be reviewed. The Committee assumed from prior expert studies that the incidence of sexual harassment was pervasive in virtually every employee population, and that such incidence was certainly underreported. The challenge became to determine how the State responded to incidents of sexual harassment within its workforce, and whether or not that response was appropriate and effective. Members of the Review Committee individually researched each area using their specific skills within each of the defined areas of inquiry. Each person then brought the results of that research back to the Committee for discussion. Through this process, findings and recommendations were agreed upon by a group of individuals diverse in background but committed to a single goal.

In an effort to gather as much information specific to State employees as possible, three public hearings were conducted in North, Central and Southern New Jersey. These hearings brought a modest response which was not unexpected, given the sensitivity of the issue of sexual harassment, and the well-supported concept of underreporting. Approximately 30 individuals testified, and 50 written comments were received, some of which were submitted anonymously. A summary of all testimony appears in Appendix D. Copies of individual testimony from the hearings, as well as summaries of written comments, were distributed to the Committee for inclusion in its analysis for the development of findings and recommendations that were intended to improve the State's response to the management of sexual harassment in the workplace.

The Review Committee gave general agreement to all of the findings and recommendations. While consensus was not achieved in each and every case, overall consent was given. Legal and ethical implications were carefully considered in the development of recommendations.

IV. DEFINING SEXUAL HARASSMENT

The phrase "sexual harassment" was not coined until sometime in the 1970s, and was not recognized by the U.S. Supreme Court until 1986. As a result, the scope of actions which constitute sexual harassment is still being defined through litigation. A broader recognition of what constitutes sexual harassment is perhaps characterized in a November 1991 study prepared by the National Council for Research on Women which states that sexual harassment is:

"...the inappropriate sexualization of an otherwise nonsexual relationship..."

What can be agreed upon is that sexual harassment is a form of sex discrimination; that sexual harassment is illegal; and that sexual harassment costs millions of dollars a year, not only in terms of lawsuits, but in absenteeism, turnover and lost productivity. A survey performed by the U.S. Merit System Protection Board in 1987 indicated that over a two year period, sexual harassment cost the federal government \$267 million dollars in lost productivity and turnover alone.

Sexually harassing behavior runs the spectrum from sexist or sexually oriented comments to actual sexual assault. It can be statistically supported that sexual harassment is most often committed by men against women. Less frequent, but no less significant, is sexual harassment perpetrated against men. As the workforce continues to change, an increase in less typical forms of sexual harassment may be anticipated: those involving men as the victims and those involving same-gender harassment.

As will be seen from the information gathered by this Review Committee, the incidence of sexual harassment in the workplace is so pervasive, there is every indication that a majority of American women experience some form of sexual harassment during their academic or working lives. This trend will continue unless we make clear what is appropriate behavior in the work place.

LEGAL DEFINITIONS

Under the Equal Employment Opportunity Guidelines on Discrimination, Sexual Harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when:

- 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement;*
- 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions or academic decisions affecting such individual; or*
- 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive working or academic environment.*

The language of sections 1 and 2 is fairly clear and serves to define "quid pro quo" cases. **"Quid-Pro-quo"** sexual harassment occurs when a supervisor or management level employee conditions continued employment or further job benefits on sexual favors by a subordinate employee.

Those falling under Section 3 have come to be known as "hostile environment" or "environmental" sexual harassment. These cases in particular are still being defined by pending litigation. **"Hostile Environment" or "Environmental"** sexual harassment occurs when a supervisor or co-worker's sexually or gender based conduct has the effect of unreasonably interfering with an employee's work performance or has the effect of creating an intimidating, hostile or offensive working environment.

In addition, there are "third-party" sexual harassment claims involving a person or persons not directly harassed, but employed in a situation where acts of harassment affect conditions of employment. A **third-party claim based on underlying "quid pro quo" harassment** occurs when:

- An employee may be able to claim that he or she was denied job benefits as an "implicit quid pro quo" that had become a general condition of employment;
- An employee may be able to claim he or she was denied job benefits based on the unlawful sex-based coercion of the favored employee.

A third-party "hostile environment" claim based on underlying harassment occurs when:

- An employee may be able to claim that conduct, directed at another employee, is sufficiently severe or pervasive to alter the conditions of their employment and create a hostile working environment.

DESCRIBING PROSCRIBED BEHAVIORS

Particularly in view of legal gray areas defining sexual harassment, researchers have developed various definitions of types of sexual harassment, in ascending order of severity, based on reported cases. A widely used model breaks sexually harassing behavior into five "types" as follows:

- ◆ ***Type 1: Gender Harassment: Generalized sexist remarks and behavior.***
- ◆ ***Type 2: Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances.***
- ◆ ***Type 3: Sexual Bribery: Solicitation of sexual activity by threat of punishment;***
- ◆ ***Type 4: Sexual Coercion: Coercion of sexual activity by threat of punishment;***
- ◆ ***Type 5: Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.***

V. SEXUAL HARASSMENT IN THE WORKPLACE

A. Pervasiveness of the Problem

In testimony before the Review Committee, Myra Terry, President of NOW-NJ, offered the following view of the extent of the incidence of sexual harassment as documented in a study of Federal employees:

"A 1988 study among Federal employees revealed that 42% of all such women were the victims of uninvited and unwelcome sexual attention on the job within the prior two years.

The 1988 study showed the following type and incidence of sexual harassment experienced by the women reporting:

*uninvited letters, calls, materials of sexual nature - 12%;
uninvited and deliberate touching, leaning over, cornering or pinching - 26%;
uninvited sexually suggestive looks or gestures - 28%;
uninvited pressure for sexual favors - 28%;
uninvited pressure for dates - 9%;
uninvited sexual teasing, jokes, remarks or questions - 35%;
and actual or attempted rape or assault - 8%.*

Testimony before a Congressional committee in 1991 disclosed that each year, 15% of women in the workplace will be the subject of sexual harassment, and that 90% of such harassment goes unreported.

Ms. Terry states later in her testimony that "...there is no reason to believe that the numbers and statistics I have just provided do not apply (as well) to the State as employer." The Review Committee agrees with this view of the pervasiveness of the incidence of sexual harassment. It is amply supported in the testimony and independent research conducted by experts in the field which was reviewed by the Committee.

Other sources support the argument that sexual harassment is a pervasive workplace issue:

- "50% to 85% of American women will experience some form of sexual harassment during their academic or working life." (U.S. Merit Protection Board, 1987, as quoted in Sexual Harassment: Research and Resources, A Report in Progress, 1991).
- "Anywhere from 42 to 90 percent of women will experience some form of harassment during their employed lives. At least one percent experience sexual assault." (Anita Hill, as quoted in Eskenazi and Gallen, pg. 12).
- Approximately 70 percent of those sampled reported incidents of sexual harassment. (Working Women United Institute, 1978, pg. 9, as quoted in Sexual Harassment: Research and Resources, A Report in Progress, 1991).

B. Underreporting of Sexual Harassment Incidents

Perhaps even more dramatic are the statistics related to the low reporting incidence of sexual harassment, particularly when those factors are viewed in the context of why complainants are reluctant to come forward on the issue.

- More than 90% of American women who will experience some form of sexual harassment during their working or academic life do not come forward or register a complaint for fear of loss of privacy and/or retribution. (Eskenazi and Gallen, pg. 66)
- Studies indicate that only 1-7% of women who report sexual harassment in surveys actually file a formal complaint or seek legal help. (Women's Legal Defense Fund, 1991)
- "Only 5% of the...employees in the 1987 US Merit Systems Protection Board survey who indicated they had been harassed actually filed formal complaints or requested investigations..." (Women's Legal Defense Fund, 1991)

C. Reasons for Underreporting

The reasons for the low reporting of episodes of sexual harassment are most discouraging. There are various reasons offered for the underreporting of sexual harassment in the workplace. The two primary reasons are fear of retaliation and loss of privacy (Klein, 1991). In one study, 50% of the women who said they were harassed believed nothing would come of it; over 50% reported they were afraid they would be blamed. In the 1988 Working Woman Study, employees described a lack of faith in the complaint process and structure. They would often delay reporting for the reasons cited previously, only to be berated for not coming forward sooner.

Most, although not all, cases of sexual harassment involve a male who is placed higher in the organization than the female(s) harassed. Particularly in these cases there is an economic dependence upon the maintenance of a working relationship with the harasser that makes it so difficult to complain. Women often attempt to ignore or otherwise normalize the relationship with the harasser to keep their jobs, and to keep the harassment from escalating. Unfortunately, underreporting only contributes to condoning the inappropriate behavior.

Perhaps an even more frightening concept explaining why victims don't complain has to do with the idea that harassment and other forms of employment discrimination are so pervasive that women, particularly, do not recognize sexual harassment as each episode occurs. Rather, something dramatic such as an unexpected termination or denial of a promotion will trigger the awareness of a pattern of abuse that will act as the catalyst for filing a complaint.

Fear of retaliation, loss of privacy, and unease about confidentiality are not only supported in research materials as reasons for unwillingness to report episodes of sexual harassment, but these elements were cited in much of the testimony presented at the public hearings. Interestingly enough, these items were cited by both men and women who had been involved in sexual harassment episodes...as victims, as accused harassers, and as supervisors attempting to deal effectively with the incidents. Often such fears were expressed not in the context of information leaking from those involved directly in the process (although that issue was also raised in testimony); but rather were expressed in reference to relationships with co-workers and supervisors strained by unauthorized discussion of the episode by witnesses or others who may have inappropriately been informed of a complaint. Complainants accused harassers of retaliation; accused harassers charged that complainants publicly convicted them by openly discussing the case before or during the course of the formal investigation, thereby "contaminating" the evidence.

In any case, the overwhelming evidence is that only about 10%, at best, of sexual harassment cases are reported. Any statistical data offered must therefore take this into account when evaluating the seriousness of the problem in the workplace. It is this fact of underreporting that lends credibility to the myth that "the problem isn't really all that bad." To again quote from Ms. Terry's testimony before the Review Committee:

What we have found, time and time again, is that women's complaints of sexual harassment on the job are not being redressed not so much because the process is flawed, although that may well be the case, but because sexual harassment is not seen by employers as a serious problem worthy of their time and concern...We wish to bring...an understanding that sexual harassment in employment is an extensive problem, with debilitating effects on victim and employer alike.

D. Effects of Sexual Harassment

One of the most debilitating effects of sexual harassment is the psychological, emotional, and physiological damage to a victim. Although there has not yet been extensive research done on the impact sexual harassment has on its victims, there are a growing number of identifiable patterns.

Among the most common effects described by women, Koss (1990) cited fear, anger, anxiety, depression, self-questioning, and self-blaming. Catherine MacKinnon noted that "like women who are raped, sexually harassed women feel humiliated, degraded, ashamed, embarrassed, and cheap, as well as angry" (MacKinnon, 1979). In a study conducted by Working Women United Institute, 78% of sexual harassment victims said they experienced emotional or physical effects (Eskenazi and Gallen, pg. 42). Respondents reported that they had feelings of no control, a sense of doom, and helplessness. They are upset, angry and tend to put up emotional barriers, and suffer from emotional agitation and frustration (MacKinnon, 1979).

Based on the testimony of expert witnesses and research done on this subject, victims of sexual harassment, particularly women, start to see themselves as the problem. They often begin to think that they must have done something to elicit the treatment they are getting. Victims also begin to lose confidence in their job performance. They are left wondering whether the praise they received prior to this treatment was because they deserved it or was because the harasser thought there was potential for a relationship (Klein, 1991).

Many women who are victims of sexual harassment try to endure the stress of sexual harassment, which can often cause a physical backlash. As Myra Terry stated in her testimony:

[Victims of sexual harassment] experience physical symptoms such as problems sleeping, nervousness, headaches, and weight gain or loss...90% report suffering psychological stress, 63% physical stress and 75% find that their work performance is adversely affected.

The effects suffered by a victim of sexual harassment appear to be similar to those of a rape victim. The parallel that can be drawn between these two devastating, traumatic experiences suggests that appropriate counseling intervention is extremely necessary. It also underscores the low reporting rate. Victims often cannot economically, emotionally, physically, or psychologically endure the consequences of reporting employment-related sexual harassment under current circumstances. It is primarily for this reason that the State must approach sexual harassment with the view that it is pervasive, and that it must be treated seriously.

VI. Administrative Policies and Procedures

A. Findings

- ◆ 68% of the Departments and 100% of the State colleges have separate and distinct policies addressing sexual harassment. The remaining Departments address sexual harassment in their EEO/AA plan.
- ◆ At a minimum, policies regarding sexual harassment are distributed under the (annual) distribution schedule of the agency EEO/AA plan.
- ◆ Even in those agencies that have policies which deal specifically with sexual harassment, there are variations in procedural implementation of those policies among agencies.
- ◆ Affirmative Action Officers in all State departments and colleges are responsible for the investigation and disposition of complaints pertaining to sexual harassment.
- ◆ Of the 19 state departments, 9 of the lead Affirmative Action/EEO Officers are male; 10 are female.
- ◆ There is no consistent managerial level for final determination of probable cause.
- ◆ When a finding of "no probable cause" is issued as a result of an investigation, it indicates the complaint lacked sufficient tangible basis on which it may be proved in that venue. It does not necessarily establish that an accusation is false.
- ◆ Where accommodation is made during an investigation to separate the alleged harasser from the complainant, the complainant is the party most often reassigned or transferred.
- ◆ Employees who allege that they are victims of sexual harassment by their immediate supervisor are not required to notify the harassing supervisor in order to file a discrimination appeal. Pursuant to N.J.A.C. 4A:7-3.3 and 3.4, the alleged victim should notify the Affirmative Action Officer.
- ◆ There is no consistent practice or policy regarding notification to an alleged harasser when a complaint is filed.
- ◆ 63% of the Departments include sexual harassment training as part of their training plan. The remainder of the Departments do not have training programs to address sexual harassment.

VI. Administrative Policies and Procedures

B. Recommendations

- 1a. Due to the unique nature of sexual harassment, appropriate intake staff of both genders must be designated and trained in each department, authority and in the Division of EEO/AA to assist in the initial intake process. Staff so designated as alternates need not be assigned within the Affirmative Action Office of that agency. Examples may include Chiefs of Staff, human resource professionals, Directors of Administration, etc.*

The EEO/AA Officer at the department, college or authority must be notified of such alternate contact within 1 working day and any resulting investigation shall be conducted by the EEO/AA officer in accordance with established procedures.

- 1b. The administrative process of investigating sexual harassment complaints and recommending the disposition of the claim should reside with department/authority EEO/AA Officers.*
- 1c. EEO/AA offices at the department/authority level and at the Division of EEO/AA in the Department of Personnel should be appropriately staffed to properly handle complaints.*
- 1d. The separate, uniform policy regarding sexual harassment issued State-wide shall include:*

A policy statement with a purpose.

A definition.

Statement regarding confidentiality.

Prohibition against retaliation (referencing language in the N.J. Against Discrimination and emphasizing enforcement of violations).

Explanation of complainant's role.

Remedial action other than or in addition to discipline, such as counseling for the harasser.

Description of the distribution plan.

Language authorizing an employee to initiate a sexual harassment or other discrimination complaint directly with the Division of Equal Employment Opportunity and Affirmative Action, in the Department of Personnel, if filing the complaint with the appointing authority appears to pose a conflict of interest by virtue of the alleged harasser having any involvement with the intake, investigative or decision-making process.

- 2a. *The policy distribution shall consist of:*

Initial distribution to all current employees.

Distribution to all new hires (employee to sign for receipt)

Reissuance of a general policy statement at least once per year to all employees.

- 2b. *The policy shall state that complainants are encouraged, where possible, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. Failure to do so would not preclude filing of a complaint.*
- 3a. *In order to ensure consistent application and enforcement of the statewide policy, procedures to implement the policy should be developed and disseminated by the Department of Personnel. Interpretation of the policy and questions on procedural matters arising from policy implementation should also be centralized within the Department of Personnel for response.*
- 3b. *Ultimate responsibility for the determination of probable cause and resolution of complaints shall be with the Cabinet Officer, President of the college or other Chief Executive Office of the autonomous authority, with appropriate appeal rights to the Division of EEO/AA in the Department of Personnel clearly articulated.*
- 3c. *While guaranteeing confidentiality in the investigative process is not possible, emphasis must be placed by the investigator upon the sensitive nature of a sexual harassment case. The investigator must be held responsible for ensuring that the facts uncovered are made available only to those authorized and on a need-to-know basis. The investigator must be required to emphasize to all involved in the investigation, including the complainant, the accused and with witness(es), the confidential nature of the inquiry, and must discuss the implications of divulging information related to the investigation with specific reference to potential defamation claims, lawsuits, and/or disciplinary action that may occur as a result of unauthorized discussion of the case.*
- 3d. *Time frames must be clearly articulated in the procedures developed.*

- 3e. *Resolution of sexual harassment complaints shall be progressive in nature with informal resolutions as the first option.*
- 3f. *Hearing officers shall report all sexual harassment allegations which arise from grievance hearings and disciplinary appeal hearings to their respective Affirmative Action offices.*
- 3g. *Consistent procedures shall be promulgated to ensure the alleged harasser is notified at an appropriate time of any pending charges with due consideration for safeguards necessary for all involved (retaliation, confidentiality concerns).*
- 4. *All departments, colleges and authorities shall abide by the policy and procedures promulgated as a result of the Executive Order.*
- 5a. *For purposes of gathering empirical data, particularly as it relates to the under-reporting of claims, statistics on all complaints, whether formal or informal, shall be kept by each EEO/AA office in each department, college or autonomous authority. Statistics, in turn, must be forwarded by each office to the Division of Equal Employment Opportunity/Affirmative Action in the Department of Personnel at least annually.*
- 5b. *Department/college/authority statistics of sexual harassment complaints should be published and posted annually for employees' information.*
- 6. *A statement pertaining to the prompt reporting of remedial avenues for sexual harassment shall be included in departmental/college/authority Codes of Ethics.*

VII. Statutes, Legal and Regulatory Matters, Venues for Relief

A. Findings

- ◆ There are seven (7) distinct venues under which sexual harassment complaints may be pursued (see Exhibit 1).

Confusion exists over the various avenues available for relief. Depending on the circumstances, there may be cases where various civil or criminal laws may also be invoked, such as the State and federal laws dealing with hate crimes, domestic violence, stalking, etc.

- ◆ There are no reliable statistics in ANY forum to accurately indicate the number of sexual harassment complaints and dispositions thereof, that have been brought by State employees since sexual harassment was defined.
- ◆ The Employee Advisory Service is not officially involved in counseling of either the (alleged) harasser or victim. The EAS refers employees who come to them with a complaint about sexual harassment to the Affirmative Action Officer of each agency.
- ◆ The effects of sexual harassment on the victim are often similar to forms of sexual assault in terms of psychological impact. In that sense, current counseling options to readily deal with episodes of sexual harassment are inadequate.
- ◆ Complete confidentiality for the victim, witnesses or alleged harasser cannot be assured under current venues.
- ◆ Sexual harassment constitutes "Conduct unbecoming a public employee" and could also fall under "Other sufficient cause" (N.J.A.C. 4A:2-2.3); and therefore constitutes cause for discipline.
- ◆ Verbal abuse based on gender constitutes abuse "of a sexual nature" and, as such, is prohibited under N.J.A.C. 4A:7-1.3, the New Jersey Law Against Discrimination, Title VII and all other State and federal statutes prohibiting sexual harassment.
- ◆ Employees who are not the object of direct sexual harassment can still be subjected to harassment if they work in an environment where such harassment is pervasive.
- ◆ Third party sexual harassment complaints have been upheld by the courts.
- ◆ It is unclear to employees in some State colleges what avenues of relief are available to them.

- ◆ Procedural guidelines for complaint investigations are disseminated by the Division of Equal Employment Opportunity and Affirmative Action to each state agency's Affirmative Action Officer in order to ensure compliance with N.J.A.C. 4A:7-3.3 and 3.4 (see Exhibit 2).
- ◆ While sexual harassment does exist outside the employer/employee relationship (e.g. care giver/patient; professor/student), the Review Committee does not address these situations as they are outside the scope of this review.

VII. Statutes, Legal and Regulatory Matters, Venues for Relief

B. Recommendations

1. *A standardized document which specifies ALL avenues of relief available, including relevant time frames and responses, should be generated and distribution MANDATED at the point of filing with State department, college or authority.*

2a. *The Appointing Authority should, at its discretion, refer the harasser to the Employee Advisory Service for establishment of a counseling program.*

Victims of sexual harassment should be informed of EAS services to provide counseling or referral if so desired.

2b. *The EAS should be staffed to deal appropriately with such episodes. While the EAS should be the preferred primary contact for such crisis counseling, in the absence of staff augmentation, the EAS should develop, maintain and distribute a list of appropriate referral sources for use as needed by the agency. This list of State-approved physicians or counselors should be made available at a minimum to those designated agency personnel who may receive sexual harassment complaints so they may make appropriate immediate counseling referrals.*

3. *N.J.A.C. 4A time frames for ALL discrimination complaints should be expanded from 20 to 30 calendar days to minimize confusion for employees who may be familiar with a 30-day window for filing grievances.*

4. *All intake forms in each venue under which the State has jurisdiction should be modified to clearly delineate sexual harassment complaints from other types of discrimination or other claims.*

5. *N.J.A.C. 4A:2-2.3 (General Causes, under Major Discipline) should be considered for amendment to read: -(a) (10).Discrimination, including sexual harassment.*

6a. *The internal investigation should aim to protect the reputations of both the alleged harasser and the complainant.*

6b. *The complaint process should be made more "user friendly" and accessible, such as designating sufficient appropriate staff to confidentially handle complaints; staggering workhours of intake staff to discuss complaints at times that maximize privacy.*

6c. *Every effort to make reasonable accommodation for the victim during the course of an investigation (e.g. temporary reassignment of either the alleged harasser or the complainant) should be required of the employer.*

- 6d. *Upon completion, written notice of the results of the administrative investigation should be given to all parties who were directly involved.*
7. *The department/college/authority EEO/AA Officer who investigated the complaint must be notified of the determination of the recommendation made, including discipline. The EEO/AA Officer, in turn, must notify the Division of EEO/AA in the Department of Personnel of those actions and disciplinary actions taken by the appointing authority.*
8. *The Division of EEO/AA shall be required to post-audit administrative actions taken, including discipline taken and monitor State-wide activities in this area for appropriateness and consistency across department/college/authority lines. An annual report of findings must be filed by the Division of EEO/AA with the Commissioner of Personnel.*
9. *Consistent information regarding available avenues of relief must be promulgated by the State colleges.*
10. *Further study must be devoted to sexual harassment which arises in situations other than those that occur within the context of the employer/employee relationship (i.e. teacher/student; care giver/patient). It is recommended that the Review Committee be authorized to continue to study those aspects of sexual harassment that involve State employees in areas such as these.*
11. *Although outside the scope of Executive Order 88, investigating procedures (with time frames) for employees who may be harassed by vendors conducting business with the State, or for State employees who harass an individual utilizing a State service must be included in the procedures.*

VIII. Training

A. Findings

- ◆ Not all State employees are adequately advised of the nature of sexual harassment and the remedies that exist.
- ◆ The employee population of more than 73,000 (excluding State colleges) includes more than 10,000 supervisors who are directly responsible for performance assessment. As employees and agents of the State, these individuals have diverse backgrounds and varying amounts of sensitivity, information on the policies, and knowledge of the practices of operating a system free from sexual harassment.
- ◆ In addition to employees, supervisors and administrators identified by Executive Order 88 as part of the training target population, other groups of specialists are in need of in-depth professional development in the prevention of sexual harassment. These include Human Resource Development Institute (HRDI) training staff assigned to conduct the standard anti-sexual harassment training, Affirmative Action officers, Employee Advisory Service counselors, intake workers and others responsible for responding to complaints of sexual harassment within each agency.
- ◆ Not all State agencies have plans for providing anti-sexual harassment training programs or seminars for employees and/or management and administrative personnel (Departments are required to complete an annual training plan addressing all staff development and training needs.).
- ◆ Anti-sexual harassment training programs and seminars are widely available through the Human Resource Development Institute as well as in the education community, and through commercial education and training vendors. Principal State departments have used DOP/HRDI resources and consultant resources to provide training in the past.

To this point the DOP has not evaluated the course content or effectiveness of commercial training programs. Participant learning has not been assessed and the impact of training as indicated by improved organizational effectiveness has not been measured.

- ◆ Organizations reporting on anti-sexual harassment programs regularly recommend establishing strong, visible leadership participation in the inauguration of standardized training.

- ◆ The anti-sexual harassment training program and seminars available through the DOP/HRDI are in broad agreement with academic and commercial curricula available in the adult education community. Related programs including Affirmative Action Awareness, Certified Public Manager Program, and Basic Supervision training may not be reflective of the advancing interpretation of sexual harassment.
- ◆ The different workplaces in the State system and the diverse employee population result in inconsistent program operation, and unequal access to professional development and training. Problems with communication are based in part on language, literacy, education and cultural diversity issues. Other problems include a lack of centralized information dissemination when case law redefines parameters or policy guidelines are changed.

VIII. Training

B. Recommendations

1. *All employees should receive clear, explicit and accurate information through those informational and educational channels consistent with the recommendations in this report.*
2. *The training program (which includes various types of training geared to those categories of employees identified in the findings) will be administered through the Human Resource Development Institute (HRDI). HRDI shall establish standard learning objectives, measure participation, evaluate training impact on the workplace and assess the impact of the training program on organizational operations.*
- 3a. *Affirmative Action Officers, alternate intake designees and others described previously in managing the response to sexual harassment complaints will receive specialized training and periodic updates in addition to the regular program.*
- 3b. *HRDI Training Staff assigned to teach the program and seminars should receive in-depth background training, advanced trainer education and on-going subject matter updates. Consideration should be given to including victims of sexual harassment to participate in curriculum development.*
4. *Upon promulgation of the approved State policy each department, agency, and autonomous authority shall address providing anti-sexual harassment training as part of their annual training plan requirement. Agencies must ensure that appropriate training at the necessary levels of competence is recommended for employees in each subsequent annual training plan.*
- 5a. *The Human Resource Development Institute must develop and/or authorize all educational programs presented in the organizations covered under the Executive Order pertinent to sexual harassment. The HRDI will be responsible to act as a central update facility to reflect the advancing policy guidelines and changes required in curriculum as case law may require. This will better ensure currency and consistency of information presented.*
- 5b. *Curriculum for employees and supervisors should address major informational requirements including:*

Legal and social context; definition; historic background.

Policy guidelines; liability; and the law.

Types of sexual harassment; quid pro quo; hostile work environment; sexual favoritism; indirect and third-party harassment; same-sex harassment.

Understanding risks; unwelcome conduct; conduct of a sexual nature; "reasonable victims" standards; workplace relations.

Prevention and setting a hostile-free environment; remedial and preventative action; complaint handling.

Investigation techniques; disciplinary action.

Confidentiality; behavior in the workplace.

- 6a. *The Governor and the Cabinet should take the lead in implementing system-wide educational opportunities by receiving the program at the outset of state-wide implementation.*
- 6b. *Following the lead of the Governor and Cabinet, administrators and managers shall be trained, as well as those identified as part of the complaint management process. All employees shall then be scheduled for the appropriate portions of the overall program*
7. *Sexual harassment training should be incorporated into standard program offerings through HRDI, such as the Certified Public Manager Program (CPM), Basic Supervision and Support Specialist Program (SSP).*
8. *Information should be provided periodically through supervisors, direct distribution, and public notices, which gives all employees up-to-date information on the nature of sexual harassment, how to prevent it and what to do if it occurs.*
9. *Sexual harassment training must include updated training in investigative procedures, including those that involve the handling of collateral contact (witness) testimony.*
10. *Procedures developed must include provisions for updating training and information dissemination. In addition to curriculum changes within the Human Resource Development Institute-provided training, other informational mechanisms might include Advisory Boards currently in existence (Personnel Advisory Board, Affirmative Action Advisory Board, Labor Advisory Board).*
11. *Due to the unique nature of sexual harassment, counseling options must be highlighted in the training provided those who are identified as response management personnel.*

IX. PROPOSED POLICY ON SEXUAL HARASSMENT

PURPOSE

In recognition of the dignity and worth of each person in State employment, this policy concerning sexual harassment is promulgated State-wide. All employees - male or female - shall be allowed to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive or disruptive, including sexual harassment. Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. Sexual harassment debilitates morale and interferes with the work productivity, and therefore, will not be tolerated.

COVERAGE

This policy applies to all employees in State departments, colleges and authorities and prohibits such conduct by or towards all employees.

Everyone who conducts business with the State of New Jersey is encouraged to adhere to the spirit and intent of this policy.

DEFINITIONS

Sexual harassment is defined as: unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature when:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

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 or, and can include:

Gender Harassment: Generalized sexist remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

If the unwelcomed behavior in question does not fit into the above categories but is the inappropriate sexualization of an otherwise nonsexual relationship it will be considered as sexual harassment.

AUTHORITY

N.J.A.C. 4A:7-1.3

RESPONSIBILITIES

♦ Managerial/Supervisory

In order to ensure the integrity of the work environment, managerial and/or supervisory personnel, upon being informed of possible harassment, are expected to take immediate action to stop such behavior where it does exist and to inform employees of their right to file a discrimination complaint.

♦ Employee

Employees are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so would not preclude filing a complaint.

Employees are further encouraged to report all alleged incidents of sexual harassment.

There are two ways in which employees may file discrimination complaints, including sexual harassment, either concurrently or sequentially:

1. Affirmative Action Office

2. Outside Agencies (see attached addendum)

The complainant may initiate a sexual harassment or other discrimination complaint directly with the Division of Equal Employment Opportunity and Affirmative Action, Department of Personnel, if filing the complaint with the appointing authority would pose a conflict of interest by virtue of the alleged harasser having any involvement in the intake, investigative or decision-making process.

TRAINING

Recognizing the diversity and complexity of sexual harassment issues and the State workforce, education and training will be provided on a continual basis to equip all employees and supervisors to act effectively in the work environment, free from sexual harassment.

Those individuals administering the response process to sexual harassment complaints shall receive additional and continual training.

PROCEDURAL ELEMENTS

Procedures promulgated in accordance with N.J.A.C. 4A:7, Equal Employment Opportunity and Affirmative Action, and N.J.A.C. 9:6A-7.4, State College Personnel System, shall include the following elements:

◆ Confidentiality

To the extent possible, the sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the accused harasser and all witnesses. All parties involved in the proceedings, from the initial meeting to the final decision and thereafter, will be advised to maintain strict confidentiality to safeguard the privacy and reputation of all involved.

◆ Retaliation

It shall be a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceeding under this policy. Threats, other forms of intimidation, and retaliation against the complainant or any other party involved in implementing this policy may be cause for disciplinary action.

◆ Protection of all Parties

All complaints will be investigated. Complainants and the alleged harasser will be informed fully of the steps taken during the investigative proceeding.

When there is a finding of no probable cause, as a result of an investigation, it does not necessarily establish that an accusation is false. However, this policy shall not be used to intentionally bring frivolous or malicious charges against any employee.

◆ Sanctions/Remedies

Sanctions for employees found in violations of this policy may be progressive in nature and include:

Referral to counseling;

Oral reprimand;

Written reprimand;

Reassignment;

Suspension (with or without pay);

Termination;

Referral to the criminal justice system for possible sexual assault violation.

◆ **Documentation**

It will be the responsibility of the Division of Equal Employment Opportunity and Affirmative Action in the Department of Personnel to receive and collect data regarding complaints.

◆ **Incidents Involving Vendors**

Procedures shall be developed to address incidents of sexual harassment involving vendors conducting business with the State of New Jersey.

◆ **Distribution Recommendations**

The distribution of policy shall consist of:

Initial distribution to all current employees

Distribution to all new hires

Reissuance of a general policy statement at least once per year to all employees.

The State of New Jersey is committed to maintaining a heightened awareness of the personal dignity of others by fostering a work environment free of sexual harassment.

X. APPENDICES

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 88

WHEREAS, in recognition of our recent celebration of Women's History Month, it is appropriate for the State of New Jersey to redouble its efforts to advance the cause of equality for all women; and

WHEREAS, all women enjoy a fundamental right to be treated with equal respect and dignity; and

WHEREAS, sexual harassment of any kind is totally repugnant to basic principles of equality; and

WHEREAS, the threat of sexual harassment in the workplace continues to hinder the progress of women in professional life; and

WHEREAS, women have the right to be totally free from unwanted sexual advances and other forms of sexual harassment that create an intolerable and offensive atmosphere in the workplace; and

WHEREAS, this State must take every necessary and appropriate step toward eradicating sexual harassment and gender discrimination from the workplace; and

WHEREAS, the New Jersey Department of Personnel currently operates a successful training program through its Human Resource Development Institute that is designed to educate State employees on this important topic; and

WHEREAS, the State should ensure that all governmental entities adopt effective policies to eradicate sexual harassment from the workplace;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, do hereby ORDER and DIRECT:

1. The Commissioner of Personnel shall conduct a comprehensive review of the State's current policies, practices, and procedures for eradicating sexual harassment from the government workplace. The Commissioner of Personnel, working in cooperation with the Personnel Advisory Board, shall examine current policies, practices, and procedures, including N.J.A.C. 4A:7-1.2 et seq., to determine

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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

how these practices and procedures can be made more effective and sensitive to the needs of victims of sexual harassment. The Commissioner of Personnel shall submit a final report to me no later than ninety (90) days after the date of this Executive Order.

2. The final report shall set forth findings and recommendations, and shall address all relevant issues including: (a) What are the current practices and procedures employed by the nineteen principal State departments as well as State authorities and colleges?; (b) Do these practices and procedures respond adequately to the needs of victims of sexual harassment?; (c) Do these practices and procedures provide adequate sanctions for those who are found to have committed acts of sexual harassment?; (d) Are these practices and procedures uniform throughout all units of State government?; and (e) Are State employees adequately advised of the nature of sexual harassment and the remedies that exist?

3. Concurrent with the preparation of this report, all State agencies, departments, authorities, and instrumentalities shall develop a plan for providing anti-sexual harassment training programs or seminars for employees and/or for management and administrative personnel. In particular, the nineteen principal State departments shall make available to employees the anti-sexual harassment program as administered through the Human Resources Development Institute in the Department of Personnel.

3. This Order shall not be construed to apply to local, county, or municipal governments.

4. This order shall take effect immediately.

GIVEN, under my hand and seal
this 4th day of April
in the Year of Our Lord, One
Thousand Nine Hundred and
Ninety Three, and of the
Independence of the United
States, the Two Hundred and
Seventeenth.

GOVERNOR

Attest:

Robert J. Lott

Chief Counsel to the Governor

FILED

APR 8 1993

DANIEL J. DALTON
SECRETARY OF STATE

APPENDIX B

EXHIBIT 1

OUTLINE OF SEXUAL HARASSMENT COMPLAINT PROCESSES

AVAILABLE TO NEW JERSEY STATE EMPLOYEES

1. SUPERIOR COURT OF NEW JERSEY

Can bring directly in New Jersey Superior Court, claim of N.J. Law Against Discrimination ("N.J.L.A.D."), N.J.S.A. 10:5-1, et. seq. violation.

Can also bring N.J.L.A.D. claim in Federal Court if plaintiff is bringing a Title VII or 42 U.S.C. §1983 claim there.

* Statute of Limitations (period of time in which plaintiff must file action or else be barred from filing suit) (2 or 6 years) Montells v. Haynes case pending before N.J. Supreme Court. Statute of Limitations under N.J.L.A.D. is an open issue.

Remedies Available

Depending on the claims and the proofs and who the defendants are, the available remedies under NJLAD are...

1. Compensatory damages for lost wages.
2. Compensatory damages for medical or psychiatric expenses.
3. Injunctive relief.
4. Punitive damages (damages to punish for malicious wrongdoing).
5. Attorney fees.

2. NEW JERSEY DIVISION ON CIVIL RIGHTS ("DCR")

(Must file complaint within 180 days).

Can get an adversarial hearing after 6 months with the Office of Administrative Law.

Either transfer to OAL or wait for a probable cause determination by the DCR.

A Deputy Attorney general will represent plaintiff once the DCR completes its investigation and finds probable cause unless defendant is a New Jersey state agency represented by a deputy. It is an open question as to who represents plaintiffs in that situation.

Case can be referred over to the Federal Agency, the EEOC.

If the Division on Civil Rights makes a determination of no probable cause, the moving party's only recourse under the NJLAD is to appeal the decision to the New Jersey Superior Court, Appellate Division.

Remedies Available

Compensatory, punitive, injunctive and or equitable relief.

3. FEDERAL COURT - TITLE VII

Plaintiff must within 300 days of harassment incident file a complaint with the EEOC.

EEOC issues a "right to sue" letter and within 90 days receipt of the "right to sue" letter, plaintiff must file Title VII complaint in Federal District Court.

Remedies Available

Compensatory.

Punitive damages (depending on who defendant is).

Equitable relief.

Attorney fees.

4. 42 U.S.C. §1983 - Federal Statute creating a remedy for a constitutional deprivation by a person acting under color of State law.

Can be brought in State or Federal district court against State employee--not against State agency.

Must be brought within 2 years of incident.

Remedies Available

Compensatory damages.

Punitive damages.

Injunctive relief.

Attorney fees.

5. DEPARTMENT OF PERSONNEL - MERIT SYSTEM BOARD

*** (N.J.S.A. 11A:7, et. seq., N.J.A.C. 4A:7-3.2, et. seq.)**

Employee first brings complaint to departments' or colleges' Affirmative Action Officer within 20 days of incident.

Affirmative Action Officer investigates and issues report.

Department head or college president issues a written decision on the complaint. Department head or college president has 45 days from date of complaint to issue a decision.

Department head or college president may find discipline appropriate.

Employee can appeal department head's or college president's decision to the Division of EEO/AA within the Department of Personnel within 20 days of receipt of the decision.

Employee can appeal from Division of EEO/AA (Department of Personnel) decision within 20 days to the Merit System Board.

Can appeal Merit System Board's decision within 45 days to the New Jersey Superior Court, Appellate Division because Merit System Board's opinion is a final agency decision.

Remedies Available

Equitable relief.

6. UNION CONTRACTUAL GRIEVANCE

First step is to submit a written grievance with 30* days of harassment on a "grievance form" provided by the State which will contain a general description of relevant facts of the grievance to the designated representative of each party.

Complainant can proceed with or without union representation.

If grievance is appealed to the second step and department head or designee determines grievance resolution not within authority of department, grievance may be forwarded to Office of Employee Relations for determination within 10* days.

Within 20* days from receipt of grievance, the Office of Employee Relations must respond in appropriate fashion.

** Time frames may vary with each union contract.*

7. STATE COLLEGE PROCESS

* N.J.A.C. 9:6A-7.4 applies to New Jersey state college unclassified employees. Career employees follow procedure in #5.

Employee first brings complaint to departments' or colleges' Affirmative Action Officer within 20 days of incident.

EXHIBIT 2

DISCRIMINATION APPEAL PROCESS GUIDELINES

Any person employed by or applying for employment with the State of New Jersey shall NOT be discriminated against on the basis of race, creed, color, national origin, ancestry, sex, age, religion, marital status, or handicap. Any employee or applicant for employment who believes he/she has been discriminated against on the basis of any of the above category(s) may file a discrimination complaint (appeal).

Any person who believes that he/she has been discriminated against in connection with any of the following, must pursue his/her appeal through the appropriate appeal procedure as described in Title 4A of the New Jersey Administrative Code and include all arguments concerning the discrimination issues:

1. Awards in State service;
2. The classification of their position;
3. A major discipline matter;
4. An employment list removal for medical unfitness;
5. An employment list removal for psychological unfitness;
6. An examination(s);
7. A layoff(s) in State government;
8. An overtime matter;
9. Final Performance Assessment Review;
10. Acts of reprisal (other than reprisal from filing a discrimination appeal);
11. A resignation;
12. A salary issue;
13. A sick leave injury claim; or
14. A supplemental compensation on retirement matter.

Any person who believes he/she has been discriminated against, and the complaint does not involve any of the above listed issues, may file a complaint (appeal) through the discrimination appeal process. That process is described in the following three pages.

A discrimination complaint (appeal) must be in writing and must be filed within 20 calendar days of either the discriminatory action or the date on which the person should reasonably have known of the occurrence. The appeal must specify the basis for the complaint. That is, the appeal must include the following:

1. Appellant's name, title and the department/agency where employed or seeking employment, and home mailing address.
2. The type of discrimination (i.e. race, sex) contending to have been subjected to by employees/agents of the department/agency.
3. Detailed, specific information concerning the charge of discrimination. This shall include date of occurrence(s) and the name(s) and title(s) of person(s) involved.

Complaints (appeals) shall be presented to the Affirmative Action Officer of the department/agency where the employee works or where the person applied for employment. A copy of the appeal must be sent to the Director, Division of EEO/AA, by the person filing the appeal (the appellant) at:

Department of Personnel
CN 315
Trenton, New Jersey 08625.

The Affirmative Action Officer must stamp the date of receipt on the appeal.

The appellant has the burden of proof. This means the appellant must provide sufficient information/argument to demonstrate there has, in fact, been different, discriminatory treatment.

The Affirmative Action Officer shall investigate the complaint of discrimination and report his/her findings to the department head. The report to the department head shall include:

1. A synopsis of the arguments presented by the appellant.
2. A synopsis of arguments submitted by pertinent department/agency employees/agents.
3. A complete listing of the findings of fact.
4. Conclusions drawn from the arguments presented and the facts.
5. Recommended action.

The department head shall issue his/her written decision to the charges of the appellant within 45 calendar days of the receipt of the complaint by the Affirmative Action Officer; unless a longer period of time is agreed to

by both the department head, through the Affirmative Action Officer, and the appellant. Such extension of time shall be in writing and shall be signed by the department Affirmative Action Officer and the appellant. The date the agreement was signed shall be clearly shown. The agreement shall include a specific date upon which the decision is to be issued. A copy of the agreement is to be given to the appellant and sent to the Division of EEO/AA by the Affirmative Action Officer.

The department head's decision letter will advise the appellant of:

1. A complete listing of the findings of fact;
2. Conclusions drawn;
3. Decision; and
4. Where appropriate, the right to appeal the decision to the Division of EEO/AA within 20 calendar days of receipt of the decision.

The decision letter is to be sent to the appellant, at the appellant's home address. At the same time the appellant is sent the decision letter, the department head must send to the Division of EEO/AA:

1. A copy of the decision letter; and
2. A copy of the Affirmative Action Officer's report and recommendations. (Conclusions and recommendations included in the original report may be extracted before forwarding to the Division of EEO/AA.)

If no decision is received by the appellant within the 45 day time limit, or the agreed upon extension, the individual may submit a written request to the Division of EEO/AA to assume jurisdiction of the complaint. Receipt of the request will be acknowledged and the Department notified of the request via copy of the acknowledgement. Inquiry will be made of the department concerning the case. The Division of EEO/AA will do one of the following:

1. Grant the department an extension on the time needed to complete the decision on the case, if time needed is reasonable as determined by the Division of EEO/AA;
2. Take jurisdiction and investigate the complaint and issue a determination. If the Division of EEO/AA takes jurisdiction the investigation will be conducted and a decision issued by the Director of EEO/AA within 45 days of receipt of the pertinent documentation from both the appellant and the department's Affirmative Action Officer; or
3. Take other appropriate action.

The appellant has 20 calendar days from date of receipt of the departmental decision in which to appeal. The appeal must be in writing and include a copy of all materials presented at the department level.

The Division of EEO/AA shall review the written record and render a final decision. The decision letter will advise of both the appellant's and the department's right to appeal to the Merit System Board. Review of the appeal at the Division of EEO/AA will involve an examination and analysis of the arguments and documentation presented by the appellant at the department level in conjunction with the analysis and decision rendered at the department level.

If the individual is not satisfied with the final decision of the Division of EEO/AA, he/she may appeal the decision to the Merit System Board within 20 days of receipt of the decision.

The appeal to the Merit System Board shall be in writing and contain all the information which was presented to the Division of EEO/AA, plus a copy of the Division's final decision.

The Commissioner of the Department of Personnel shall review the appeal and request any additional information needed or conduct any necessary investigation.

The Merit System Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

APPENDIX D

SUMMARY OF PUBLIC HEARING AND WRITTEN TESTIMONY

A number of concerns regarding different aspects of sexual harassment were raised in the three public hearings and through written testimony. The issues were raised by employees of the State (victims and accused harassers), Affirmative Action and EEO Officers, anti-sexual harassment trainers, state college/university students and professors, and private industry employees.

One of the prevailing concerns that was brought to the committee's attention was the fear of being retaliated against once a victim has filed a complaint. Many of our anonymous witnesses admitted it was because of this problem that they felt forced to remain anonymous. Victims testified that they were too scared to file complaints because they feared losing their job, being embarrassed by their supervisors, being transferred to another job or eventually having to leave their job. Some of the witnesses suggested removing the alleged harasser from the worksite during an investigation instead of the alleged victim. Many witnesses suggested instituting a strong system of penalties whereby if an alleged harasser does in fact retaliate against an alleged victim, they will be dealt with appropriately.

The issue concerning a consistent method of penalizing those who harass and retaliate was raised on several occasions. Witnesses were concerned that penalties for those found guilty of harassing and/or retaliating are not strong enough; are not well enforced; and are inconsistent across departments. Suggestions to define clear cut, serious, consistent, enforceable penalties and making the crime of sexual harassment punishable as a misdemeanor were proposed. Many Affirmative Action/EEO officers complained that their recommendations in regard to dealing strongly with guilty harassers are often overruled by appointing authorities or commissioners.

Many witnesses spoke of the psychological impact sexual harassment has on victims, particularly women. Victims and trainers explained that the effects of sexual harassment are similar to those of rape. Victims feel scared, humiliated, embarrassed, and powerless. They noted that co-workers often act differently, as if uncomfortable, around them once a victim has complained. Unfortunately, many victims start to see themselves as the problem and blame themselves.

The issue of problems with the complaint process was raised a number of times. Problem areas that were recognized were: the lack of or confusion over the amount of time to file a complaint from the time of the incident to the time the complaint is due; the length of time it takes for an investigation and findings once a complaint has been filed; the lack of confidentiality during an investigation; the lack of communication among all involved parties throughout the entire complaint/investigation process; the inability to file a "sexual" harassment complaint with a union, and lack of faith in the Affirmative Action/EEO officers to handle the situation fairly and efficiently.

Lack of faith in the Affirmative Action/EEO officers was expressed throughout the testimony. Witnesses complained of Affirmative Action/EEO officers relying too heavily on the testimony of witnesses during an investigation; they believe witnesses too fear retaliation and are often too embarrassed to talk about an incident. Witnesses did not trust Affirmative Action/EEO officers to conduct an efficient investigation when they knew that the officer must report to a higher authority within the same institution or department. It was felt AA/EEO officers attempt to protect the image of the employing agency, since that institution or department is responsible for hiring, firing, and paying the AA/EEO officer as an employee.

Along these same lines, witnesses complained of feeling uncomfortable talking to their Affirmative Action/EEO officer for several reasons: Some complained that it was the officer that was doing the harassing. Others complained that the officers were insensitive to their feelings due to their own gender. Witnesses also pointed out that in a small working environment, speaking to the Affirmative Action/EEO officer would be like telling everyone in the office because information "travels." On the other hand, witnesses who work in large departments complained of the lack of accessibility of AA/EEO officers; these witnesses complained of the lack of privacy in getting in touch with an officer over the phone (i.e. many state employees work in open cubicles where there is little privacy) and the inability to reach an officer at a time when there are no other workers around. Suggestions to provide "off-hour" availability of the AA/EEO officers and to provide victims with another outlet, outside their particular department, were made.

Many Affirmative Action/EEO officers testified that they do not have the available resources needed to conduct thorough investigations. They also expressed that they would like to be kept informed of the corrective action rendered by the appointing authority upon termination of an investigation. AA/EEO officers complained that many times their recommendations in regard to penalties for guilty harassers were often changed or overruled by chief administrators or appointing authorities.

A major concern among witnesses who testified was the lack of enforcement on the part of management to see that sexual harassment does not exist in the workplace. Many complained that not only are managers not well informed of the policies and available outlets for relief that exist, but that they completely overlook the whole issue of sexual harassment and pretend it does not exist. Witnesses claimed that managers are quick to point fingers at those they feel are responsible for the problems in the office, but they never take it upon themselves to do anything about it. They also complained that they are often guided in the wrong direction by management. Many witnesses and trainers agreed that managers, in particular, need to be trained and be provided with guidance and support for handling these issues.

The subject of anti-sexual harassment training was brought to the committees attention a number of times. The majority of witnesses claimed that there is not enough mandatory anti-sexual harassment training provided for state employees at all levels. Most witnesses agreed that employees need to be trained and made aware of their options in the case of a sexual harassment incident. Suggestions were made to distribute a list of people to contact, with their phone numbers, in the event that an incident should occur. Other suggestions such as updating training materials and continuing to do so every couple of years, training for all levels of employment (including training for trainers), frequent distribution of informative brochures, pamphlets, and other literature, incorporating a training/education program on the subject of same-gender sexual harassment, and providing follow-up training for all employees were made.

Another subject that received much attention and was the focus of much testimony was the issue of sexual harassment in New Jersey state colleges and universities. A major complaint of people who testified on this issue is that students of these institutes are not protected by the state. This was seen as a major problem/obstacle for both students and professors that were allegedly victimized and/or accused of sexual harassment. It became apparent to the committee that there is a lack of consistency among policies or procedures in these institutions, which makes it difficult for students to file complaints. Witnesses claimed that they had to change classes and even change their majors so as to avoid professors known to sexually harass. Some witnesses testified that they were actually forced to leave the institution completely. Students also complained that they were the ones to be transferred out of classes during an investigation, not the alleged harasser. One witness noted that by moving the student out of the class, this is a form of sexual discrimination, especially for female students because they are not entitled to take classes that males can take because the AA officers and administration at the school feel that female victims

need female professors. Many witnesses also complained that there is no effective or consistent method of dealing with or punishing guilty harasser. In listening and reading the testimony, there also seems to be some confusion over who actually has access to these types of complaint files.

Students and counselors of various colleges complained that there is not enough confidentiality when filing complaints at state universities and colleges. Students choose not to file sexual harassment complaints due to fear of grade retaliation. Witnesses also complained of inconsistent investigation procedures. Many who have dealt with university and college investigations complained that the investigation centers on the credibility of the student filing the complaint.

Another area of complaint among those who testified was the scope of Executive Order 88. Many people were concerned that the order is not expansive enough. They believe that there are other areas that need just as much attention in terms of the pervasiveness of sexual harassment. Such areas are state colleges and universities (i.e. student/professor harassment), state prisons (i.e. prison guard/visitor harassment), state hospitals (i.e. care-giver/patient harassment), and many more.

Sexual harassment is obviously a wide spread problem. This Committee received testimony from people that had many different and valuable perspectives on sexual harassment. However, we know that there are many others who declined to share their experiences with us for reasons that would appear to be consistent with our study.

ACKNOWLEDGMENTS

The Review Committee wishes to acknowledge the contributions of the following individuals, who spent time and effort in ensuring that this report was compiled, written, edited, and word processed in a professional, timely fashion.

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REVIEW COMMITTEE ON SEXUAL HARASSMENT

In addition to testimony presented, the Commission acknowledges the use of the following sources:

Eskenazi, Martin and Gallen, David, Sexual Harassment: Know Your Rights. Carroll & Graf Publishers, Inc.: New York, 1992.

Siegel, Deborah L., Sexual Harassment: Research and Resources. The National Council for Research on Women: New York, 1991.