

A Sexual Harassment Retrospective: Where Are We Today? By Stephanie B. Goldberg

When Chicagoan Calvita Frederick Sowell recalls taking the bar exam in 1978, one event stands clear in her mind. She remembers being approached by one of the exam proctors, who told her she could expect trouble unless she went out with him. She was not expecting such a dramatic and shocking abuse of power. So why didn't she report him immediately? "You've got to remember that this was 1978. It was a very different era," says Stowell.

And, indeed, she's right. The landmark decision in *Meritor Savings Bank v. Vinson*, in which the Supreme Court held sexual harassment to be an actionable form of sex discrimination for which employers could potentially be held liable, was still some eight years away. At the time Sowell took her exam, few courts recognized harassment as actionable. The term "sexual harassment" was not yet in common usage, and Catharine MacKinnon's ground breaking *Sexual Harassment of Working Women: A Case of Sex Discrimination*, which created a theoretical and doctrinal basis for these actions, was a year away from publication.

How frequently do incidents such as Sowell's happen today? Has the legal field made significant progress toward getting rid of what the *ABA Journal* described in 1988 as the "profession's dirty little secret"?

Getting the Data

At this juncture, it's very hard to pin down, but all available data indicate that harassment is common in the legal profession. The long hours, the frequency of travel, the rapid influx of women into a male-dominated profession, and the inattention most firms pay to personnel matters create environments in which harassment can flourish. In 1990, the ABA Commission on Women in the Profession found a 66 percent incidence of harassment among women working in private practice. A 1993 survey of harassment conducted by the *National Law Journal* showed more than half of the 768 responding lawyers reported they'd been sexually harassed. In 1999, Johanna S. Hunsaker, a professor at the University of San Diego, surveyed 119 female attorneys and clerical staff and found that two-thirds of the attorneys and nearly three-fourths of the clerical workers reported sexual harassment.

There's little reason to think that the problem has declined since then, although the nature of the harassment has almost certainly become more subtle. "Everybody agrees there's very little of the 'sleep with me or you're fired' kind of harassment," says Joanna Grossman, an associate professor at Hofstra Law School in Hempstead, New York. But the more subtle forms of harassment can be equally if not more harmful to women.

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