

How to Stop Harassment:  
The Professional Construction of Legal Compliance in Organizations\*

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ABSTRACT

Between the mid-1970s and the late 1990s, American employers adopted sexual harassment grievance procedures and anti-harassment training in droves. Neither case law nor legislation supported these practices, and lawyers advised that grievance procedures could backfire, putting employers at risk of liability. Where did these strategies come from and how did they become so common? Both practices were retrofitted weapons from the personnel arsenal. Personnel experts saw it as in their professional interest to claim jurisdiction and hawked grievance procedures and training as amulets against liability. With each legal landmark, more employers adopted the grievance procedures advocated by personnel experts despite negative reviews from lawyers. Employers who consulted personnel experts were more likely to install harassment grievance procedures; those who consulted lawyers were less likely. Personnel succeeded in part by framing different arguments to convince executives in different sectors. Private sector executives were susceptible to personnel's argument that these measures protected the bottom line; public sector executives to personnel's argument that they prevented stakeholder problems. Our findings illuminate how these two professions, relying on their different *modus operandi*, contended with each other for jurisdiction over a new issue.

In the 1980s and 1990s personnel experts and lawyers debated how to protect employers from liability for sexual harassment at work. Personnel experts counseled executives that harassment grievance procedures and training programs could inoculate employers against liability, while lawyers argued that there was no panacea and that grievance procedures could backfire by giving employers knowledge of harassment that would make them liable for it. Neither practice provided much protection until 1998, when the Supreme Court ruled that they might help in certain limited circumstances. By then harassment grievance procedures were found in 95% of medium and large workplaces and harassment training was provided in 7 out of 10. Grievance procedures were actually more common than unpaid maternity leaves, which were explicitly required by federal law. The irony is that the Court vetted these things because personnel had made them ubiquitous, not because there was any evidence that they solved the problem. By 1998, harassment procedures and training were so widespread that employers without them seemed to be sending a signal that they condoned harassment (Edelman, Uggen and Erlanger 1999, p. 808). How is it that personnel experts sold executives on grievance procedures when lawyers were at best lukewarm on them? How did personnel executives sell training far and wide long before the courts took a stand?

As the formal organization has absorbed more and more of social life, jurisdictional disputes between professional groups increasingly play out in networks of executives rather than in front of government officials. Professions win jurisdiction not through state licensure, but by popularizing the management practices they favor. Our theoretical contribution concerns the professional jurisdictional strategies that work best before this audience. Before state officials, the classical liberal professions won jurisdiction by establishing licensing boards and examinations and by demonstrating unique expertise in particular areas of knowledge. Before organizational executives, successful professional claims look different in two ways. First, executives favor practical solutions over perfected expertise. Personnel's ready remedy trumped lawyers' wait-for-precedent approach. In the increasingly common jurisdictional disputes before organizational executives, the profession with a practical solution appears to have an advantage over the profession with a claim to greater knowledge. A profession may even win government sanction by convincing enough executives – that is what happened when the Supreme Court

vettted grievance procedures and harassment training. Second, managers respond to arguments linking their own interests with the greater good in a way that state regulators typically do not. Personnel experts appealed to the different interests of public and private managers. They told public sector executives that they faced stakeholder problems if they had many women workers and did not adopt personnel's favored remedies. They told private sector executives that they faced financial risk when punitive damages were in play if they did not adopt personnel's remedies. These specific appeals worked, as we demonstrate. In jurisdictional battles that play out before executives, it is not only claims about expertise and the public good that matter but also appeals to the specific interests and motives of those executives.

Why did these professions offer such different advice? History and professional ethos explain the differences. Personnel's advice was based in the field's tradition of building bureaucracy, a tradition dating to the 1930s when personnel experts and lawyers divided up the turf of labor relations. Attorneys' advice was based in their traditional deference to case law and their technology of case consultation. When harassment came on stage, the two professions revived their old labor relations roles. Lawyers recommended that employers come to them with each harassment claim and wait for the courts to rule on bureaucratic procedures. Personnel managers pitched retreats of the Civil Rights grievance procedure and sensitivity training program.

We bring two types of evidence to bear on the question of how these two professions influenced organizations' anti-harassment measures. On one hand, in a systematic review of the articles published in personnel and legal journals between 1977 and 1997, we find that the personnel articles often mentioned grievance procedures and training as compliance strategies and that law articles frequently advised employers not to set up grievance procedures. On the other hand, our quantitative analyses of the spread of sexual harassment grievance procedures, more inclusive "general" harassment procedures, and anti-harassment training programs among 389 employers between 1965 and 1997 confirm three interesting hypotheses. First, each time a legal landmark seemed to ratchet up the risk of a harassment lawsuit, executives became significantly more likely to follow the advice of personnel experts and less likely to heed the warning from lawyers that grievance procedures might actually do harm. Increases in the

perceived legal threat, in the context of substantial legal ambiguity, enabled personnel experts to trump the obvious expertise of lawyers. Second, the professions had direct influence through their roles in organizations. Consulting personnel experts increased the likelihood an employer would install harassment procedures; consulting legal experts decreased the likelihood. Third, expert appeals to different executive interests in different sectors were effective. Experts did not merely appeal to norms of equity and fair play, as institutionalists have suggested in the past (Meyer and Rowan 1977). Expert claims that harassment procedures could reduce political risk from internal stakeholders worked in public sector organizations with many women. Claims that harassment procedures could reduce financial risk worked in private organizations exposed to large damage awards.

### **THE PROFESSIONS IN ORGANIZATIONS**

The classical literature on the professions focused on how groups gain authority in particular domains by winning public opinion, establishing credentials, and setting up state licensing. Abbott revolutionized the field with a systems perspective on professionalization projects, attentive to the contending groups that vie for authority in a given domain. In *Ancien Regime* France, Abbott (1988, p. 157) observes, the groups competing for work as healers included “physicians, surgeons, pharmacists, ‘empirics,’ operators, *spagiristes*, and ... the various members of the clergy”. Groups won turf battles through the status group closure processes that Weber (1980 [1946]) documented. Whereas Abbott observes the wide historical sweep of professional contention, we observe a microcosm that illuminates how expert groups have recently vied for authority within organizations.

One consequence of the organizational absorption of vast domains of social activity over the last two centuries is that jurisdictional struggles for expert authority are increasingly played out within networks of organizations rather than within nation-states (Abbott 1988). Organizational institutionalists have examined how the professions seek to establish authority within organizations (Dobbin and Sutton 1998; Fligstein 1990), but they have not much explored what happens when two groups vie for authority over the same issue (but see Edelman, Abraham and Erlanger 1992; Stryker 2000). Relevant here is one of Abbott’s (1988) key case studies, which compares the jurisdictional struggles over legal authority in

the U.S. and Britain. In the U.S. there was an adequate supply of lawyers, thanks to the innovation of formal legal training to supplant clerkship, and as a result other groups (accountants, justices of the peace, etc.) did not invade lawyers' turf when the rise of the corporation expanded demand for legal talent. In Britain the supply of lawyers was inflexible and so other expert groups won control over important arenas of corporate law because the supply of lawyers could not meet growing demand.

We document a different sort of pattern in the division of labor between lawyers and personnel experts. Personnel professionals risked being frozen out in handling labor relations, civil rights, and sexual harassment. These arenas might have been monopolized by lawyers and personnel experts fought hard to establish a role in each. Lawyers could count on disputes redounding to them and so were sure of playing a role. For Abbott, in the earlier period, the issue was the "unauthorized practice of law" by contiguous groups of experts in a situation of scarcity of experts. Here the issue is more fine-grained, concerning the organizational division of labor. And here the issue is not one of inadequate professional supply but of competition among two well-staffed professions.

It stands to reason that in matters of law, executives would listen to lawyers. But personnel's modus operandi was to build bureaucratic solutions to legal problems and the legal profession's modus was to consult on a case-by-case basis. We show that, in the case of harassment at least, personnel won out because they had ready solutions that could allay executive anxiety about the uncertainty of the legal environment. Personnel successfully appealed to managerial interest in reducing uncertainty in the organizations that employ them (Fligstein 2001; Jensen and Meckling 1976). Managerial perceptions of legal uncertainty were heightened by America's ambiguous Civil Rights code, in the context of a common law system that gave judges the capacity to continuously reinterpret the law. The Civil Rights Act did not specify what employers must do, or not do, and legal precedent was a moving target (Edelman 1992). Personnel played on compliance ambiguity and on managers' risk aversion. We demonstrate that managers followed the advice of the profession whose pattern was to design bureaucratic responses to new regulations and not the profession whose pattern was to await legal precedent.

A second insight concerns how personnel appealed to different managerial interests in risk reduction in public and private sectors. Organizational theorists have argued that firms pay attention to emerging legal norms to avoid looking bad in the eyes of their various constituencies (DiMaggio and Powell 1983; Pfeffer and Salancik 1978). The idea behind the concept of normative isomorphism is that firms try to follow emerging norms. This approach neglects the social construction of group interest by experts (DiMaggio 1988; Roy 1997). We suggest that to succeed in establishing their authority in a new domain, professions must couple broad normative goals with sales pitches appealing to the self-interest of managers. In this case, personnel sketched two very different theories of why managers should want to implement grievance procedures. They appealed to the interest of private sector managers in minimizing financial risk, and of public sector managers in minimizing political risk. Organizational theorists should pay more attention to the multi-vocality of rationales for managerial action. The remainder of the paper provides the evidence for our claims about the roles of the two professions and about the efficacy of personnel's two sectoral arguments for the grievance procedure.

## **PERSONNEL AND LAW: DIVIDING THE TURF**

The personnel profession first struggled to carve out a role in labor relations in the 1920s. (Personnel renamed itself Human Resources Management during the period we observe and we follow the change in terminology). Personnel became a distinct management specialty by developing scientific systems for selecting and training workers and creating benefits programs and “company unions” under the rubric of “welfare work” (Brandes 1976; Brody 1980). After the Wagner Act of 1935 empowered unions, personnel experts negotiated union contracts alongside labor lawyers and went on to implement the grievance procedures, seniority systems, job classification schemes, and pension programs written into those contracts. Later in non-union sectors personnel matched the hiring and promotion systems of unionized sectors (Kochan, Katz and McKersie 1986; Selznick 1969). Personnel grew as a profession in response to labor law, and the profession's core technology was bureaucratization.

The legal profession had flourished earlier; with the rise of the modern corporation, lawyers set up shop as independent professionals with a technology of case-by-case consultation (Abbott 1988, p.

247). Whereas personnel professionals managed the law by establishing bureaucracies, lawyers claimed the singular ability to offer precedent-based advice that would stand up in court. Even after lawyers joined the payroll as house counsel (Leicht and Fennell 1996) they acted as consultants on individual cases and contracts (including union contracts) -- they did not design bureaucratic systems for handling legal compliance as personnel experts did (Nelson and Nielsen 2000).

The two professions, from the start, had different views of the law and different strategies for managing the legal exposure of the firm. Their different approaches can be seen in Edelman, Abraham, and Erlanger's (1992) study of wrongful discharge law. The personnel journals exaggerated the risk of wrongful discharge suits, blithely telling employers that they could protect themselves by adding formal language to their personnel manuals -- employment-at-will clauses. Their authority came from the claim that the law was a moving target, and that they could predict its trajectory and create bureaucratic protections. Legal journals more accurately represented the modest risk to employers but did not argue that a new, untested, personnel manual clause could inoculate employers. Lawyers followed case law more closely. These approaches reflected the two groups' bases of authority, which in the case of personnel was very much tied up with its historical struggle to gain jurisdiction over elements of employment law. Sutton and Dobbin (1996) found that in the spread of civil rights grievance procedures and employment-at-will clauses, personnel administrators were more entrepreneurial: "their marginal position in firms inclines them to embrace unproven compliance recipes. The legal profession is, by nature, conservative and self-referential" (p. 808). In the case of employment-at-will clauses guaranteeing the employer's right to terminate without cause, personnel managers were "explorers" of uncharted compliance measures and employment lawyers were "settlers," working out details of these clauses after courts had found in favor of them.

Robyn Stryker's study of the role of lawyers and scientists in mediating the law suggests groups' prior identities and assumptions shape how experts will respond to the law. Lawyers and scientists were "trained and socialized to promote the rules that best define their professional identity and that they believe are right and appropriate" (2000, p. 196). In our case, the professional ethos of personnel

managers and lawyers led them to propose solutions that would reinforce their professional identities and authority.

Things might have evolved differently. It is easy to imagine a world in which Civil Rights issues were monopolized by the field of law. France comes close to exemplifying that world, for personnel managers have done little to respond to discrimination or harassment law (Bleich 2000; Saguy 2003). So while American personnel experts successfully established a role in this arena, it was not a foregone conclusion that they would.

In this first section we analyze the advice personnel experts and lawyers offered in print about how to deal with harassment, presenting the results of a systematic analysis and then fleshing out the story with evidence from articles following different legal landmarks. At the end we develop hypotheses to be tested in the second section where we analyze the diffusion of harassment programs.

## **Two Professions Proffer Advice on Harassment**

Given their joint history and their different professional technologies, personnel and legal experts had different advice to offer when legal milestones warned of changes in the terrain ahead. The Civil Rights Act of 1964 did not outlaw sexual harassment by name but, after a rocky start in the courts, sexual harassment claims gained some traction in 1977. Three federal courts found that when a supervisor makes an employee's job contingent on submission to his sexual advances, he has engaged in sex discrimination. (The courts recognize that women can harass men, but for the sake of simplicity we use the male pronoun). In 1986, the Supreme Court found hostile-environment sexual harassment to be illegal and in 1991, Congress added full compensatory and punitive damages to the plaintiff's pot. These three legal milestones, described in detail below, brought new attention to harassment. Personnel experts advised employers to adopt harassment grievance procedures and training programs. Lawyers advised employers to get legal advice for each case but to wait for court rulings before installing grievance procedures.

While personnel experts and lawyers advised executives on what compliance strategies to adopt, in our interviews and in our survey we found that top managers were the key decision-makers. In 60 in-

depth interviews between 1997 and 2001 (described below) Human Resources (HR) directors consistently told us that they needed executive approval for policy changes such as a new grievance procedure or training program. Many complained about having to fight for the policies they wanted. The HR manager at a publisher explained that a company executive killed the idea of harassment training, arguing, "If [sexual harassment] goes on, and if they attend training, they're going to realize: 'My God I was being harassed.' And they'll sue us." In our survey, the majority of respondents told us that they ran HR policy changes by employment attorneys before executives signed off. At more than a third of subsidiaries in our survey (which made up 7 in 10 of workplaces), personnel decisions were approved by executives not merely outside of HR, but at another location.

Next we examine the advice proffered by personnel managers, on the one hand, and employment lawyers, on the other. To systematically analyze this advice, we took the universe of articles from the most-cited personnel and management journals, on the one hand, and legal journals and law reviews, on the other, between the year in which three federal district courts defined harassment as illegal discrimination, 1977, and the year our survey data end, 1997.<sup>1</sup> We searched 41 personnel and management journals and 166 law journals (most law schools publish journals, replete with footnotes, hence there are more oft-cited law than personnel journals). We combine personnel and management in one category because personnel experts wrote most of the management articles on harassment (see Appendix A for a list). We limited the search to journals that were continuously published, allowing for name changes (journals with "personnel" in their titles typically substituted "human resources" at some point). We identified articles with harassment in the title or abstract. We excluded letters to the editor

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<sup>1</sup> We chose the most cited law journals from Hein OnLine's "Core U.S./Most Cited Law Journals" list and the most cited personnel and business journals from the ISI Journal Citation Report, 2003 Social Sciences Edition. For personnel and business journals, we looked at the ISI categories Business; Business, Finance; Industrial Relations and Labor; Management; Psychology, Applied; and Public Administration. We collected the articles from Hein OnLine, LegalTrac, LexisNexis, JStor, ABI/Inform, and EBSCO Academic/Master. Those not available electronically we photocopied and scanned. We ran scanned articles and non-searchable .pdf files through a character recognition program to render them searchable. We read through the articles to eliminate those not primarily about sexual harassment. We used Google Desktop to search for terms. A full list of the journals is available in Appendix A.

and notes of less than a page in length, as well as articles that were not principally about workplace harassment, to find a total of 152 personnel and management articles and 281 law articles.

We searched these 433 articles for mentions of different approaches to compliance. What we found was striking. The personnel and management articles were more likely to mention grievance procedures and harassment training than were the law articles. Moreover, when we read through the articles that contained mentions of these terms, the personnel articles typically recommended both enthusiastically and often suggested that the courts had endorsed them. The law articles typically counseled that the courts had not yet ruled on whether grievance procedures could protect employers and many argued that they could put employers at greater legal risk.

-- Figures 1, 2, 3, 4 About Here --

Figure 1 shows that harassment articles in personnel journals frequently mentioned grievance procedures, and rarely mentioned the “strict liability” standard that could make procedures worthless. We graph the proportion of personnel/management articles mentioning “grievance” or “procedure” because many articles used variations on the term “grievance procedure” – common were “complaint procedure” and “grievance mechanism” – but most used one term or the other. Neither term was commonly used in other contexts in these articles. “Complaint” by itself often returned hits for other uses of the word. We also graph “strict liability”. As we describe below, the courts debated whether employers should be held to a “knowledge” or a “strict liability” standard. Articles discussed the “strict liability” and the “knowledge” standards to point out that grievance procedures would not protect employers in court and might put them at risk by making them aware of illegal conduct and thereby liable for it, as we show below. We graph “strict liability” because our search for the term “knowledge” frequently returned hits to other uses of the word.

When an author mentioned “grievance procedure” without mentioning “strict liability”, it was typically to argue that grievance procedures provided legal protection. When an author mentioned both “grievance procedure” and “strict liability”, it was typically to argue that grievance procedures provided no legal protection given that courts had adopted a strict liability standard.

Compare Figures 1 and 2. X-axis labels include the number of articles published each year and the average pages per article. In Figure 2 we graph the proportion of articles in law journals using the terms. Fewer of the law articles mention grievance procedures. Overall, 26% of the law articles and 34% of the personnel articles mention grievance procedures – despite the fact that the law articles averaged 28.5 pages and the personnel articles averaged 6.1. Moreover, in the critical period of the mid-1980s, when employers were choosing compliance strategies, as many of the law articles mentioned “strict liability” as mentioned “grievance procedure”. Overall 10% of the law articles mention “strict liability” and only 7 of 155 personnel articles mentioned “strict liability”.

Personnel articles were also much more likely to mention training and education as part of their prescription for action. This is evident in Figures 3 and 4. Among the personnel articles, 43% mentioned training and 21% mentioned education. Among the law articles, 1% mentioned training and 13% mentioned education. Training was the bailiwick of the personnel profession, though some employment lawyers did brisk business in anti-harassment training by the 1990s.

In accordance with their different professional histories and ethos, personnel experts were flogging two new versions of bureaucratic personnel remedies and legal experts ignored training and mentioned grievance procedures only to point out that they had no value before the courts. Next we discuss each legal landmark and the specific advice found in personnel and law journals to develop hypotheses that motivate the quantitative analysis. Our contention is that the legal landmarks focused attention on harassment and that after each, executives would be more likely to follow the ready-made solution of personnel and to ignore the advice of lawyers to wait for the courts to settle the matter of grievance procedures.

### **Legal Landmark I: Harassment is Discrimination.**

Federal judges first heard the claim that on-the-job harassment constitutes sex discrimination nearly a decade after Congress passed the Civil Rights Act. At first they scoffed at the idea. In *Barnes v. Train* (13 FEP [D.D.C 1974]), *Corne v. Bausch and Lomb, Inc.* (390 F. Supp. 161 [D. Ariz. 1975]), and *Tomkins v. Public Service Electric & Gas Co. Co.*, (422 F. Supp. 553 [D. N.J. 1976]) federal judges

found that the Civil Rights Act does not cover sexual harassment. In the 1975 case the court found that Mr. Price's actions toward Ms. Corne appeared "to be nothing more than a personal proclivity, peculiarity, or mannerism. By his alleged sexual advances, Mr. Price was satisfying a personal urge" and concluded that "there is nothing in the (Civil Rights) Act which could reasonably be constructed to have it apply to verbal and physical sexual advances by another employee" (390 F. Supp at 163). In the 1976 case the District Court of New Jersey found that sexual assaults do not constitute sex discrimination because Title VII "is not intended to provide a federal tort remedy for what amounts to physical attacks motivated by sexual desire on the part of a supervisor and which happens to occur in a corporate corridor rather than a back alley" (422 F. Supp. 553).

The courts took employers by surprise in 1976 and 1977, defining harassment as employment discrimination. In 1976, in *Williams v. Saxbe* (413 F. Supp. 654), a federal court first found that when a supervisor fires a worker for refusing his sexual advances, he has discriminated under Title VII. In 1977 three federal courts ruled that it was illegal to make an employee, in Catharine MacKinnon's (1979) words, "put out or get out". The District of Columbia Circuit Court of Appeals, in *Barnes v. Castle*, 561 F. 2d 983 (D.C.Cir. 1977), reversed the 1974 district court dismissal of Barnes' complaint, defining quid pro quo harassment as sex discrimination and holding an employer responsible for a supervisor's conduct. The Court of Appeals for the Third Circuit reversed the district court ruling in the Tomkins case (*Tomkins II*, 568 F 2d 1044) to find that an employer could be held accountable if a supervisor made submission to his sexual advances a condition of continued employment. And in *Garber v. Saxon Business Products*, 552 F. 2d 1032 (4<sup>th</sup> Cir. 1977), the U.S. Court of Appeals for the Fourth Circuit found that the complainant had shown sufficient evidence of employer "acquiescence in a practice of compelling female employees to submit to the sexual advances of their male supervisor in violation of Title VII" (552 F.2d at 1032) to bring a claim against the employer.

These decisions made clear that employers were potentially liable for quid pro quo harassment, but they did not offer employers a way to protect themselves against liability. (Later the courts would also recognize "hostile environment" harassment as discrimination.) The Barnes decision implied that a

formal policy against harassment might help to shield employers from liability, but didn't prescribe a grievance procedure or training.

### **Personnel's Advice**

In writing about harassment, personnel experts piqued executive interest by citing four surveys showing that between seventy and ninety percent of working women had experienced harassment. In 1976 the women's magazine Redbook asked readers to respond to a questionnaire published in the magazine, and reported that an astounding 90% of women had experienced unwanted sexual attention on the job (Safran 1976). This and results of a survey conducted at a sexual harassment conference, showing that 70% of working women had been harassed, were widely reported in places like Personnel Journal (Hoyman and Robinson 1980) and the New York Times (Haberman 1980). Random-sample studies showing harassment to be less common were much less often covered (Gallup Organization 1991; Spann 1990). To respond to newfound concern about sexual harassment, personnel experts turned to their trusty bureaucratic tool-kit and dusted off the grievance procedure and the training module.

The grievance procedure.--Personnel professionals had established grievance procedures in union negotiations after passage of the Wagner Act in 1935. They later sold these to non-union firms as insurance against union drives so that by the mid 1950s, 99% of unionized firms and 80% of large non-union firms had grievance procedures (Selznick 1969). Then in the 1970s, personnel created the Civil Rights grievance procedure in the mold of the union procedure. After Department of Justice personnel experts created a Civil Rights procedure for their own complaints (Order No. 420-69, 34 FR 12281, July 25, 1969), experts recommended the same for the high profile firms that signed consent decrees with the EEOC in the early 1970s -- AT&T, the Bank of California, Pacific Gas and Electric, El Paso Natural Gas, and the big firms in steel and trucking (Schaeffer 1975). By 1980, the personnel journals were unanimous in the view that grievance procedures could protect employers from Civil Rights complaints in court (Berenbeim 1980; Gery 1977, p. 203; Marino 1980, p. 32), despite the fact that grievance procedures had not yet protected a single employer in court (Edelman, Uggen and Erlanger 1999).

Now personnel experts advised in articles in key journals – Personnel, Public Personnel Management, the Harvard Business Review – that managers should establish a “good faith effort” to stop harassment by creating a special harassment grievance system (Spann 1990). Several articles discussed the harassment grievance procedure and training video Tomkins and her attorney had won in their out-of-court settlement in 1977 (Shah and Agrest 1979). The effect of these articles was to give personnel directors ammunition to take to their bosses.

Some argued that grievance procedures could prevent harassment charges. In the Harvard Business Review, Mary P. Rowe (1981, p. 46), one of MIT’s two “quasi-ombudspersons,” advised employers that an internal grievance procedure could help to keep harassment complaints from reaching courts. An April 1979 article in Personnel Administrator noted; “Currently few, if any, organizations have specific grievance procedures designed to appropriately address this particular grievance” and advised that “To be effective in lessening sexual harassment, such a procedure would have to be well-known throughout the organization, ensure confidentiality, and be under the authority of a highly credible, powerful individual” (Somers and Clementson-Mohr 1979, p. 26). Edelman, Uggen, and Erlanger (1999) later found that grievance procedures do not reduce harassment complaints to the government.

The most dramatic claim was that grievance procedures could protect employers in court. The EEOC issued “Guidelines on Discrimination Because of Sex” on 10 November 1980 that defined sexual harassment as sex discrimination under Title VII, and advised “developing appropriate sanctions”. Personnel managers parlayed this into a federal directive to set up grievance procedures (Hoyman and Robinson 1980). Articles in the major personnel journals suggested that grievance procedures would provide legal protection. Two human resources professors published an article in Personnel in 1981 titled “Sexual Harassment: The Employer’s Legal Obligations” that began: “Employers can protect themselves against liability for sexual harassment charges with a strong policy against such activity and a grievance procedure that expedites the processing of such complaints” (Linenberger and Keaveny 1981b, p. 60). They asserted, contrary to what the law journals were saying, that the courts had accepted grievance

procedures: “Several courts have suggested steps an employer can take to escape liability ... liability can be avoided if two conditions have been met: (1) The employer has a policy discouraging sexual harassment, and the employee failed to use an existing grievance procedure and (2) the sexually harassing situations are rectified as soon as the employer becomes aware of them.”(pp. 65-66). In the same year, the same authors published a piece in Human Resource Management (pp. 14-15) arguing “liability may be avoided if the employer has a policy or history of discouraging sexual harassment of employees by supervisors and the employee has failed to present the matter to a publicized grievance board” and “to ensure compliance with Title VII” employers “must establish a written grievance procedure which explains the steps a victim of sexual harassment should follow to make her complaint known to upper management”. In the former article the authors did not cite a case, but in the latter they cited a single case, *Miller v. Bank of America*, 418 F. Supp. 233 (N.D. Cal. 1976), in which the employer’s claim that a grievance procedure should protect him had been rejected by the appellate court in 1979, as we will see below in the Harvard Law Review treatment of the same case (see Edelman, Uggen and Erlanger 1999, p. 433). In short, claims that the courts had vetted grievance procedures were unfounded.

Even articles that accurately depicted case law tended to leave the impression that grievance procedures were mandatory. A January 1980 article in Personnel Administrator used a version of Simon-Says, listing requirements the courts had established, such as rapid response to complaints, and then continuing: “It is extremely important for a company to have an established grievance procedure.... These procedures should be in written form and available to all employees” (Sawyer and Whatley 1980, p. 37). Only the closest reader would see that the court had not mandated grievance procedures.

Figure 1 shows how often personnel articles discussed grievance procedures in the key years of the 1980s. It was easy to argue that grievance procedures would provide legal protection; they were law-like, with rights to counsel, to privacy, to an open hearing, to a neutral grievance panel, and to appeal. Sanctions were clearly defined. Personnel experts suggested that employees would have to use company procedures before appealing to the courts, for that is how grievance procedures written into union contracts worked. Yet in Civil Rights cases complainants were not legally bound to go through a

company grievance system before going to court. In point of fact, grievance procedures had as yet provided no legal protection. Edelman, Uggem, and Erlanger (1999, p. 439) searched all federal racial and sexual discrimination decisions in Westlaw and through the end of the 1970s found only 4 cases in which defendants tried to use a grievance procedure as part of a defense, and not a single case where they succeeded. In this period, the courts had not vetted grievance procedures by requiring that employees use them before appealing to the courts, or by finding that they offered employers any legal protection whatsoever.

Harassment sensitivity training.— Personnel had long run on-the-job skill and management training and in the late 1960s developed “sensitivity” training for incumbent managers (Barley and Kunda 1992; Bennis 1963; Lawrence and Lorsch 1967; Lowin, Hrapchak and Kavanaugh 1969; Robin 1967; Scott 1968). In the early 1970s personnel consultants began to recommend Civil Rights sensitivity training. This became widely popular among large firms and eventually morphed into diversity training (Kelly and Dobbin 1998).

From the time of the 1977 district court rulings, some HR experts recommended harassment training modeled on Civil Rights training. The Working Women’s Institute told Business Week in 1979 (p. 120) that there was widespread interest in the in-house workshops they were then developing. In January of 1980 Sawyer and Whatley wrote in Personnel Administrator that supervisors should be trained to understand the kinds of actions that might imperil employers: “any action which makes current/future employment contingent on acquiescence to sexual advances or demands is illegal” (p. 38).

After the EEOC suggested in its 1980 guidelines that employers should make their policies against harassment known to employees, human resources specialists began using language suggesting that the law required training. An article in Personnel Journal in 1981 titled “Effective Training and the Elimination of Sexual Harassment” begins with the bold (and groundless) claim that case law mandated both training programs and grievance procedures: “Prominent communication of corporate policy opposing harassment in the workplace [i.e. training], and the existence of in-house complaint procedures, are mandatory since a number of judicial actions have placed strong reliance on such measures”

(emphasis added, Kronenberger and Bourke 1981, p. 879; see also McIntyre and Renick 1982, p. 289; Renick 1980, p. 661).

### **Advice from Lawyers: Call Your Attorney**

The positive advice found in legal journals followed case law closely. Lawyers argued that employers should take quick corrective action, in consultation with an attorney and in response to the specific facts of the case. The early law articles quoted the Tomkins district court case from 1977; Title VII is violated when a supervisor harasses “and the employer does not take prompt and remedial action after acquiring ... knowledge” (e. g. Burge 1984, p. 802). Legal journals argued that “prompt and appropriate remedial action” meant calling the lawyers in, disciplining the harasser, and ensuring that the harassed employee did not suffer adverse consequences for the complaint. In one such article John Attanasio argued that case law required that employers get in front of the problem. If a complaint arises, the employer should provide a remedy right away, making a lawsuit moot.

Both the Constitution and Title VII relieve an employer of liability for the discrimination of its agents [supervisors, typically] if it takes corrective action. In constitutional terms, the principle that a plaintiff cannot continue to litigate once she has been afforded her requested relief is commonly called ‘mootness.’ (p. 32)

Employers wait to see if a lawsuit ensues at their peril, for the courts find suspect corrective action taken under the pressure of a pending lawsuit. The court had said that it viewed corrective action “in the face of litigation as equivocal in purpose, motive and permanence” (quoted on p. 35). Attanasio and others advised employers to consult a lawyer the moment they got wind of harassment and settle the problem. Waiting for a formal grievance to be filed was the last thing to do.

### **Lawyers on Grievance Procedures: What You Don’t Know ...**

Law reviews discounted the idea that the courts would favor grievance procedures. As a Harvard Law Review piece (no author listed, indicating that the board wrote it) noted in 1984 (p. 1461), courts had not found that grievance procedures shielded employers from liability thus far: “The defendant in Miller was held strictly liable for harassment by all its employees, despite its express policy against sexual harassment and despite its creation of procedures for grievance resolution.” The piece noted that the case

cited four other federal appellate courts to argue that employers are strictly liable for harassment by supervisors, even when they have policies against harassment and whether or not they know of the harassment. Moreover, the Review pointed out, in Miller and in other cases the courts had not required plaintiffs to go through internal grievance procedures before initiating legal action, which suggested that such procedures were immaterial (, p. 1462). The Review interpreted the EEOC's brief 1980 guidelines on sex discrimination as supporting grievance procedures, but argued: "Because the EEOC does not have the statutory authority to issue regulations ... the Guidelines' standards can acquire the force of law only through adoption by the Supreme Court" (p. 1460). In other words, grievance procedures would not protect employers until the courts decided on them.

Legal journals advised employers not to be fooled by the false promise of grievance procedures (Burge 1984). The problem was that the courts vacillated between two standards of liability. Neither seemed to support grievance procedures. If the courts held the "strict liability" standard, under which employers were liable no matter what precautions they took, grievance procedures wouldn't inoculate them and the courts wouldn't require that plaintiffs go through corporate grievance systems before suing. If the courts upheld the "knowledge" standard of liability, under which employers had to know of harassment to be held liable, grievance procedures could backfire by making employers aware of harassment. In discrimination cases not involving harassment, the courts held employers strictly liable for discrimination (Michigan Law Review (no author listed) 1978, p. 1027). In early hostile environment cases, lower courts had applied the knowledge standard. Neither standard seemed to favor grievance procedures.

Law reviews were sometimes quite blunt in arguing that grievance procedures could backfire. The Harvard Law Review article reiterated that current case law discouraged grievance procedures, for employers had "an incentive to remain ignorant" (, p. 1462). In Attanasio's University of Cincinnati Law Review article, subtitled "The Developing Law of Sexual Harassment," he warned that

Should courts continue to refuse to impute to unknowing employers the sexual discrimination of their supervisors, the policy against sexual discrimination could become

see no evil, hear no evil... The employer has little incentive to encourage [complaints] because the fact remains that lack of knowledge equals lack of liability (1982, p. 31 emphasis added).

A 1984 North Carolina Law Review article dealt exclusively with the knowledge standard, pointing out that from the start, some courts had made employers liable for harassment only if they knew of it. The author quoted the Tomkins decision: “[We] conclude that Title VII is violated when a supervisor, *with the actual or Constructive knowledge of the employer*, makes sexual advances or demands toward a subordinate employee and condition’s that employee’s job status ... on a favorable response” (Burge 1984, p. 803). No knowledge equals no liability.

The question about the standard of liability was a dominant theme in the legal articles published between 1980 and 1990. Note that in Figure 2 articles published in the mid-1980s were as likely to mention “strict liability” as they were to mention “grievance” or “procedure.” Journals for practicing lawyers told much the same story as academic law reviews. Ralph Baxter writing in the American Bar Association journal Legal Economics in 1982 (p. 20) asked the question: “Is the employer liable for sexual harassment by its supervisors if it does not have ‘notice’ of the conduct?” The answer was not clear. While some courts held employers liable for conduct they did not know of, “Other courts ... have rejected this ‘strict liability’ standard.” They have “held that an employer is not liable for sexual harassment by its supervisory employees unless it has notice of the conduct.” Or, ignorance is bliss – at least for the moment. A reader looking to the legal experts could only come away with the view that a grievance procedure might do more harm than good.

Key to our argument is that the legal profession’s claim to jurisdiction over matters of law was based in its knowledge of the minutiae of case law, and that the profession’s modus operandi was to present relevant case law and not to speculate wildly about what the courts might do in future. And so the reigning advice from attorneys was to wait to see if the courts vetted grievance procedures. Below we test the hypothesis that executives who consulted attorneys on HR policy were less likely to install harassment procedures.

## **Legal Landmark II: The Supreme Court's 1986 Meritor Decision**

The Supreme Court's first decision in the area of harassment expanded the definition of actionable harassment. In *Meritor Savings Bank v. Vinson* (40 FEP 1822, 477 U.S. 57 (1986)), the Court defined "hostile environment" harassment as illegal. Catharine MacKinnon (1979), who had put forward the idea, sat as co-counsel for Vinson. Quid pro quo harassment was, to most minds, both clear-cut and rare. Hostile environment harassment by MacKinnon's definition, of repeated, unwanted sexual attention, was neither clear-cut nor rare. Not only had the definition of harassment been expanded, but as the American Bar Association Journal noted in 1987, claims were growing: "'Sexual harassment cases were on the rise even before [Meritor],' says William C. Bruce, a management labor lawyer in New Haven, Conn. 'The publicity surrounding [the case] accelerated the trend, as more potential plaintiffs saw that legal recourse is available'" (Machlowitz and Machlowitz 1987, p. 80). Yet the Court had not outlined how employers might protect themselves. In the opinion the Court explicitly denied requests from counsel for both sides to clarify whether a grievance procedure could protect employers, and said that the "mere existence of a grievance procedure and a policy against discrimination" would not insulate employers from liability (106 S. Ct. at 2408-09).

### **Personnel's Advice After Meritor**

One lesson personnel might have taken from Meritor was that the court had declined the chance to approve grievance procedures and so it was time to search for new strategies. In quid pro quo cases, lower courts used the strict liability standard and so grievance procedures provided no protection. In Meritor, the Court did not accept a grievance procedure as a defense against a hostile environment claim.

Instead of backing away from grievance procedures, personnel experts emphasized that the Court had accepted a much broader definition of harassment. They advocated "general" anti-harassment grievance procedures to cover all bets (Bradshaw 1987; Domenick 1999, p. 786). Personnel experts took the view that a properly worded grievance procedure would protect employers. An article in Public Personnel Management touted Madison Wisconsin's 1981 policy which forbade "harassment on the basis of race, sex, religion, color, handicap, national origin, or sexual orientation" (Spann 1990, p. 59). When

we interviewed the HR manager at a public utility in 1997 about sexual harassment policies, she told us: “you are not keeping up with the latest trends ... we don't even call it a sexual harassment policy any more. It's any kind of harassment. So, we're taking it beyond that. ... And we refer to it as a Non-harassment Policy.”

After Meritor established “hostile environment” harassment as illegal, personnel experts stepped up their advocacy of training programs that could spell out what was *verboten*. “Company confusion and concern have spurred a growth industry in training videos, seminars and consultants” reported U.S. News and World Report in 1986 (Brophy, p. 56).

Chase Manhattan Bank discourages employees from touching each other and runs a 2-hour harassment-awareness program for managers. Atlantic Richfield distributes a film and training materials to corporate divisions, but the level of activity in each division varies. While the ambiguity surrounding sexual harassment perplexes many managers, it's a boon to the companies that market videotapes and training programs.

Many of the human resources managers we interviewed between 1997 and 2001 parroted the press, describing the legal meaning of harassment as a moving target and emphasizing the need to train managers in what “hostile environment” harassment was. An HR manager at a high technology company told us in 2000 that training was key: “There's lots of types of harassment. I think you have to start and make sure that the managers really understand what that is and make sure that they're not doing it and give them the skills to be able to spot that with their employees.”

In 1998 the Supreme Court did hold that training could protect employers against punitive damages in hostile environment cases where employees failed to complain, partly vindicating the prophesy of HR experts. However, even after the 1998 decisions, HR experts overstated the legal support for training. As legal scholar Susan Bisom-Rapp argues: “Some training advocates represent [the Supreme Court decisions] as expressly mandating sexual harassment training, even though the decisions say absolutely nothing of the kind. Susan Meisinger, of the [Society for Human Resource Management], puts it this way: ‘The Court said ... if you don't provide some kind of sexual harassment training to your employees, you're going to be liable’ (2001b, p. 156). Even the 1998 Supreme Court decisions did not go that far.

## **Lawyers After Meritor: More Ignorance is Bliss**

An article in Tort and Insurance Law Journal emphasized that in the Meritor case, the Supreme Court rejected “the bank's contention that the mere existence of a grievance procedure and Vinson's failure to use it should have absolved it” of responsibility (Dolkart and Malchow 1987, p. 187). Law reviews and legal journals continued to advise employers to act quickly when an employee complained of harassment, consulting lawyers to determine an individualized remedy. As Gayle Ecabert wrote the year after Meritor was handed down, “An employer who has been put on notice that sexual harassment exists in its workplace must take prompt remedial action or be held liable”. But the issue of how employers could inoculate themselves had not been decided in Meritor. The Meritor decision’s “terse guidelines lack the adequate analysis and specific detail needed to make them of practical use” (Ecabert 1987, pp. 1195-1196). For now there was no clear means of inoculation.

The knowledge standard was still in play, and the knowledge standard did not favor grievance procedures. In 1990 the lead article in the Howard Law Journal reiterated the point that ignorance of hostile-environment harassment could protect employers: “an employer would not be held responsible for unlawful acts of supervisors that it neither knew of nor condoned” (Turner 1990, p. 10). The second strike against grievance procedure was that in *Meritor*, the Court “rejected the bank's argument that it was insulated from liability by virtue of its policy against discrimination and a grievance procedure which Vinson failed to invoke” (p. 15). Strike three was that a grievance procedure could make harassment “foreseeable” for a repeat offender, heightening legal jeopardy. In *Yates v. Avco Corp.* (819 F.2d 630 [1987]) the sixth circuit court of appeals faulted Avco for having failed to prevent a “foreseeable” situation with an offender who had faced a formal grievance before. Foreseeability would ratchet up the employer’s legal liability: “the establishment of employer foreseeability resulting from the implementation of [a grievance procedure] -- could have a significant impact in harassment cases” (p. 17).

Law reviews now reiterated that the courts had consistently upheld a “strict liability” standard for quid pro quo harassment. A grievance procedure wouldn’t help there. For the increasingly common “hostile environment” cases, the courts might eventually favor some sort of grievance mechanism but

Meritor didn't spell out what it should look like. For the time being, there was no recipe for an effective grievance procedure and any procedure might make an employer aware of, and liable for, harassment.

Lawyers paying attention to case law would conclude that the grievance procedure had little support in the courts. As noted, up to 1979, of the thousands of federal Title VII court cases on racial or sexual discrimination of any sort, Edelman, Uggen, and Erlanger (1999) found only 4 in which defendants claimed that grievance procedures should have shielded them from liability and none in which the courts accepted this defense. Between 1980 and the Meritor decision in 1986, they found only 9 cases mentioning grievance procedures, and only 4 in which the court accepted the grievance procedure as a partial defense. In 4 others, the court refused the idea that any grievance procedure could protect the employer. From 1987 through 1993, 36 employers invoked a grievance procedure defense, evidently because when the court in Meritor said that the "mere existence" of a procedure would not protect employers, some read this to mean that a well-constructed grievance procedure might protect employers. In 12 cases courts found that the grievance procedure relieved employers from liability, at least in part. By the end of 1993, when our survey shows that over 60% of employers had harassment grievance procedures, there was scant evidence that they did much good in court and legal writers counseled that employers should wait to see (a) what kind of grievance procedures the Supreme Court would accept as a defense and (b) whether courts would continue to hold employers liable when a procedure made them aware of harassment.

In Figure 4, we saw that the legal journals discussed training rarely. The articles that mentioned training and education generally spoke favorably of it (Dolkart and Malchow 1987, p. 192; Ecabert 1987, p. 1191). A skeptical law professor later commented on the belief that training could solve the problem: "This belief, widely held and rarely questioned, has spawned a multi-billion dollar sexual harassment and diversity training industry staffed by consultants, management attorneys, and human resource professionals who offer programs aimed at litigation prevention" (Bisom-Rapp 2001a, p. 1). Because the law journals rarely discussed training, we expect that legal counsel will have little effect on whether organizations adopt training programs.

### **Legal Landmark III: The Civil Rights Act of 1991**

Congress bolstered harassment law in 1991 with a new Civil Rights Act that allowed sex discrimination plaintiffs to sue for compensatory and punitive damages. Only race discrimination plaintiffs could do so before that. Now harassment plaintiffs could seek up to \$300,000 each, and employment lawyers saw new potential in class action suits. John Motley, vice president of the National Federation of Independent Business, was quoted in *Business Week*: "Let's face it, until now, virtually no business in the U.S. was exposed to jury trials, punitive damages, and compensatory damages in intentional-discrimination lawsuits except when dealing with racial harassment" (Verespej 1991, p. 64).

Personnel consultants now stepped up their efforts to sell training programs and grievance procedures. When the Senate hearings for Clarence Thomas's Supreme Court confirmation brought widespread discussions of the issue of harassment, consultants pointed to the new financial risk to private sector employers. They also lobbied state governments to require grievance procedures and training. In 1993, Connecticut required private sector managers in workplaces with at least 50 workers to undergo harassment sensitivity training. The main lobbyists were professional associations of trainers, as Representative Joseph Adamo argued, "in most cases, it is the groups that are advocates for this particular legislation who do the training" (Olson 1993, p. 14).

### **PERSONNEL'S APPEAL TO MANAGERIAL INTEREST IN TWO SECTORS**

Organizational sociologists have long noted that organizations in different sectors follow different managerial logics. Meyer and Scott (1983) link these logics to how organizations are judged, suggesting that public-sector organizations tend to be judged by their normative and political behavior, private sector organizations by the bottom line. Personnel had sold grievance procedures and training as risk reduction measures generally. But personnel journals made distinct arguments by sector, emphasizing financial risk to private sector managers and political risk to public-sector managers. We argue not that private sector managers are mercenary and public-sector managers political, but that different ideas of managerial interest are found in the two settings.

## **The Public Sector: Selling Reduction in Political Risk**

Jeffrey Pfeffer (1981) argues that the elaboration of organizational rules and bureaucracy is “a function of the number and importance of different interests that must be coopted” (Pfeffer and Salancik 1978, p. 273). Yet studies of the effects of internal stakeholders show mixed support for the idea that constituency groups shape organizational behavior. Studies of corporate civil rights policies have generally failed to find effects of workforce gender and racial composition (Dobbin and Sutton 1998; Dobbin et al. 1993; Edelman 1992; Edelman 1990; Sutton and Dobbin 1996; Sutton et al. 1994), but several recent studies have shown an effect of workforce feminization on work-family policies (Deitch and Huffman 2000; Goodstein 1994; Guthrie and Roth 1999; Osterman 1995).

When they sold anti-harassment programs to public sector managers, personnel experts discussed the risk of alienating women workers. Journals aimed at public personnel administrators emphasized that sexual harassment had become a problem as more women moved into the workplace. As the constituency increased in size, the risk of problems increased. A 1980 article in the Personnel Journal titled “Sexual Harassment at Work: Why it Happens, What to do About it”, by public administration professor James Renick, noted that female employment in the public sector had increased significantly and cited an Illinois survey of state workers showing that harassment was widespread and that 75% of women were angered and alienated by sexual attention on the job; contrary to the old-boy shibboleth only 1.5% were flattered.

Personnel articles noted that as women took jobs traditionally held by men, the risk of harassment that would alienate workers increased. Gloria Steinem told a New York Times reporter in 1977 that the incidence of harassment had increased as women moved into men’s territory – calling harassment “a reminder of powerlessness – a status reminder” (Dullea 1977, p. 77). A 1982 article on harassment in Public Personnel Management Journal began: “Relations between the sexes in the workplace have been in ferment for over a decade, as the proportion of working women has increased rapidly and they have entered occupations previously closed to them” (McIntyre and Renick, p. 282). A 1990 article in the same journal tied Madison Wisconsin’s need for an anti-harassment program to the growth of women in men’s jobs, “few women outside clerical and other very traditional occupations had worked for the City

before the 1970s ... By the early 1980s, each new (police) academy class of 10 to 15 was at least half female” (Spann, p. 56). Moreover, constituency groups often demand a role in formulating anti-harassment policies. In Madison, two employee groups had strong views of what the policy should look like -- the Women’s Issues Committee and the Minority Affairs Committee – and the administration went through 8 drafts of the grievance procedure before satisfying these groups (p. 58). The increase in women translated into an increase in targets of harassment. Personnel journals advised managers to heed women voters, and to be sensitive to the newsworthiness of public-sector sex scandals: “The problems of governments as employers are magnified by the wider publicity given to and interest expressed in situations which smack of sex scandals” (McIntyre and Renick 1982, p. 289).

Government agencies had integrated women more quickly than private firms and one result was disaffection and discord among the ranks. As Major General John S. Crosby, deputy chief of personnel for Forces Command Installations, told the New York Times about the Army: “Our main mission in life is to fight as a team and to have cohesion and unit spirit. Anything that’s divisive, such as racial disharmony or sexual harassment, has got to be faced and attacked.” In the army, enlisted women had quadrupled in a decade to 10% of the force (New York Times (no author listed) 1982, p. A12).

Personnel experts emphasized that with growing female constituencies, public sector organizations faced the risk of alienating stakeholders if they did not install grievance procedures to remedy harassment.

### **The Private Sector: Selling Reduction in Financial Risk**

When writing for private-sector managers, personnel experts emphasized cost and argued that grievance procedures could eliminate risk. Personnel experts were accustomed to framing policies in bottom-line language, for as Robert Jackall found in studying corporate safety programs, “productive return is the only rationale that carries weight within the corporate hierarchy” (1983, p. 58). A 1980 article in Personnel Journal pointed out that harassment litigation could be costly, arguing “there may be some strong reasons for compliance (with harassment guidelines) based on a cost-benefit analysis” (Hoyman and Robinson, p. 996). Kronenberger and Bourke, writing in the same place in 1981, outlined a case that came before the U.S. District Court of New Jersey in 1979 (*Kryiazi v. Western Electric*) in

which a single complaint of harassment expanded to become a class action with nearly 2000 plaintiffs, and which had already cost Western Electric several million dollars in back pay and legal fees: “Kyriazi demonstrates clearly the potential financial liability in class action lawsuits” (p. 881). In 1983, John F. Wymer III pointed out that a 1981 case against Loews l’Enfant Plaza Hotel opened a potential floodgate of civil suits for “assault and battery, invasion of privacy, and intentional infliction of emotional distress” (p. 182). Under Title VII, penalties for sex discrimination were limited – but a finding of discrimination could lead to civil suits where the sky was the limit: “employers may be on the verge of finding themselves exposed to a very serious new source of financial liability” (p. 182). From the start, when addressing private sector HR managers, personnel experts emphasized the financial risk associated with harassment and argued that the courts favored grievance procedures.

The business press played its role, touting the cost of being sued for harassment. As Los Angeles employment attorney Barbara Lindemann Schlei told the Wall Street Journal in 1985 (Jacobs 1985, p. 1); “[A] pinch at the water fountain has been the way of life in corporations. But that friendly pat or squeeze is this year's tort.” U.S. News & World Report (Brophy 1986, p. 8) wrote: “Until recently, many corporate managers didn't take charges of sexual harassment seriously. Those days are over as a result of a Supreme Court decision ... and big-dollar legal settlements.” The *Meritor* decision created a very large gray area in supervisory conduct, as U.S. News reported, “The case ... underscores that sexual harassment doesn't have to be linked to promises or threats about job advancement. A ‘hostile or abusive work environment’ is sufficient ground for an employee's harassment claim, the Supreme Court ruled.” Meanwhile the business press pointed out that the price of harassment had been rising. Awards had averaged \$60,000 to \$70,000, U.S. News reported, but CBS agreed to settle a claim for \$500,000 and a U.S. district court awarded the former employee of an architectural firm \$250,000 (p. 8).

The Civil Rights Act of 1991 allowing punitive damages gave HR experts new ammunition. Two days after Congress passed the bill, Business Week heralded a victory for the disadvantaged and attributed the extension of punitive damages to the recent Clarence Thomas hearings:

The Thomas hearings are responsible for [a] civil rights breakthrough: a provision in the act giving the victims of sexual harassment the right to sue an employer for monetary damages. Under current law, all workers who win a harassment case can collect is back pay and reinstatement in a job they probably wouldn't want. The draft legislation would provide for damages of \$50,000 to \$300,000, depending on the size of the company. (1991, p. 190)

The new damage awards applied only to private-sector employers. Personnel experts focused on the potential for suits, and the fact that the Act would encourage potential complainants to come forward. Industry Week led its article on the Act, titled “Longer Dockets, Deep Pockets,” thus: “The increased legal liability business will face from the enactment of the Civil Rights Act of 1991 is sobering indeed. The bill ... opens the door -- for the first time -- for women, persons with disabilities, and those who are religious minorities to seek a jury trial and sue for punitive damages of up to \$300,000” (Verespej 1991, p. 34). When a district court certified a harassment class action in the same year, personnel experts pointed out that with damage awards of \$300,000 per complainant, a class action the size of Western Electric’s created an economic sinkhole for employers (Bingham and Gansler 2002). Huge payouts now got broad press coverage. In 1994, a California state jury ordered the biggest law firm in the country, Baker and McKenzie, to pay \$7.1 million – later reduced to \$3.5 million -- to a legal secretary who charged that a lawyer groped her breasts and pressed her from behind. In April of 1996, the EEOC brought a class action suit against Mitsubishi, for harassment at its Normal, Illinois plant that involved nearly 400 workers. Mitsubishi agreed to two settlements by 1998 totaling \$43.5 million.

The key to our argument is not that the 1991 Act increased the financial risk and that this led executives to try to defend against harassment suits. The key is that when the 1991 Act was passed, executives in private firms became more likely to follow personnel’s longstanding advice that grievance procedures could protect against financial risk by inoculating employers against liability. Only personnel had been making that argument, and there was scant evidence that grievance procedures helped defend employers against harassment suits at this time. The 1991 law did not make executives more likely to heed the advice of lawyers that they should await a clear legal ruling on grievance procedures.

In our in-depth interviews with HR managers we often heard that they convinced executives to install grievance procedures and training by emphasizing the financial risk. In 2001, an HR manager at a

high technology company told us: “It doesn’t take too often to be pulled into the court by your earlobes and threatened with millions of dollars. ... I think at the very beginning for a lot of the sexual harassment [policies], it was the lawsuits that implemented the action.” A utility company manager told us in 2001 that he was in the process of expanding the training program he’d initiated in 1993, “Because we see and we read that that’s been one of the fastest growing [areas of] litigation. ... [T]he courts are saying to protect yourself [and whether] you’ve ever had a complaint or not, you’re going to get one. And if you do, you should have this, and this, and this in place.” Private-sector personnel managers also told us that they emphasized cost in their training. At one big high technology company, the HR vice president told us that during the training managers “hear about some of the judgments awarded to people in sexual harassment cases, so they can see that it’s something you’re gonna have to pay for.”

### **Predictions**

The personnel profession’s tradition of devising bureaucratic solutions to problems of legal compliance gave it an advantage in appealing to executives interested in risk reduction in a legal arena with ambiguous compliance standards. Personnel came up with a ready-made solution to the problem of harassment, a preventative to avoid liability. Lawyers advised executives to take complaints directly to counsel but to await a definitive legal precedent before establishing a grievance mechanism. Each time a legal landmark seemed to heighten the risk of liability, executives became more likely to grab hold of that ready-made solution and to ignore lawyers’ advice to sit tight. Executives listened to both sets of advisors, and those who consulted lawyers were significantly less likely to install grievance procedures. Those who consulted personnel experts were more likely to install grievance procedures and training. Moreover, personnel sold grievance procedures and training as measures to reduce financial risk in the private sector and political risk in the public sector, and we expect that in these sectors, when these risks seem to rise, executives will take that advice.

We expect that the three landmarks caused executives to heed the advice of personnel experts and adopt harassment programs, despite lawyers’ frequent arguments that grievance procedures were useless or perhaps even dangerous.

**Hypothesis 1:** Sexual harassment initiatives devised and promoted by personnel experts will spread more quickly after 1977, following the Barnes, Garber, and Tomkins decisions; again after 1986, following the Meritor decision; and again after 1991, following the new Civil Rights Act.

Given the active role of personnel experts, and personnel journals, in defining the grievance procedure and harassment training as lawful compliance strategies, we expect that employers with links to the profession will be more likely to adopt these mechanisms. These professions operated across organizational boundaries; by 1997 76% of organizations with HR departments reported HR managers who belonged to professional associations.

**Hypothesis 2:** Employers with human resources (HR) departments, those using HR consultants, and those with full-time anti-harassment staff members will be more likely to adopt training and both kinds of harassment procedures.

Given that the law journals argued that the courts had not vetted grievance procedures and that procedures might actually backfire, we predict that employers who consulted lawyers were less likely to install procedures.

**Hypothesis 3:** Employers who relied on lawyers for advice were less likely to adopt grievance procedures.

Lawyers began offer training themselves and some became advocates of training, but legal journals had little to say about them so we don't expect that employers who consult lawyers on HR matters will be more likely to adopt training. We control for the presence of diversity training programs, with the thought that where they had a foot in the door, training specialists would have a greater chance of selling harassment training.

Because human resources managers emphasized that grievance procedures could reduce the risk of alienating stakeholders in the public sector, we predict that public employers will be more likely to adopt programs as the proportion of women in the workforce rises. Workforce feminization should have a significantly greater effect in the public sector than in the private sector, according to our thesis.

**Hypothesis 4:** Public sector organizations alone will be more likely to adopt anti-harassment procedures as the proportion of female employees rises.

Because human resources experts emphasized that grievance procedures could reduce financial risk in the private sector, we expect that when the 1991 act opened the possibility for punitive damages, private

sector executives (but not public sector employers) became more likely to install grievance procedures. We do not expect that they became more likely to heed the advice of lawyers to hold off for a definitive judicial opinion.

**Hypothesis 5:** After 1991, private-sector employers will be significantly more likely to install anti-harassment programs.

## **OTHER FACTORS SHAPING HARASSMENT PROGRAMS**

Here we review a range of theories with predictions about anti-harassment programs and outline the factors we control for in the analyses.

### **Organizational Demography and the Risk of Harassment**

The burgeoning literature on the social-psychological and demographic factors that produce harassment indicate which kinds of organizations will face high rates of harassment (Welsh 1999), and decision theorists suggest that organizations formalize problem-solving routines for problems they face frequently (March and Simon 1993). Organizations prone to harassment should be more likely to establish procedures for dealing with cases. Under the contact hypothesis, a woman's risk of experiencing harassment is a function of the number of men she comes into contact with. James Gruber (1998) found that as the sheer number of men in the workplace increased, the likelihood a woman would experience harassment increased. In studies in which women workers report the number of daily contacts they have with men, contact is found to increase the likelihood of harassment (Gruber 1998; Gutek, Cohen and Konrad 1990; Kauppinen-Toropainen and Gruber 1993). In one study, the percentage of men in the workplace was found to increase the incidence of harassment (De Coster, Estes and Mueller 1999). We expect that the percentage of men in the workplace may increase the incidence of harassment procedures and training programs. By extension, the percentage of non-minority workers may increase the likelihood of adopting general anti-harassment procedures that cover racial harassment.

### **Size, Age, Inertia**

Scale should predict the formalization of harassment policies, as it predicts the formalization of many other policies (Blau and Schoenherr 1971; Kalleberg and Van Buren 1996). Bigger establishments,

and those that are part of larger organizations, should be more likely to formalize harassment programs. Stinchcombe (1965) and Selznick (1957) both argue that as organizations age they become resistant to change, and both argue that inertia carries old organizational practices forward. Older organizations should be less likely to adopt harassment policies. Because there were two waves of harassment grievance procedures – sexual and then general harassment procedures – we expect that inertia will keep sexual harassment policies from being replaced by general harassment policies.

### **Unionization**

Unions have historically called for codification of employee rights and due process procedures. Yet some union officials argued that their grievance procedure was the right venue for harassment claims, perhaps slowing adoption of distinct harassment procedures (Hauck 1999). Unionization may have either a positive or a negative effect.

### **Professionalization of the Workforce**

Neo-Marxist labor economists (Edwards 1979; Gordon, Edwards and Reich 1982) contend that organizations in the primary labor market are most likely to protect the rights of employees. We expect that organizations in which the most common job is either managerial or professional will be more likely to adopt anti-harassment policies.

## **DATA AND METHODS**

### **Sample and Data Collection**

We drew a national sample work of work establishments stratified by sector and size. The sectors are representative of the economy: food, chemicals, computer manufacturing, transportation manufacturing, trucking, wholesale trade, banking, business services, hospitals, non-profit social services, and government. The sampling frame was the Dun and Bradstreet Market Identifier database, which Kalleberg, Marsden, Aldrich, and Cassell (1990, p. 664) describe as the most comprehensive of available frames. The modal size of the sampled establishments was 430; the mean was 1445. We did not sample employers with fewer than fifty workers.

The Survey Research Center at the University of Maryland conducted the telephone interviews in the latter half of 1997, completing 389 interviews that covered the history of HR practices back to 1965. We wrote to HR managers, or general managers in organizations without HR managers, and asked permission to interview a person “familiar with the history of your human resource policies.” Interviewers reported that they almost always spoke to HR managers in organizations with HR departments, and to general managers in the 30% of workplaces that lacked HR departments. Seventy-four percent of the organizations we were able to contact by phone cooperated. The overall response rate, which includes in the denominator those respondents they were not able to contact by telephone after repeated attempts, was 56%. Similar surveys have yielded comparable response rates. Milliken et al.(1998) report a rate of 18%; Lincoln and Kalleberg (1985) report 35%; Blau et al.(1976) report 36%; Edelman (1992) reports 54%; Dobbin et al.(1993) report 45%; and Guthrie and Roth (1999) report 57%.

Response bias may inflate the mean figures for our outcome variables because organizations with elaborate HR systems may have the energy, and inclination, to participate. We investigated the possibility of response bias with data available from the sampling frame (Dun & Bradstreet Market Identifiers File; N = 749 contacted establishments). In our logistic regression models of survey response, government sector was a significant predictor of response, with non-profits, manufacturing, and service organizations significantly less likely to respond. But the other factors we analyzed were not significant predictors: size of establishment, size of total organization, subsidiary status, branch (vs. headquarters) status, region, and having a female CEO. The Dun & Bradstreet dataset does not include information on HR departments or officers and so we cannot explore whether the presence of a department increased the likelihood of responding. On the most important question, of whether response bias might influence the statistical results, we are confident that we have controlled for possible sources of bias in the models. Moreover there is adequate variation the key independent variables – as noted, for instance, 30% of responding establishments did not have an HR department.

We generated a data-set with 9844 organization-by-year spells of data. In each model, we retain a record for each year in which an organization was at risk of adopting the practice in question – in which

it existed and did not have the practice in place. Organizations that did not have a particular practice by 1997 are included for the whole period. In each analysis, we omit a small number of organizational spells for which data for covariates are missing. The total number of spells considered in the analyses ranges from 5911 for sexual harassment procedures to 7414 for sexual harassment training programs. We model the adoption of 335 sexual harassment procedures, 249 general harassment procedures, and 284 anti-harassment training programs.

Before the survey we conducted nineteen face-to-face interviews with human resources professionals in the New York metropolitan area, whom we selected randomly from Hoover's Directory of Human Resources Executives (1996). After the survey we conducted another 41 in-person interviews with human resources executives in California, Minnesota, New Jersey, and New York, selected randomly from the Dun's list mentioned above. Above, we quote some of those managers.

### **Measures and Model Specification**

Harassment policies.—We asked survey respondents whether they had ever had each harassment policy and in what years they had adopted each of these strategies. In the analyses, we model the adoption of a sexual harassment procedure, a more elaborate general anti-harassment procedure, and an anti-harassment training program. In the survey, interviewers mentioned both kinds of harassment procedures to ensure that respondents knew the difference between them, and read definitions of both when respondents did not recognize them. In Figure 5 we show the percent of employers with each practice, over time. Each practice rose dramatically over this period.

-- Figure 5 About Here --

Independent variables.—Table 1 lists variables used in the analyses, which were collected at the establishment level and which vary over time, except where noted. Table 1 reports univariate statistics for these variables. Appendix Table 2 reports a correlation matrix for all 9844 spells of data. In our multivariate analyses, organizations that adopted and then abandoned a practice reenter the risk set, but this happened rarely. We asked about the number of employees at ten year intervals; asked about years of exceptional gains and losses; and interpolated size figures for intervening years. For Proportion Minority

and Proportion Female, we asked about the numbers at ten-year intervals and interpolated for the intervening years. To measure age, we asked when the organization was founded. We measure the presence of Union Contract, Human Resources Department, Sexual Harassment Staff Position, and Diversity Training with binary variables. We asked whether the employer ever used HR consultants and if so, in what years they used them.

-- Table 1 About Here --

We also asked whether the employer had ever consulted attorneys – house counsel or outside attorneys -- on human resources matters. In our qualitative interviews, HR directors who used legal consultants told us that at some point their organizations began running all new policies by an attorney, from inside or outside of the firm. The simple presence of a legal department did not have an effect in the models, but organizations that consulted attorneys on HR matters behaved differently from those that did not. We omit Legal Department in the reported models for the sake of simplicity.

Variables that are time invariant are multi-establishment firm, sector, and workforce professionalization. Professionalization is a binary variable, based on the title of the most common job at the establishment. We looked up these titles in the Dictionary of Occupational Titles and gave a score of 1 to any firm whose most common job was defined as professional or managerial.

Most survey records contained complete information on the variables of interest. In a few cases, respondents were not able to tell us when a certain practice or structure (HR department, for instance) was adopted. When a respondent could not give us the exact date of adoption of a particular practice, we assigned the median date of adoption based on other cases. We did not estimate the date of adoption for any dependent variable. In a sensitivity analysis we found that treating the estimated data as missing did not alter the results.

-- Table 1 About Here --

To capture the effects of three legal landmarks we include overlapping binary variables for the periods 1978-97, to model the effects of the three District Court findings in 1977; 1987-97, to tap the effects of the Supreme Court's *Meritor* decision of 1986; and 1992-1997, to capture the effects of the

Civil Rights Act of 1991. In each case, we begin the period in the first full year after the legal landmark. We use overlapping periods so that it will be clear from the coefficients whether each legal shift substantially increased the likelihood of adoption of the harassment policy in question, above and beyond the effects of previous policy shifts. We include a linear time trend variable to control for the possibility that there is simply a secular increase in these practices.

### **Estimation**

We use discrete-time event-history methods because we do not know the exact timing of adoption within the spells and because we have many “tied” events, i.e., years in which multiple employers adopt harassment policies (Allison 1995, p. 220-222; Kalbfleisch and Prentice 1980). In particular, we employ discrete models where the hazard (instantaneous risk) at time  $t$  for an organization with characteristics  $i$  is:

$$h(t|X_i) = h_0(t)^{(X_i'\beta)} \quad (1)$$

Here  $h_0(t)$  is a baseline hazard function describing the risk for organizations with baseline characteristics  $X=0$  and the exponentiate  $(X_i'\beta)$  is a proportionate increase or reduction in risk associated with characteristics  $X_i$ .

Because the transformed data set contains annual spells, the hazard of adoption in each year is equivalent to  $P_{it}$ , the conditional probability that the event occurs to organization  $i$  in year  $t$ , given that it has not already occurred. We model the complementary log-log transformation of the cumulative survival function  $(1-P_{it})$  on the covariates, specified for that time:

$$\log(-\log(1-P_{it})) = \alpha(t) + \beta'X_{it} \quad (2)$$

The complementary log-log transformation takes a variable with the values of 0 and 1, marking the occurrence of the event in a given year, and changes it to a continuous value which ranges from minus infinity to plus infinity (Allison 1995, p. 216). The coefficients estimated by this procedure have a proportional hazards, or relative risk, interpretation.

We present three nested models for each outcome. The three sets of nested models are identical except that we include the presence of a sexual harassment procedure as an independent variable in the

models for the general anti-harassment policy and the training program. A sexual harassment procedure represents the first wave of response to sexual harassment law and we expect organizations that participated in this first wave to be slower to adopt new and improved policies.

We explore whether, net of the effects of variables representing existing theories, variables representing our new hypotheses show significant effects. In the baseline models (equations (1), (4), and (7)) we include variables representing other theories and variables representing organizational reliance on HR and legal professionals. In the subsequent models (equations (2), (5), and (8)) we add the three overlapping periods to see whether shifts in the legal environment have important effects. In the final set of models we test the hypothesis that the different justifications for public and private sectors influence adoption. In equations (3), (6), and (9) we add Female\*Public, to test the hypothesis that public-sector organizations are more affected by feminization than private-sector organizations, and Public\*1992-97, to test the hypothesis that private-sector organizations became more susceptible after the introduction of punitive damage awards in 1991.

## **FINDINGS**

Personnel experts and lawyers mediate the effects of the law and they do so in strikingly different ways. Each time a legal landmark appeared to raise organizational risk, more executives followed personnel's prescription of grievance procedures even though neither Congress nor the Supreme Court advocated them and lawyers often argued against them. Organizations that looked to HR professionals for advice were significantly more likely to adopt sexual harassment procedures and training. Organizations that looked to lawyers were less likely to adopt both sexual and general harassment procedures. Moreover, as we anticipated, organizations in the public and private sectors responded to different rationales – female constituency and bottom-line rationales respectively. The more women a public agency had, the more likely it was to adopt both a general harassment procedure and anti-harassment training. Not so for private firms. But private firms alone became significantly more likely to adopt general harassment procedures after Congress created punitive damage awards. These procedures

were HR's best ammunition, but lawyers still argued that there was little reason to believe that they protected employers. Next we review results for each of the hypotheses.

### **Legal Landmarks**

The risk of adopting sexual and general harassment procedures rose significantly after both the 1977 District Court rulings and the 1986 *Meritor* ruling. These effects can be seen in the significant coefficients for each time period, in equation (2) and (5). The Civil Rights Act of 1991 also has a significant effect on sexual harassment procedures, as can be seen in equation (2). Each significant coefficient suggests that a legal landmark ramped up adoptions over the baseline linear increase captured by the time trend. Coefficients for the latter two periods reflect the increased risk net of both the time trend and the earlier period effects, suggesting a stepwise rise in risk. The legal landmarks do not show the same stepwise effects on training programs, although the coefficients for the time trend, in equations 6 through 9, show a steadily increasing hazard. This is consistent with our argument that personnel argued that grievance procedures could prevent legal liability, and that training could reduce harassment.

-- Table 2 About Here --

### **Professional Influence**

Personnel advocated harassment procedures and training programs – part of their stock-in-trade – as compliance mechanisms. We predicted that employers with human resources departments, human resources consultants, and full-time sexual harassment staff members (who are HR professionals) would be more likely to adopt all three policies. For sexual harassment procedures, the presence of an HR department shows a strong and consistent effect in equations 1 through 3. In equations 4, 5, and 6, none of the variables representing the influence of the profession showed an effect on general harassment procedures. This may seem surprising, but note two things. First, the effect of personnel does show up here, in the effects of each new legal landmark. Only personnel was advocating the grievance procedure as a preventative, and its effects were clearly felt with each legal shift. Second, recall that general anti-harassment procedures were the second wave, and note that in equations (4) through (6) the presence of a sexual harassment procedure shows a negative effect on general harassment procedures. This suggests

that executives who relied on HR experts installed sexual harassment procedures early, but inertia kept them from switching to general harassment policies later.

The advocacy of human resources experts shows strong effects on the adoption of training through three different variables. In equations (7), (8), and (9), HR consultants, Sexual Harassment Staff Position, and Diversity Training all show significant positive effects. HR Department does not show an effect in this model with more fine-grained HR measures, but it does show an effect when we omit HR consultant. The positive effect of Diversity Training suggests that where trainers already have a foot in the door they are able to sell harassment training programs.

We predicted that employers who consult with lawyers on HR policies would be less likely to adopt harassment procedures. The legal journals suggested that formal harassment procedures could backfire. Legal consultants show negative effects on both sexual harassment procedures, in equations (1), (2), and (3), and general harassment procedures, in equations (4), (5), and (6). We did not predict an effect of lawyers on training programs – the legal journals said little about training -- and do not find one.

### **Constituency and Bottom-Line Rationales**

We expected that public sector executives would respond to the HR profession's political/constituency rationale, and thus that workforce feminization would cause them to adopt policies. This idea was supported. We expected that private sector executives would respond to the bottom-line rationale and would be more likely to adopt policies after 1991, when Congress introduced punitive damages. This idea was supported as well.

The constituency rationale.--Workforce feminization stimulates public agencies, but not private firms, to adopt general harassment procedures and anti-harassment training. The non-interacted variable, Percent Female, which taps the effect of feminization only in the private sector, is not significant. In equation 6 the effect of public-sector feminization can be seen in the interaction Female\*Public. The same pattern can be seen for training in equation (9). In the private sector feminization matters less to employers who appear to be more concerned with the bottom line; as one manager told us in 2000, “The number of workers doesn't matter for these policies because one lawsuit is enough.”

-- Figures 6 and 7 About Here --

Figures 6 and 7 show the effects of Percent Female on the hazard of adopting general harassment procedures and training for public and private sector organizations. We report the estimated hazard ratio across the full theoretical range of Percent Female. In both cases, the graphs illustrate dramatic differences between the public and private sectors. For the public sector, Figures 2 and 3 show how an increase in feminization increases the hazard of adopting both general harassment procedures and harassment training. There is no such increase in the private sector, and this is confirmed by the coefficients for Percent Female in equations (6) and (9), representing the effect of feminization in private firms. In the case of multiplicative terms where both components are binary variables, interpretation of coefficients is straightforward because the product of the multiplication is zero or one. However, where variables are not binary, as in the case of feminization, it can be instructive to explore the interaction. We would like to know at what levels of feminization the public sector risk is significantly different from the private sector risk (Dobbin and Dowd 2000; Friedrich 1982). We constructed standard errors for the combination of coefficients using the `lincom` routine in the statistical package STATA. The results reinforce the visual presentations in Figures 2 and 3. Feminization (mean 48.4) has a significantly different effect on the hazard of adopting general harassment procedures among public sector employers in the range 0-43%. It has a significantly different effect on training in the range 0-11%.<sup>2</sup>

Previous studies have generally found that public-sector organizations are more susceptible to adopting practices that symbolize new employee rights (Dobbin et al. 1988; 1992; Edelman 1990; Ingram

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<sup>2</sup> To evaluate the effects of feminization and of the Civil Rights Act of 1991 in public and private firms, we interact both Percent Female and Period 1992-97 with Public Sector. As Friedrich (Friedrich, Robert J. 1982. "In Defense of Multiplicative Terms in Multiple Regression Equations." *American Journal of Political Science* 26:797-833. demonstrates, including these terms alters the equation in significant ways. This can be seen in a comparison of the two models, one with interacted terms and one without. Consider an equation without multiplicative terms, with the variables Public (*Pub*), Female (*Fem*), and Period 1992-97 (*Per*):

$$\log[-\log(1 - P_{it})] = b_0 + b_1 Pub + b_2 Fem + b_3 Per + \varepsilon.$$

In the above equation, the impact of Female is not influenced by the value of Public. In an equation that includes multiplicative terms, this is not the case:

$$\log[-\log(1 - P_{it})] = b_0 + b_1 Pub + b_2 Fem + b_3 Per + b_4 Pub * Fem + b_5 Pub * Per + \varepsilon.$$

In this second equation, the effect of the variable Female is conditioned by the value of Public. In this equation, the  $b_2$  and  $b_3$  coefficients represent the effects of Female and Period, respectively, when Public equals zero – for private-sector organizations.

and Simons 1995). In our final models, public sector shows no effect when the effects of interacted variables are taken into account. In the final models for general harassment procedures and anti-harassment training, the coefficient for public sector is negative and significant, but this represents the effect of public sector when Percent Female is 0 – a situation that never occurs in these establishments. We cannot understand the effect of Public Sector without taking into account the multiplicative term Female\*Public. In equation (6), at the average level of feminization (48.4%) the coefficient of .019 for Female\*Public would increase the likelihood of adopting a general harassment procedure by .920 ( $48.4 \times .019$ ). In other words, at the mean level of feminization, the effect of being in the public sector is small and not statistically significant. The same calculation for Training eliminates the negative effect of Public Sector in equation (9). Apparent sectoral differences are conditional on feminization and the 1991 Civil Rights Act.

The bottom-line rationale.--We argued that private firms would be more susceptible to the bottom-line rationale, and thus would be significantly more likely to adopt policies after the introduction of punitive damage awards in 1991. We operationalize the policy change with two variables, Period 1992-97 and Public\*1992-1997. If private firms are more susceptible to adopting harassment policies after 1991, the first term (representing private firms in 1992-1997) will show a positive effect and the second will show a negative effect. For the general harassment procedure, this is precisely what we find. Note that in equation (5), it appears that the Civil Rights Act of 1991 has no effect on general harassment procedures. In fact, the sectoral differences have masked the effect of this law on private firms. In equation (6), the coefficient for Period 1992-1997, of .502 ( $p < .05$ ), shows the effect of the act on private-sector employers. To calculate the effect of the act in the public sector, we must add to this coefficient the coefficient for Public Sector (-1.198,  $p < .05$ ) and the coefficient for Public\*1992-1997 (-.769,  $p < .05$ ). The legislation does not increase the risk of adoption among government agencies; indeed, the difference between private-sector and public-sector employers is greater in the later period. This is particularly striking given that the act coincided with the hearing on Clarence Thomas's appointment to the Supreme Court, which brought the issue of harassment in the public sector to light.

In sum, feminization significantly affects the spread of general harassment policies and of training, but only in the public sector. The introduction of punitive damages in 1991 significantly increases the chance that private firms will adopt general harassment policies, relative to government agencies. Equations (6) and (9), which include the interacted variables that represent these sectoral differences, fit significantly better ( $p < .05$ ) than equations (5) and (8), indicating that sectoral variation is important. Executives responded to HR's political risk argument in the public sector, adding general harassment procedures and harassment training as the percent female rose. They responded to HR's economic risk argument in the private sector, adding general procedures after Congress imposed punitive damages. In both cases, they responded to personnel's arguments that these practices could reduce risk and did not heed lawyer's warnings to wait for a definitive legal ruling.

### **Other Factors**

Control variables generally show the expected effects, or no effects at all. Large employers are consistently more likely to adopt each kind of harassment policy, as evidenced by the positive effect of employment size on each outcome. Multi-Establishment Organization has a positive effect on General Harassment Procedure. Age shows a negative effect on Anti-Harassment Training Program. Unionization fails to attain significance in the models. Workforce professionalization shows a positive effect on General Anti-Harassment Grievance Procedure and on Training.

### **CONCLUSION**

Viewed from the perspective of Abbott's wholistic approach to understanding the system of professions, Edelman, Uggen, and Erlanger's (1999) insight that in 1998 the Supreme Court vetted personnel's recommendations takes on new meaning. They show that the Court embraced harassment grievance procedures after most organizations already had all-purpose grievance procedures in place. We find that most organizations already harassment procedures and harassment training by the time the Court endorsed them. We show not merely that personnel experts got their way, but that they convinced executives to listen to them and not to attorneys. The personnel profession popularized the grievance

system even as the legal profession advised employers to deal with cases individually and to wait for a clear court ruling on grievance procedures.

The case of harassment management points to the changing character of jurisdictional struggles among the professions. While the Supreme Court eventually endorsed personnel's compliance approach, albeit for very specific circumstances, this profession's authority did not come through state licensure. Instead, executives in public and private organizations gave personnel unofficial license to take charge of harassment by adopting their compliance strategies in large numbers. Turf battles between the professions are increasingly played out in executive suites rather than in legislatures. Contests for control over legal compliance are commonplace in the United States, with a common law system in which regulatory uncertainty is the way of the world. The courts are unpredictable. Attorneys' superior grasp of the law and of precedent would seem to give them the upper hand in professional turf battles, but the legal profession's ethos of caution and attention to precedent puts it at a distinct disadvantage when dealing with executive who seek certain legal remedies.

Personnel's modus operandi gave it a distinct advantage. The claim that the courts had accepted grievance procedures as inoculation against harassment lawsuits, though baseless when personnel first made it, trumped the sober call from lawyers to await judgment from the courts. Many lawyers argued that the grievance procedures being hawked by personnel actually increased liability. Executives embraced them anyway. We build on the longstanding sociological observation that when hired hands run firms, they are more interested in reducing risk of disaster than in eking every last cent out of the enterprise. A nasty discrimination suit can knock top executives from power, and so executives took solace in grievance procedures even when lawyers were arguing against them. Their efforts probably did not make economic sense. They collectively spent untold millions setting up training programs that had not been shown to reduce harassment (Bisom-Rapp 2001b) and establishing grievance procedures that were unproven in court and that did not reduce complaints to the government (Edelman, Uggen, and Erlanger 1999).

Many of today's organizational practices were concocted and popularized by inter-organizational groups of professionals and management experts seeking license from executives. Personnel and legal networks devise strategies, as we have been arguing, but so do finance, marketing, accounting, engineering, and scientific networks (Dobbin and Sutton 1998; Fligstein 1990; Ocasio and Kim 1999; Stryker 2000). Our findings suggest hypotheses to be tested in other settings. We showed that the two professions proffered advice based on their professional models of operating within the organization. Personnel managers had long specialized in creating bureaucratic procedures to handle employment regulations – first labor relations regulations, then Civil Rights regulations, and now harassment law. They not only used the general modus operandi of formalization; they used two practices they had developed in response to earlier regulations – the grievance procedure and the sensitivity training module. Lawyers had long specialized in case consultation based on relevant precedent and now they advised employers to address complaints promptly, with legal counsel, and described the grievance procedure as fool's gold, warning that under the “knowledge” standard courts had been applying, a grievance procedure could render an employer liable in a situation where ignorance of the harassment would have protected him.

The importance of professional toolkits was borne out in our review of all articles on harassment from 1977 through 1997 in the most-cited personnel, management, and legal journals. The two fields differed significantly in the advice they put forward. Personnel articles were more likely to mention grievance procedures even though they averaged 6 pages compared to nearly 30 for law articles. Law articles often mentioned the “strict liability” standard in tandem with the grievance procedure, to argue that case law indicated that grievance procedures might expose employers to liability.

Personnel's promise of a vaccine, based in its history of bureaucratizing legal compliance, appealed to executives' concern for risk reduction. Attorneys' advice, based in case consultation, did not play so well to managers who wanted a general inoculation against liability. Every time a legal landmark seemed to increase the risk of lawsuit, executives became more likely to take personnel's unproven advice. Executives who consulted HR experts were more likely to follow that advice. And those who

consulted lawyers were more likely to take their advice and hold off on grievance procedures. In the end, the growing risk of liability and the absence of a clear judicial mandate led almost all employers to embrace the one preventative measure that was out there, the grievance procedure.

Another insight is that professionals hawking new legal compliance strategies appealed not only to broad norms of justice, as institutionalists have claimed about other anti-discrimination strategies, but to the particular interests of executives in different sectors. Personnel experts claimed to have a way to reduce financial risk in the private sector and political risk in the public sector, and we see in the data analysis that executives responded to these different rationales. The emphasis of institutionalists on the role of broad norms of fairness in the diffusion of new organizational practices has been misplaced, we believe. Institutional entrepreneurs who design and sell new practices like the grievance procedure succeed by making general arguments about fairness and specific arguments about managerial interests simultaneously, and our evidence suggests that the latter play an important role. The effects of these arguments only showed up when we examined the sectors separately, suggesting that organizational sociologists should pay greater attention to the multiplicity of rationales the professions use to popularize new practices to different groups of organizations.

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Figure 1  
 Grievance Procedure in Harassment Articles in Personnel Journals

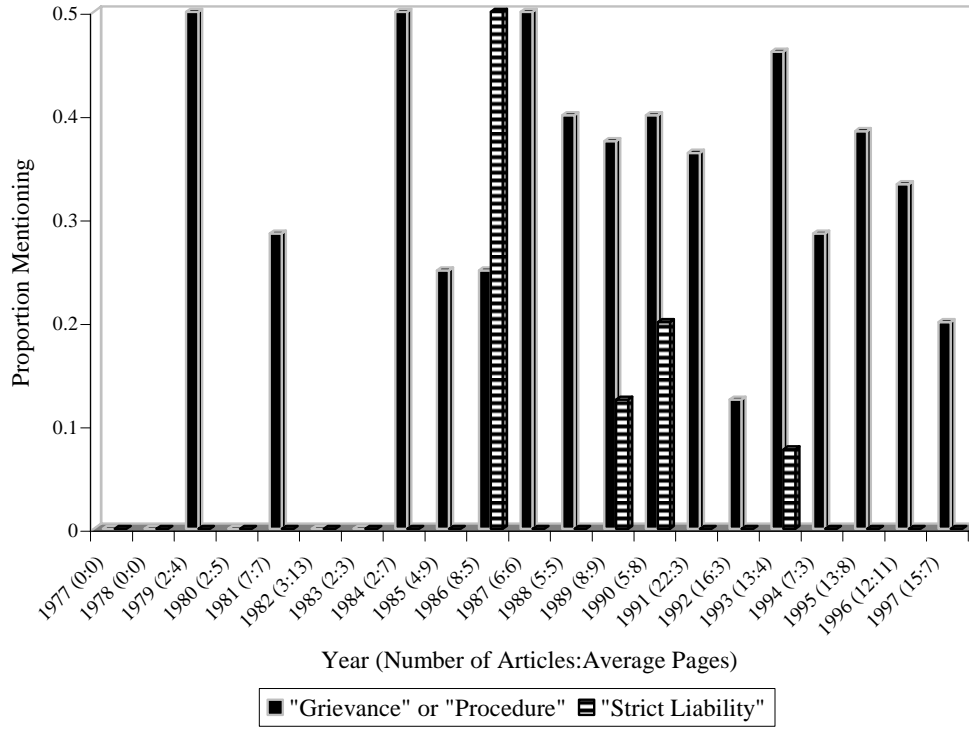


Figure 2  
 Grievance Procedure in Harassment Articles in Law Journals

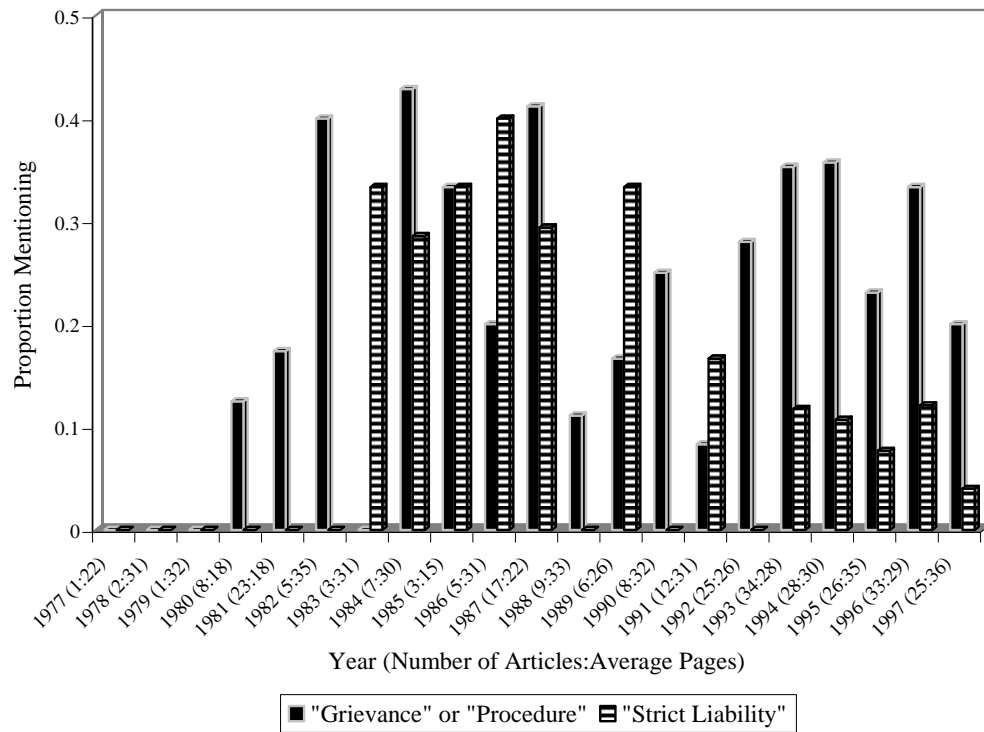


Figure 3  
 Training in Harassment Articles in Personnel Journals

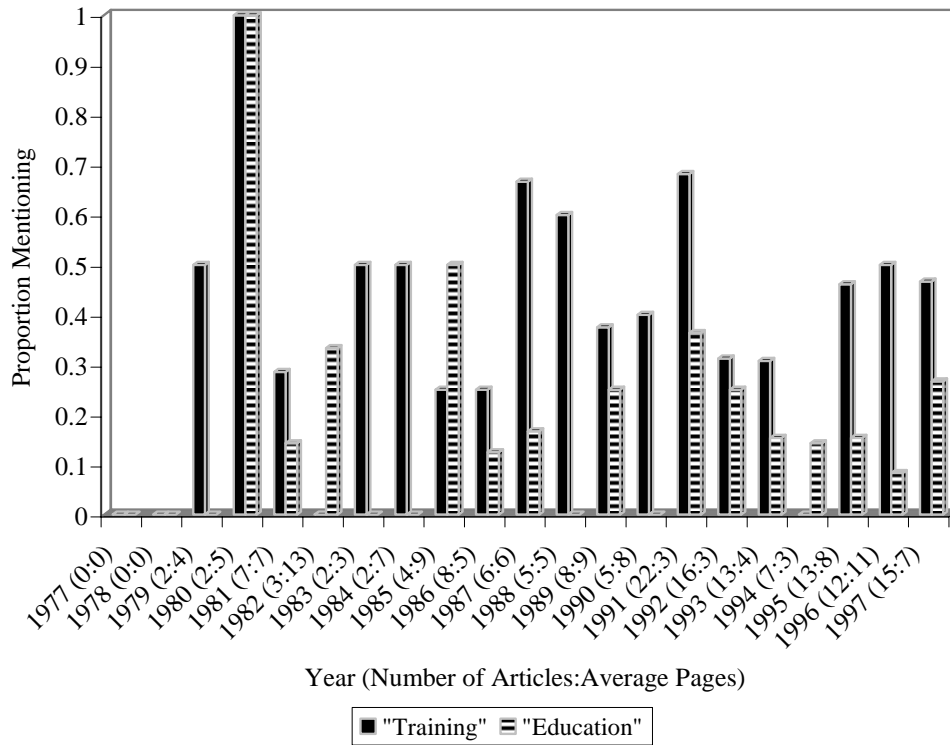
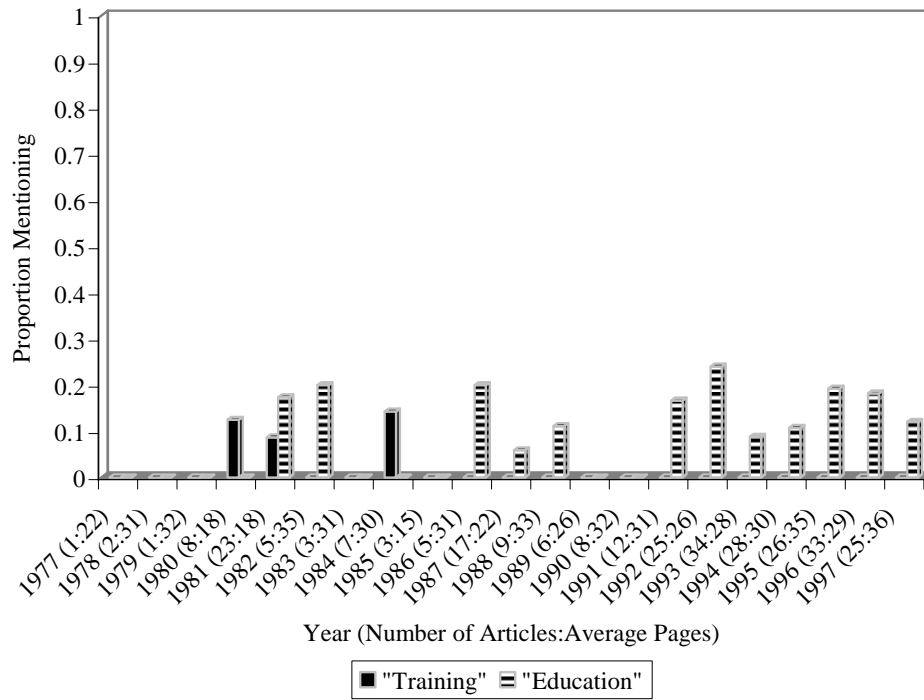
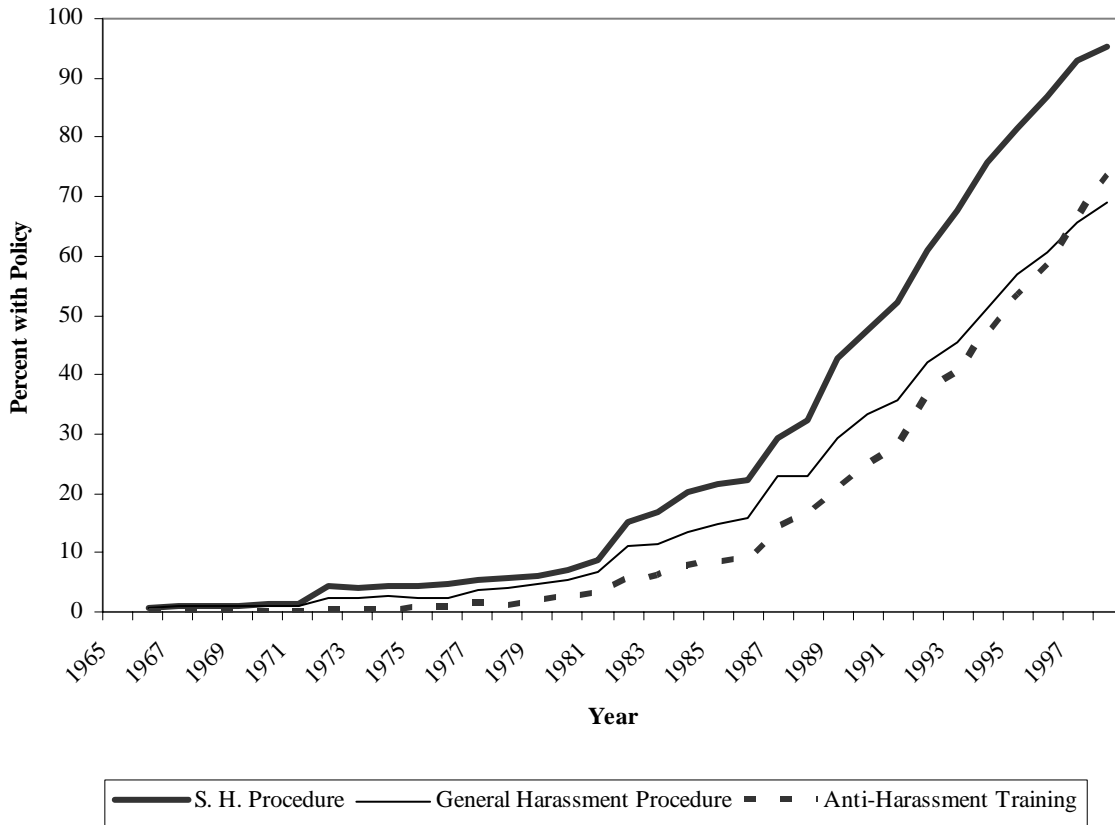


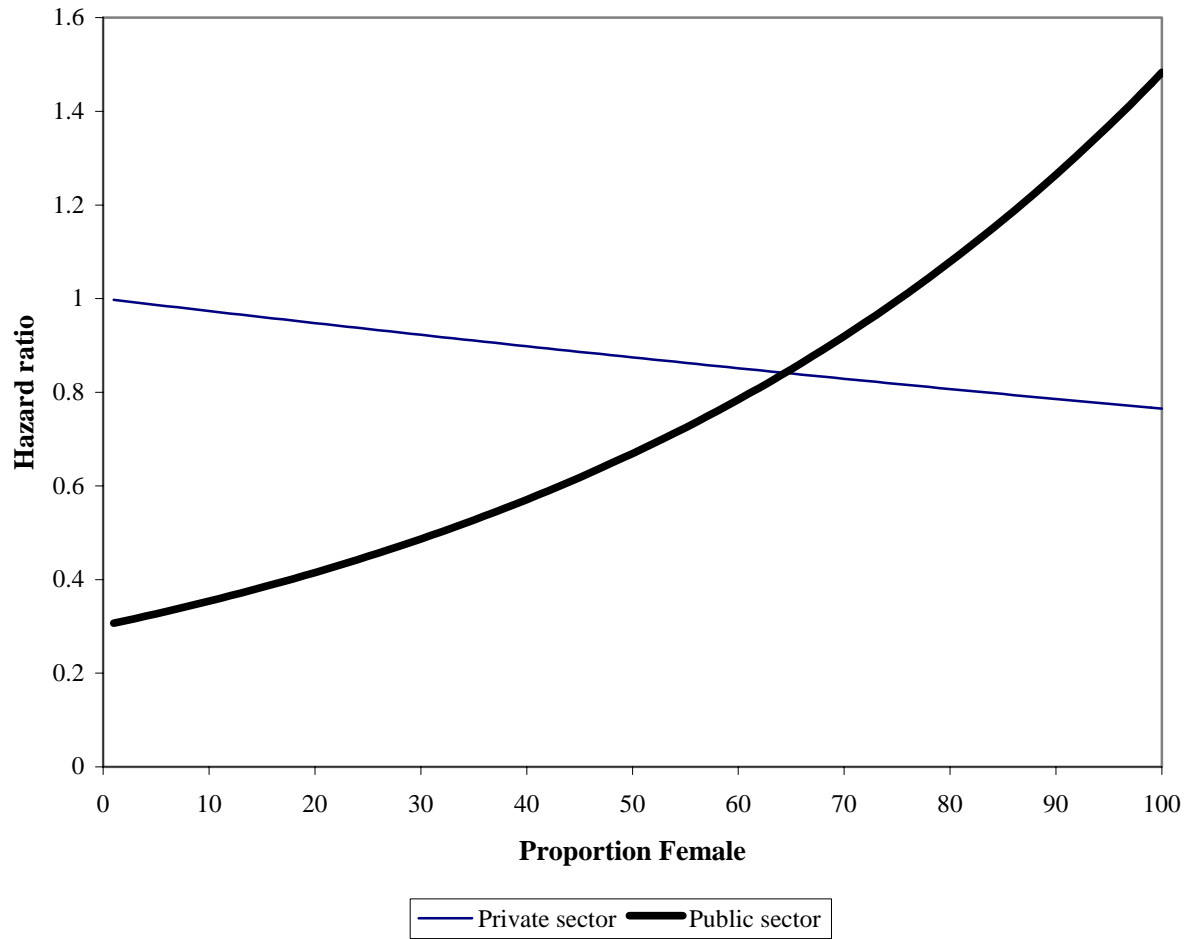
Figure 4  
 Training in Harassment Articles in Law Journals



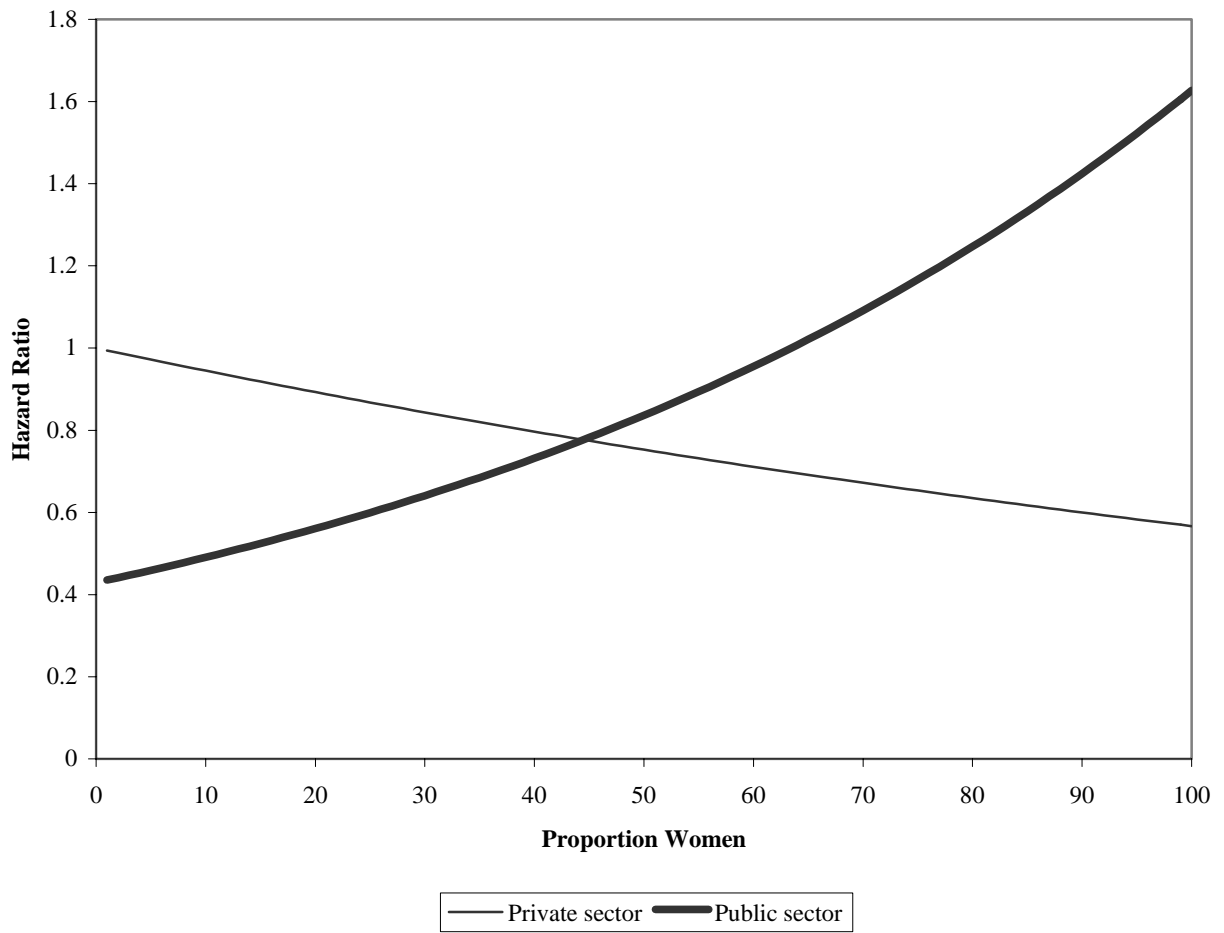
**Figure 5**  
**The Spread of Harassment Policies**



**Figure 6**  
**Effects of Sector and Feminization on General Harassment Procedures**



**Figure 7**  
**Effects of Sector and Feminization on Sexual Harassment Training**



**Table 1**

<b>Variable</b>	<b>Definition</b>	<b>Mean</b>	<b>Std Dev</b>	<b>Min</b>	<b>Max</b>
<b>Organizational Factors</b>					
Establishment size	Log of number of employees	5.76	1.57	0	11
Multi-establishment org.	Part of a larger organization	.76	.43	0	1
Age	Years since founding	46.22	49.71	1	350
Union	Presence of a union contract	.30	.46	0	1
Professionalization	Core job is professional/managerial	.35	.48	0	1
Percent minority	Percent of the workforce	23.40	20.27	0	100
Percent female	Percent of the workforce	48.40	25.94	0	100
Public sector	Local, state, or federal government	.28	.45	0	1
S.H. procedure	Presence of a procedure	.33	.47	0	1
<b>Professional Influence</b>					
H.R. department	Presence of an H.R. department	.52	.50	0	1
H.R. consultant	Use outside H.R. consultants	.28	.45	0	1
Legal consultant	Consult with attorney on H.R. matters	.66	.47	0	1
S.H. staff position	Full-time employee working on S.H.	.05	.21	0	1
Diversity training	Provide diversity training to employees	.11	.32	0	1
<b>Periods</b>					
Time	Time trend (years since 1965)	18.85	9.34	1	33
Period 1978 - 97	Binary indicator	.69	.46	0	1
Period 1987 - 97	Binary indicator	.41	.49	0	1
Period 1992 - 97	Binary indicator	.23	.42	0	1
<b>Interactions</b>					
Female*public sector	Interaction	12.16	22.48	0	100
Public*1992 - 97	Interaction	.06	.23	0	1

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**Table 2: Estimates of the Adoption of Sexual Harassment Policies**

Equation	Sexual Harassment Procedure			General Harassment Procedure			Anti-Harassment Training		
	1	2	3	4	5	6	7	8	9
Estab. Size (log)	<b>.101*</b> (.045)	<b>.104*</b> (.045)	<b>.104*</b> (.045)	<b>.124*</b> (.050)	<b>.127*</b> (.050)	<b>.134**</b> (.050)	<b>.239**</b> (.050)	<b>.237**</b> (.050)	<b>.240**</b> (.049)
Multi-Estab. Org.	.189 (.138)	.196 (.139)	.193 (.139)	<b>.483**</b> (.160)	<b>.493**</b> (.160)	<b>.497**</b> (.160)	.276 (.156)	.285 (.155)	.259 (.157)
Age	-.002 (.001)	-.002 (.001)	-.002 (.001)	-.003 (.002)	-.003 (.002)	-.003 (.002)	<b>-.004*</b> (.002)	<b>-.004*</b> (.002)	<b>-.003*</b> (.002)
Union	-.061 (.148)	-.075 (.148)	-.058 (.149)	-.150 (.166)	-.163 (.166)	-.174 (.166)	-.156 (.152)	-.167 (.152)	-.157 (.152)
Professionalization	.013 (.129)	.007 (.128)	.014 (.129)	<b>.389**</b> (.144)	<b>.383**</b> (.144)	<b>.391**</b> (.144)	<b>.274*</b> (.139)	.263 (.139)	<b>.290*</b> (.139)
Percent Minority	-.002 (.003)	-.003 (.003)	-.002 (.003)	.004 (.003)	.004 (.003)	.005 (.003)	-.004 (.003)	-.004 (.003)	-.003 (.003)
Percent Female	-.003 (.002)	-.003 (.002)	-.004 (.002)	-.001 (.003)	-.001 (.002)	-.003 (.003)	-.003 (.003)	-.003 (.003)	<b>-.006*</b> (.003)
Public Sector	-.290 (.152)	-.292 (.153)	-.559 (.347)	<b>-.583**</b> (.186)	<b>-.584**</b> (.186)	<b>-1.198*</b> (.474)	.120 (.159)	-.115 (.158)	<b>-.845*</b> (.412)
S.H. Procedure				<b>-.823**</b> (.175)	<b>-.755**</b> (.179)	<b>-.756**</b> (.179)	-.269 (.144)	-.218 (.146)	-.213 (.145)
HR Department	<b>.299*</b> (.135)	<b>.304*</b> (.136)	<b>.289*</b> (.136)	-.008 (.155)	-.028 (.156)	-.048 (.156)	.193 (.147)	.180 (.147)	.163 (.147)
HR Consultant	.159 (.131)	.149 (.131)	.155 (.132)	-.012 (.152)	-.012 (.152)	.026 (.153)	<b>.370**</b> (.133)	<b>.365**</b> (.133)	<b>.362**</b> (.134)
Legal Consultant	<b>-.305*</b> (.129)	<b>-.305*</b> (.129)	<b>-.320*</b> (.131)	<b>-.385*</b> (.156)	<b>-.402**</b> (.156)	<b>-.418**</b> (.157)	-.034 (.169)	-.044 (.169)	-.068 (.170)
S.H. Staff Position	.063 (.401)	.121 (.404)	.112 (.405)	.117 (.375)	.130 (.376)	.095 (.376)	<b>.903**</b> (.296)	<b>.890**</b> (.295)	<b>.818**</b> (.296)
Diversity Training	-.005 (.203)	-.016 (.205)	-.002 (.205)	-.117 (.212)	-.069 (.212)	-.035 (.213)	<b>.595**</b> (.171)	<b>.618**</b> (.171)	<b>.644**</b> (.172)
Time	<b>.200**</b> (.010)	<b>.096**</b> (.029)	<b>.097**</b> (.029)	<b>.171**</b> (.012)	<b>.075*</b> (.033)	<b>.076*</b> (.033)	<b>.193**</b> (.013)	<b>.146**</b> (.034)	<b>.147**</b> (.034)
Period 1978-97		<b>1.102**</b> (.405)	<b>1.097**</b> (.405)		<b>1.246**</b> (.467)	<b>1.229**</b> (.467)	.918 (.573)	.895 (.574)	
Period 1987-97		<b>.777**</b> (.233)	<b>.773**</b> (.233)		<b>.755**</b> (.277)	<b>.747**</b> (.277)	.421 (.276)	.413 (.276)	
Period 1992-97		<b>.516**</b> (.191)	<b>.581**</b> (.201)		.377 (.227)	<b>.502*</b> (.233)	.092 (.222)	.071 (.235)	
Female*Public			.007 (.006)			<b>.019*</b> (.008)		<b>.019**</b> (.007)	
Public*1992-97			-.280 (.280)			<b>-.769*</b> (.351)		.070 (.271)	
Intercept	<b>-7.151**</b> (.375)	<b>-6.413**</b> (.458)	<b>-6.387*</b> (.462)	<b>-7.416**</b> (.427)	<b>-6.904**</b> (.521)	<b>-6.923**</b> (.523)	<b>-9.036*</b> (.474)	<b>-9.070*</b> (.644)	<b>-8.931*</b> (.644)
Log-Likelihood	-986.82	-979.44	-978.38	-896.71	-891.30	-886.56	-928.39	-926.10	-922.42
N (spells)	5911	5911	5911	6904	6904	6904	7414	7414	7414
N (events)	335	335	335	249	249	249	284	284	284

Note: standard errors in parentheses.

\* P&lt;.05 \*\* P&lt;.01

## Appendix A

### Personnel/Management Journals (previous titles omitted)

Academy of Management Executive  
Academy of Management Journal  
Academy of Management Review  
Business Week  
California Management Review  
Career Dev Quarterly  
Decision Sciences  
The Economist  
Forbes  
Fortune  
Government Executive Magazine  
Harvard Business Review  
HR Focus  
HR Magazine  
Human Factors  
Human Relations  
Human Resources Development Quarterly  
Human Resources Management  
Inc.  
Industrial & Labor Relations Review  
Industrial Relations  
Industry Week  
Journal of Business  
Journal of Career Development  
Journal of Human Resources  
Journal of International Bus Studies  
Journal of Labor Research  
Journal of Management  
Journal of Management Studies  
Journal of Organizational Behavior  
Leadership Quarterly  
Management Science  
MIS Quarterly  
MIT Sloan Management Review  
New Technology, Work, & Employment  
Organizational Behavior & Human Decision  
Processes  
Organizational Dynamics  
Personnel Psychology  
Public Administration Review  
Public Personnel Management  
Workforce Management

### Law Journals

Administrative Law Review  
Air Force Law Review  
Akron Law Review  
Alabama Law Review  
Albany Law Review  
American Journal of Comparative Law  
American Journal of Criminal Law  
American Journal of Jurisprudence  
American Journal of Legal History  
American University Law Review  
Antitrust Law Journal  
Arizona Law Review  
Arizona State Law Journal  
Arkansas Law Review  
Baylor Law Review  
Boston College Law Review  
Boston University Law Review  
Brigham Young University Law Review  
Brooklyn Law Review  
Buffalo Law Review  
Business Lawyer  
California Law Review  
California Western Law Review  
Capital University Law Review

Case Western Reserve Law Review  
Catholic University Law Review  
Columbia Human Rights Law Review  
Columbia Journal of Law and Social  
Problems  
Columbia Law Review  
Comparative Labor Law and Policy Journal  
Connecticut Law Review  
Cornell Law Review  
Creighton Law Review  
Criminal Justice Review  
Criminology  
Cumberland Law Review  
Defense Counsel Journal  
Delaware Journal of Corporate Law  
Denver Law Journal  
Denver University Law Review  
DePaul Law Review  
Drake Law Review  
Duke Law Journal  
Emory Law Journal  
Family Law Quarterly  
Florida Law Review  
Fordham Law Review  
Fordham Urban Law Journal  
George Mason University Law Review  
George Washington Law Review  
Georgia Law Review  
Golden Gate University Law Review  
Harvard Civil Rights Civil Liberties Law  
Review  
Harvard Journal of Law and Public Policy  
Harvard Journal on Legislation  
Harvard Law Review  
Harvard Women's Law Journal  
Hastings Constitutional Law Quarterly  
Hastings Law Journal  
Hofstra Law Review  
Houston Law Review  
Indiana Law Journal  
Indiana Law Review  
Industrial and Labor Relations Review  
Iowa Law Review  
John Marshall Law Review  
Journal of Corporation Law  
Journal of Criminal Law and Criminology  
Journal of Juvenile Law  
Journal of the American Judicature Society  
Kentucky Law Journal  
Law and Contemporary Problems  
Louisiana Law Review  
Loyola Law Review  
Loyola of Los Angeles Law Review  
Loyola University Chicago Law Journal  
Maine Law Review  
Marquette Law Review  
Mercer Law Review  
Michigan Law Review  
Military Law Review  
Minnesota Law Review  
Mississippi Law Journal  
Missouri Law Review  
Naval Law Review  
Nebraska Law Review  
New England Journal on Criminal and Civil  
Confinement  
New England Law Review  
New York Law School Law Review  
New York University Annual Survey of  
American Law  
New York University Law Review  
New York University Review of Law and  
Social Change  
North Carolina Law Review  
Northern Kentucky Law Review

Northwestern University Law Review  
Notre Dame Law Review  
Nova Law Review  
Ohio State Law Journal  
Oklahoma Law Journal  
Oklahoma Law Review  
Oregon Law Review  
Pacific Law Journal (McGeorge LR)  
Pepperdine Law Review  
Rutgers Law Journal  
Rutgers Law Review  
Saint Louis University Law Journal  
San Diego Law Review  
Santa Clara Law Review  
Seattle University Law Review (U Puget  
Sound LR)  
Seton Hall Law Review  
SMU Law Review  
South Carolina Law Review  
South Texas Law Review  
Southern California Law Review  
Southern Illinois University Law Journal  
Southwestern University Law Review  
St. John's Law Review  
St. Mary's Law Journal  
Stanford Law Review  
Stetson Law Review  
Suffolk University Law Review  
Syracuse Law Review  
Temple Law Review  
Tennessee Law Review  
Texas Law Review  
Thomas Jefferson Law Review  
Thurgood Marshall Law Review  
Tulane Law Review  
Tulsa Law Review  
UC Davis Law Review  
UCLA Alaska Law Review  
UCLA Intramural Law Review  
UCLA Law Review  
United States Air Force JAG Law Bulletin  
United States Law Review  
University Law Review  
University of Chicago Law Review  
University of Cincinnati Law Review  
University of Colorado Law Review  
University of Detroit Mercy Law Review  
University of Illinois Law Review  
University of Kansas Law Review  
University of Miami Law Review  
University of Michigan Journal of Law  
Reform  
University of Pennsylvania Law Review  
University of Pittsburgh Law Review  
University of Richmond Law Review  
University of San Francisco Law Review  
Utah Law Review  
Vanderbilt Law Review  
Villanova Law Review  
Virginia Law Review  
Wake Forest Law Review  
Washburn Law Journal  
Washington and Lee Law Review  
Washington Law Review  
Washington University Journal of Urban and  
Contemporary Law  
Washington University Law Quarterly  
Wayne Law Review  
West Virginia Law Review  
Willamette Law Review  
William and Mary Law Review  
Wisconsin Law Review  
Women's Rights Law Reporter  
Workers Compensation Law Review  
Yale Law Journal

Appendix B

Table A  
Correlation Matrix

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	
1. Establishment size	...																						
2. Multi-establishment org.	.13																						
3. Age	.20	.03																					
4. Union	.31	.14	.23																				
5. Professionalization	.06	-.21	-.05	-.22																			
6. H.R. department	.43	.09	.01	.13	.06																		
7. H.R. consultant	.29	.08	.11	.11	.05	.34																	
8. Legal consultant	.31	.09	.05	.18	-.02	.41	.36																
9. S.H. staff position	.09	.07	-.01	.02	.02	.11	.14	.12															
10. Diversity training	.21	.04	.03	.08	.06	.23	.28	.21	.20														
11. Percent non-white	.03	-.01	-.07	-.07	-.03	.05	.05	.06	.06	.07													
12. Percent female	-.02	-.19	-.05	-.12	.31	-.06	.02	-.03	-.01	.06	.00												
13. Public sector	.08	.30	.28	.31	-.27	-.11	.05	.03	-.01	.00	-.10	-.10											
14. Time	.11	.00	.01	.10	.02	.24	.37	.42	.19	.37	.14	.11	-.06										
15. Period 1978 - 97	.08	-.01	.01	.10	.01	.20	.27	.34	.13	.23	.11	.10	-.05	.83									
16. Period 1987 - 97	.10	.01	.01	.07	.02	.21	.34	.38	.18	.35	.12	.09	-.05	.83	.56								
17. Period 1992 - 97	.10	.01	.02	.04	.02	.17	.31	.29	.17	.39	.10	.07	-.04	.69	.37	.66							
18. Female * public sector	.08	.26	.18	.29	-.20	-.07	.07	.04	.01	.02	-.10	.11	.88	.01	.01	.00	.00						
19. Public * 1992 - 97	.09	.12	.14	.18	-.09	.05	.18	.13	.09	.23	-.01	.01	.40	.31	.17	.29	.44	.41					
20. S.H. Procedure	.17	.03	-.02	.08	.06	.32	.35	.36	.26	.39	.06	.08	-.08	.66	.46	.64	.61	-.01	.26				
21. Harassment Training	.25	.07	.00	.08	.06	.31	.39	.32	.33	.52	.07	.05	-.02	.54	.35	.53	.55	.04	.28	.66			
22. General Procedure	.13	.05	-.05	.00	.10	.23	.28	.27	.26	.28	.13	.06	-.12	.52	.36	.50	.47	-.06	.14	.66	.54	...	

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