A History of What Was Once Unspoken: Legitimizing Female Experiences of Sexual Harassment through Language and Law

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[1]Work, as the primary enabler of economic well-being, is of fundamental importance to an individual's lived experience, and indeed, this was the case for women who had joined the workforce in ever increasing numbers at the close of World War II.[2] Thus, it is perhaps inevitable that it is at the intersection of a desire for economic security and expanding women's rights that we find the motivations of feminist rhetoric that demanded the eradication of artificial barriers to women's employment and inferior status as workers. Demanding the recognition of women as viable and necessary participants in the workplace, the feminist movement aimed to make this economic necessity tolerable for women's emotional and physical health.

Despite Anglo-American ideological stances on gender norms and spheres – those that perpetuate the image of the homemaker and housewife – women have been a crucial part of the American workforce since the turn of the 20th century. Since women first stepped over the threshold of the industrial factory, restaurant, or office, they have been vulnerable to the unwanted sexual advances and coercive conduct of their typically male supervisors. Such vulnerability derives from women's structural inferiority in the workplace. The stakes of women's continued subordination were high. As legal scholar and feminist Catherine MacKinnon argued in her seminal text *Sexual Harassment of Working Women:*

> Sexual harassment exemplifies and promotes employment practices which disadvantage women in work and sexual practices which intimately degrade and objectify women.

1 This paper was presented to the undergraduate research committee for the Mellon Foundation grant at Reed College during Summer 2012.

2 Julia Kirk Blackwelder, *Now Hiring: The Feminization of Work in the United States* (College Station: Texas A&M University Press, 1997)

> In the broader perspective, sexual harassment at work undercuts women's potential for social equality in two interpenetrated ways: by using her employment position to coerce her sexually, while using her sexual position to coerce her economically.[3]

As contemporary political scientist Gwendolyn Mink notes, sexual harassment is that which "reduces a woman to her sexuality."[4] Identifying the problem, naming and defining it, comprise a critical linguistic aspect of the struggle, gaining legitimacy and acceptance for that name and definition, yet another. In the case of undesired sexual conduct in the workplace, feminists, lawyers, judges, and politicians all contributed to the recognition of a woman's word through the language of law.

Over the course of the last 40 years, legal circles have come to regard Title VII of the Civil Rights Act of 1964 as the statutory bedrock for protection from sex discrimination and harassment in the workplace. However, Title VII's legal content and legislative context mention nothing specifically about sexual harassment. It was originally introduced to prohibit discrimination – largely as a function of race – in broadly defined employment practices. "Sexual harassment" as a term does not emerge until eleven years later in 1975 as a product of a small, dedicated group of feminists attempting to conceptualize a broad range of behaviors that had beset American working women for decades. By 1986, sexual harassment was codified in the legal lexicon by the Supreme Court. This paper asks why. Specifically, how did Title VII become the single most important piece of federal legislation to protect women from unwanted sexual advances in the workplace given women were not its original intended beneficiaries?

Most studies of sexual harassment adjudication and the development of its legal acceptance begin with the court cases of 1970s. To answer the above question, however, this paper takes an alternate point of departure and begins in 1963 at the legislative origins of Title VII. By integrating the history of Title VII with the history of pioneering court cases, I aim to expand our understanding of the legislation that is so fundamental to women's claims and also more completely elucidate the judicial decision-making that occurred in the early 1970s, where the contentious history of Title VII is often referenced but never fully investigated. After tracing the historiography of Title VII, I outline the ways in which sexual harassment as a concept was defined, using linguistic frameworks that were expanding as gender and language studies and women's liberation movements coalesced and attempted to identify the same problem through different means. The linguistic theory regarding language and gender helps to inform the definitional efforts of the feminist movement and the law. Having established this theoretical background, I outline the early efforts of the feminist movements to define "sexual harassment" and their continual awareness raising endeavors to bring the issue of sexual harassment to the public. Following this, I trace the advance of sexual harassment litigation and regulations, beginning in the 1970s with the first district court cases and ending with the first Supreme Court case in 1986. This legal history overlaps with the women's movement, revealing the ways in which the law responds to popular demand and advocacy.

These three elements, 1) the early legislative history of Title VII, 2) the women's movements' attempt to define and rally against such unwelcome and degrading behavior, and 3) the court cases and federal regulations that have responded to their demands, contribute to explaining the emergence of "sexual harassment" from a legislative Act that considered gender only as an afterthought to civil rights. In this history, we see the ways in which women defined a problem, sought legal remedies, and were responded to by the court system. By focusing on the definition and language surrounding this evolution, we will see the important role of the interplay between the feminine declarative word in this process and the legal interpretation of civil rights legislation. Despite the fact that this narrative is at times discouraging and enraging, it is clear that over the course of the last 40 years, women's voices have gained legal legitimacy, proving that a group of women can regain control of their naming power to speak out against an unwanted behavior and take steps to achieve legal redress.

I. The Legislative Origins of Title VII

The Civil Rights Acts of 1964 is often thought of as the landmark piece of law addressing racial discrimination in the United States. Born out of the civil rights movement, the Act focused on eradicating barriers that minorities face to equal citizenship. The civil rights movement's advocates were the primary motivators of the Act, though other grassroots organizations also played a role in advancing the civil rights agenda. The main concerns of the movement focused on access to work. As historian Nancy MacLean argues, the glamorous and high profile events that define the civil rights movement in the popular imagination overshadow advocates' demands for employment opportunity, for the good jobs that would allow them access to American prosperity and the American Dream. By placing access to jobs at the center of the civil rights movement, advocates sought "genuine inclusion [and] participation in the economic mainstream."[5] This is the impetus from which Title VII of the Civil Rights Act of 1964 springs. Prohibiting discrimination "against, any individual because of his race, color, religion, sex, or national origin," Title VII promised to end employment practices that placed unequal barriers in the path of men and women of color seeking work.[6]

President John F. Kennedy conceived of the Civil Rights Act of 1964 a year before its passage in 1963, and made public his legislative plans on June 11, 1963 in an address to the nation, saying: "Today, we are committed to a worldwide struggle to promote and protect the rights of all who wish to be free."[7] His rhetoric, informed by the events that were occurring around him,[8] focused on

3 Catherine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (New Haven: Yale University Press, 1979), 7.

4 Gwendolyn Mink, *Hostile Environment: The Political Betrayal of Sexually Harassed Women* (Ithaca, NY: Cornell University Press, 2000)

5 Nancy MacLean, *Freedom Is Not Enough: The Opening of the American Workplace* (New York: R. Sage, 2006), 5.

6 *Title VII of the Civil Rights Act of 1964, U.S. Statues at Large*

7 "Civil Rights Address," John F. Kennedy, http://www.americanrhetoric.com/speeches/jfkcivilrights.htm.

8 The speech was specifically responding to a series of protests by African-Americans, most significantly the Birmingham, Alabama campaign.

discrimination against African-Americans and other racial minorities. The Civil Rights Act was intended to be the most comprehensive civil rights legislation to date, the expected beneficiaries of which would be minority groups. The eleven titles of the Act range in coverage from voting rights to the desegregation of schools to the aforementioned employment protections. Following Kennedy's death later that year, Lyndon B. Johnson prioritized the legislation. It was in this context, and amid a national climate of distress and determination, that Title VII was discussed in the House and the Senate.

Title VII's primary aim was to eradicate discriminatory employment practices, such as those that base hirings on race rather than qualifications and experience. The Title's original wording did not include "sex" as it was specifically motivated by the civil rights movement to address the struggles of African-Americans entering the workplace. The history of just how the Title came to include "sex" has undergone close scrutiny in recent years, as historians have grappled with two historiographical interpretations of the event: one that views the amendment as an ad hoc development, and a second that sees the change as the product of intense and intentional efforts. The first historical narrative was widely held until recently, when historians and policy analysts began to uncover the more covert actions of a group of dedicated first-wave feminists. The second, and currently more accepted narrative, views the "sex" amendment within the context of interest group politics and conservative concerns rather than as a single and isolated event that occurred on the Congress floor.

The first interpretation of the "sex" amendment to Title VII views the amendment as a fluke: the accidental result of an ill-conceived and mocking suggestion by Republican congressman Howard Smith of Virginia. On February 8, 1964 he proposed that "sex" be added to Title VII. This proposal was met with laughter and Smith himself presented the amendment as a joke. Historians have interpreted this introduction of "sex" as a way to derail the civil rights bill and sidetrack it into needless debate. For example, Barbara and Charles Whalen argue in *The Longest Debate*, that Smith, as an "arch foe of civil rights," believed that if anything could "kill the bill… this would."[9] They describe his tone when suggesting the amendment as "dripping with honey" and "cunning," his smile "expectant" at the havoc he hoped to create.[10] In this reading, Smith suggested the amendment and acted alone as an agent of mischief, hoping to reveal the lunacy of the notion of women's rights and to spoil the efforts of civil rights legislation in general. This interpretation is overly simplistic, however, and fails to take into account key elements that informed both Smith and the debate at the time.

Smith's introduction of the "sex" amendment cannot be viewed as an isolated moment, motivated solely opposition to civil rights legislation. Instead, when viewed in a larger context, Smith's suggestion reveals itself to be part of an interest-group effort to achieve sweeping legislation to enhance women's rights in the workplace. Jo Freeman, Carl Brauer, and Cynthia Deitch all argue that without the involvement of the National Women's Party (NWP) the amendment would never have been conceived.[11] NWP had not appeared in previous analyses of the amendment because of their relative "marginality:" they lacked "clout, visibility, popular support, organization, and numbers."[12] When the efforts of NWP are included in the narrative of the "sex" amendment, however, a holistic and more nuanced understanding of Smith's incentives is possible.

First-wave feminists, focused on the suffrage movement, founded NWP in 1913. By the 1960s NWP was considered a conservative women's group, made up of Anglo-American elite, upper class women who "tended to look backward rather than forward."[13] Despite the group's senior status, position of privilege, and conservatism, the group was able to deftly coalesce the budding women's movement with the civil rights movement in order to advance their own goals. After Kennedy's Civil Rights Address calling for civil rights legislation, one NWP member urged their leader Alice Paul that they should take this opportunity to solve the "women problem" and the "negro problem" with a single piece of legislation.[14] By aligning the nascent women's movement with the mature civil rights movement, NWP was able to use established momentum to further their own aims. In particular, NWP was interested in advancing the controversial Equal Rights Amendment (ERA).

In its support of ERA, NWP set itself apart from other feminist groups of the time and revealed its rightward leanings. Most Democrats and feminist organizations were against the ERA because of its potential erasure of existing legislation that protected women in the workplace from grueling hours and minimum wages; the ERA would have too blanket of an approach to gender inequality and would eliminate the few laws that protected women at work. Proponents of the amendment believed, however, that it would eradicate all barriers to women's equal advancement. This divide in the debate, as Brauer succinctly summarizes, "had distinctly class, interest-group and ideological overtones, pitting affluent, business oriented, and politically conservative women against poor, union-oriented, and politically liberal women."[15] With this fight ongoing and no visible promise of resolution on the horizon, when Title VII of the Civil Rights Act was introduced, NWP saw an opportunity to further their ERA agenda through the inclusion of "sex" in Title VII.

With this in mind, NWP solicited Howard Smith for his support in December of 1963.[16] Framing the amendment in racist, anti-Semitic, and xenophobic terms, NWP made it clear that their inclusion of "sex" was aimed at preserving white women's rights. For example, one member wrote to those within the organization of her gratitude for the Southern Congressmen "who will use their brains

9 Charles Whalen, *The Longest Debate* (Maryland: Seven Locks Press, 1985), 116.

10 Whalen, *The Longest Debate*, 115-116.

11 Carl M. Brauer, "Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act," *The Journal of Southern History* 49 (1983): 38, accessed June 15, 2012, doi: http://www.jstor.org/stable/2209305.

12 Cynthia Deitch, "Gender, Race, and Class Politics and the Inclusion of Women in Title VII of the 1964 Civil Rights Act," *Gender and Society* 7 (1993): 185, accessed June 15, 2012, doi: http://www.jstor.org/stable/189577.

13 Brauer, "Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act," 40.

14 Ibid., 39.

15 Ibid., 40.

16 Ibid., 41.

and energies to prevent a mongrel race in the United States and who will fight for the rights of white citizens in order that discrimination against them be stopped."[17] Smith was not the only representative that NWP solicited, and though he was slow to agree, the others approached reacted to the suggestion with scant enthusiasm and even outright refusal. Smith's ultimate motives for agreement are conflicting, for his demeanor in Congress regarding women's rights is contrary to his acceptance of NWP's request.[18] Here Smith's dual motivations come to light. While he may have seen it as an opportunity to destabilize civil rights legislation, he may also have wished to shore-up white women's rights and privilege, which seemed to be threatened. Brauer argues that "he saw an opportunity to take a swipe at the civil rights bill, but as a chivalrous old southern gentleman he also believed that it was only fair that women, specifically white women, be granted the same legal protections that the government was preparing to afford black men."[19] This timely alliance was enabled by NWP's appeal to Smith's personal motivations in order to ensure the introduction of their own agenda.

A close reading of the Congressional Record from February 8, 1964 reveals the unsettling intricacies of this tenuous union and the nuanced arguments for and against the inclusion of "sex." When Smith offered the amendment,[20] he framed it as a "very serious" protection of "ladies" who represent the "minority sex" against discrimination based on sex.[21] To advance his argument in favor of the amendment, Smith used a letter from of one of his female constituents. Despite his repeated claims of sincerity, his demeaning and trivializing treatment of the letter, along with the laughter and snickering that is reported to have ensued, makes clear that Smith's rhetorical presentation of the amendment contained subtle ridicule and disingenuous undertones. During the debate that followed, the atmosphere that had been set-up by Smith was kept alive. Though he disagreed with the suggested amendment, Emanuel Cellar (D-New York) also belittled the legitimacy of women's rights and recapitulated traditional gender roles, casting women as tied to the family and the paternal wage, a result, he claimed, of natural gender difference. For example, he jokes:

> I can say as a result of the 49 years of marriage – and I celebrate my 50th anniversary next year – that women, indeed, are not in the minority in my house. As a matter of fact, the reason that I would suggest that we have been living in harmony, such delightful accord for almost half a century, is that I usually have the last two words, and those last two words are, "Yes, dear."[22]

While this joke implies deference to his wife and places her securely as the authority within the domestic, private sphere, it leaves little room for her movement out of it. In the same vein, Cellar speaks of the potential that such an amendment would have to create upheaval within the traditional Anglo-American family, both economically and emotionally. Cellar also alludes to the jovial dynamic in the room as he refers to the "levity" present.[23] From these excerpts is seems that though Smith and Cellar fall on opposite sides of the debate, they both use "discursive strategies" that act "in concert to make a joke of women's rights and to reinforce women's subordination."[24] Further, Deitch argues: "Whichever side men took on the amendment, underneath it was understood that there was no disagreement on how they viewed women."[25]

Following Smith and Cellar, various congresswomen spoke in favor of the amendment. They included Frances Bolton (R-Ohio), Martha Griffiths (D-Michigan), Katharine St. George (R-New York), and Edith Green (D-Oregon). Of the six women who spoke, Edith Green alone stood against the amendment. All those in favor of the amendment engaged in a sort of flirtatious and congenial banter with the congressmen, helping to perpetuate the feeling of amusement in the room. For example, Bolton stated: "Mr. Chairman, it is always perfectly delightful when some enchanting gentleman, from the South particularly, call us the minority group."[26] As this playful rhetoric continued, the women used the same forms of argumentation as their male counterparts. Much of the debate centered on hiring and employment practices that would disadvantage white women. The debate originated with concerns about civil rights but rapidly became focused on maintaining white women's rights, not the expansion of rights for African-American men and women. For example, one congressman argued in favor of the amendment because it would "make it possible for the white Christian women to receive the same consideration for employment as the colored woman."[27]

Amidst this debate, Edith Green emerged as a voice of reason and gravity. Arguing against the inclusion of "sex" in Title VII, Green believed that the title should address and be motivated by increased rights and equality for African-Americans and other minorities. Refuting those who feared the exclusion of "sex" would leave white woman last in line, Green was wary of the debate that altered the language of the title. She argued that such an amendment would jeopardize the bill and that separate legislation should address women's rights. Whereas most of the congresswomen were flirtatious and almost comic as they debated the congressmen, Green was steadfast in her convictions. Acknowledging the dynamics in the room, Green said: "I suppose this may go down in history as the 'women's afternoon.'"[28] Despite this concern, and backed by other Democratic men in Congress, the "sex" amendment passed and became part of Title VII. The air of the Congressional chamber that afternoon, punctuated by Edith Green's searing and serious argument, took on a sense of comic congeniality that precluded all serious debate, replacing it with joking rhetoric.

In this way, the entire debate surrounding the inclusion of

17 Ibid., 43.
18 It is Smith's joking and demeaning presentation of the sex amendment that informs the previous accepted historiographic interpretation, not NWP's broaching of the idea with him.
19 Brauer, "Women Activists, Southern Conservatives, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act," 45
20 Smith was not the first to suggest the amendment. On February 5, 1963, John Dowdy (D – Texas) made a similar suggestion but was promptly dismissed.
21 *Congressional Record*, H2577 88th Cong,, (February 8, 1964)
22 Ibid., 2577.
23 Ibid., 2578.
24 Deitch, "Gender, Race, and Class Politics and the Inclusion of Women in Title VII of the 1964 Civil Rights Act," 189-190.
25 Ibid., 192.
26 U.S. Congress, H 2578.
27 Ibid., 2583.
28 Ibid., 2581.

"sex" in Title VII focused on sex discrimination in the workplace as it pertained to hiring and employment practices. Title VII was intended by legislators and advocates to provide protection against unfair employment practices. Title VII was not created with the intention of protecting women from sexual harassment in the workplace or providing legal recourse from such actions. Not once was the notion of sexual harassment or unwanted advances raised or considered. Every example used in the Congressional debate centered on hiring and firing, not coercive sexual relations or violence. And yet, despite the passage of the "sex" amendment for somewhat dubious reasons amid an atmosphere of disparaging comments against women, Title VII would eventually become the single most important piece of legislation in the protection of women against sexual harassment in the workplace. When and how did this transformation occur?

II. Language

Despite its invisibility during the debate on the Congressional floor, sexual harassment has plagued women throughout history. Women have grappled with unwanted sexual advances, forced encounters, and coercive behaviors of a sexual nature, and have accepted them as a routine part of the female life. That these concerns were not voiced during the passing of the "sex" amendment to Title VII is not surprising given that public discourse in general about this unwanted conduct was unheard of. Crucially, though, part of this silence derived from the lack of vocabulary with which women could speak of such behavior. Indeed, the term "sexual harassment" did not emerge until 1975 when a small group of feminists attempted to conceptualize a broad range of behaviors that had beset American working women for decades. With the coinage of this term, women were finally able to speak out and raise awareness of their experiences, realizing with each personal revelation that they were not alone in their experience. At about the same time that this new vocabulary emerged, the field of sociolinguistics, in conjunction with the development of academic women's studies, began to explore the intersection of gender and language.[29] Scholars focusing on the gendering of language—and men and women's respective access to altering and creating it—have asked a series of questions to better understand gender and language, such as: Who names? Who creates meaning? What power structures enable them to do so?[30]

Sexual harassment's linguistic dilemma is its speechlessness, its silence. Of the absence of language, linguist Robin Lakoff acknowledges the potential for oversight. In the past, many feminists and scholars focused on the gender dynamics present in the spoken word, rather than that which is missing from the lexicon: the silences. It is more intuitive to analyze what is tangible. There is also the potential to misinterpret the reason for silence. As Lakoff reminds us, although "silence is popularly equated with the absence of thought, we also recognize, if subliminally, the uses of silence in power relations."[31] In more recent years, scholars have given more attention to silence in this sense. Lakoff writes of two interpretations of silence: the semantic (non-political) and the pragmatic (political).[32] Focusing on the political-pragmatic interpretation, Lakoff claims that structures silence voices. Specifically, this dynamic results from one party's ability to "prevent another from fully participating ('silencing') [because] of the disparate powers and roles of each." This, in turn, "contributes to the further imbalancing of those roles."[33] Pragmatic silencing can occur in both the public and private realms, though the consequences are more permanent and serious in the public sphere.

When one group in the public sphere is silenced and another gains dominance, there arises what Lakoff terms "interpretive control," that is, the maintenance of power over the making of meaning.[34] As Lakoff elaborates, "the control of meaning includes the right to name oneself and others; the right to assess one's own behavior and that of others; the right to decide what form or style of language is "good" or "right" or "appropriate"; and the right to determine what a speaker means to say."[35] It is this making of and control over meaning that feminists and scholars claim men have used to silence women's voices. Men's structural superiority, be it economic, political, or physical, has enabled them to define the prevailing interpretation of a word and phrase and furthermore, maintain control of the creation over words or terms. Because men define the language used by society, they dictate the parameters of describable and acceptable experience. This stance does not berate men for their historically established position of control; rather, it acknowledges their place as one previously unchallenged, with an increasing capacity to be altered by a developing society. Here, men are not the victimizers; the established systems of power and control that have placed men in superior rank are to blame.

Some radical and controversial feminists, such as Andrea Dworkin and Catherine MacKinnon, take more an unforgiving stance on men's naming power and hegemonic control. In her treatise, *Pornography*, Andrea Dworkin writes: "Men have the power of naming, a great and sublime power. This power of naming enables men to define experience, to articulate boundaries and values, to designate to each thing its realm and qualities, to determine what can and cannot be expressed, to control perception itself."[36] Thus far, this stance is fairly consistent with Lakoff's, but when she goes on to argue that men control their naming abilities with violent force she offers little consideration for a more nuanced view of the infrastructures of power that perpetuate it. This is the case, for instance, when she writes:

> He defines her femininity and when she does not conform he names her deviant, sick, beats her up, slices off her clitoris (repository of pathological masculinity), tears out her womb (source of her personality), lobotomizes or narcotizes her (perverse recognition that she can think, though thinking in a women is name deviant)… If she wants him sexually he

29 Robin Lakoff's seminal text *Language and Women's Place* (1975) is considered to be the first of the burgeoning field. This is the same year in which feminists coined the term "sexual harassment."

30 These questions have emerged as linguistic theory has moved from the notion that language reflects the world as it truly is to the notion that language creates and sustains power dynamics and identity construction.

31 Kira Hall and Mary Bucholtz, *Gender Articulated: Language and the Socially Constructed Self* (New York: Routledge, 1995), 25.

32 Ibid., 26.

33 Ibid., 26.

34 Ibid., 29.

35 Ibid., 29.

36 Andrea Dworkin, *Pornography: Men Possessing Women* (New York: Perigree Books, 1981), 17).

names her slut; if she does not want him he rapes her and says she does.[37]

But even as Dworkin's *Pornography* reads like a manifesto, just like Lakoff's work, it points to the importance of considering the connection between gender, power, and language.

Language defines and orders our lived reality, aiding us in making sense of the world. Lacking a vocabulary to articulate the physical wrong of sexual harassment, women struggled with how to make sense of such occurrences. Recent linguistic studies in the 1990s have focused on conceptualizing sexual harassment as a discursive practice. In particular, this research focuses on understanding sexual harassment within organizations and the dynamics that perpetuate it. One study claims that certain features and dimensions of institutions aid in promoting isolation of the victim and a "conspiracy of silence."[38] These features include: power dynamics within the organization, the time frame surrounding the incident, the grievance structures that are in place, perceived bias, and employment stratification. Further, these features normalize sexual harassment, so that when women do step forward, their complaints are framed in a way that perpetuates the structure that oppresses their speech. Linguist Robin Clair claims that women frame their own assaults in three ways that ultimately sustain the hegemonic power structure: 1) Denotative hesitancy, 2) trivialization, and 3) private domain.[39] Control of language, then, is profoundly important to the dominant power structures women in the mid-20th century faced.

III. Feminist Definition

When feminists began to grapple with the definition of sexual harassment in 1975, they overcame this linguistic hesitancy. The exact origins of the term "sexual harassment" are murky. Though Catharine MacKinnon claims in the Preface of *Sexual Harassment of Working Women* (1979) that drafts of the text were complete in 1974 and circulated in 1975, women's liberation activist Susan Brownmiller recalls in her autobiography *In Our Time*, that "the origins of this particular breakthrough are ineluctably precise," placing the term's creation in spring 1975 at Cornell University in Ithaca, New York.[40] Historian Carrie Baker also attributes the origins of the word to Brownmiller's organization, though there seems to be sufficient doubt to cast a minor shadow over the precision that Brownmiller claims. In any case, in 1975 feminists became increasingly aware of the unwanted sexual advances of their peers and sought to conceptualize and define those undesirable behaviors. Collectively or separately, they began to consider the creation of a term that would name a behavior that had occurred throughout history.

This newfound awareness did not arise in 1975 by happenstance. In the early 1970s, grassroots movements led by women began to form, calling attention to various feminist issues. Women joined together to tell their stories and share their experiences on a range of topics including abortion, women's liberation, and equal employment opportunities. Staging protests, speak-outs, and public events, feminist advocates pushed into the public eye, spurring on media coverage and reporting. To publicize street harassment that women experienced on daily walks to and from work, feminists staged "Ogle-Ins." In an eye-opening reversal, women leered, catcalled, and whistled at men as they entered their office buildings. These events allude to the immediacy of the issue of harassment in general, as women made clear that they would not stand for the continuation of such degrading treatment and began to realize that their experiences were not isolated. The invention of the term "sexual harassment" in this sense emerged from a collective realization of communal experience.

Brownmiller in particular recalls the moment in which the connection between unwanted sexual advances and employment opportunity was starkly revealed.[41] Feminist Lin Farley headed the women's section of Cornell's Human Affairs program. During a seminar held to address women's plights in the workplace, Carmita Wood stepped forward to ask for advice and help from Farley. Wood, a 44-year old mother of four, had been denied unemployment compensation after her resignation from her laboratory assistant position at Cornell University where she had worked since 1971. Suffering from physical illness as a result of her continual efforts and anxieties from fending off the aggressive and demeaning sexual advances of a professor for whom she worked, Wood resigned after enduring the treatment for four years. After attempting to search for new employment in vain, Wood filed for unemployment compensation. The hearing officer ultimately decided that Wood's reasons were "personal" and "noncompelling," and as such, did not amount to a "good cause."[42] Refusing defeat, she approached Farley and her feminist organization. After Wood told her story at the seminar a woman present recalled, "We realized that to a person, every one of us – the women on the staff, Carmita, the students – had had an experience like this at some point, you know? And none of us had ever told anyone before. It was one of those *click, aha!* moments, a profound revelation."[43]

Wood's courageous revelation sparked an important realization. Immediately, Farley and some of her colleagues decided to "break the silence about [that which had] no name" by hosting a speak-out.[44] As they created posters and pamphlets, the women began to brainstorm about what to call this experience, hoping to find a term that embraced "a whole range of subtle and unsubtle persistent behaviors."[45] Someone shouted out "sexual harassment" and Brownmiller recalls they all immediately agreed that the term was just right. Canvassing and publicizing the speak-out heavily, the group hoped that attendees would outnumber their colleagues at Cornell. On May 4, 1975, they were not disappointed. Over 300 women attended, raised their voices, and called for action. The speak-out was followed by a series of events that continued to buoy this burgeoning idea. Farley testified on sexual harassment to Eleanor Holmes Norton at New York City's Commission on Human Rights. Feminist Enid

37 Ibid., 18.
38 Shreen G. Blingham, *Conceptualizing Sexual Harassment as Discursive Practice* (Conn: Praeger, 1994), 45.
39 Ibid., 67.
40 Catherine Mackinnon and Susan Brownmiller, *In Our Time: Memoir of a Revolution* (New York: Dial Press, 1999), 279.
41 Baker and Mink both support the account given by Brownmiller.
42 Carrie N. Baker, *The Women's Movement Against Sexual Harassment* (New York: Cambridge University Press, 2008), 28.
43 Brownmiller, *In Our Time: Memoir of a Revolution,* 281.
44 Ibid., 281.
45 Ibid., 281.

Nemy, a reporter for the New York Times, brought further attention to the issue through her writing. Nemy's article, the first describing sexual harassment ever published, addressed the range of behaviors that constitute sexual harassment, the issues of trivialization that women faced, and women's efforts to advocate for change. Her article brought the issue of sexual harassment to the public, and did so in the tone of an educated and researched exploration into the treatment that, as she wrote, "Many women [have] accepted as a job hazard for years."[46]

Included in Nemy's list of sexual harassment behaviors are leering and ogling, men intentionally brushing up against women, and pinching or squeezing them. A 1977 publication titled *A Handbook on Rape* contains an article called "Little Rapes." The unnamed author urges women to refuse to ignore more subtle forms of harassment. For instance, when the author recalls her own experience writing, "I work in a library. My first day on the job I was putting some books away in the stacks, when I became aware of a man crouched beside me. I thought he was looking for a particular book. Suddenly he put his hand up my dress, then fled."[47] It is these sorts of "little rapes" that the author and the women's movement sought to acknowledge as a critical component of sexual harassment. In their continual effort to educate about such behaviors and to define them, the women for the first time articulated and named a personal and collective experience. These women defined the experience of "sexual harassment" and were active in perpetuating its meaning. As Catherine MacKinnon notes, men created the definition of rape, originating in the colonial period when women were the property of men, first their fathers and then their husbands through coverture.[48] Here, women defined their own abuse for the first time, articulating with passion the wrongs perpetrated against them and making every effort to call for legal action and change. In this way, they regained interpretive control. MacKinnon writes that in the act of naming, "the sexually harassed have been given a name for their suffering and an analysis that connects it to gender. They have been given a forum, legitimacy to speak, authority to make claims, and an avenue for possible relief."[49]

IV. Legal Moves

Calls for legal action and redress emerged from a growing popular awareness of the newly conceptualized sexual harassment. Despite the fact that the term "sexual harassment" was unknown prior to 1975, the development of litigation pursuing cases of unwanted sexual advances began in 1971. In this history it becomes clear that though the term was not in existence until 1975, women and lawyers grappled with the issue and attempted to gain benefits from the courts before then. Between 1971 and 1974 women brought cases to court that alleged discrimination in the workplace based on sex, relying on Title VII of the Civil Rights Act. Their arguments were analogous to the arguments made by those plaintiffs alleging discrimination based on race, also employing Title VII. In this sense, initial court cases brought by women who suffered sexual intimidation and coercion at work were inspired by the legal battles of the civil rights movement. In the beginning, the courts rejected many women's claims of assault, arguing that their experiences were either a private matter not to be adjudicated in the court or were the result of a biological, and therefore normal and inevitable, process.[50] These early cases of sex discrimination revealed the reticence of the courts to interpret Title VII as prohibiting acts of sexual violence in the workplace, in part, perhaps, because of the history of the "sex" amendment to the Title itself. However, by the mid-70s, courts gradually began to hear women's claims, reversing past decisions made against them. In 1980, the Equal Opportunity Employment Commission (EEOC) released a series of guidelines specifically addressing sexual harassment in the workplace, and in 1986, the Supreme Court heard and upheld its first case of sexual harassment, thereby removing ambiguity and definitively supporting women's claims of harassment. Validating law that "begins with the woman's word," the courts developed sexual harassment litigation as each case was brought.[51]

The initial series of court cases, heard by district courts in 1974 and 1975, had all attempted to gain redress at a lower level between 1971 and 1974. Most often these earlier actions were sex discrimination complaints filed within a departmental or occupational equal employment opportunity office. When such action failed, aided by feminist organizations, these women brought cases to district level courts, most often accompanied by counsel with a feminist or civil rights background and leanings. Arguing that unwanted sexual advances in the workplace constituted discrimination based on sex, these early cases sought to demonstrate that women's hierarchical inferiority to men in the workplace exposed their economic and sexual vulnerability to men who had the power to fire or demote them should they fail to comply.[52] Women's economic dependence on their work, combined with employers' often-explicit expectation of attractiveness and sexual availability, placed women in an impossible bind where their sexuality became a requirement of their work. Using Title VII, Paulette Barnes, Jane Corne and Geneva DeVane, Margaret Miller, and Adrienne Tomkins all brought cases against their employers. All were dismissed.

Feminist and legal scholar Catherine MacKinnon, supported by contemporary political scientist Gwendolyn Mink, argues that in these initial cases judges relied on two arguments to frame and dismiss women's claims. One viewed sexual harassment as personal

46 Nemy. Enid. "Women Begin to Speak Out Against Sexual Harassment at Work." New York Times, August 19, 1975.
Enid Nemy, "Women Begin to Speak Out Against Sexual Harassment at Work," *New York Times*, August 19, 1975.

47 Rosalyn Fraad Baxandall and Linda Gordan, *Dear Sisters: Dispatches from the Women's Liberation Movement* (New York: Basic Books, 2000), 193.

48 Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass: Harvard University Press, 1987), 105.

49 Ibid., 104.

50 Mink , MacKinnon, and Baker all describe this series of arguments.

51 Mink, 4

52 "The sexual harassment of working women presents a closed system of social predation in which powerlessness builds powerlessness... Working women are defined, and survive by defining themselves, as sexually accessible and economically exploitable. Because they are economically vulnerable, they are sexually exposed; because they must be sexually accessible, they are always economically at risk." MacKinnon (1979), 55.

while the other claimed it to be natural and biological.[53] Both of these understandings rely on gender norms and stereotypes of male/female sexual relations. In addition, I would suggest that the judges employed a third framing device, that of history. In their opinions, judges often cited the legislative history of Title VII as a means to prove that the original legislators did not intend such claims to be covered. By incorporating historiography into judicial interpretation and argumentation, judges not only relied on gender norms about sexual relations to dismiss cases, but also used the historical record to justify their opinions.

To frame sexual harassment as personal is to render it too private, too small, and too unique for the law to address. Multiple judicial opinions, without reference to each other, continually used the word "personal" to describe the interactions between a woman and her harasser.[54] As MacKinnon argues, "one function of all the uses of the term is to individuate, devalue, pathologize, and isolate women's reactions to an experience which is common and shared, practically without variation, by countless women."[55] Moreover, placing harassment in the personal realm removes it from employer liability; an employer cannot be held responsible for an unfortunate romantic advance made by a clumsy individual. For example, in *Barnes v. Train*, plaintiff Paulette Barnes claimed that her supervisor abolished her position at the company after she refused to have an affair with him or to comply with his sexual demands.[56]

Responding, Judge John Smith wrote: "The substance of plaintiff's complaint is that she was discriminated against, not because she was a woman, but because she refused to engage in a sexual affair with a supervisor. This is a controversy underpinned by the subtleties of an inharmonious personal relationship."[57] Considering this a matter of personal and private resolution, Smith argues that Barnes's harassment was not based on her sex, but rather, on the basis that she refused to have an affair. Similarly, in *Corne v. Bausch and Lomb*, Jane Corne and Geneva DeVane alleged that their supervisor repeatedly made physical and verbal sexual advances toward them, molested them, and made their workplace environment intolerable. In dismissing the case, Judge Frey argued that the supervisor's "conduct appears to be nothing more than a personal proclivity, peculiarity, or mannerism. By his alleged sexual advances, [he] was satisfying a personal urge."[58] Holding that the supervisor's actions were of a private and unique nature, and therefore not company policy, Frey, too, dismissed the case.

Alternatively, to frame sexual harassment as biological, natural, and universal "is to render it too big, too immutable, too invariant, too universal and thus, too pre-social to be within law's reach."[59] Viewing sexual desire, and inevitable miscommunications about it, as an unavoidable fact of human life, judges worried that if these court cases were successful, waves of complaints would be brought and the system would be overloaded with unreasonable cases spurred on by office flirting. Here, sexual harassment law is conceptualized as "restricting normal human expression," a universal and natural urge that should not be limited.[60] In *Tomkins v. Public Service*, Judge Stern called Adrienne Tomkins' refusal to comply with her supervisor's sexual demands and his eventual retaliation a "natural attraction." Continuing this line of logic, Stern writes: "If the plaintiff's view were to prevail, no superior could, prudently, attempt to open a social dialogue with any subordinate of either sex. An invitation to dinner could become an invitation to a federal lawsuit."[61] In this manner, human bodily desire is universalized, and placed outside of the realm of law. Despite the fact that these framing mechanisms appear contradictory, judges often combined the two arguments in their opinions to conclude that sexual harassment is neither discrimination based on sex nor a matter of employer liability.

In addition to these two alternately trivializing and monumentalizing frames that judges used to dismiss cases, I argue here that they also relied on the controversial legislative history of Title VII to claim that women's complaints of sexual harassment are not covered under the Title.[62] However, while judges often refer to the "sex" amendment's passage, they follow the historiographic tradition that neglects to acknowledge the efforts of the National Women's Party. As such, they fall into what contemporary historians realize is a flawed and incomplete understanding of the past. This interpretation makes sense in the context of judicial opinions, however, as is serves to strengthen their argument against upholding women's claims. Additionally, judges' stances do accurately reflect that Title VII was in fact not intended to protect women against sexual harassment. In the Congressional Record, as well as the public debate that surrounding the title in general, no mention was made of unwanted sexual advances in the workplace, let alone any attempt to regulate them. In this sense, then, the judges' use of this argument is warranted. Nonetheless their strict adherence to this historical interpretation of the Title left little room for inventive re-readings of the Title to allow for women's claims to be heard. For example, Judge Stern argues in *Tomkins v. Public Service*, "Title VII was enacted to remove those artificial barriers to full employment which are based upon unjust and long-encrusted prejudice… It is not intended to provide a federal tort remedy for what amounts to a physical attack motivated by sexual desire on the part of the supervisor and which

53 MacKinnon claims that "authoritative men" either trivialize or monumentalize or both women's claims of harassment as their arguments fall into these two dismissive categories. These categories remove the issue from the socio-political arena and thereby remove them from legal intervention as well.

54 These cases include *Barnes v. Train, Corne v. Bausch and Lomb,* and *Tomkins v. Public Service Electric.*

55 MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, 87.

56 This is a classic example of quid pro quo harassment (term coined by MacKinnon in the *Sexual Harassment of Working Women*), where the female employee must do something to maintain her current position or job. Another type is termed hostile environment and includes more subtle and daily forms of harassment. All early of the early sexual harassment cases that were brought were *quid pro quo*.

57 *Barnes v. Train,* 13 FEP 123 (D.D.C. 1974).

58 *Corne v. Bausch and Lomb,* 390 F. Supp. 161 (D. Arizona 1975).

59 MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, 83.

60 Mink, *Hostile Environment: The Political Betrayal of Sexually Harassed Women*, 38.

61 *Tomkins v. Public Service,* 422 F. Supp. 553 (D.N.J. 1976).

62 *Barnes v. Train, Tomkins v. Public Service*

happened to occur in a corporate corridor rather than a back alley."[63] Other judicial opinions referenced the difficulty in interpreting Title VII given its controversial legislative history, as well. In general, this third frame only served to bolster the other two, and all three together simultaneously enforced one another, and in doing so removed the possibility of redress for women.

1972 saw the first case to break this mold when the district court for the District of Columbia ruled in favor of Diane Williams, making it the first federal court to rule that Title VII prohibits discrimination based on sex. In his opinion, Judge Richey focused on whether or not a supervisor's retaliation, spurred by a subordinate's rejection "constitutes sex discrimination within the definitional parameters of Title VII of the Civil Rights Act of 1964."[64] Judge Richey argued that the behavior in question would create an artificial barrier to employment if only one gender and not another was propositioned in this way, despite the fact that the "rule or practice is conceptually sex-neutral."[65] Finding this to be the case in the alleged incident, the court ruled in favor of Williams. This decision was a turning point in judicial decisions regarding sexual harassment. *Barnes v. Train, Corne v. Bausch and Lomb,* and *Tomkins v. Public Service* among others were all reversed at the circuit or appellate level, strengthening women's legal ability to makes claims of quid pro quo harassment at work. In the appeal of *Barnes v. Train,* now *Barnes v. Costle,* Judge Robinson supports this development in writing:

> But for her womanhood, her participation in sexual activity would never have been solicited. To say, then, that she was victimized in her employment simply because she declined the invitation is to ignore the asserted fact that she was invited only because she was a woman subordinate to the inviter in the hierarchy of agency personnel. Put another way, she became the target of her superior's sexual desires because she was a woman, and was asked to bow to his demands as the price for holding her job.[66]

Judge Robinson not only claims that is it impossible to remove gender from conceptualizing such behavior, but also rejects the "natural urges" and "private behavior" frames of past cases, acknowledging the hierarchical power structures that enables men to make these kinds of advances.

As courts in these instances reversed past rulings, they confirmed sexual harassment as sex discrimination. And indeed, in 1977 when *Tomkins v. Public Service* was reversed, the term "sexual harassment" was finally used. Bolstered by the remarkable reversals and the entrance of the phrase sexual harassment into the legal lexicon, feminists rallied for more government action to be taken at the local, state, and federal level. In response, politicians developed remedies for harmed women, including the Equal Employment Opportunity Commission's issuance of guidelines on sexual harassment in the work place in 1980, officially stating that sexual harassment is prohibited under Title VII. One of the primary government officials behind the creation of the EEOC Guidelines was the department's Chair, Eleanor Holmes Norton. Norton's personal background and advocacy had a hand in shaping the comprehensive and sweeping Guidelines. As a civil rights advocate, African-American feminist, and lawyer, Norton has been described as a *femocrat*, arguing that sexual harassment's unacceptability, widespread nature, and economic detriment to women warranted wide-ranging government intervention.[67] As part of the process in developing the Guidelines, hearings were held at which feminist advocates, past litigants, and legal officials testified, speaking out against sexual harassment. These hearings and the reports that came out of them made clear that sexual harassment at work was a serious issue that could not be tolerated. Though Norton's EEOC Guidelines were met with a conservative pushback, mainly concerning the issue of employer liability, the Guidelines, with some modifications to their original manifestation, were adopted shortly after Reagan's election victory in 1980.

The Guidelines broadly defined sexual harassment as:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.[68]

Not only do the Guidelines explicitly link sexual harassment and Title VII, they also make clear that both quid pro quo and hostile environment harassment are covered by the Title.[69] Feminists embraced this broad definition of sexual harassment while opponents feared the scope of the definition, worrying that the inclusion of hostile environment harassment would result in frivolous charges. It is with this in mind that they argued that employer liability should be restricted to apply only when the employer should have reasonably known, and failed to act, to prevent harassment. While the Guidelines were modified little to address this notion of liability, they were modified in relation to hostile environment definition. The original language of the act defined hostile environment harassment as "substantially interfering with an individual's work performance." "Substantially" was replaced with "unreasonably," leaving space for individual's to argue that it is possible for there to be reasonable interference. Despite these changes, women's organizations were generally satisfied with the Guidelines, as they firmly established that cases were actionable under Title VII and that both experiences of harassment would be heard. As well as this definitive legal

63 Also notice how this quote refers to both the private and natural arguments.

64 *Williams v. Saxbe*, 413 F.Supp. 654 (D. D. C. 1976).

65 Mink, *Hostile Environment: The Political Betrayal of Sexually Harassed Women*, 47.

66 *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir.1977).

67 Baker, 116 and Kathrin S. Zippel, *The Politics of Sexual Harassment: A Comparative Study of the United States, the European Union, and Germany* (Cambridge: Cambridge University Press, 2006), 58.

68 EEOC Guidelines on Sexual Harassment

69 *Bundy v. Jackson* is the first case to rule against hostile environment harassment. The decision was made in 1981.

advancement, the EEOC Guidelines also served to bring awareness of the issue of sexual harassment to an even broader public audience. Media coverage of the Guidelines packaged the issue in much the same fashion as the judges of the early cases did and opponents of the Guidelines similarly claimed sexual harassment to be a private matter.[70] Regardless of the heated aftermath, the Guidelines represent an influential and expanding definition of sexual harassment, giving harassed women a legal, legitimate and accepted set of rules to reference in their claims of abuse.

In 1986, the Supreme Court heard its first case of sexual harassment, upholding Mechelle Vinson's claims of sexual abuse in what is widely regarded as "the crowning achievement of the early movement against sexual harassment."[71] Initially brought in 1980, Vinson's case reached the Supreme Court after a series of appeals. Alleging that she had been forced to have sexual relations with her supervisor for over two years, Vinson claimed that once she refused to continue, he threatened to eliminate her position and began creating an unbearable working environment for Vinson as well as many of her other female co-workers. The Supreme Court ruled in favor of Vinson, endorsing recent interpretations of Title VII in lower court cases, explicitly referencing the EEOC Guidelines on sexual harassment, and ruling that both quid pro quo and hostile environment harassment are covered under Title VII. In this sense, "the Court confirmed many of the principles that had been developing in the lower courts for the previous ten years."[72] However, *Vinson* did set a series of high standards and limitations on women's ability to gain relief, leaving ambiguous issues such as employer liability, the severity and pervasiveness of the harassment, and how unwelcome such conduct was. The *Vinson* decision removed uncertainty surrounding the viability of the use of Title VII and the recently established EEOC Guidelines, while simultaneously enforcing it in relation to burden of proof and corporate responsibility. Despite this, *Vinson* definitively established not only the legitimacy of the term of sexual harassment itself, but also its rightful place in the courts

V. Conclusion

Despite the developments in sexual harassment litigation charted here, even today women face intense scrutiny in the courts as lawyers and the public attempt to uncover their motives, judge the outfit they wore on the day in question, and limn the contours of their sex lives for context. Despite the fact that women have attained a space in which their claims and words can be heard, it is rare that they are heard without prejudgment or bias. Efforts to gauge women's credibility, promiscuity, and incentives do not solely stem from conservative men and women who believe the regulation of sexuality to be erroneous. Feminists and liberals alike also partake in the interrogation of women's claims, judging women for the situations that they were forced into rather than the men who abused their power. As Mink writes, "if the law now will listen to a woman's experience, it does not shield her from promiscuous public scrutiny that distorts the experience she describes."[73] But the stakes of this doubt are high. The near constant investigation and skepticism of women's motives in making claims of sexual harassment, by liberals and conservatives alike, according to Mink, "betrays feminism's single legal accomplishment and compromises its future."[74] When women are discouraged from pursuing legal recourse because of these unfair and intrusive examinations, it damages the legitimacy and progress of the law as a whole for women. Now that there are laws that theoretically protect women against harassment, women must muster the courage to use them: "The law gains strength from the women who use it."[75]

Catherine MacKinnon is similarly pessimistic about women's social and political advancement since the intense strivings of the women's movement. Though she acknowledges, "sexual harassment, the legal claim – the idea that the law should see it the way its victims see it – is definitely a feminist invention," she also writes: "Feminism has not changed the status of women.[76] It is not enough to observe that social change is glacial, law is inadequate to move anything basic, and power is powerful."[77] Seeming to concede to prevailing structural hierarchies, MacKinnon's path forward is vague. Mink, while similarly subdued, may offer a more hopeful solution: shifting public discourse around issues of sexuality and the law and allowing women to make claims in a way that remains true to their experience.

Here, Stephen Schulhofer's conception of the right to sexual autonomy becomes pertinent. Though writing mainly about laws relating to rape, Schulhofer argues in his book *Unwanted Sex* that the right to sexual autonomy is currently absent from legal consideration. Claiming this to be as important a right as that to property, Schulhofer spends much of the text developing the notion of this right to choose "whether and when" to be sexually intimate with another.[78] His conceives of this right as both positive, the right to choose one's own bodily lifestyle, and negative, the right to safeguard and exclude others from one's own body. Currently, the positive aspect of this right is privileged as the law is committed to supporting the right to seek intimacy, but there is no meaningful freedom to refuse it. Within the context of sexual harassment, this right to intimacy, or alternately labeled as the right to privacy, has been used to argue that sexual harassment is outside of the purview of the law. In this sense, the disproportionate and distorted focus on rights to, rather than from, has enabled harassers to evade consequence while the women whose personal and sexual autonomy has been violated must endure. Incorporating this notion of the right to refuse, be it solely in public discourse surrounding the issue, might aid in creating a more receptive space for women's claims to be heard.

If pursued, sexual autonomy, like the term "sexual harassment," will undergo intense scrutiny, debate, and attack. However, the narrative of the development of sexual harassment as a concept and as a juridical claim as outlined above, surely shows that provided the concentrated efforts of a group of dedicated activists, such a change – if only culturally – is possible. Activism

70 Baker, *The Women's Movement Against Sexual Harassment*, 119.
71 Ibid., 171.
72 Ibid., 169.
73 Ibid., 5.
74 Ibid., 3.
75 Ibid., 7.
76 MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, 103.
77 Ibid., 2.
78 Stephen J. Schulhofer, *Unwanted Sex: The Culture of Intimidation and the Failure of Law* (Cambridge, Mass: Harvard University Press, 1998), 100.

in and of itself is not enough, however. The law must respond to grassroots demands for authentic structural change to occur. From the historical narrative outlined in this paper, it appears that the feminist movement's awareness and labeling of the term "sexual harassment" came after the first court cases were contemplated and brought. Despite the fact that this language did not exist, there was still some notion that such treatment was actionable under Title VII. This first step in Title VII's evolution, namely the filing of the first cases, was based on an analogy between sex and race discrimination, building on the legal foundation of the civil rights movement. In the second step, the analogy of sex discrimination was aligned with the newly created term sexual harassment. Here, sex discrimination in the courts becomes sexual harassment in the popular media, feminist rhetoric, and movement activism. In a sense, advocacy was a short step behind the court's rulings in that the court heard cases of sexual harassment before the term was coined and popularized. This perhaps explains why once the term sexual harassment was coined and feminists became increasingly vocal and active, courts were more able to accept the validity of the arguments made in favor of the plaintiffs. Sexual harassment, without such a moniker or public awareness, had not been taken up seriously enough yet to influence the judges in early court cases. From this, we can see that there was a delicate dance in the 1970s between legal interpretations of Title VII, the feminist movement, and the definition of "sexual harassment." This murkiness makes it impossible to pin down the exact moment at which women realized that Title VII was a possible avenue for redress and how exactly their thinking on the matter formed. However, it is possible to say that once the notion was exposed, individuals worked to expand it and create an accompanying language with which to allow women to make their experiences heard. As this expansion occurred, the law began to respond, eventually legitimating women's claims and words in the 1980s.

These debates and concerns about the female body and experience proliferate around us. The female body is a contested space in which society projects its ideals and stereotypes of how women ought to act and behave. In the development of sexual harassment definition and jurisprudence, women had to resist traditional Anglo-American views that placed them in the home and out of gainful employment. Fighting stereotypes about gender and sexuality, women made clear that a new paradigm of female existence was needed to correspond to the reality that women faced on a daily basis. Naming an experience for themselves for the first time, women sought recognition of it in the legal realm with success. Despite the fact that there is much to be done for women to feel comfortable bringing such claims, especially when faced with intense scrutiny, the history of sexual harassment reveals that women have the power and ability to speak of their own bodily experience, and declare and demand that the law to reply.

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