SEPLER & ASSOCIATES

Strategic and Respectful Approaches to Contemporary Workplace Issues

Written Testimony of Fran Sepler, President, Sepler & Associates

Commissioner Feldblum, Commissioner Lipnic, Members of the Task Force, thank you for the opportunity to speak with you today. I am a consultant, trainer and fact finder who has been focused on prevention, identification and remediation of workplace harassment for approximately 30 years. I work across industries, including the nonprofit and public sector and academia. I have conducted over 700 independent fact findings, conducted training for over 150,000 people and served as an expert witness and advisor to organizations throughout the world, focusing on discriminatory and nondiscriminatory harassment, or bullying. I also teach an occasional master's level class on Workplace Fairness at the University of Minnesota.

I've been asked to talk about those things that make organizations and individuals more or less susceptible to the development of hostile environments or occurrences of serious harassment and bullying. While I am a practitioner and not an academic, I have conducted some proprietary research and have observed and taught about patterns in workplace culture for an extended period of time.

The risk of harassment in any workplace is a combination of individual risk factors, organizational culture and industry norms. Let me address each individually to shed light on both the complexity of prevention and the multivariate perspective that students of workplace harassment must take.

Individual Factors

My research, conducted beginning in 1980 and proceeding for years beyond, examined the role of workplace responses to harassment complaints; essentially asking whether employers could respond to those complaints in ways that reduce the probability of a charge or legal claim. In fact, my research found there were absolutely such factors, and addressing and leveraging those factors has formed the core of my supervisory and leadership training for decades. As any researcher learns, however, sometimes you learn things you did not expect to learn, and those become in some ways more valuable than the answers to the central thesis.

 Interviewing thousands of complainants, we found that there were some startling patterns in our data. For instance, those individuals who reacted most dramatically to harassment, meaning those who filed charges and brought legal claims were not necessarily subject to more abusive or explicit behaviors than those that did not; nor were they more likely to be harassed by someone of greater stature. Rather, they were more likely to have a history of victimization in their life. This context is important because those with such a history might be less likely to think they will be helped or might blame themselves for what is happening. Because of this, they will struggle silently to cope with the behavior longer than others.

This is important because the length of that period we call the "incubation period," between when the harassing behavior begins and when the behavior is brought to the attention of organizations – is a direct correlate to the quality of the outcome. We found that the longer the wait, the less likely the complainant was to have faith in management and the more likely he or she would seek outside advocacy.

Less dramatic and more logical is the profile of a harassment victim. We found that single parents, people in the midst of a divorce or separation, people who were developmentally promoted[1], recent immigrants and people making low wages were more frequently targeted for harassment and bullying than others. What these people have in common is an intense reliance on their wages and a foreboding sense that they cannot afford to lose their job. Fear of reprisal or retaliation, and the subsequent fear of job loss lengthens the incubation period and the harassment continues until the individual's calculus is that they cannot bear the harassment for one more minute – by then the problem has become far less manageable and more traumatic to the target.

So, it is clear that some of the risk for harassment is inherent in simply having people in your workforce. Employers cannot control or screen for these risk factors, but they can arm their employees with knowledge and by doing so, instill confidence that concerns will be addressed fairly. In fact, one of the things we learned by interviewing all of those complainants was that an individual who knew someone who had a good result when they complained about harassment was twice as likely to have a good outcome as someone who did not know of a good result. We call that the "spin factor," and use it to encourage employers to keep in mind that their interactions with employees can make the next interaction better or worse.

Organizational Factors

There are several key organizational factors I'd like to address: unearned privilege, decentralization, historic lack of diversity, and mundane work. While these are hardly the only organizational factors that create a propensity for harassment of all kinds to occur, they are, in my practice, those most frequently encountered.

Unearned Privilege

In certain fields, you will hear the term "eminence." In others you will hear the less dignified but aptly descriptive "rainmaker" or "big producer." Sales, financial services and the professions are full of them. These are people who have excelled in their fields and have earned a stature that warrants certain privileges. In academia, it is the brilliant scholar who will attract grant monies and other highly desirable faculty. In law, it is the senior litigator who brings visible verdicts and bankable dollars. In medicine, it is the renowned surgeon. The privileges afforded these superstars may include substantially higher compensation, accommodations in scheduling, facilities, opportunities, and exemptions from certain expectations to which "mere mortals" are held. For some, this is where the privilege ends. For others, the rarefied air they work in brings about a bit of cognitive dissonance. The eminent individuals begin to believe that they are of a different order of human than those they work for and with. They treat

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[1] This term refers to employees who were hired for an entry level or administrative job and promoted into roles of greater responsibility without meeting the requirements contained in the position description for the roles they currently hold.

people poorly or they exploit them. They use their status to threaten those who challenge them. They become abusive or harassing or both, and they know that their leaders, dependent on them for income, grants, reputation or other key contributions, will tiptoe around the bad behavior. I think anyone who has worked in the professions I mentioned knows at least one of these people, and recognize fully that while there is increasing likelihood that employers will act in the face of their bad behavior, it is more likely that the reporting target be mollified than the harassment stop. I recall one project I worked on where we learned that for decades an eminent professor had his exclusively Asian graduate students not only wash his feet daily, but on occasion, satisfy certain erotic desires. His Dean was aware of his abusive tendencies but took a hands off approach. It took twenty five years, the graduation of one of those students and tenure for her own position at a different institution for her to find the courage to report it to senior institutional officials. Unearned privilege and the cowardice of leaders observing it is the most pernicious underpinning of white collar harassment. It is also often enabled by a second organizational factor; decentralization.

Decentralization and Insufficient Oversight

From the perspective of organizational science and business, decentralization is good for many things Autonomy, local control and flexibility are some of the things achieved by decentralizing operations. Local control and autonomy work well when those in positions of authority are competent and effective leaders. When they are not, dictatorial and autocratic pockets of otherwise well run organizations develop. Examples I have experienced in my practice include academic laboratories of governed by a tyrannical professor and a single plant of a large international corporation, where the plant manager explained to me that his largely African American workforce were "mostly trained monkeys." These, rogue managers somehow produce results, and because they produce results, their own leaders turn a blind eye to their methods. While the behavior of these managers is undeniably problematic, it is only the first link in an unfortunate chain of conduct. When this middle layer of management sets a tone of disrespect or abuse, it amounts to organizational oppression, and when members of an organization truly feel oppressed they are less inclined to try to band together and battle against the oppression and are more inclined to turn on one another. The form that takes is often workplace harassment, whether protected class harassment directed towards the least represented minority, sexual harassment in predominantly male or predominantly female work environments or non-protected class harassment based on tenure, job category, or other characteristics that make someone vulnerable. In one organization I worked with recently, new workers who put in real effort were cautioned by their peers to "slow down" and "make some mistakes" lest the others be asked to increase their speed or quality. These workers had become resentful of management, but their misbehavior was directed towards the new employee who was working hard. The target of their bullying, like other employees working in a secluded pocket of an organization generally believed that he would be punished for reaching outside that pocket for help. Since he had observed significant amounts of bad behavior unstopped and unpunished, he believed he had nowhere to go.

Historical Lack of Diversity

When we hear about the risk of harassment in single gender dominated professions, many of us immediately think of blue collar fields, and this characterization would certainly embrace industries like trucking and construction, but also the military and paramilitary professions such as law enforcement. It includes nursing as well, which often surprises people. The reason these fields are at such great risk is

that while gender and racial integration is occurring quickly, the organizations culture tends to lag. Patterns of behavior established when homogeneity was the norm might include banter of a sexual or racial nature, frank sexual discussions, explicit language and the sense of belonging that such "insider" interactions engender. In many of these organizations, anti- harassment training is either nonexistent or is treated humorously by supervisors. I recently visited a plant having some challenges with sexualized and racially charged humor, and workers told me the attorney who came to do anti-harassment training told offensive and explicit "war stories" with humorous twists. In another a supervisor acknowledged laughing at an employee's joke involving a racial slur because the employee was just repeating something he had heard on TV. He told me with an air of authority that unless someone vociferously objected, the behavior could not be harassment.

When organizations have allowed a culture to blossom that implicitly assumes everyone is okay with everything, it is difficult to change. In an administrative department, I dealt with a group of women who have worked together for years, often humorously sharing explicit sexual information and bashing males openly. They told me they believed this behavior was acceptable because the department was all female and no one had objected. When a young man joined the group, he was expected to become "one of the girls" and attempted to do so. He later explained he felt he had to go along or to be the subject of resentment because the others have had to "give up" the interactions that for them, make the workplace fun. When the behavior escalated to sexual pranks, he complained to his supervisor who scoffed that a group of middle aged women could be harassing a young man.

Cultures are ritualistic, and sometimes banter, humor and explicit language are part of the organizational rituals. Omitting these bonding exercises creates a void. Without coaching and finding substitute ways to fill the void in the face of a changing culture, harassment may be the outcome. Add to this that the newest employees, those most likely to find themselves in a work environment they find offensive, are highly inclined to go along with the behavior because they are in need of help learning the ropes and affinity from their coworkers. A graduate of a police academy for instance, waited until he had passed his probation and then six months more until he reported the racial names he had been called as part of the departments semi-hazing of newbies.

While gender and racial integration is rapidly accelerating, traditions, cultures and mores only change when there is a strong commitment to making the change and competent actions create a culture of accountability. In 2015, I am still told by supervisors that abusive behavior towards employees is acceptable because "these people won't get the work done any other way," In one investigation, supervisors attempted to block me from meeting with workers privately because "these are rough guys and they don't know how to act in front of a woman."

Before I move on from the topic of lack of historic diversity, I would like to point out that within this type of organizational framework there is a specific set of industries that I call "the thick skin jobs." These are jobs that require incumbents to deal with unpleasantness; correctional guards who deal with criminals, journalists who deal with grisly stories and breaking deadlines, EMT's, firefighters, medical personnel and other first responders. The human defense against having the ills of the world daily penetrate one's emotional boundaries is the development of "thick skin." Thick skin insulates you from feeling pain when you are dealing with difficult, sometimes awful situations – human suffering and the worst of human behavior – but it also insulates a person from the sensitivities of those around them. In these professions, dark humor including outrageous language and inside jokes becomes part of the armor, and

because of a lack of sensitivity to others, a certain imperviousness to the way others may react when that cultural norm is *not* the norm for others. In training, I explain the concept of the reasonable person and persuade them that the judge of whether their behavior is acceptable is not the homicide cop or the ER doc beside them in the trenches, but a person who does not have their thick skin. Because these are largely professions with only recent progress in true gender integration, this dynamic increases the risk of problems developing.

Mundane Work

By now it is clear that the risk factors I am discussing often overlap. In nursing, for instance, you have a single gender dominated profession interacting with the more than occasional dynamic of physicians with unearned privilege. Add to that the requirement for thick skin and you land squarely in the two riskiest places for harassment in medicine – the OR and the ER. So too, you have the industrial world of shipyards and factories as well as professions like security and maintenance that have traditionally been male bastions. Add to that a new element – mundane work. Work that is repetitive, routine and, frankly boring is a canvas for mischief. Interviewing security guards at a major cultural center, I heard repeatedly that when you have nothing to do, you find ways to make the workplace more interesting. Sometimes this manifests in gossip and speculation, and gossip and speculation often lead to mobbing or group harassment. Assembly lines are rife with people telling themselves stories about a perceived or imagined slight. If you want to start a rumor, go to your local newspaper and whisper it to the people assembling this weekend's advertising inserts. If it is like most unskilled workplaces, it is more diverse and integrated than the community as a whole, full of immigrants, people of varied socioeconomic status, and racially and ethnically rich. In these work environments, if rumors and concocted stories lead to hostility, it is not uncommon for it to take on a racial or ethnic edge or to be perceived that way.

Even if there is not gossip and bullying, there may be humor used to break the monotony. I recently had a Mexican employee in an assembly warehouse tell me that he would beat up someone for using racial slurs, except if it was one of the guys he worked on the line with, because they just were just trying to be funny. When I pointed out that someone walking by might assume such language would be acceptable and repeat the slurs, he said "well, they'd find out in the parking lot it wasn't."

<u>Industry Norms</u>

Some of the organizational characteristics I've discussed are embedded into industrial norms. Since I have dealt so intensively with harassment in professional firms, I'd like to start there. By "the professions," I am talking about law, medicine, financial services, accounting, and to some degree sales. Each of these professions might use different lingo to describe one of their most common attributes; the existence of a "front office" and "back office." In other words, those who do the professional work and bring in the income, and the others who support them, or colloquially, "the staff." These structures create several important dynamics; one is that the people whose names appear as "managers" rarely have the actual power and authority to demand that the professionals behave appropriately. Ask any hospital administrator or law firm administrator how much control they have over the conduct of the professionals in the firm and if they are being honest with you, they will admit it is little if any. Secondly, there is a two-tiered status in the firm. When I do sexual harassment training for law firms, I have never had lawyers and their assistants or paralegals attend the same sessions. There are attorney sessions and staff sessions. Usually the staff sessions are precisely the length I have recommended, and the attorney sessions are shorter. This is not, I assure you, because attorneys somehow already know this

material. When a claim is made against a staff member, there is little wringing of hands and a willingness to take punitive action, but if there is a claim made against a partner, it becomes a very big deal. When a senior partner was determined to be harassing his secretary, the managing partner barely stifled a yawn, but when I added that two promising associates were also being targeted, I got his attention. The upshot of this cultural reality is that a clerical employee in a big ten accounting firm being harassed by a partner may do nothing. They will likely assume they are "fungible" and fear for their job or they will assume that their word will not be taken over the word of their boss. This is what creates ripe harassment claims.

Finally, in the area of culture, I'd like to suggest that while organizations worldwide tout their culture with sayings such as "people are our biggest asset" or have mission statements filled with commitments to high quality work environments, the lived reality of employees may be different. Without a steady diet of cultural reinforcement, compensation that aligns with leading for cultural values, prompt action in the face of a lack of alignment and a compassionate middle management layer, trouble can happen anywhere. I have investigated claims of brutality in some of our most lauded Universities, have seen people humiliated and suffering PTSD in companies whose food we all eat and even seen a public figure in law enforcement so blatantly sexually harass staff that employees joked he had a waiver from the court. These organizations had policies, they had training, they had respectful workplace as part of their mission, but, as we say, their lip language did not match their body language. This disconnect demonstrates the rigor required to truly build a culture of respect and rich feedback.

So What Works?

Cultural expectations are set by leaders and implemented by management. I am certain we all agree that leaders need to set the tone and to demand and expect that organizational climates be respectful and civil, and that employees have access to skilled resources when they are having a problem. Viewing Human Resources as an essential strategic partner means people practice concerns are at the table when the organization is making decisions. Good policies and aspirational cultures, however, are only the beginning.

If I had limited assets to improve the climate of any organization, I would invest ninety-five percent of them in middle managers. These are the people who make all of the difference in the day to day lives of organizations and people. When we train middle managers, we don't just train them about how to spot and address problem behavior –we teach them empirically sound things to do and say when an employee seeks them out to discuss a problem. We teach them to avoid suggesting the employee is at fault. We teach them emotionally intelligent responses, and we stress the importance of a feedback rich environment, so that people get used to speaking up and listening when they are being told there is a problem. Most of all, we show them the metrics that come along with proper monitoring and complaint handling, increase in feedback and early coaching. The increases in productivity, morale and attendance. The reduction of unproductive conflict, the increase in teamwork and cooperation. This is a harder sell in some organizations than others, but if they are paying attention, they realize that by really making the effort to promote respect, their job will become far more enjoyable.

Part of the work that must be done in any organization is carefully weeding out the inclination to punish those who have complained. Retaliation is pernicious, and can come months or years after the complaint is made in the form of withheld promotions or failure to provide positive references, negative statements behind closed doors and blocked career paths. A single retaliatory gesture echoes through

organizations for years. An impression that reprisal has occurred in an organization can stifle complaints for the foreseeable future. Because retaliation is so very difficult to prove, it remains one of the greatest challenges to encouraging people to do precisely what we want – to speak up loudly and early, before the behavior has become unlawful. Success stories in this area come primarily from organizations that have compliance hotlines, very skilled Employee Assistance Programs or Ombuds, where people can raise issues privately and advocacy can be achieved without putting the complainant in the line of fire. Problems arise in this area due to recent decisions that have limited investigator's capacity to instruct witnesses of a need for confidentiality. It is my opinion that we need more, not fewer ways to address situations quietly and privately.

Finally, I have found that training, required in some states and voluntary in others, must be robust, engaging and specific. We design training to raise awareness that the absence of disrespect is not respect, and that creating civil and respectful work environments requires the engagement of everyone. While defining prohibited behavior is a necessary part of training, it must also include clarity on the behavior that is desired and valued in the organization. My experience is that people engage the training in a much more positive way when they have the opportunity to identify those things that make them feel respected and valued by their peers, superiors, and where appropriate, subordinates.

Thank you for the opportunity to speak with you about this most important issue.