COMING TO TERMS WITH SEXUAL HARASSMENT:
SIMPSON TIMBER COMPANY AND LOCAL 3-38
INTERNATIONAL WOODWORKERS OF AMERICA
SHELTON, WA, 1979

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A Thesis

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Abstract

of

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Statement of Problem

This thesis examines the strike that resulted from the 1979 case of sexual discrimination filed by Toni Lee Gilbertson against the Simpson Timber Company in Shelton, Washington. The thesis explores the responses of Gilbertson, the Washington State bureau of the Economic Employment Opportunity Commission, The International Woodworkers Association Local 3-38, Simpson Timber Company and to a lesser extent, the town of Shelton, Washington, to the new emerging legality: the illegality of the sexual harassment of women in the workplace.

Sources of Data

A wide variety of sources are used in this project. Primary sources include the case of the Equal Employment Opportunity Commission v. Simpson Timber Company, Civil Action No. C79-510T; local newsletters, standing committee minutes and newspaper accounts. Secondary sources such as monographs and journal articles provide the background and context for the subject.

Conclusions Reached

The case of Toni Lee Gilbertson is representative of the actions taken by women beginning in the 1970s who were determined to address the ancient scourge of the sexual harassment of working women. Gilbertson's case pushed the Washington bureau of the Equal Employment Opportunity Commission to protect American women's legal right to a harassment-free workplace under Title VII of the 1964 Civil Rights Act. Where the rights of women union workers had conflicted with the notion of male entitlement, male dominated unions, including the International Woodworkers of America, Shelton Local 3-38, were slow to grasp and act upon the insidiousness of the harassment of women laborers. Simpson Timber Company found the challenge to its workplace environment unacceptable and acted as such in its efforts to squelch the sexual harassment complaint. Like many small towns across America, Shelton was finding its way in a changing world where traditional notions of women's place were being redefined by a new generation of women demanding not only equality at home, but in the workplace as well.
To working women everywhere
and to Toni Lee Gilbertson, wherever you are.
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Chapter 1

INTRODUCTION

"...The issue we are striking over goes to the very heart of a change that is taking place ....in Shelton."\(^1\)

Philip Foner, on the bottom of page 559 in his book *Women and the American Labor Movement*, footnotes Toni Lee Gilbertson’s 1979 challenge to the sexual harassment she suffered at Simpson Timber Company, Shelton, Washington. He wrote that her union went on strike in solidarity with her over her firing for refusing to retract a sex discrimination claim she filed against the company.\(^2\) Not only is this partially accurate, but her story is worthy of far more than a footnote in a history book.

Gilbertson’s union, Local 3-38 International Woodworkers of America, went on strike over a contract dispute which emanated out of what the union believed to be wrongful termination. It was not until the strike was through its second week that the issue of sexual discrimination was raised. When this became apparent, a number of union members wanted to end the strike once it became known that sex discrimination played a role in her eventual firing. Others considered her claim worthy of prolonging the strike. Gilbertson’s story provides an opportunity to evaluate the responses of ordinary

\(^1\) "Worker Seeks to Illuminate Strike Issue," *The Daily Olympian*, October 14, 1979, D3.

Americans to the transformations they experienced privately and at work, particularly in light of women’s changing role in American society.

The 1970s proved to be a tumultuous time in American history. America was experiencing significant political, economic, and social unrest. Citizens in Shelton and across the country felt they were under siege. America remained disillusioned over Vietnam as President Carter negotiated the release of Americans in Iran. The Cold War showed no signs of abating. The rust belt was spreading and industry was hemorrhaging jobs as inflation eroded consumer buying power. Gas lines were frequent and punk rock was in vogue. American women were unabashedly challenging traditional ideologies as to women’s proper place in the economy and in the home. And they were demanding an end to an ancient and hidden scourge of working women – sexual harassment. Change was also taking place in Shelton.

Famous for its Christmas trees, Shelton, population 7,000, was experiencing rapid growth and a changing landscape. Family-owned businesses struggled as corporate businesses displaced them. Established neighborhoods evolved into enclaves for a new class of wealthy Seattle professionals seeking second homes forcing young residents further away in search of affordable housing. The strike over Gilbertson’s contract dispute further disrupted the small town tranquility of Shelton especially when the issue of sexual harassment was revealed. The strike was the second in twenty-five years. The strike challenged customs and expectations between the sexes and appeared particularly

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unnerving to many Shelton residents when other elements in their society appeared to be in disarray. The strike forced unwilling citizens of Shelton and employees of Simpson to the front lines of a much broader ideological war between those angered by a deeply entrenched male prerogative and those who felt threatened by women’s challenges to time-honored assumptions regarding their right to work in occupations dominated by men.

The local press noticed as well the change going on in society at large. The Seattle newspapers featured a number of stories at the time of the strike on sexual harassment, changes in women’s place in society and the second-class status of many working women. They served to inform their readers about the issues debated across the country and in their own town. Many articles paralleled the sentiment held by local Shelton residents about the strike and women’s place in a traditionally male occupation. One editor pondered the necessity of women in the work force. He noted that due to changes in the economy women needed to work outside of the home and this was fine, as long as there was work for both men and women. He lamented however, that there would be difficulties between men, women and children if women worked outside the home, but agreed that these “difficult problems [were] amenable to human solutions.”

Another lengthy article discussed the merits of women in combat. Women who wanted

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to be on the front lines were accused of putting themselves ahead of their country. They were viewed as not being strong enough and would only endanger the men who would be distracted by their presence. More importantly, women should not be on the battlefield but in the home taking care of the family. Another article highlighted strategies women could employ if they were passed over for promotions or denied training while several others featured statistics on the probability of women incurring sexual harassment at work. The article noted how the courts were addressing a rising tide of harassment cases.6

This thesis concentrates on Gilbertson’s unwitting expansion of women’s right to work in an environment free of sexual hostility. It not only examines her contribution to the centuries-old fight against sexual harassment, but it also looks at the reactions of individuals and organizations in the context of a new legality, the illegality of sexually harassing women at work. While the strike provides a measure in terms of how union members, Simpson management, court officials, citizens of Shelton and the women on the factory floor at Simpson were transformed by the events leading up to and during the strike, the purpose of this thesis is to evaluate how these individuals disparately came to terms with sex discrimination and harassment at the end of the turbulent 1970s.

Women have been fighting sexual harassment for as long as they have worked. That the topic has been considered taboo has forced women to address the issue clandestinely through their poems, stories, trade journals, diaries, and at times, a rare newspaper article. But for stories hidden within chapters of biographies, fictional

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characters in novels and short stories and an occasional trade journal article, the subject of sexual harassment was not specifically addressed in historical or legal literature until the 1970s.

In chapter two this thesis surveys early monographs as well as contemporary literature discussing various aspects of sexual harassment: efforts to end it, its effect on women, strategies to address it, and why men harass women. In addition to contributing to our understanding of the issue, some of these works themselves are part of the historical movement to end sexual harassment in the workplace. What these works have largely neglected are the reactions of organizations and individuals to the challenges raised by women against those who harass. This thesis closely looks at Toni Lee Gilbertson’s challenge to sexual harassment at work and the reactions of those who were forced to come to terms with her challenge. Her challenge in turn broadened the Federal court’s interpretation as well the general population’s understanding of sexual harassment under Title VII of the 1964 Civil Rights Act thus making her case more than just a footnote. Chapter two places Gilbertson’s case in the context of the emergence of the Women’s Movement and the long history of women’s efforts to combat discrimination in the workplace.

Chapter three reviews the specifics of Gilbertson’s case. It discusses Gilbertson’s determination to challenge Simpson Timber Company plywood plant superintendent Gary Hargens for sex discrimination in the hiring process for a mill position at Simpson’s Shelton, Washington plywood plant. Shortly after being hired by Simpson as a result of her complaint to the Washington Human Rights Commission about her interview, she
was fired. She was not fired for filing the complaint against the company, but rather she was fired in retaliation by her swing shift foreman, Jerry Ayers, after he was erroneously informed that she filed a discrimination complaint against him. Gilbertson’s firing then prompted her to file a second complaint for retaliation. Chapter four discusses the union’s attempt to have Gilbertson rehired at Simpson after she was fired in breach of contract, the failure of which led to the strike in early October. Chapter five focuses on Simpson Timber Company and the International Woodworkers of America, Local 3-38’s attempt to cast the firing of Gilbertson as a breach of contract only to realize that both the union and Simpson had to address publicly the sexual harassment of one of its union employees once the press made the issue front page news. Chapter six discusses the local branch of the Equal Employment Opportunity Commission’s (EEOC) efforts to improve its reputation through the effective prosecution of Gilbertson’s case. The chapter concludes with Federal Judge Jack E. Tanner’s expansion of a woman’s right to a sexual harassment free workplace under Title VII of the 1964 Civil Rights Act.
Chapter 2

MAKING THE PRIVATE, PUBLIC

In an effort to bring light to the plight of working-class women, reporter Helen Campbell in 1887 published *Prisoners of Poverty*. Her book is a collection of stories she obtained through interviews with working women. Attentive to Victorian sensibilities, she writes of young women who were forced to leave their place of employment more than once, so as to remain “decent” and of others who were protected by their older sisters from lecherous supervisors. As discrete in her reporting as she could be, Victorian readers clearly understood the plight and powerlessness of female workers in general and factory workers in particular. Failure to comply with a supervisor’s advances could render a young woman financially ruined and without recourse. Acquiescence ruined her reputation and complaints about such abuse were regarded “as mere blackmailing.”¹

For decades women had been blamed for advances forced upon them at work and they were largely powerless to stop it. It would not be until the 1970s and the second wave of feminism that the antediluvian myth that a woman is at fault for such violations was effectively challenged and dispelled. Nor would it be until the 1970s that women in academia, labor, and in the professions addressed the issue of sexual harassment in a public way. That the subject touched upon sex proved to be irresistible to the media and the resulting publicity greatly facilitated American women’s efforts to end sexual

harassment in the workplace. More significantly, the courts increasingly provided legal remedies and protections that were previously unimaginable.

In 1978 Constance Backhouse and Leah Cohen published the first comprehensive work on sexual harassment, *The Secret Oppression: Sexual Harassment of Working Women.* The book focuses on multiple aspects of sexual harassment. It attempts to define sexual harassment, shares stories of women who were harassed and notes the early evolution of the law regarding sexual harassment. Innovative for its time, the book addresses issues regarding women harassing men. The book offers advice to women as to how they can avoid harassment and what legal avenues are available.

Kerry Segrave chronicles the sexual harassment of women since the 1600s in *The Sexual Harassment of Women in the Workplace, 1600 – 1993.* She surveys complaints women brought forth while working in industry, offices, and in the trades. What is unique about her work is that she links the underlying role of economics to harassment and the prevalence of it. When demand for women’s labor was high, harassment was kept at a minimum because of the needs of the employer. This was especially true during World War I and World War II. She also addresses the condition of women in the sex trade, arguing that during the Victorian period, women were forced into prostitution to supplement low wages. Women were fired for refusing their supervisors’ advances or complaining of them and thus left destitute. Prostitution was their only source of income.

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Interestingly, Segrave notes that over a period of 400 years “the idea that male behavior might be the problem was rarely discussed”  

Karin L. Swisher, broadened the discussion in Sexual Harassment, with a series of essays on whether sexual harassment remained a problem in the early 1990s. Contributors to the book attempt to explain the underlying causes of harassment. A large part of the work is devoted to the problem of defining just what sexual harassment in fact means.

The essays collected in Linda LeMoncheck and James P. Sterba’s work, Sexual Harassment, Issues and Answers, reflects issues central to sexual harassment twenty-three years after Bankhouse published the first survey of issues regarding harassment. In addition to a review of works by Farley, MacKinnon, and other second wave feminists, works in the volume address the effects of sexual harassment on women, detailed explanations as to why men harass, and contemporary harassment issues within the gay community as well as an essay on the right to free speech which harassers assert. The work clearly reflects the struggles endured and the gains women won since the mid-1970s. It also serves as a reminder that women must be ever vigilant against those who would attempt to undermine hard-fought laws protecting women against harassment.

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10 Ibid., 5.


Not all works on the sexual harassment of women are sympathetic to women. Stephen Morewitz suggests in *Sexual Harassment and Social Change in American Society*, that feminists’ concern over the issue has challenged behavior which is “natural in nature.” Although he agrees that sexual harassment does not belong in the workplace, he masks his argument against sexual harassment complaints in a discourse on the apparent need of feminists to challenge what is “natural” and can be “self-regulated.” He argues that women’s complaints over harassment since industrialization have undermined gender relations and politicized what should be a natural relation between men and women. As complaints mounted especially during the women’s movement, it became more difficult to address the issue in a nonpolitical way which thus made it difficult for women to eradicate harassment from the workplace.

Another body of literature chronicles specific cases of challenges to sexual harassment through biographical treatment. Motivated by the struggles of women during the women’s movement for equality, Lois Jenson decided to challenge harassment at the Eveleth Mines in northern Minnesota. Her painful, incredible, and lengthy struggle from 1975 to 1998 for a sexual harassment-free working environment at the northern Minnesota iron mine is highlighted in *Class Action* by Clara Bingham and Laura Leedy Gansler. Jenson not only challenged her male dominated miners’ union, she also had to

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face the apathy of her female mine workers and the wrath of the town for taking a "man's job."  

While Morewitz argues that feminists have politicized sexual harassment to the point that they cannot eradicate it from the work place, Carrie Baker demonstrates that the politicization of the issue during the women's movement is precisely how women put businesses, the courts, the media and women themselves on a path to stop the sexual harassment of women at work. 

Carrie Baker traces the fight against sexual harassment in the workplace as one aspect of the broader women's movement of the 1960s and 1970s in *The Women's Movement Against Sexual Harassment*.  

She notes the fortuitous timing of the Johnson and Kennedy administrations' appointments of progressive judges to the Federal bench, the simultaneous introduction of university women's studies classes as well as an increase in feminists graduating from law schools across the country. As African American women evoked the Civil Rights Act of 1964 in their fight against harassment, blue collar women increasingly forced their unions to confront the issue of sexual harassment within their own ranks as well as at their places of work. This concomitant and spontaneous grassroots movement against sexual harassment effectively forced the issue out of the shadows and into the public arena on a scale never imagined by colonial

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15 The story of Jenson’s struggle was fictionalized into the critically acclaimed 2005 film, *North Country*, starring Charlize Theron.

domestics, nineteenth-century factory girls, Victorian reformers or early twentieth-century store clerks.

While a few works have studied the history of women's struggle to confront and disencumber the workplace of sexual harassment, most available research and writing focuses on specific areas unique to the issue of sexual harassment such as its prevalence, legal issues, communication, prevention, and how to confront the harasser. 17

Feminist scholars trace the underlying reasons for the sexual harassment of working women to pornography, male insecurity, the desire to exercise power, capitalism, patriarchal societies, and sex-role spill over. Feminist scholars argue that pornography desensitizes men to abusive behavior towards women. While some argue that insecure males harass in order to devalue women, others suggest harassment is an abuse of power. 18 Sexual harassment in the workforce is "both an expression of and a means of perpetuating the unequal power relationship between men and women...and threats to it include the entrance of women into traditionally male fields." 19 To maintain their powerbase, men resort to harassment in an effort to dissuade women from occupying traditional male occupations.


18 Langelan, Back Off, 40; Deborah Tannen “What’s Sex Got to Do With It?” in Sexual Harassment, 85 – 87; Swisher, Sexual Harassment, 66, 70, 81.


19 Baker, Women’s Movement, 42 – 43
In an early contribution to the gendered analysis of harassment, Heidi Hartman traces the sexual harassment of working women to deeply entrenched ideologies of patriarchal societies, implications of which lingered well into the 1970s. A patriarchal society is “a system of male oppression of women” supported by the state and the church in which the division of labor is based upon gender distinctions maintained within these societies. As capitalism emerged, Hartman posits that men “created hierarchies in the production process in order to maintain their power.” To be masculine in a capitalist society meant economic success. Instituting job segregation enabled men to pay women less thereby causing them to be dependent upon men for support which in turn made them especially vulnerable to exploitation. Male dominated unions in particular denied women training and job skills, effectively keeping them in poverty while protective legislation limited their hours. As child labor ended, men sent women back into the home to care for children under the pretense of separate spheres. This Victorian doctrine of separate spheres legitimated offensive behavior towards women who dared to cross deeply entrenched gendered lines of work.\(^\text{20}\) In addition to retaliation for crossing gendered lines of work, gendered expectations also facilitated the offensive behavior.

Recently, feminist scholar Barbara Gutek wrote “sex-role spillover denotes the carryover of gender-based expectations into the workplace.” These gender-based expectations include notions of how a woman should dress at work and an assumption

that women were passive sexual beings and receptive to sexual suggestions. Moreover, these expectations foster the attitude that women are not committed and capable workers. One miner expressed it best when commenting about the arrival of women in the coal mines during the 1970s, “The problem, you don’t know, is whether you can really count on ‘em.”

Simple arrogance also facilitates the sexual harassment of women. One man expressed his understanding of women and his assumed responsibility for them: “Being a woman is partly defined by being harassed by men. It’s being trained to wait for men to tell women who they are.” Such hubris and failure to see women as dependable workers and not as sex objects or dependents clearly undermined inhibitions men have felt about their behavior towards women. The invisibility of men’s behavior to themselves as well as the invisibility of it to the courts and to society in general is a significant reason why the sexual harassment of women went virtually unchallenged until the 1970s.

Sexual harassment of women left them feeling humiliated, degraded, and at fault. Women were fearful of speaking out lest the harassment increase. An early twentieth-century shop clerk in Los Angeles described her feelings of dealing with repeated harassment while walking home by the men on the street, “[1] threatened to speak to the

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police. That I was ashamed to do, thinking it must be my own fault in some way...”24 It also left them physically ill. Campbell describes many of her interviewees who were waitresses noting, “Many sensitive and shrinking girls have brought on severe illness arising solely from the dread of running this gauntlet.”25 From turn-of-the-century shop girls and waitresses to professional women in the 1970s, the resulting physical and emotional strains remained largely unchanged. A 1978 survey by the Working Women’s Institute found that emotional stress symptoms such as nervousness, fear, and sleeplessness were experienced by 96% of its respondents while 83% said sexual harassment significantly interfered with their ability to do their job, which often resulted in poor reviews and thus no promotions.26

This sense of powerlessness and fear of retaliation coupled with the financial difficulties women experienced as they went from job to job to escape harassment proved to be the foundation upon which the tumultuous fight against sexual harassment emerged.27 This foundation emerged gradually over a long period of time, traceable even to colonial America, and eventually transformed legal, social and cultural understandings of women’s right to equality in the work place by the 1970s.


25 Campbell as quoted in “Sexual Harassment of Women on the Job,” Sexual Harassment, 39.


Although legal and public actions to abate sexual harassment did not occur until the later twentieth century, the reality of women’s experiences in the workplace and the history of women’s struggle for equality at work did not go undocumented. Questioning and challenging sexual harassment publicly left women vulnerable to insinuation about their respectability. Thus, in an effort to tell their stories, women and some men documented the plight of women in the workplace. It is largely through a wide variety of literature that the fight against the sexual harassment of working women first emerged.

Hidden in the pages of newspapers, chapters in books, union publications and other literature are early testimonies of women challenging sexual harassment through their writings and of authors who dared to shed light on its insidiousness. As early as 1734 women servants in New York pooled their money and placed an ad in the local paper requesting their mistress’ “husbands not beat them or tender them mischief.” Recounting her life as a slave girl, Harriet Jacobs describes in her chapter “The Trials of Girlhood” the sexual harassment she endured and the rape of young slave girls. The women of Lowell, Massachusetts, published writings warning young women of the perils of losing their reputations should they acquiesce to a threat of the loss of one’s job by granting favors to the foremen. Upton Sinclair painted a dire picture of immigrant women in the meat packing industry subjected to “the whim of men every bit as brutal and unscrupulous as the old-time slave drivers.” Harassment at work was one of several key reasons in 1911 that women came together and formed the National Women’s Trade

Union League. One of its articles in the union’s trade paper, *Life and Labor*, titled “The Tyranny of the Foreman” declared “No woman should be subjected by fear of loss of her job to unwarranted insults.” As women gained organizational and work skills and self-confidence especially after World War I, the fight for a sexual harassment-free workplace took on a new dimension and seriousness as evidenced in the 1937 Flint Michigan strike against General Motors.

Conditions on the automobile factory floor during the infancy of the United Auto Workers union were appalling at best. Speed-ups were common but restroom breaks were not. Management intimidation was rampant and effective, especially during the Depression when workers were grateful to have a job at all. For women the working environment was worse. Pioneer union organizer Genora Dollinger recounts in her oral history how the young women working in the only plant that hired women “had all been forced to go to the county hospital and be treated for a venereal disease traced to one foreman. Those were the conditions that young women had to accept in order to support their families.” Either they acquiesced to his demands or they joined thousands of others in the unemployment line. In an effort to stop the exploitation of women at the plant, Dollinger became one of the key organizers in the successful 1937 strike against

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30 Speed-up refers to when an employer forces employees to move faster at their job such as increasing the speed of a conveyer belt.

General Motors. Confident in her organizational skills, she continued her agitation for better working conditions with the establishment of the Women’s Auxiliary.

As World War II approached, she continued to organize women in the automobile manufacturing industry. When not subjected to harassment by management, women fielded sordid remarks from fellow union members. Male union members felt threatened because women were entering the factories in unprecedented numbers and “were taking men’s jobs.” Tired of the harassment and emboldened by her earlier successes, Dollinger convinced the women to walk out. The stark realization that the women workers were no longer going to take the harassment forced the military personnel supervising the auto body plant-turned-airplane-manufacturer to take unprecedented action and institute new policies against harassment. 32 This opened the door and set the stage for more women in industry to challenge the status quo and demand equality in the workplace.

When the war ended, women were encouraged to return to the home. Although most lost their high-paying wartime jobs, few chose to return to the home. Interestingly, more women entered the work force as job opportunities in industry and commerce expanded greatly after the war. As more and more women entered the workforce, they developed a consciousness of themselves as workers, which as it did with Dollinger, empowered them to agitate for the end of sexual harassment in the workplace. 33

32 Ibid., 151 -156.

Silenced by an especially virulent code of domesticity that emerged after World War II, however, women’s efforts to rid the workplace of harassment were virtually halted during the 1950s. It would not be until the Women’s Movement of the 1960s and 1970s, which re-energized, empowered, and educated a new generation of women to challenge seriously the sexual harassment of working women once again, this time in public and on a much larger and organized scale. There was a convergence of media attention, litigation, and agitation by special interest groups born out of academia – all of which occurred in an auspicious social climate - which resulted in the evolution of sexual harassment into a social, economic and legal issue.\textsuperscript{34}

Cornell professor Lin Farley first broached the topic of sexual harassment in 1975 upon discovering how widespread it was experienced by her students and colleagues alike. Although denied twenty-eight times, she nonetheless convinced McGraw-Hill to publish her pioneering book, \textit{The Sexual Shakedown: The Sexual Harassment of Women on the Job}. She documented hundreds of stories working women shared with her in speak-out sessions she held at the university.\textsuperscript{35} Prior to these speak-outs, no term existed to describe adequately the type of harassment these women experienced. Farley and her colleagues described their experiences as sexual harassment. The term has been used ever since.

\textsuperscript{34} Weeks, “The Transformation of Sexual Harassment from a Private Trouble into a Public Issue,” 433.

Farley was particularly inspired by African American secretary Carmita Wood who was the first to file for unemployment insurance for sexual harassment. Feminist historians date the true beginning of the concerted effort to rid the workplace of sexual harassment with Wood’s complaint. Wood resigned under stress from extensive harassment she endured from a prominent faculty member at Cornell. Although the hearing officer did not doubt the existence of the harassment, her complaint was denied due to its “non-compelling and personal” nature. Determined to confront what she felt was unjust, Farley conducted numerous consciousness-raising sessions in an effort to force the private into the public. Special advocacy groups such as Working Women United (WWU) and Alliance Against Sexual Coercion (AASC) emerged out of these sessions for the sole purpose of serving as a public forum and to “attract public attention to the issue.”

An integral part of the women’s movement against sexual harassment was the 1979 publication of the first extensive legal tome on sexual harassment. Catharine MacKinnon’s book, *Sexual Harassment of Working Women: A Case of Sex Discrimination* ushered in a radically new and highly influential legal argument under which women could sue for sexual harassment. Citing the Civil Rights Act of 1964, specifically Title VII, she argued that sexual harassment is discrimination based on sex.

36 Farley, 84 -86; Pogrebin, ”Sexual Harassment,” in Debating Sexual Correctness, 8.


that results because *women are discriminated against because they are women*. She further suggested that not only should quid pro quo harassment be grounds for a legal complaint, but so should conditions of work, later referred to as a hostile environment. She posited that courts previously have not allowed women to sue for harassment under Tort law because sexual harassment was simply invisible and thus had no name. Moreover, if the court found no physical evidence, then there must not have been an injury. Where the courts argued that no injury occurred, MacKinnon countered that the unnamed injury “should not be taken for the nonexistent.”

MacKinnon was one of the first feminists to unequivocally argue that in addition to being humiliated by the harassment, women suffered economically as well because they either left their jobs to escape the abuse or were fired for noncompliance to the sexual request. In addition to her legal analysis as to why sexual harassment is a violation of a woman’s civil rights and destructive financially, she specifically defined it as “unwanted imposition of a sexual requirement in the context of a relationship of unequal power.” Her definition served as the basis to the Equal Employment Opportunity Commission’s (EEOC) articulation of sexual harassment in 1980 and continues to serve as a foundation upon which case law is developed.

Noted above are the pioneering analyses of sexual harassment by scholars Lin Farley, Catherine MacKinnon, Constance Bankhouse and Leah Cohen. While these women had a significant influence on the fight against harassment in academia and in the

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40 Ibid., 2.
legal profession, an unwitting media fueled the fight against harassment among professional and working class women as well as homemakers.

It was not until August of 1975 that a major newspaper, the *New York Times*, published a serious article, albeit in the *style* section, exclusively devoted to the sexual harassment of working women. Reporter Enid Nemy wrote, “Although the issue of sexual harassment is still a comparatively new one, it is being treated with increasing seriousness by government agencies.” The issue was clearly not a new one. However, Nemy should be credited for her lucid reporting on the subject. Like nineteenth-century reporter Helen Campbell before her, Nemy’s waitresses complained of the groping and propositioning, college-age babysitters like colonial domestics complained about the husbands of the women for whom they worked making passes at them. Victorian notions as to women’s proper place remained strong. Like the men before them, Nemy noted as well that male supervisors who did not believe women should be working outside the home resorted to harassment. As historian Linda Gordon concludes, “... there has been remarkable continuity in the results – or perhaps one should say function – of sexual harassment.”

Foreshadowing the eminent challenge to male prerogative, one of Nemy’s respondents asked, “Why do women have to put up with this sort of thing anyway? Women are the ones who are punished. They have to leave a job because of a man’s behavior and the man is left there sitting pretty. It’s totally ridiculous.” Hidden beneath

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this woman’s observation is an equity issue: why does his behavior cost her, her income and her means of support? The courts began to ask this question as well.  

Nemy’s *New York Times* article prompted *Redbook Magazine* to explore just how extensive harassment at work was with a first-ever sexual harassment questionnaire in its January 1976 issue. The response was overwhelming and unprecedented. Of the 9,000 women who responded, nine out of ten not only had experienced harassment at work, but they described it as serious. Many women wrote in thanking *Redbook* for publicly reporting on something that “has been going on for as long as women have been going out to work” yet was hidden in the closet because the subject was considered taboo, embarrassing, and trivial. Coverage of the issue in the media continued unabated.

*Ms Magazine* in 1977 featured an article about women who had experienced harassment, not in restaurants or business offices, but at the United Nations and on Capitol Hill. That such revered institutions, pillars of equality and democracy, maintained sexually hostile environments further inspired women to not only go public with their stories but to also join any number of groups forming around the country whose purpose was to expose harassment at work and to help women confront their harassers. A year later published an update on the fight against harassment summarizing letters

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women sent in describing their experiences. One woman's response reflected her upbringing - girls are to be passive and not rock the boat - and then her epiphany:

"Finally, at 23, something inside is beginning to click. I no longer care if I injure someone's ego by telling him where to get off."46 She was not alone in her sentiments.

Not all magazines at the time were progressive in their approach to the issue of sexual harassment, nor were they optimistic that anything could be done about it. In 1979 Mademoiselle Magazine, while recognizing that the issue existed, nonetheless trivialized the harassment. Readers were advised that to pursue the issue would only "open a can of worms" and that there really was little "evidence" to back a claim of harassment. It would be best to let the issue go because "chances are you’ll get over it."47 However, as more women entered the workforce with new "expectations for equal treatment which the women’s movement generated, victims were less inclined to continue tolerating harassment as a (routine) part of the job."48 They began turning to the courts.

Before positive media attention, and prior to MacKinnon’s legal argument for the inclusion of sexual harassment under Title VII, women workers were consistently frustrated in their attempts to have their complaints of harassment taken seriously by the EEOC. However, not to be dissuaded by inaction on the part of government officials, in 1972 Diane Williams filed the first discrimination complaint with EEOC in Washington,

46 "Update: Sexual Harassment on the Job," Ms, July 1978, no. 1, 85-86. Ms printed the article with the watermark "Unite" on each page.


D.C. Williams alleged that she was fired for rebuffing her supervisor's advances. The EEOC denied the claim arguing that the facts did not back the claim. A year later Jane Corne, tired of physical advances, propositions and innuendo, alleged she was forced to leave her job due to discriminatory conditions of employment. The court dismissed the case stating that if businesses were held accountable for each amorous comment, the courts would be flooded with lawsuits. Paulette Barns filed a similar complaint with the EEOC alleging that her refusal led to the elimination of her job. Again the lower court dismissed the case holding that she was not discriminated against because of her gender, but because she refused to have an affair. In 1974 Adrienne Tomkins sued claiming she suffered extensive retaliation for refusing illicit requests. The court denied her suit ruling that the "abuse of supervisors... for personal purposes is an unhappy and recurrent feature of our social experience."49 However, towards the end of the decade, "the climate was right for a change in court opinion."50 The grievance Williams, Corne, Barns, Tomkins and many other women shared was transforming into a legal cause of action. More importantly, the media attention these cases generated served to inform the public and feminist attorneys not only of the pervasiveness of the problem, but also that it was a cause for action under Title VII.

Young feminist attorneys, academics, and activists had significantly raised the level of awareness among working women in all occupations and in the courts. By 1976 the federal court ruled in the Williams case, significantly, that sex discrimination violates


50 Baker, 49; MacKinnon, Sexual Harassment of Working Women, 57 – 72.
Title VII of the 1964 Civil Rights Act. The appellate court in Corne, Barns and Tompkins reevaluated the lower court rulings in light of this ruling and found that these women had been discriminated against as well. Notwithstanding intense media coverage, increasingly progressive court rulings and public demonstrations by feminists and other activists, American business owners, management and some unions were slow to realize there had been a sea change in the perception of women’s right to equality in the workplace. Moreover, government agencies, under pressure to enforce recent court rulings, were scrambling to keep up with a significant jump in sex discrimination claims filed by working women such as Toni Lee Gilbertson of Shelton, Washington.
Chapter 3

HARASSED

"...I]t all started with that young lady, and she apparently wanted to take on the giant. I don't know why, but she did..."51

Simpson Timber Company traces its roots to the early 1890s when Sol G. Simpson started a small railroad, a bank, and a logging company approximately forty miles south of Seattle and slightly west of the Puget Sound. By the early 1900s, the Simpson family had established a successful shipping and mercantile business in Shelton, Washington. As the family's wealth increased, so did their contributions to the town of Shelton. Land was donated for schools, libraries, and a hospital. Funds were set aside for sports facilities and college scholarships. The company prides itself on being one of the first to provide sanitary living conditions in its logging camps as well as eight-hour days. The company offered little resistance to the unionization of its workers during the 1930s. In 1960, Simpson Timber Company had operations in Oregon, California, Canada and Chile. By the time Toni Gilbertson filed her complaint on 20 April 1979, generations of workers and the company had established a benevolent relationship characterized by custom, mutual dependence and fraternity.

51 United States District Judge Jack E. Tanner, court transcript of proceedings, November 30, 1979, Record Group 21, Box 80, File C79-510T, United States District Courts – Western Division of Washington, National Archives-Pacific Alaska Region. All court documents hereafter will be from this record group and case file number. Box and sub-file numbers will vary and will be thus noted.

52 Perry, The First Century: Shelton Plus Ten, 12, 26, 31, 43 – 47, 63.
Not unlike businesses across America at the time however, Simpson was finding its way in a society that increasingly challenged the domestic code. While women had worked in the lumber industry for decades in small family-owned mills where their work was viewed as an extension of their familial responsibilities, they were a new phenomenon on the factory floor of large corporate timber companies. Working on the corporate factory floor was not viewed as an extension of women’s work, but as an intrusion into a traditional male occupation defined by physical prowess and danger. They were a new challenge to those accustomed to an especially “virulent domestic code” which emerged after World War II insisting that women’s responsibilities were back in the home. This Code of Domesticity refers to an ideology in which men and women have separate roles to fulfill. Historians have variously referred to this ideology as “the cult of true womanhood,” “the ideology of separate spheres, or simply “domesticity.” This ideology blinded business and labor alike to the needs and demands for equality by its female workers and it left them unprotected targets of exploitative behavior. This pernicious ideology clashed directly with an increasingly agitated female labor force emboldened by the civil rights movement who decided that sexual harassment was no longer an acceptable part of the job. As a senior vice-president of a major bank observed, “We have an employee population that is more aware of its rights

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55 Ellen Carol DuBois, Through Women’s Eyes (Boston: Bedford/St. Martin’s, 2005), 139; Alice Kessler-Harris, Women, Households, and the Economy, 72 -74.
than it has ever been before," especially regarding unlawful discrimination.56 Except for court records and a union press release, little is publicly known of Toni Lee Gilbertson. However, what we do know is that she was one such employee who was aware of her rights and she was determined to protect them.

Gilbertson interviewed with superintendent Gary Hargens on 16 April 1979 in his office at Simpson Timber Company's Shelton, Washington, plywood plant for a job on the green chain where lumber is sorted by size and grade. During the interview, Hargens asked Gilbertson if she wore a bra and her bra size. He asked her to lift a chair and to do windmills with her arms. He noted that he was disappointed that her clothing was not revealing enough. At the end of the interview, Hargens concluded that her muscles were too small, she was too short, and too well-endowed to work at Simpson. He also informed her he had a right to ask such questions for safety reasons. Gilbertson noted that in a previous job she handled hoses carrying 1200 pounds of pressure and believed she could handle 100 pound plywood sheets.57 Nevertheless, Hargens concluded the interview and noted that she should not call Simpson but that Simpson would get back to her. Before she left the building, Gilbertson spoke with the personnel secretary about the interview questions she was just asked by Hargens. The secretary responded, "Well that figures,


57 Affidavit of Toni Gilbertson, October 23, 1979, Box 79, File G. Green Chain refers to freshly cut green wood moved through the mill with chains to a location where the green wood is sorted by size.
he's done it before." Hargens' behavior was simply an accepted and acknowledged part of the work environment.

On 20 April she filed a sex discrimination complaint with the Washington State Human Rights Commission (WSHRC) in Olympia alleging she was discriminated against because of her "feminine characteristics." She stated that she was denied employment because she was considered too short and too well-endowed for the job. She did not file her claim based upon the sexually explicit questions and lurid comments regarding her clothing. That she failed to note the sexually harassing behavior is indicative of not only her conceptualization of what it meant to be sexually harassed but WSHRC legal counsel's conceptualization of the term as well. The term was evolving and increasingly connoting offensive behaviors previously trivialized and dismissed - a point the court addressed at her hearing.

In an effort to avoid a potential lawsuit and concerned that she did not have a fair interview, Simpson offered Gilbertson a job almost immediately upon receiving a copy of her complaint on 9 May from the WSHRC regarding her interview with Hargens on 16 April. The job she interviewed for had just been given to another but in the interest of avoiding a lawsuit, Simpson made room for her hoping that that would resolve the issue. Gilbertson started to work at Simpson on 15 May. Three weeks after Simpson

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58 Second Affidavit of Toni Gilbertson, November 27, 1979, Box 79, File Q.

59 Washington State Human Rights Commission, Complaint, April 20, 1979, Box 79.

60 Standing Committee Minutes, October 5, 1979, Box 79.
received the complaint from the WSHRC, Hargens was fired from Simpson Timber Company.

Shortly after hiring Gilbertson, Senior Industrial Relations Representative Phillip Morrison informed union business agent James Lowery that she had filed a charge of sex discrimination against the company. Morrison was incredulous and alarmed that such a complaint had been lodged against the company. It was not unusual for harassment charges brought by employees to be viewed as “mere blackmailing.” Morrison was adamant that Simpson was being “set-up by a woman who seems to know the ropes.” His concern was for the company’s bottom line and reputation, not the existence of sexual harassment at the company.

To assure that there would be no further issues with Gilbertson or a second lawsuit, plant manager Dennis Ferguson instructed graveyard foreman Lester Sousley to keep a close watch on her because of her complaint. He informed him that she was hired because of her complaint and because a suit “could extend for a period of years, and the company wasn’t interested in paying her wages over a period of years where she didn’t work, [thus] they decided to ... hire her and give her a chance to perform.” Sousley was further instructed to give her the same training as any other new hire and to treat her the same as everyone else. He was to keep notes on her progress because if Ferguson was called into court to answer another suit by Gilbertson should she be terminated, “he wanted to have proper documentation ... so we would know what we were talking

61 Campbell, Prisoners of Poverty, 97; Plaintiff’s Brief in Support of Preliminary Injunction; Exhibits, Box 80.
about. Simpson’s intent was to see Gilbertson succeed so there would be no further issues with her.

Gilbertson was assigned to the graveyard shift as a dry belt offbearer. An offbearer removes graded plywood sheets from a moving conveyor belt. She was also responsible for sweeping debris off the floor. During the first week, she noted that her foreman Les Sousely had been observing her several times during her shifts. Concerned, she asked him how she was doing. He informed her that she was doing well at her job. She then requested to be moved to the swing shift where she was again, an offbearer.

Jerry Ayres was now her foreman. He spent about ten minutes explaining what her new tasks were to be. No senior employee was assigned to her for further instruction or help. Ayers was advised as well to note her progress and to treat her as any other employee. However, the record shows very little documentation of her work by Ayers between 21 May and 4 June. Approximately three weeks after Gilbertson was transferred to Ayers’ swing shift, Gary Hargens told Ayres that Toni Gilbertson had filed a harassment claim against Ayres; she had not.

Almost immediately after Hargens misinformed Ayers about the alleged complaint about him around 31 May, Ayers began monitoring her work very closely, greatly increased his documentation of Gilbertson’s work and conducted his first of a number of job evaluations with her in his office. He noted that some of the employees had some difficulties with her occasionally but he never suggested she would be

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62 Deposition upon Oral Examination of Lester Souseley, November 20, 1979, Box 79, file E.
63 Affidavit of John Lee, November 5, 1979, Box 79.
terminated nor was she given a written warning as per contract agreement between the union and Simpson. Within the following week and a half Ayres submitted a five page report to Ferguson of her work. He noted that she had difficulty learning her job as a plywood grader, misplaced wood, and was prone to snap at fellow employees. He contacted Sousley and stated that “she was the worst employee that I had ever had and that I was considering terminating her then.”

Nonetheless, when the WSHRC investigator Fumiko Saito met with Philip Morrison and other management personnel in early June to discuss Gilbertson’s 20 April discrimination complaint, the investigator was assured that Gilbertson’s performance was adequate and that if she continued to improve at her job, she would not be terminated. However, management was concerned that if she did work out, that perhaps she would just “slough off afterwards.”

Once Sousley learned from Ayers that he did not like the quality of her work, Sousley informed Ayers and his immediate supervisor Steve Torgesen that they needed to continue to work with Gilbertson so that she would qualify for the job she was presently doing. They could not terminate her before they checked with the plant manager Dennis Ferguson. Ferguson in turn informed Ayers that he “could not terminate her employment at that time, and that (he) must make every effort possible to see that Ms. Gilbertson qualified for the job as dry belt offbearer.” Concerned that Gilbertson was getting poor

64 Affidavit of Gerald Ayres, November 27, 1979, Box. 79.

65 Affidavit of Jon Lee, November 8, 1979, Box79.

66 Affidavits of Gerald Ayres and Steve Torgesen respectively, November 27, 1979, Box. 79.
reviews from Ayers, vice president Morrison cautioned Ayers as well to take special care in documenting her work and he hinted that no recrimination against Gilbertson should take place. He was concerned that with Ayers’ voluminous and negative documentation, Simpson was “going to be in trouble” should Gilbertson not work out.  

Although Simpson’s policy held that the final determination as to whether a probationary employee was to be terminated was at the discretion of the shift foreman Ayers, Simpson feared another lawsuit if she was fired. Notwithstanding requests to make her successful, Ayers was determined to fire her. A week before he was to transfer to another mill, Ayers noted to Simpson employee Doug Norton regarding Gilbertson that he needed “to get this thing solved before I leave.” On 22 June, at the conclusion of yet another evaluation meeting with Gilbertson, Torgesen and Ayers, Ayers noted in fact that her work had improved and that she was working well with her colleagues. Nevertheless, Ayers fired Gilbertson citing her “inept and inadequate performance as a dry belt offbearer.”

Gilbertson then filed a second complaint on 25 June again with the WSHRC alleging she was fired in retaliation for filing the first complaint for sex discrimination against the company. In fact, unbeknownst to Simpson and Gilbertson, she had been fired by foreman Steve Torgeson, not for filing the initial sex discrimination complaint

67 Affidavit of John Lee, November 8, 1979, Box 79.
68 Affidavit of Doug Norton, November 27, 1979, file F, Box 79.
69 Affidavit of Gerald Ayers, November 24, 1979, Box 79.
70 Equal Employment Opportunity Commission, Charge of Discrimination, June 25, 1979, Box 79.
fired by foreman Steve Torgeson, not for filing the initial sex discrimination complaint against the company, but at Ayers’ (and Hargens’) prompting and against Simpson Timber’s intent, in retaliation for what Ayers believed to be the truth: that Gilbertson had filed a sex discrimination complaint against him. The second discrimination complaint against Simpson Timber Company prompted management to exclaim that “If there is any question in this case it may be that we tried too hard.” Management believed that they had gone out of their way to accommodate Gilbertson by giving her extra time to learn her job and treating her fairly only to be sued for their efforts.

Between the end of June and the middle of August, Gilbertson was unemployed. In mid-August, she found a position as a cook at The Hut Restaurant. As word spread through Shelton and eventually to her employer that she had filed a sex discrimination claim against Simpson Timber Company, her employer laid her off. She was told that the reason she was laid off was that business was slow.

Federal Judge Jack Tanner’s question as to why Toni Gilbertson decided “to take on the giant” was never answered in the record but what can be said about Gilbertson is that she was tenacious and determined to challenge a pervasive and abusive culture on the factory floor at Simpson Timber Company. No doubt that she understood the risks she took. At the time it was common in businesses everywhere for women who brought forth discrimination complaints against a supervisor to be fired. However, Gilbertson’s willingness to challenge the harassment may be interpreted as an affirmation of her

71 Simpson Inter-Office Communications, July 25, 1979, Box 79.

72 Second Affidavit of Toni Gilbertson, November 27, 1979, File Q, Box 79.
developing sense of self, a process she shared with many working women. Possibly motivated by the new expectations the women’s movement generated, Gilbertson decided to challenge the unequal treatment she received. Moreover, her suit against the company was a direct threat to Gary Hargens’ presumed prerogative, a modern “droit du seigneur.” In essence, Gilbertson’s actions threatened a male’s access to female subordinates to which Hargens felt entitled; he was not amused. His sense of entitlement is reminiscent of patriarchy where men maintained their power through the oppression of women, particularly those dependent upon them for their livelihoods. Moreover, Hargens understood that by making the private, public, he would be exposed to the scrutiny of others which would undermine his ability to continue to harass or subordinate women. Her complaint threatened the exploitative power Hargens wielded over the women he supervised. 

Feminist scholars posit that “Sex-role spillover occurs when women, more than men in the same work roles, are expected to be sex objects or are expected to project sexuality through their behavior, appearance, or dress.” Moreover, in these circumstances women are not seen as rational, capable and committed workers. They are viewed as a distraction in the work environment. Harassment occurs when men subscribe

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73 “Abusing Sex at the Office,” Newsweek, 10 March 1980, 82; Martha J. Langelan, Back Off: 39 – 40; Alice Kessler- Harris, Women, Households, and the Economy, 76; Gwendolyn Mink, Hostile Environment: The Political Betrayal of Sexually Harassed Women (Ithaca: Cornell University Press, 2000), 77. Droit du seigneur refers to the right of the first night of a Medieval lord to the brides within his fiefdom. It is a form of economic property right in their subjects or employees, lords and some modern day employers and supervisors feel they are entitled to.

74 LeMoncheck, “Understanding Sexual Harassment,” Sexual Harassment, 58.
to such stereotypical notions about women. To Hargens, women at Simpson were not workers but sex objects easily exploitable both sexually and economically. To him they were available and fair game. This is evident in his treatment of the women he supervised, which was documented in a number of affidavits recorded during Gilbertson's case.

Hargens required Linda Nagel, as well as other women with long hair, to put their hair up while men with long hair simply needed to tie it back. He asked interviewee Rhonda Terry about her personal relations and he wanted to know if she would take her shirt off in front of him. He encouraged her to report to work in a revealing shirt. He did not see these women as mill workers but as potential seductresses. When he interviewed Nagel, he smugly commented that he “just made two brownie points... by hiring a woman” and he noted as well that she was “an Indian.” He met two criteria companies were anxious to meet – hiring both women and minorities. Nagel was a feminized statistic which helped Simpson meet new federal guidelines in employment. This objectification contributed to the denigration of these women as mere objects.

To Hargens, Krista Kricidlo was a date waiting to happen. Sexual harassment not only exploits women's sexuality, it is also “a virulent form of economic coercion practiced by men who have the power to hire or fire” Hargens implied that if he was to hire Kricidlo, going out with him may be necessary. Barbara Edmiston noted as well that

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75 Affidavit of Linda Nagel, November 27, 1979, File O, Box 79, File O; Affidavit of Rhonda Terry, October 23, 1979, File T, Box 70.

76 Pogrebin, “Sexual Harassment,” in Debating Sexual Correctness, 5.
Hargens said that whether she was hired depended upon whether she would go out with him. He inquired about her personal life and he made it clear that she could not go braless at work as that would be a distraction to the men on the floor which could be dangerous around mill equipment.\footnote{Affidavit of Krista Kricidlo, October 23, 1979, Box 79; Affidavit of Barbra Edmiston, October 23, 1979, Box 79.}

Harassing these women, treating them like passive sexual beings, was Hargens’ way of telling them that they did not belong on the mill floor as workers, but in someone’s bed as a toy. Hargens was exerting his patriarchal authority by wielding economic and sexual power over them. It also reflected his insecurity over the number of women Simpson was hiring. He viewed the increasing number of women at Simpson as a threat to his dominance in a traditionally male occupation.\footnote{Baker, \textit{The Women’s Movement}, 43.} Moreover, he enjoyed his role as harasser because he knew he could get away with it. In an interview with Rhonda Terry he told her not to bother reporting because “he had been through three discrimination cases in court and had always won” and it would be his word against hers.\footnote{Rhonda Terry, October 23, 1979, File T, Box 79: The record does not show any discrimination or other cases brought against Hargens while working at Simpson. It is quite possible by his own admission that other cases were brought against him by other women but the court found their claims spurious and thus dismissed them. This point makes Gilbertson’s case significant in that this case was not dismissed.} In this case, Hargens was on solid ground legally and in practice. The courts up to this point were clear as to quid pro quo harassment, but “less clear regarding the
remarks that usually precede the direct proposition. 80 Thus, Hargens not only had history to support his claim, but legal precedent as well. What he did not have in his favor this time with Gilbertson was a determined woman who filed a lawsuit because she believed that sex discrimination was no longer an acceptable reason to deny her a job for which she qualified. 81 The women at Simpson noticed Gilbertson’s challenge. They also noticed what happened to her for stepping forward and confronting the harassment. Hargens response was predictable. As with Michael Herbaugh against whom he retaliated by firing her for not complying with his advances a year earlier, Hargens exacted revenge on Gilbertson for her public exposure of his behavior. 82 He knew that by telling Ayers that she filed a claim against him, Ayers would monitor Gilbertson closely specifically for the purpose of finding fault so he could fire her, which he did.

As news spread of Ayers’ unusually close monitoring of Gilbertson’s work, the numerous job evaluation sessions he held with her and her subsequent firing, a climate of fear descended upon the women on the factory floor. They were concerned that if they spoke up or were in any way connected to her suit they would lose their jobs as well. 83 Yet, emboldened by her courageous decision to file a complaint, a few women shortly

80 “Sexual Harassment in the Workplace – What should an employer do?” EEO Today, (Spring 1978): 41. Quid pro quo harassment refers to a more or less explicit exchange: the woman must comply with the sexual requests or risk a tangible loss such as one’s job or promotion.


82 Affidavit of Michael Herbaugh November 5, 1979, Box 79, File H

83 Affidavit of Krista Kricidlo, October 23, 1979, Box 79, File K.
thereafter came forth and began telling their stories about Hargens' abusive interviews to union business agent Jim Lowery.
Chapter 4

A BREACH OF CONTRACT

"Realizing she has two cases pending, we have nothing to do with them...our main concern is the contract." 84

Although historically unions often barred women from membership, when it served labor's interest, male-dominated unions in certain cases supported women's organizing efforts and provided support for demands unique to female unionists such as maternity leave and sexually hostile-free work environments. Early twentieth-century male unionists preferred that women stay out of the workforce so as to not undermine male wages. However, that they did not, male unionists concluded that it would be better to organize them in order to ensure equal pay for equal work, which in theory would maintain fair wages for men. The American Federation of Labor, (AFL), admitted that, "Unorganized they constitute a menace to standards established through collective action" thus in an effort to secure good wages for men, women needed to be organized as well. 85 Unions also supported women unionists in their efforts to secure just wages from unscrupulous employers when those wages were benefiting the family as a whole. In Pennsylvania, union miners ousted railroad officials who sought to disrupt a meeting of women textile workers whose wages supported family members who worked in different industries, including mining. Men also supported women in the garment industry in an

84 Standing Committee Meeting Minutes of October 5, 1979, Box 79.

effort to bolster the ranks of the union in general so as to strengthen their bargaining position.86

Against the background of the suffrage victory, the significant increase in female wage labor prior to World War II, and the massive industrial organizing drive during the 1940s, within the Congress of Industrial Organizations (CIO) there was a shift in the larger political culture away from a traditional emphasis on differences between men and women to one which focused more on gender equality. The CIO “captured this new political thrust, explicitly opposing discrimination on the basis of sex.”87 Although a key motivation to this change in focus was rooted in the need to emphasize class solidarity amid business efforts to divide unions through discriminatory policies, the CIO’s efforts to advocate for gender equality nonetheless remained strong. In fact, some CIO unions were leading supporters of “legislation against sex discrimination in the 1960s.”88 The level of commitment by various unions to gender equality, however, was dependent upon the perceived needs and concerns of its male leadership within particular industries and time periods. While labor at the national level gave serious consideration to women’s issues, Ruth Milkman observes, local unions have historically been supportive, hostile or ambivalent in “their level of engagement with issues of special concern to women

86 Alice Kessler-Harris, “Where are all the Organized Women Workers,” Gendering 28.


88 Ibid., 231.
workers. Indeed, union responses to the process of workforce feminization have been far from uniform.”

World War II blurred sex-based job categories in government, light industry, food service and on the factory floors of automobile manufacturing companies, leaving an opening to fight sex discrimination in job categories. As noted earlier, due to the shortage of labor, Genora Dollinger successfully took advantage of the opportunity to fight sexual harassment on the factory floor at General Motors. While the UAW embraced a more gender-neutral workplace, protested discrimination against married women and unequal pay for equal work, union leaders nonetheless favored a gendered hierarchy in job and wage classifications in an effort to protect established male standards. As the 1950s approached and automobile manufacturing became increasingly automated and efficient amidst cyclical recessions and layoffs, union officials acquiesced as more senior women were laid off before their junior male coworkers. However, as feminization throughout the labor force grew significantly in the 1960s and 1970s, labor in general found it difficult to maintain traditional viewpoints regarding working women especially as the second wave of feminism was transforming


90 Dollinger, 124.

women's consciousnesses and their expectations for a more equitable work environment in terms of training, promotion and pay.92

Working women's awareness as to what had been denied them is evident in the 1970 publication of the "Declaration of Rights of Women Workers." The document illuminates what was important to working women: childcare, access to free birth control, maternity leave, training, and a right to work in an exploitative-free workplace.93 While the end to a sexually hostile workplace was not specifically listed in the "Declaration," five years after its publication the term sexual harassment became part of the lexicon in 1975. It then became a clearly articulated demand of working women across the country. By 1979 women in the steel, mining, agriculture, airlines, entertainment, auto, and timber industries increasingly demanded that their unions address the issue not only at their places of work but within unions themselves.94 Thus, weakened by a decline in male membership and under siege by corporate America towards the end of the decade, national as well as local unions frequently and at times grudgingly, found themselves on the front lines fighting against the sexual harassment of women at work in an effort to strengthen and bolster their ranks with their membership. This tension between the evolving needs of its women members and long standing patriarchal traditions, assumptions and philosophies regarding women's role in the Pacific Northwest timber

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industry is evident in the International Woodworkers of America in the Pacific Northwest.

Early twentieth-century labor history of the Pacific Northwest and the Seattle area particularly, can be characterized as progressive. Labor committed itself to fighting for the just treatment of all workers. Union membership was strong among waitresses, candy makers, garment workers, telephone operators, ship builders, carpenters and postal workers. Women in the region had established themselves as capable, indispensable and tenacious not only as supportive union auxiliary members but as respected laborers themselves especially as both World Wars drained men from industry and from the forests and mills.\(^{95}\)

However, notwithstanding this progressive labor advocacy for women laborers in the Pacific Northwest, the level of support for female International Woodworkers of America (IWA) timber and mill workers was dependent upon the needs and demands of male union members. This was due in large part to a strong adherence to the ideological domestic code within the ranks of its male members.\(^{96}\) This tension between a resurgent domestic code and advocacy for women's equality is particularly evident in the decades following World War II. In an effort to enforce a family wage and secure work for


returning soldiers, the IWA of Port Alberni worked in tandem with management to encourage women to return home and to hire only men so as to secure a higher wage scale for men. 97 Likewise, despite significant support for the efforts of the women’s IWA auxiliary movement at Lake Cowichan, following the war, the local did not support pay parity for women mill workers. 98

However, with the passage of Title VII in 1964 and under pressure to comply and to maintain its ranks, the IWA like so many unions at the time, reaffirmed its commitment to equality for all workers. The AFL-CIO International Woodworkers was one of the first unions to establish a protocol for its members who believed their rights under Title VII had been violated. 99 Although the AFL-CIO International Woodworkers may have responded to Title VII progressively, local IWA chapters varied in the level of support they gave their women woodworkers who filed a claim under Title VII. This is particularly manifest in Shelton Local 3-38’s response to the firing of Toni Gilbertson on 22 June over her sex discrimination and retaliation complaints.

Local 3-38 had a legitimate concern that if Simpson was not challenged on the grounds that it illegally fired Gilbertson in violation of contract, regardless of her discrimination and retaliation claims, it would set a bad precedent and leave all of its members vulnerable. Between July and early October, union officials called for a series


of meetings with Simpson management in an effort to get Gilbertson rehired. The essence of these meetings during this time covered the terms and conditions of the contract between Simpson and the union.

At an August meeting with Simpson management IWA representative James Lowery stated that the “union is concerned about the integrity of (the) contract. We have a valid agreement and under our contract Toni Gilbertson should have been returned to her former job without prejudice, and not terminated.” In its discussions with Simpson the union provided ample evidence in support of its claim that Gilbertson had been treated differently and fired improperly in breach of contract. At issue was the lack of proper training, opportunity, the quality of her job performance and the fundamental question of fairness in terms of her treatment at Simpson. In addition to Simpson’s failure to abide by the terms of the contract, union members were alarmed at not only the number and frequency of job evaluations Gilbertson was subjected to but also the voluminous notes taken during these evaluations. Moreover, in direct violation of an implied contract between Simpson and the union, in none of these evaluations was she given any warning that if she did not improve she would be terminated. Lowery reminded Simpson management, “There has been a long-standing past practice between the company and the union that employees must be given a clear and conscious warning before they can be terminated.”

100 Union minutes of August 24, 1979, Box 79.

101 Affidavit of James Lowery, October 30, 1979, Deposition Upon Oral Examination of Joan Brewer, November 21, 1979, Box 79.
Union members also reminded Simpson in meetings that “there is no real training program at Simpson” which made it difficult for any new hire to keep up. Moreover, if Ayres felt she was inept at her job, she should have been given the opportunity to move back to her old position and she should have been given more time to qualify as others in the past had. Of particular concern to the union was that she had been improving at her job but was fired nonetheless.102 During these meetings, the issue of sex discrimination was only tangentially mentioned in passing.

Failing to resolve the issue after months of discussions, on 5 October, 52% of Local 3-38 voted to go out on strike specifically over the issue of Gilbertson’s firing in breach of contract, Simpson’s failure to provide adequate warnings regarding her performance and refusal to reinstate her.103 Interestingly, while employees at other plants within Local 3-38 voted for the strike, union employees at the Shelton plant voted not to strike. While the contract issue was important to a majority of union members within IWA Local 3-38, her sex discrimination complaint proved to be a formidable challenge to a deeply entrenched male prerogative at the Shelton plant.

On 8 October, one last meeting between Simpson and the union was held in an effort to resolve their differences and avoid a strike. The union offered several suggestions as to how the company could rehire Gilbertson. Simpson conceded that the union may have had a point regarding a technicality in the termination of Gilbertson and

102 Affidavits of Linda Nagel, October 27, 1979; Bob Rinard, October 23, 1979; Larry Beerbower, October 24, 1979, Box 79.

103 “IWA Meets Over Strike,” The Daily Olympian, 8 October 1979; Affidavit of James Lowery, October 30, 1979, Abstract of Deposition of Alan Miljour and Scott Townsend, November 27, 1979, Box 79.
noted that it would have indeed been cheaper “for us to bring her back” but held firm arguing that if she was hired back it would be unfair to other employees. Simpson remained intransigent because they were already under investigation due to Gilbertson’s discrimination and retaliation charges and they did not want to risk a third charge should they hire her back. The company was feeling the pressure from the EEOC’s investigators and was angered by Gilbertson’s charges.

The union’s position was dismissive of this argument. Union representative Lowery noted that while “she has two cases pending, [the union had] nothing to do with them [and that their] main concern [was] the contract.” What the Human Rights (Commission) was going to do was not the union’s concern. He continued, “We have tried to present proposals...We feel we have a contract violation.” Senior Industrial Relations Representative Phillip Morrison pointed this out in his affidavit later as well: “At no time during [our] meetings did the union ever contend that Ms. Gilbertson’s termination was an act of retaliation by the company or that sex discrimination or sex harassment was in issue as a result of her termination.” Except for a few coworkers, the sexual harassment of Gilbertson and subsequent retaliation against her had not been a concern of the largely male union, nor its leadership, just the contract. That only a few union members saw past the contract issue demonstrates the union members’ conviction that, notwithstanding their historical presence within the timber industry, the concerns of

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104 Standing Committee Meeting Minutes, October 5, 1979, Box 79.

105 Standing Committee Meeting Minutes of October 5, 1979, Box 79.

106 Affidavit of Phillip G. Morrison, November 27, 1979, Box 79.
women mill workers who left their sphere were appropriately treated as secondary employees and should expect harassment. Their concerns were not paramount to their male colleagues.

Towards the meeting’s end, Simpson offered Gilbertson two days’ pay in an effort to resolve part of the contract dispute. Offended that Simpson was trying to buy off one of their members coupled with the fact that they were unable to resolve their respective interpretations of the contract an exasperated Lowery exclaimed “the company really went to extremes on this one, we have no argument on doing this.” He called for a strike later that night idling 1,400 Simpson employees working at three of Simpson’s logging camps and five of its mills. The strike continued for eight weeks until 3 December. At its peak, 3,000 woodworkers were idled. It was only the second strike against Simpson in twenty-five years.

107 Alice Kessler-Harris, Out to Work, 297.
108 Standing Committee Meeting Minutes of October 5, 1979, Box 79.
Chapter 5

HIDDEN WITHIN THE STRIKE

“We are going through an educational process in this strike.”

Early press coverage of the strike followed the lead of the IWA and Simpson by focusing on the contract dispute. However, tired of the confusion, rumors and misinformation regarding Gilbertson’s discrimination complaints, subsequent firing and the strike vote circulating on the Shelton plywood factory floor, Simpson employee Scott Kauffman published a letter to the editor of *The Daily Olympian* on 14 October. Kauffman decided it was time to expose what neither the union nor Simpson publicly acknowledged was a key underlying cause for the strike at hand: the sexual harassment of women at the Shelton plywood plant. In part his letter reads:

There are two issues involved in this strike; only one of which is publicly discussed by the two sides. The public issue involves contractual interpretation regarding ‘probationary’ employees, which I’ve been told has been resolved. The more pervasive and deep-rooted problem concerns the sexual harassment and general lack of respect for women working at Simpson. This remains the unspoken, and unsettled, stumbling block to the conclusion of this strike.

The influx of women within Simpson, though by no means overwhelming, has steadily increased over the years. Yet despite this there is not-to-be-concealed resentment against these women by many men who work with and around them.111

His letter served as a bombshell in the union and the town of Shelton. It altered the nature of the strike and set in motion a series of challenges to preconceived notions

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held by union members and Simpson management as well as the citizens of Shelton of a woman’s place in a changing world

Of particular concern to Kauffman and his reason for writing was the failure of his fellow unionists to see the strike as important and necessary to secure equality and respect in the workplace for women who were increasingly entering traditionally male occupations. He deplored the response to a question asked at the strike vote regarding whether it was worth striking for a woman. The respondent shouted, “I think women should stay at home!” He noted that the question and its answer were “indicative of the attitude of many within the company toward women who work” at Simpson. The question and its answer explain as well why the vote to strike passed by a narrow margin.

Notwithstanding the publication of this letter, the local press continued to focus on the contractual dispute. However, following a press release by the union regarding the harassment charge on 19 October, *The Daily Olympian* made the sexual harassment issue front page news. When questioned by the paper about the allegations, Simpson vice president Hank Sandstrom replied, “I can’t believe that. I can’t believe it... That’s merely a charge. ...Let her prove it at the HRC.” He continued that other charges had been filed in the past and he noted that they had been summarily dismissed.

Sandstrom’s reaction to the allegation of sexual harassment at Simpson was not unlike those of business executives across the nation. Typical of businesses’ responses to the allegation is that “they don’t have sexual harassment” at their place of work and


moreover, even if it occurred, it was not their responsibility to “alter their employees’ attitudes towards women.”

Although previous charges of sexual harassment against Simpson employees had been dismissed, this time it would be difficult for Simpson to refute overwhelming evidence to the contrary. Gary Hargens’ harassment continued once the female employees were on the factory floor and out of his office. As noted, he instructed women with long hair to wear it up on their head while men with long hair were not required to do so. Others in management harassed as well. On cold days Linda Nagel was not permitted to wear a coat by her supervisor while working yet men on her shift could. Barbara Edmiston had to retrieve her paycheck from wherever her supervisor, Torgesen, chose to leave it on the factory floor but men were handed theirs. When she requested gloves from him, she was denied a pair and only received a new pair after sustaining an injury. Men were promptly given new gloves upon request. Although Sandstorm may have dismissed the claim that women had been so disparately treated at Simpson, the secretary who responded to Gilbertson’s question regarding her interview with Hargens and the affidavits offered by female Simpson employees verified that in fact discrimination was part of the working environment at Simpson.

The harassment Kauffman described had been apparent to union leader Lowery for at least a year. Michael Herbaugh sought help from Lowery in early 1978 after being


115 Affidavits of Barbara Edmiston and Linda Nagel, October 23 and October 27, 1979, Box 70.
fired by Hargens for refusing his advances. Lowery interceded on her behalf and found another position for her at another plant. Moreover, he notes in his affidavit that shortly after Barbara Edmiston was hired in May of 1978, he was told by other unionists that they suspected that “sexual harassment was going on at the plywood plant.” He noted that he “tried to look into it but no one wanted to come out in the open with it.” The harassment Edmiston and other women received from Hargens, Torgesen, and others on the factory floor provides evidence that Lowery did not consider it serious and it raises the question of how committed he was in addressing the issue on behalf of the women unionists at the Shelton plant.

After the publication of Kauffman’s letter to the editor, Lowery was forced to publicly address the root cause of Gilbertson’s firing by Ayers: sexual harassment and retaliation for filing charges. He could no longer focus exclusively on the contract dispute nor could he ignore the sexual harassment at the Shelton plant. Failure to do so would have undermined his leadership of Local 3-38, particularly among the Local’s growing population of female members. Moreover, he realized that failure to address the harassment could leave the union vulnerable to intervention into their internal affairs and the interpretation of their contract by a third party, the Human Rights Commission, possibly leaving the union in a weakened bargaining position in future negotiations.

Thus, on 19 October, the union issued a press release acknowledging that “one woman

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116 Affidavits of Michael Herbaugh, November 5, 1979, James Lowery, October 30, 1979, Box 79.

117 Affidavit of James Lowery, October 30, 1979, Box 79.

118 Standing Committee Meeting Minutes, October 16, 1979, Box 79.
finally decided to take action against this practice and file a discrimination charge."\textsuperscript{119} The statement addressed not only the illegal firing of Gilbertson but also the fact that the IWA had at least 50 female members and that the sexual harassment of its women members could no longer be tolerated regardless of how "male chauvinistic as our members might be."\textsuperscript{120} The IWA’s decision to go public with their support of women union members was an example of how, as Milkman notes, "the feminization of union membership serves to guarantee that the unions will defend women’s rights."\textsuperscript{121} Lowery also understood that by exposing the presence of sexual harassment at the mill, Simpson would be anxious to settle the contract dispute thereby ending the embarrassingly large group of reporters and TV camera crews at its Seattle headquarters.

By 25 October, the strike spread to Simpson’s mills in Oregon and California idling an additional 1,300 workers. The strike also exposed genuine attitudes members held regarding women’s proper place in society. Most union members understood that the 5 October vote to strike was based on a contract dispute. However, as more facts surfaced regarding the sexual harassment of Gilbertson and other women at the plywood plant, solidarity among members began to weaken. An unofficial petition for a revote on the merits of the strike was now in circulation. Members circulating the petition believed that because there was more information regarding the strike, that if a revote were taken,


\textsuperscript{120} "Union Raises Sexual Hiring Issue," \textit{The Daily Olympian}, 19 October 1979.

it "could cause a difference in the vote." Within a week of the petition's circulation, most of the signatures needed for a revote had been collected.

In an effort to protect its reputation and to deflect findings by the WSHRC, Simpson continued throughout October and into early November to deny the allegations of sexual harassment at its Shelton plywood plant. When questioned by reporters, Simpson insisted that it "does not tolerate discrimination in its operations" and heatedly directed the questioning back to the issue of the contract dispute. As media coverage intensified and civil rights, educational and women's groups protested in front of Simpson's headquarters in Seattle, Simpson intensified its reactions to the allegations. Simpson demanded verification of the harassment charges and the names of women who said they had incurred it. After lumber workers in Oregon and California went out in sympathy with their Shelton colleagues, Simpson filed a complaint with the National Labor Relations Board arguing that the pickets were illegal.

Exasperated that the strike was now in its fifth week, Simpson vice president Sandstrom confronted the press directly in an effort to assign blame on the union for their impasse. He charged that "The only issue in the strike is the termination of a probational employee who was unable to perform assigned work... [and] the company intends to fight for it in every available form." He continued, "We deplore the union's tactics of

gaining media attention by making broad [slanderous] sex discrimination charges” against Simpson personnel which have turned the strike into a “media circus.” Yet, when a reporter asked about rumors surrounding Hargens’ alleged on-going harassment, Sandstrom replied that he believed he was either fired or transferred over the matter. Realizing that he just admitted that harassment in fact existed at Simpson, he quickly shot back that the accusations were only allegations and that nothing had been proven. The press continued to cover the strike, however, they focused on the sexual harassment issue more than the contract dispute.

While solidarity among IWA members had been historically strong, the interjection of women laborers into traditionally male fields tested this time-honored tenet. This was especially true in this strike because not only were men asked to strike for a woman who was working out of her sphere, but one who was also challenging male prerogative. For some members, this was too much to endure. The revote in circulation, indicative of a split within the union, reflected “confusion over the changing composition of [the membership] and values” held by unionists regarding the employment of women at Simpson and their right to social justice. As Lowery noted, the members were going though an educational process over the strike. So was he.


126 Alice Kessler-Harris, *Gendering Labor History*, 15.

Gary Creasey was one member who was confused over the purpose of the strike. It was his understanding that it was for a contract dispute, but once harassment allegations had surfaced, he demanded “what are they [Simpson] supposed to do about it?” He did not feel it was an issue that necessitated a strike and that there was a silent majority that had not been heard from whom he felt shared his opinion. Mark Schmidt concurred stating “now that the real issue has been more clearly defined we must go back to work.” John Anderson called the strike “asinine” and expressed his gratitude that at his plant, his business agent can keep things in perspective and not “go screaming about every little squabble.”

Concerned that Simpson was effectively undermining union solidarity for this strike by calling the allegations slanderous and unsubstantiated, Scott Kauffman wrote a second letter to the editor. He observed that Simpson perceived ambivalence among union members resulting in a narrow strike vote and that Simpson was using this in an attempt to undermine the union and break the strike. He argued that the ambivalence was not over the purpose of the strike, but rather unionists were ambivalent over the influx of women at Simpson. Likewise, Lowery observed that “The fact that it was a woman meant they did not want to go out. But that’s typical of a small logging town like this.” However, union attorney Christine Mrak countered that “the raising of the discrimination part of it, and the union’s coming out publicly with the background in which this

grievance arose, has strengthened the strike. People would rather be on strike for basic human dignity than for a contract technicality.”

The revote to end the strike on 10 November was rejected. Continuing the strike reflected the union’s coming to terms with a far more serious issue than just the contract dispute over Gilbertson’s firing, just as Mrak described. Union member Jonathan Foe said it best in a letter to the editor. His letter in part reads: “The strike is more evidence of a reawakening of the labor movement. The movements for equality have really affected the unions, which have been relatively dormant since the mid-40s... I am proud of this new labor upsurge... and I hope all unions will start championing the rights of all their members, not just white men.”

The changes in the larger society which were transforming women’s roles and consciousness led to changes in the union’s understanding of Local 3-38’s women’s rights to equality in the workplace.

Local citizens on both sides of the conflict weighed in on the underlying issue of the strike as evidenced in letters to the editor of Shelton’s daily newspaper. The deeply divided letters illuminated frustrations, anxieties, disbelief and uncertainties of citizens who were unsure of how to come to terms with the real challenge facing them – the right of women to work in a harassment-free environment. Some writers accused Simpson of protecting the reputations of its ex-employees at the expense of honesty leaving the public guessing as to what was really going on. Others alleged that Simpson raised the


issue of sexual harassment betting it would undermine union solidarity over the contract violation which they believed to be the only issue. One woman explicitly asked how Simpson could possibly “launch a personal vendetta” for suing over “an extremely degrading and indecent interview.” Another writer questioned how “these people” could put one woman ahead of 1,400 workers and force them out of work. 132

Typical of many of the letters was the belittlement of the issue of sexual harassment. One in particular stands out. Mr. Richard Lee wrote that he did not believe that “sexual bigots” run the Shelton plant and he questioned whether union attorney Christine Mrak was merely using the strike as a pretense to further her career aspirations. Moreover, Lee stated, the contract issue had simply “been lost and turned into a case of equal opportunity and sex discrimination.” 133 Clearly, the fundamental right to work in a harassment-free environment was lost on this writer.

After losing her job at The Hut in mid September, Gilbertson was hired on 30 September to work at Jean’s Restaurant in Shelton as a cook. As stories in the press on the strike continued and the owner of Jean’s realized Gilbertson was the same person discussed in the paper, she asked her “how could she be so mean? ... as to cause trouble for people that resulted in the strike.” She was laid off shortly thereafter. In both cases, the owners promptly hired a replacement. 134


134 Second Affidavit of Toni Gilbertson, November 27, 1979, File Q, Box 79
While Gilbertson’s notoriety left her without a source of income, the strike left local business devoid of customers fueling cries to end this “asinine” strike. Restaurateurs complained that before the strike, mill workers would order breakfast. Now it was just coffee. J.C. Penny adjusted layaway payments and the local feed store held back on stocking unnecessary Christmas items. One entrepreneur noted that his furniture business was down considerably but the pawnshop seemed to be doing a brisk business.135 For many businesses in Shelton, this was the first strike they had struggled through.

Gordy Smith, owner of the Coast-to-Coast store rued that “business has been pretty good up until” the strike. He continued that the “issue between the company and the union has become a philosophical issue and it looks like a long strike.”136 Beyond the technicality of the contract dispute, the strike indeed was a philosophical one; it struck at the core of the citizens’ of Shelton, the union’s and Simpson’s understanding of a woman’s right to work in an environment free of sexual harassment, or not.

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Chapter 6

COMING TO TERMS WITH A NEW LEGALITY:
THE ILLEGALITY OF SEXUAL HARASSMENT

"Mr. Vitaro...informed me that he thought the EEOC (Equal Employment Opportunity Commission) would commence the action...because if the EEOC did not act in an expeditious manner the image of the EEOC would be tarnished in the public eye."\textsuperscript{137}

In an effort to defeat the highly controversial bill establishing the Civil Rights Act of 1964, Representative Howard Smith, Democratic congressman from Virginia, inserted the word sex into the bill. He was convinced that if women were granted the same rights as minorities whose rights he did not want expanded, the bill would not pass. His plan backfired. Overshadowing the controversial clause was the issue of how much enforcement authority the Equal Employment Opportunity Commission (EEOC) should wield. After much wrangling, enforcement powers were granted; however, they were not employed by the agency in good faith. By 1972, under mounting pressure from women's groups angry that the courts were ignoring their claims, particularly sexual harassment claims, Congress further expanded the EEOC enforcement powers under Title VII.\textsuperscript{138}

\textsuperscript{137} Affidavit of Dale E. Kremer, November 23, 1979, Box 79.

\textsuperscript{138} Foner, \textit{Women and the American Labor Movement}, 481; Karen Maschke, \textit{Litigation, Courts, and Women Workers} (New York: Praeger, 1989), 22. The Civil Rights Act of 1964, Title VII, reads in part—"It shall be an unlawful employment practice for an employer to (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." Stein, \textit{Sexual Harassment in America}, 32. The EEOC was established as a federal enforcement agency under the 1964 Civil Rights Act. The responsibility of the agency is to ensure the protection of civil rights.
Notwithstanding increased powers delegated to the EEOC, government officials blinded by a lingering code of domesticity ignored discrimination cases causing the Government Accounting Office (GAO) to publish a blistering report. The GAO discovered a huge backlog of cases, infighting, corruption, incompetence, financial improprieties, and sexual harassment within the EEOC’s ranks. In 1976 the *Wall Street Journal* wrote “The allegations of incompetence and corruption at the agency are only the latest in a string of recent negative reports about the EEOC. Congressional studies have charged the agency with … failure to vigorously protect … against job discrimination.”¹³⁹

Under mounting pressure as more women entered the workforce demanding equal treatment, President Carter appointed Elizabeth Holmes Norton, formerly of the New York Human Rights Commission, as head of the EEOC. Until her arrival the organization was referred to as “the government’s worst bureaucratic mess.” Norton significantly reorganized the agency and for the first time, focused specifically on Title VII making it the “principal federal agency in fair employment enforcement.”¹⁴⁰ She proposed sweeping new guidelines on sexual harassment which made all employers liable for not only coercive harassment but also for a hostile work environment. The EEOC’s new guidelines under Norton “defined sexual harassment as unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual

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nature. Norton’s reach extended into the Labor Department as well. In anticipation of new Labor Department guidelines in employment, businesses were bracing for minority hiring guidelines, not “provision(s) requiring contractors to ensure and maintain ...working environment(s) free of harassment, intimidation and coercion.”141 The focus on a harassment-free work environment, especially for women, had not been a concern for most businesses until she addressed the issue. Moreover, courts increasingly referred to her new guidelines when adjudicating sex bias cases. She made the organization 65% more efficient so that within two years, the EEOC addressed half of the 150,000 cases with which she started. Norton’s successes, however, met stiff resistance, especially amidst a growing backlash against affirmative action.

In an effort to clean up the EEOC’s image, Norton focused on high profile companies such as Sears, then the world’s largest retailer. Not only did she focus on Sears’ poor affirmative action policies, she focused especially on gender bias. Sears almost exclusively assigned men to its high commission sales departments while women were paid on an hourly basis.142 Angry that it had been a target of the EEOC’s new hiring guidelines, Sears in its countersuit desperately argued that its failure to hire and promote more women was because Depression-era laws promoted laying off women before men. Sears continued in its defense arguing that war industries promoted hiring white men into prestigious jobs, housing and other laws contributed significantly to reduce the number of women in private industry and lastly, the extended age in


142 “Sears and the EEOC dig in for a long war,” Business Week, 1 February 1979, 41.
retirement all “worked against bringing more minorities and women” into higher paying jobs at Sears.\textsuperscript{143} The U. S. Chamber of Commerce cheered Sears in its countersuit noting that it “was long overdue.”\textsuperscript{144} That Sears could resort to such logic amidst its growing need for labor and its continuing expansion into the suburbs throughout the country is testament to deeply entrenched notions of women’s roles.\textsuperscript{145}

However, under Norton the EEOC nonetheless greatly expanded its role beyond litigating cases of systemic discrimination to rapid fact-finding, streamlined litigation, investigative and conciliation functions, and retaliation. Significantly, whereas before it was almost impossible to secure temporary restraining orders if an employee was about to be fired or to prevent further harassment or discrimination, the agency was now empowered to act as soon as it became evident such events were about to occur.\textsuperscript{146} The imminent likelihood of an individual incurring specific harm in addition to an evolving and an increasingly lucid definition of sexual harassment promoted by Norton greatly enhanced the EEOC’s ability to seek justice. It also facilitated women’s chances of success in court.\textsuperscript{147} The change in direction was fortuitous for Toni Gilbertson and the women on Simpson’s plywood plant floor. It was also an opportunity for the local branch of the EEOC to clean up its tarnished image as well.

\textsuperscript{143} Ibid.

\textsuperscript{144} Ibid., 42.


\textsuperscript{147} Ibid., 685 – 687; Baker, \textit{The Women’s Movement}, 116.
Reeling from scathing reports in the local press regarding its failure to properly handle recent bias cases which resulted in sanctions against the agency, both the WSRHC and the EEOC’s Washington State bureau saw an opportunity in Gilbertson’s claim of retaliation to reestablish its credibility in the public eye.148 This was especially true in light of the fact that even though Gilbertson filed her retaliation claim on 25 June, the WSRHC had conducted very few meetings with Simpson and union representative Lowery between June and October. Moreover, the topics of these meetings dealt with issues pertinent to the contract and her dismissal and not about the sexual harassment of Gilbertson or any other female employee.149 However, once it was revealed to Lowery that other women had been subjected to Hargens’ harassment and the women who were out on strike feared for their safety and jobs, union attorney Christine Mrak demanded a quick response to Gilbertson’s retaliation claim on 19 October. Moreover, public pressure mounted on the agency to act quickly due to the substantial media attention that followed Scott Kauffman’s letter to the editor publicly discussing the issue of sexual harassment at Simpson for the first time.150

Utilizing new EEOC guidelines, within two weeks of Mrak’s request on 8 November, the WSHRC in conjunction with the federal branch of the EEOC in Washington State filed for a Petition for Preliminary Relief citing Title VII on behalf of

148 Affidavit of Michael Rayton, in Support of Defendant’s Motion for Evidentiary Hearing and Other Relief and in Opposition to Preliminary Injunction, November 27, 1979, Box 79.
149 Affidavit of Jon Lee, November 8, 1979, Box 79.
Gilbertson. Fearing obstruction in its investigation from Simpson, a Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction on behalf of the women at Simpson was filed simultaneously. Mrak’s fear was legitimate. Within days of the union’s 19 October press release and Mrak’s call for action, women on the factory floor started to receive threatening phone calls and reported vandalism to their personal property.\footnote{Affidavit of Jon Lee, November 8, 1979, Box 79.}

The agency concluded in the Petition for Preliminary Relief that “Simpson has intentionally engaged in apparently unlawful employment practices at its Shelton, Washington facilities in violation of ... Title VII by taking retaliatory measures against Ms. Gilbertson because of her charge of discrimination with the Commission.” The retaliation included close and continual scrutiny of her work and subsequent dismissal in violation of union protocol. It found that the failure to reinstate her at the union’s request imposed an irreparable hardship on her, tarnished her reputation, and discouraged others from “participating in the investigation, proceedings or hearings under Title VII, thereby undermining the Commissions’ jurisdiction ... and its ability to carry out its Congressionally mandated duty.”\footnote{Petition for Preliminary Relief, November 8, 1979, Box 79.}

In its initial investigation leading up to the Petition for Relief on behalf of Gilbertson, the agency concomitantly discovered legitimate concerns regarding the reporting of harassment by other women on the factory floor. Women reported being very concerned about retaliation especially after Gilbertson had been fired. Rhonda Terry
stated that she “did not report [the harassment] because she was afraid the company would harass” her. Krista Kricidlo noted in her affidavit that she did not report being harassed because she felt “embarrassed and humiliated by what happened” to her in the interview and she feared that she “would lose her job.” She was concerned that by assisting the EEOC in its investigation of Gilbertson’s claim, she may yet lose her job. Barbara Edmiston testified that she “might be fired for reporting what happened in [her] interview with Hargens” and Linda Nagel confided in union business agent James Lowery that he had no idea how scared she was to tell her story. Molly Clark was so afraid of sharing her story regarding her interview with Hargens that Mrak could not convince her to submit an affidavit. She only noted briefly on a piece of scratch paper what happened. In Nagel’s second affidavit she noted that she observed what had happened to Gilbertson after she filed her claim and she noted that those who did come forth on behalf of Gilbertson were treated poorly by other workers. Nagel’s car was vandalized. Mickey Tumin testified that working conditions worsened once Gilbertson’s case became public concluding that if the “company wants to get down on you they will get down on you.”

These women experienced what many other women in the past endured for telling their stories. Based upon the facts and in keeping with new directives, the Washington State bureau of the EEOC concluded that it “must ... ask for full relief for Ms. Gilbertson and

153 Affidavits of Rhonda Terry, October 23, 1979, Krista Kricidlo, October 23, 1979, Barbara Edmiston, October 23, 1979, James Lowery, October 24, 1979, Molly Clark document, not dated, Linda Nagel, November 27, 1979, Mickey Tumin, November 27, 1979, Box 79.

company assurances that no other interferences with investigations or retaliation would occur.” In The Petition for Preliminary Relief, the agency requested an injunction enjoining Simpson and its agents from discouraging Gilbertson and other employees from assisting or testifying. Simpson could not retaliate against any employee for assisting in the investigation and had to communicate to aggrieved employees that they may seek relief as well. Simpson needed to make Gilbertson “whole” by removing from her file any negative comments and to pay all costs and to reinstate her.  

Notwithstanding the EEOC’s findings, Simpson attorney Mike Rayton maintained that she was fired due to the poor quality of her work and not in retaliation for her claim. When the EEOC requested that she be reinstated, he “expressed doubt that the voluntary offering of the requested relief would be in his client’s best interests.” He mentioned nothing of preventing further harassment as this would have been an admission of culpability.

Concerned that the agency would be unable to continue its investigations or prevent any further retaliation in the face of an intransigent Simpson, it thus filed a Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction as well. The EEOC argued that Simpson’s actions would cause “considerable injury to both the free operation of the Congressional plan to eliminate employment discrimination

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155 Petition for Preliminary Relief, November 7, 1979, Box 79.

156 Affidavit of John Lee, November 8, 1979, Box 79.
and to the Commission’s ability to investigate and secure witness testimony in charges filed with the EEOC in direct violation of Title VII.\textsuperscript{157} The agency understood that if workers had to worry about retaliation, civil rights laws such as Title VII would lose much of their force.

Taunted by Gary Hargens’ hubris that he had been through three discrimination cases and “had always won,” faced with indisputable facts and a genuine fear of more adverse publicity, the Washington State bureau of the EEOC proceeded quickly, thoroughly, and effectively on behalf of Toni Gilbertson.

Simpson Timber Company’s failure to grant the EEOC’s request and reinstate Gilbertson prompted the EEOC to immediately file for a Motion for Preliminary Injunction on 7 November. The hearing for this Motion took place on 30 November. The presiding judge was United States District Judge Jack E. Tanner who took the opportunity to further clarify, and expand, what constituted sexual harassment under Title VII.

The EEOC wanted the immediate reinstatement of Gilbertson while it continued its investigation of the merits of the retaliation charge Gilbertson had filed. Due to the treatment Gilbertson incurred including the unusually close supervision ordered by top management and the culture of fear at Simpson EEOC investigator John Lee discovered during his initial investigation, the EEOC believed that “prompt juridical action was necessary . . . to assure others that they do not have to choose between filing a complaint

\textsuperscript{157} Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, November 8, 1979, Box 79.
with the Commission, and their job.” Furthermore, “the free flow of information between the Commission and charging party goes to the heart of Title VII and goes to the matter of our being able to enforce that statute effectively.” Employees needed to feel free to report discrimination without worrying about repercussions.

At the hearing, Simpson attorney Dale Kremer objected to the EEOC findings alleging that the EEOC failed to speak with Simpson management and that Gilbertson’s treatment was not out of the ordinary. Moreover, he questioned the need of the EEOC to seek prompt action on the retaliation claim when in fact the EEOC received the complaint on 25 June but only took action on 19 October. Over Kremer’s objections, Federal Judge Tanner dismissed his argument and immediately focused on the issue of sex discrimination and the sexual harassment of Gilbertson by Hargens during her interview on 16 April.

Central to Tanner’s line of questioning was the position Simpson Timber Company took regarding the first interview Gilbertson had with Hargens. He determined that because Simpson did not deny what happened, discrimination did in fact occur. Tanner continued by articulating the specific offenses which constituted discrimination and he reminded Kremer that Congress intended Title VII to be liberally construed. He asked Kremer if he could explain why Hargens felt it necessary to ask Gilbertson if she was wearing a bra and the purpose of his inappropriate comments. “I don’t know what well-endowed means in relationship to when a woman is looking for a job” Judge Tanner

queried, "Can Simpson explain that to me, what would that have to do with any job that they might have?"\(^{159}\)

Having established that Gilbertson incurred discrimination, Tanner then proceeded to demonstrate why it existed at Simpson. He queried Kremer as to how many women were on the board and how many were in executive positions. Tanner’s purpose in asking how many women served in executive positions was to emphasize that “in view of Title VII that was passed by Congress after... thorough debate... it is very difficult for all-male boards of directors, and all-male executive committees, and all-male management, to treat women fairly... I think that is one of the reasons why Congress passed that law, one of the reasons.”\(^{160}\) Tanner understood that to get men to stop sexually harassing women required him to enjoin them to “try to see the world from a woman’s perspective...to develop empathy”\(^{161}\) Simpson just did not see or understand that Hargens’ behavior was discriminatory due to its all-male culture. They did not see the problem and thus were unable to find a solution. This was especially apparent to Tanner when Kremer asked what Congress wanted Simpson to do about it. Stunned by the question, Tanner snapped that “whoever initiated it or caused it to continue should have made a good faith effort to eliminate it” which clearly Simpson failed to do. Perhaps they could discontinue the practice.\(^{162}\)

\(^{159}\) Ibid., 13.

\(^{160}\) Ibid., 8.


\(^{162}\) Hearing, 20.
Tanner proceeded to establish the fact that Simpson discriminated against Gilbertson after she was hired. Kremer insisted that Gilbertson was treated fairly and was not closely monitored as the EEOC suggested. However, in an exchange with Tanner, Simpson attorney Kremer unwittingly admitted that the company did in fact discriminate against Gilbertson after she was hired:

KREMER: ...I can only argue to you that this woman was treated fairly in an effort when she applied for the job and she didn’t make it.

TANNER: She doesn’t want to be treated fairly, she wants to be treated like everyone else, because fairly means whatever I think is fair.

KREMER: If she had been treated like everyone else she would have been terminated before she was.

Unbeknownst to Kremer, he admitted that in fact Gilbertson was treated differently because she was not fired like someone else in her situation would have been. This admission was not lost on Tanner.

Kremer continued that in fact Gilbertson’s supervisor “made a real effort to make her comply with the job.” At which point Tanner slyly asked “Isn’t that sort of damning you by faint praise, Counsel?”

Kremer further implicated Simpson’s discrimination against Gilbertson by noting a real effort was made for her to work out. Another employee in Gilbertson’s position would not have been subjected to this extra effort. Gilbertson was subjected to this discrimination because of her initial complaint against Hargens.

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163 Ibid., 23.
Having established the fact that Gilbertson was discriminated against in her interview and on the floor of Simpson's Shelton plywood plant, Tanner concluded that Simpson set her up to fire her and never intended to hire her permanently because she filed the first complaint against the company for sex discrimination. He based his opinion on the fact that Gilbertson was given the easiest job on the floor and yet she was fired from it. "I can only conclude that the company never intended for her to make the job, how else can you look at it?" 164 Tanner ended the hearing with a summary of the facts:

It appears to me that the plaintiffs by a preponderance of the evidence have convinced me as follows, one, that at the initial interview for employment by plaintiff that she was discriminated against because of her sex, that after she was subsequently hired by Simpson Timber Company, that she was monitored, she was treated differently from other employees of Simpson Timber Company, she was counseled, she was met with, ...she was treated differently, and she was treated differently when she was fired. She was fired in retaliation of her filing the first complaint. 165

Tanner concluded that the facts of the case and the law compelled him to order Gilbertson reinstated at Simpson. Kremer alluded to the possibility that putting her back to work would "cause certain problems the court should be aware of..." At that point, Tanner interjected that perhaps putting her on the payroll would be sufficient. Kremer agreed. 166 Gilbertson was awarded "the penal sum of Nine Thousand Dollars (9,000)...
and back wages, including interest.\textsuperscript{167} The union thus ended the strike the following week on 3 December.

\textsuperscript{167} Supersedeas Bond, December 19, 1979, Box 80.
Chapter 7

CONCLUSION

What Tanner did not understand was that Simpson gave her the easiest job because they wanted her to succeed. It was in their best interest to avoid a second lawsuit. Even though Simpson management did not intend to fire her, Ayers, prompted by the true villain of the story, Hargens, wanted her fired in retaliation for what he believed Gilbertson had done to him. Ayers was determined to see her fail and in order to show documentation, he kept voluminous notes on her and kept calling her in for evaluations so that he would have proof she was not suitable for the job; Simpson believed him to their peril. Regardless of the apparent intentions of the corporation, Ayers was an employee of Simpson, as such under agency law, as Tanner established had existed when discussing Hargens' relationship to the company, this made Simpson responsible for Ayers' behavior as well.

The courts were instrumental at this time in redefining sexual harassment largely due to enlightened justices. Federal Judge Jack E. Tanner's liberal interpretation of Title VII further clarified what sex discrimination meant. More significantly, his questioning of Hargens' abusive and discriminatory behavior towards Gilbertson in her interview raised awareness not only among women as to what could be considered harassment and discrimination, but also within the EEOC. This is reflected in new guidelines published five months after this case was adjudicated. The Washington State

Human Rights Commission’s new policy stated in part: In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which alleged incidents occurred. The determination of the legality of a particular action will be made from the facts on a case by case basis.\textsuperscript{169}

As historian Linda Gordon notes, the definition of sexual harassment “has been evolving historically as women gain power to set higher standards of the way in which they expect to be treated.”\textsuperscript{170} Commenting on bust measurements, asking personal questions and requesting women to wave arms for purely prurient purposes would now be interpreted as sexual harassment. Neither Toni Lee Gilbertson nor the EEOC legal counsel understood that behavior as constituting sexual harassment when her initial claim was filed in April. However, Gilbertson understood that she had been discriminated against because of her gender. Angered that she was not treated equally, she filed a claim. By filing the claim on behalf of Gilbertson, the EEOC eventually placed the issue in front of Tanner who used the opportunity to clarify the law thereby expanding the rights of working women. He reminded Kremer that Congress and the Constitution “gave [judges] that power.”\textsuperscript{171} Gilbertson and other women who evoked Title VII in turn strengthened it.

\textsuperscript{169} Washington State Human Rights Commission, Policy on Sexual Harassment, May 15, 1980. Section B
\textsuperscript{170} Linda Gordon, “The Politics of Sexual Harassment,” \textit{Radical America}, p. 8
\textsuperscript{171} Hearing, 37.
Both Simpson and the EEOC, willingly or not, came to a new understanding regarding a new legality: the illegality of the sexual harassment of working women. The EEOC needed to be more aggressive in addressing the issue and Simpson soon learned it needed to be more aggressive in preventing its occurrence on the factory floor. In pursuing this case the EEOC furthered the rights of American women to a hostile-free work environment. Tanner’s ruling put men in positions of power, whether in unions or on boards of companies, on notice that they needed to listen to injured women. Tanner’s ruling forced Simpson to ensure the right of its women employees to equal treatment. This was a point Kremer sheepishly admitted to Tanner. He noted in court that Gilbertson’s claim against Simpson prompted it to take action and ensure compliance with Title VII in all of its branches.172

Women in Shelton and across the nation moved that much closer to a work environment free of sexual harassment which would not have been possible but for the struggles of women such as Toni Lee Gilbertson who dared to cross into the male sphere of lumber mill work in the 1960s and 1970s.

172 Ibid., 16.
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