

No Ifs, Ands Or Butts

By Kathleen Peratis

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In March, an American woman on the staff of the Office of the United Nations High Commissioner for Refugees accused the high commissioner himself of sexual harassment, saying he had “grabbed her behind.” The dashing and handsome high commissioner, Ruud Lubbers — a former Dutch prime minister who is currently charged with protecting 17 million refugees from violence, famine and sexual harassment — did not deny the act with which he was charged.

His defense, at least as explained in a letter to his staff widely circulated throughout the U.N., was that the woman had misunderstood his “friendly gestures.” In the course of the official investigation, four other women came forward and said the high commissioner had done the same to them. A few weeks ago, Kofi Annan, the secretary general of the U.N., “admonished” the high commissioner for his behavior but cleared him of sexual harassment charges.

There is probably not a single large company in the United States that would *not* have fired a manager for doing what Lubbers did. Most companies in Europe, and most other places for that matter, would have done what Annan did, which is pretty much nothing. Who is right, and why?

When it comes to sexual harassment — and much else, as we have seen so often in the recent past — Europe is from Mars and the United States is from Venus. The differences go much deeper than whether an ass-grabbing boss gets admonished or fired. The deeper difference lies in divergent histories, histories that we cannot escape. The evil that anti-harassment laws are meant to address in Europe and in the United States are not the same.

Kofi Annan did not exonerate Lubbers because banning harassment is a fringe Americanism unknown in the rest of the world — far from it. In most European countries, workers are protected from what is variously called “moral harassment” or “psychoterror” or “mobbing,” which includes all kinds of unfair treatment, from bullying and ridicule to insults and threats and degrading assignments, and it applies to all workers, irrespective of race, sex or anything else.

European worker protection emerged from the evil of feudalism and the bitter class resentments that bred and festered for hundreds of years. Now, laws provide that no worker has to endure insulting and degrading treatment, and no employer is entitled to dish it out. Every human is entitled to be treated with respect and dignity. This seems to be so even if the offended human would rather not be protected. France recently banned “dwarf-throwing” because it violates the human dignity of the dwarf. (The dwarf himself, suddenly deprived of a livelihood, objected, but to no effect.)

No such worker protection exists in the United States. I have frequent occasion (in my day job) to tell surprised workers seeking legal advice that employers have no generalized duty to be fair or to treat employees with decency or respect. There are few exceptions, such as being covered by a collective bargaining agreement or living in California, the most worker-friendly state in the union. Perhaps the most important exception is the legal ban on discrimination. Born of the civil-rights movement, these laws seek to eradicate the consequences of America's darkest evil: black slavery. The American commitment is to eradicate discrimination along with all badges of slavery.

So it has happened in the United States that if a practice is understood to be "discriminatory," and thus an obstacle to equality, there will be popular support for outlawing it. In the early 1970s, American feminists came up with the shocking proposition that "sexual harassment" of women workers was not a "private peccadillo," but a significant obstacle to women's achievement of equality for which employers should be held liable. By 1977, it was a recognized claim. In 2004, it is the claim that strikes more fear in the hearts of human resources directors than any other. No recent legal campaign for equality has had success as immediate and complete as the one against sexual harassment.

Like discrimination, sexual harassment is a nasty business and is taken very seriously by courts. But somehow it has gotten trivialized in the public arena. The media uncritically label everything from consensual sex to forcible rape as "sexual harassment," and stories appear regularly that make the claim look a bit stupid.

An absurd version of "sexual harassment" has gripped much of Corporate America. Human resources officials have become avenging angels, bent on driving sex out of the workplace. They zealously enforce workplace bans on even trivial "sexualized" conduct, conduct that has nothing to do with impeding equality in the workplace and that never would be characterized as illegal "sexual harassment" by any court.

Sexual jokes, remarks and teasing make up about half of the complaints received by the human resources departments of most major companies, and a high proportion of those complaints result in discipline. Europeans take this as yet another example of the well-known fact that Americans just cannot handle sex. I recently took the deposition of a supervisor who said: "You tell a woman she looks nice — that is sexual harassment." While corporations waste their time on such trivialities, the real issues of inequality in the workplace, which include sexual harassment, still get scant attention.

And what of Ruud Lubbers? He was for sure boorish and stupid, and actual touching is not trivial. But was it harmless, as he said, or did it constitute a real threat to gender equality? Was Kofi Annan right to have saved his behind, or should he have given him the boot? Depends on whether you are from Mars or Venus.

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