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# Why So Many Victims of Sexual Harassment Stay Silent, Still

By Kathleen Peratis

*Two decades after Anita Hill's testimony against Supreme Court nominee Clarence Thomas, women are still punished for confronting their harassers.*



AP Images

I'm a lawyer, a long-time practitioner of employment discrimination law, and a partner at Outten and Golden LLP in New York City. I guess I am what some people disparage by calling a "slick lawyer," a way to put down those who are passionate about justice. The work is hard and in Anita Hill's day even more so than today, claimants were so far ahead of the times that they were often unsuccessful in their legal claims. The law was so inhospitable in the 1990s and for many years thereafter that had Anita brought a legal claim—which she never did—it is likely that she would have lost in a court of law.

At about the same time as Anita Hill's claims exploded onto the public scene, my firm was involved in a very similar case, unsuccessful at the trial stage and then successful on appeal, which is why I am able to speak publicly about it. The details of this case give you a flavor of what the law was like in 1991. The claimant was a woman named Lisa Petrosino who worked for Bell Atlantic, which is now Verizon,

repairing telephone lines. She worked out of a garage in Staten Island with an all-male crew who tormented her every day. The banter among the men in the workplace was crude and misogynistic, which would have been bad enough for Lisa, but they also singled her out. They drew crude pictures of headless women, women with their legs spread in the air, pictures of men having sex with animals, and of her having sex with supervisors, and left them in terminal boxes she was assigned to work on so she would find them. She felt threatened by the depictions of dismembered women. She said, "It's not that I don't have a sense of humor, but this stuff is not funny." They ridiculed her appearance, they told her to "calm her big tits," they said she complained because she was "on the rag." Bell Atlantic not only did nothing to stop it, their supervisors joined in. Bell Atlantic's lawyers, one of whom was a woman, argued that none of this was illegal, it was just boys being boys. The federal district court judge agreed with them and dismissed the case.

The Supreme Court had decided years before that sexual harassment and hostile environment were illegal, but the prejudices of the trial judges remained. In Lisa's case, the trial judge saw no illegality. The appellate court finally reversed and sent the case back to the trial court for trial, and at that point, the case was settled. So the wrong was righted, in a way, but only in a way. Like Anita, Lisa suffered greatly along that road to justice. Some women are transformed by the vindication of a legal victory but some find the process totally debilitating and demoralizing. Women who go public still get punished. It's a sad reality, but some of my happiest clients are the ones who settled for less than their claim was worth and even the ones who decided not to complain at all. Women were punished in 1991, they were punished in 2000, and the sad reality is they are punished still today. I was recently retained by a woman who works at a major education institution in New York City. She was having a business dinner with her boss and he put her hand on his crotch, on his erect penis, freaking her out. She will probably sue and it will be harder on her than she can imagine. These cases do happen less now than they used to but when it happens to you, that is cold comfort.

But let me tell you a little bit about what is actually illegal, then and now. The definition of an illegal hostile environment has not changed—it is an environment where there is an atmosphere of hostility and misogyny that is either severe or pervasive. These words are subject to interpretation, of course, but in most courts, "severe" means that the bad actor, as we call him in my business, has engaged in at least some unwanted or unwelcome touching. I will explain the "unwanted" part in a minute. As for the "touching," it doesn't have to be rape, but to have a really good case for hostile environment discrimination it has to be serious. In the absence of unwanted touching, the claimant has to show that the bad actions were pervasive, and that means a pattern of incidents. How many? No one can quantify what is enough and as in any legal case, it will depend on many things, such as how the claimant and the other witnesses come across to this particular judge or jury.

I mention that the conduct has to be "unwelcome." This is very important because it provides defendants with the opportunity to blame the victim by saying she was a willing participant. It is the

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"You asked for it" defense. "Why did you send your boss birthday cards or light-hearted emails, if you were bothered by his conduct?" "Why did you get drunk at the holiday party?" "Why did you let your boss come to your room when you were traveling?" "Why did you tell all those off-color jokes?" "Why did you wear a skirt so short, if you're not a slut?" "Why didn't you quit?"

Because this road is so tough, I often hear clients say, "Why me? Why did this have to happen to me? Why has my life been turned upside down by this creep who had no right to do this to me?" And it is unfair. But the law has been transformed by the many women who have bravely stepped up and paved the way for the rest of us. That is what Anita did.

*This post is adapted from [I Still Believe Anita Hill: Three Generations Discuss the Legacies of Speaking Truth to Power](#).*

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