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Feminism, Work and Sex: Returning to the Gates
by Carlin Meyer¹

Many of the children I taught today
were hungry. The strong men who are
their fathers hang out in the bar
across from the locked gates
of the mill, just as if they were still
laborers with lunch pails, released
weary and dirty at the shift change.

Suppose you were one of them?

..... You'd talk mean
to your wife who would talk mean back,
your kids grow impatient and arbitrary,
way out of line.

Closed Mill, Maggie Anderson²

Introduction

When I received the call for submission of papers for today's conference, I had been thinking for quite some time about the process which lead me, after 13 years of practicing

¹Associate Professor of Law, New York Law School. My thanks to Kate McLeod and Joe Molinari of the New York Law School library staff and to my research assistant Miriam Foley, for their willing, excellent and much-needed help.

²THE PITTSBURGH BOOK OF CONTEMPORARY AMERICAN POETRY 21(Ed Ochester, Peter Oresick, eds. 1993).

employment law, to turn as an academic to writing primarily about women's sexuality: about pornography, prostitution and masculinity. This conference offered a perfect opportunity to launch what is both a self-examination and an examination of the direction feminism has taken in the 1980's and '90's.

This summer's conference - for which we own thanks, once again, to the Herculean labors of Martha Fineman and her assistant, Cynthia Hewitt - asks us to examine the ways in which feminism's focus on sexuality has thus far shaped feminist theory. I want to ask two corollary questions: first, how *feminist theory* has shaped our *approach* to sexuality; and second, how the focus on sexuality has - as thus shaped - affected *feminist practice*. My thesis, in brief, is that our overemphasis on sexuality, both in selection of topics for inquiry, and in the manner and slant of our inquiry, has led to a dangerous underemphasis on economic, institutional and structural forces, and has often rendered invisible critical issues of race and class. It has, in addition, by positing sex as *the* great divide, harmed feminist practice; alienating important allies, creating alliances with enemies, and misdirecting energies by identifying male sexual aggressors as feminism's main enemies. I propose to illustrate this thesis by exploring the role of sexual harassment in the lives of working women. And because I have chosen the Stroh's Swedish Bikini Team case by which to embark on my inquiry, I will also try to show the way in which our claims about media imagery's role in the construction of women's sexuality - that is, our analysis of advertising's textual aspects - reflects a failure to address some of the foundations that lie beneath.

Two caveats are in order. There are many wonderful feminists - both female and male - who have avoided the errors I am about to describe. I critique what I believe is the dominant

trend, particularly in legal academia, aspects of which are visible in lots of feminist writing and practice, including mine. And although I take aim at feminism's current enchantment with images and texts, I do not mean to denigrate the importance of semiotic deconstruction, or of cultural and academic critique and reconstruction. We do need to look at texts, signs, symbols and alter the images our culture forces us to consume. But for a variety of reasons, we have gone too far - so that today we fail to complement textual deconstruction with institutional challenge, and have been deflected to a significant extent from making our goals more dramatically redistributive.

Material Bases and Working Girls

When our women go crazy, they're scared there won't be
enough meat in the house. They keep asking
but how will we eat? Who will cook? Will there be enough?
When Our Women Go Crazy, Julia Kasdorf³

Indisputably, sexuality has been a central mode of social control, especially control of women, and must hence be addressed by all feminists seeking understanding or reform.⁴ And feminism's focus on it was initially a necessary corrective to the failure of progressive academia to address the particularities of sexism - that is, the failure of mono-causal theories like Marxism adequately to factor in gender; and of social construction theorists like Foucault to comprehend

³PITTSBURGH POETRY, *supra* note 2, at 120.

⁴cite Sander Gilman, feminist work, foucault, my porn piece etc.

the way in which the complex institutional mechanisms of social control have depended on it.⁵ Yet in the 1990s, our focus on the sexual seems in danger of overwhelming us, and the particular form it has often taken has led us astray.

Despite frequent repetition of statistics indicating that two thirds or more of working women report having been sexually harassed at work,⁶ it does not follow that sexual harassment is the issue of most concern to working women. Take "Marie",⁷ seamstress and mother of six, who sews clothing at home, sometimes until midnight, at piecework rates of as little as \$1.20 per hour *before* paying for sewing machines, needles and electricity.⁸ Her counterparts in factory sweatshops manufacture garments in dank, windowless rooms where the temperature often rises above 90°, amid the constant thunderous noise of sewing machines.⁹ Violations of

⁵cite the feminist Foucault critics (as well as Foucault - V. 1, Hist. of Sexuality.)

⁶cite early surveys.

⁷Marie is the pseudonym for a Miami woman who came to the United States from Haiti in 1980, and whose story was told at hearings concerning industrial homework in the garment industry held in 1989 by the United States Department of Labor. *Testimony of ILGWU President Jay Mazur at Labor Department Hearing on Homework in the Women's Apparel Industry*, 63 BNA DAILY LABOR REPORT, April 4, 1989, at D-1.

⁸Her story is mirrored by those of other immigrants from China, Korea, Mexico and Salvador. *Id.* This is not even to mention the conditions of the women who perform similar labor in those countries, and others. The garment and textile industries have increasingly turned to overseas labor. [cites] *See infra* at note [] for discussion of garment labor in sweatshops.

⁹Susan Headden, *Made in the U.S.A.*, U.S. NEWS AND WORLD REPORT, Nov. 22, 1993, at 48. Headden's excellent report documents the horrendous conditions, the sub-minimum wages paid, the child labor violations, lack of benefits, and miserable treatment of the largely female (and child) domestic garment labor force in cities throughout the United States, especially Manhattan, Los Angeles and San Francisco.

wage, hour, and safety laws abound.¹⁰

Or take Lou-Ann,¹¹ a single black mother of three, who labors nine hours a day on a poultry assembly line removing innards from chicken at a rate of *ninety-one chickens-per-minute*, amid grinding noise and feather-dust filled air.¹² She and her mostly female co-workers have among the highest incidence of serious repetitive motion injury in the United States workforce.¹³ She earned \$5.65 per hour in 1990;¹⁴ and the fabulous pension of \$7.00 per month for each year of service.¹⁵ While her plant has thus far been lucky, in 1991, a fire at

¹⁰*Id.* Safety violations are precisely those that led to the 1911 Triangle Shirt Waist factory fire, in which 154 women leaped to their deaths or were burned alive due, among other things to blocked fire exits. Ruth Heifetz, *Women, Lead, and Reproductive Hazards*, in *DYING FOR WORK: WORKERS' SAFETY AND HEALTH IN TWENTIETH-CENTURY AMERICA* 160 (David Rosner and Gerald Markowitz, eds. 1989).

¹¹"Lou-Ann" is my own pseudonym for a composite profile of a Lewiston, South Carolina, Purdue poultry worker, and is based on interviews of women aired on 20/20 in February 1990. 20/20: Chicken at Any Price? (ABC Television, broadcast, Feb. 16, 1990.)

¹²With a workforce of 2800, the plant processes 425,000 chickens per day. *Supra note* .

¹³Incidence of repetitive motion injury in the meat-packing and garment industries is 56%. BNA DAILY LABOR REPORT, Feb. 15, 1994. Lou-Ann's wrist/hand pain is so great that she is often unable to comb her children's hair, and it the wrist and hand pain is so great; it takes both her hands for her to turn her ignition key, and there are many things she will never again be able to do, despite two operations. cite Many women suffer urinary tract and kidney infections as well because they are not permitted to leave the line to urinate unless they are first relieved by another worker. Other injuries at her plant have been worse: one women's breast was caught in a machine; a young man's thumb was torn off his first day on the line. Indeed, temperatures are so cold (to reduce contamination of the chickens) that workers suffer deep gashes without feeling them. 20/20, *supra note* .

¹⁴She nets roughly 15 cents on a 3 lb. chicken that sells for over \$3.00. 20/20, *supra note*

¹⁵That will amount to a bountiful \$140.00/month in the year 2010, if she can stand to work that long in a place in which there is a large workforce turnover *every two weeks!* *Id.* Other benefits include free ibuprofen and vitamins for her wrist pain. *Supra note* .

a North Carolina plant killed 25 workers,¹⁶ while 1992, one in Texas injured 21 workers.¹⁷

Marie and Lou-Ann are lucky: they at least have jobs. Nearly four million other women are unemployed.¹⁸ Nearly 75% of women who work full-time earn less than \$20,000.¹⁹ In 1990, 46% of working women were employed in low-wage, few-benefits, service and administrative support jobs such as secretaries, waitresses, and health aides;²⁰ they were in 1988 a mere 3% of mechanics and repairers and 2% of construction workers.²¹ Women of color are often temporary or seasonal workers, frequently earning below the pitiful \$10,500 for a family of four which our government generously admits to be poverty.²² Indeed, forty years after *BROWN V. BOARD OF ED.*, the average salary of an African-American female college

¹⁶Imperial Foods poultry plant in Hamlet, N. Carolina. *Id.*

¹⁷The latter fire was at Pilgrim's Pride chicken in Mount Pleasant, Texas. In the Hamlet plant, fire exits were padlocked to keep the workers from stealing. See, Jon Jefferson, *Dying for Work*, ABA JOURNAL, Jan. 1993, at 46 and *Job Safety: A Belated Crackdown*, TIME, Jan. 20, 1992, at 25.

¹⁸These numbers are widely admitted to be far lower than the true numbers, because they only count women the Bureau of Labor Statistics views as still actively seeking work. In addition, they do not include the vast numbers of women who are underemployed (working few hours each day or fewer days each week than they wish.) Robert D. Hershey Jr., *U.S. Survey Underestimated the Jobless Rate for Women*, NEW YORK TIMES, Nov. 17, 1993, at A1.

¹⁹SUSAN FALUDI, *BACKLASH* (1991) at . This figure compares with 37% for full-time working men.

²⁰THE AMERICAN WOMAN 1992-93 (Paula Ries and Anne J. Stone, eds. 1992) at . See also, *NAFE Report Finds Wide Disparities Persist Between Men, Women in Workforce*, BNA DAILY LABOR REPORT, June 15, 1993, at D-15 (women account for 93% of nursing and bookkeeping, yet male nurses earn average of 10% more and male bookkeepers, 16% more; in male-dominated industries such as construction and motor vehicle operation, women earn 75% of what men do. And men are disproportionately at the higher levels in all fields.)

²¹United States Department of Labor Women's Bureau, 1992 at .

²²[cite]

graduate in a full-time position is less than that of a white male high-school dropout.²³

A large proportion of women workers are single mothers; even those who have partners are typically almost entirely responsible for the added jobs of home and childcare.²⁴ A growing number are contingent workers who lack benefits such as health insurance, pensions, and coverage by many laws including, for instance, the Family and Medical Leave Act.²⁵ Women are disproportionately underemployed, and disproportionately subject to certain serious workplace hazards when they are employed: we are far more likely to suffer from repetitive motion injury, disabling stress and burnout, and murder on the job.²⁶

Failure to give adequate attention to these subjects not only means that women's situations may not be adequately analyzed or comprehended, but sends to the public, to working women, and to our colleagues a message about their relative importance to feminism. A survey

²³THE AMERICAN WOMAN 1990-91 (SARA E. RIX ED. 1990) at .

²⁴cites (I think the figure hovers at 90% still.)

²⁵See Karen Judd and Sandy Morales Pope, *the New Job Squeeze: Women pushed into part-time work*, MS MAGAZINE, May/June 1994, at 86 (by year 2000, contingent workers - now 1/4 to 1/3 of the workforce, will make up 50%; an estimated 2/3rds of contingent workers are women.) Contingent workers rarely have benefits such as health insurance coverage or pensions. Their numbers are bound to grow, because employers save not only up to 40% on benefits, but on administrative costs, plant and office space, salary (part-timers can ear 40% less than full-times), and flexibility. *Id.*

²⁶Nussbaum Says Employers Often Deny, Ignore Women's Workplace Health, Safety Concerns, BNA DAILY LABOR REPORT, Nov. 16, 1993, at D-7. Underemployed typically refers to those who wish to work more and are unable to find jobs or who are unable to find jobs that utilize their skills and expertise. *Id.*, quoting Linda Ray Murray, director of the Winfield Moody Medical Center in Chicago, who argues that workplace hazards are greater for women because of gender, and that unemployment and underemployment are the "number one 'occupational disease[s]'". See also, *Sprains, Strains Lead Workplace Injury Types*, BNA DAILY LABOR REPORT, Apr. 28, 1994, at D-30 (women account for 65% of repetitive motion injuries in 1992).

of the publications since 1980 of myself and my law colleagues reveals a scant four law review or journal articles addressed to Marie's situation - that is, to sweatshops, homework, or conditions in the garment industry.²⁷ And, excluding the flurry of writing concerning the JOHNSON CONTROLS "fetal protection" case, only a smattering of articles appear under the headings of women's occupational safety and health,²⁸ pensions and health benefits for women,²⁹ the contingent workforce, or related subjects. While about seventy-four articles since 1980 address equal pay/comparable worth, during the same years law reviews published at least *one hundred seventeen* articles on workplace sexual harassment.³⁰

²⁷Survey by author/ New York Law School librarian Joe Molinari of Infotrack computer database. Infotrack begins in 1980, and does not capture every single law review type publication so these figures may not be perfectly accurate. But they do provide a suggestive picture. I have excluded all non-academic journals, and limited my survey to American reviews and journals. The four articles include: Leo L. Lam, *Designer duty: extending liability to manufacturers for violations of labor standards in garment industry sweatshops*, 141 U. PENN. L. REV. 623 (1992); Dennis Hayashi, *Preventing human rights abuses in the U.S. garment industry: a proposed amendment to the Fair Labor Standards Act*, 17 YALE J. OF INTL. L. 195 (1992); Barbara E. Koh, *Alterations needed: a study of the disjunction between the legal scheme and Chinatown garment workers*, 36 STANF. L. REV. 825 (1984); and Laura Gonshorek, *Crisis after Dole: the plight of modern homeworkers (Case Note)*, 8 HOFSTRA LAB. L. J. 167 (1990). Though not in a legal publication, one explicitly feminist exploration of homework is Boris, *Homework and Women's Rights: The Case of the Vermont Knitters, 1980-1985*, 13 SIGNS 98 (1987).

²⁸Fifty articles addressed INTERNATIONAL UNION, UAW v. JOHNSON CONTROLS, 499 U.S. 187 (1991) and related "fetal-protection" issues; hardly any addressed repetitive motion injury, stress or other prominent health issues for working women. *Author's/Library survey*.

²⁹Sen. Howard Metzenbaum recently introduced legislation to revamp the pension system, noting that women are especially vulnerable to having inadequate retirement savings because of lower earnings and lesser likelihood of pension coverage. *Metzenbaum Proposes Restructuring of Pension System in Bill of Rights*, BNA DAILY LABOR REPORT, May 13, 1994, at A-3.

³⁰Author/NYLS library staff survey. A survey of six of the more elite journals revealed that more than a third of the article addressing working women concern sexual harassment. Those journals include the Harvard Law Review, the Yale Law Journal, the Columbia Law Review, the Stanford Law Review, the Texas Law Review and the University of Chicago Law Review

A survey of articles related to women's employment in six of the earlier established feminist legal publications - the Harvard Women's Law Journal, the Yale Journal of Law & Feminism, the Texas Journal of Women and the Law, the Berkeley Women's Law Journal, the Wisconsin Women's Law Journal, and the Rutgers Women's Rights Law Reporter³¹ - reveals a similar pattern: fourteen articles concern workplace sexual harassment, as against twenty-one on all other issues involving working women.³²

These figures may present a distorted picture that skews to the sexual because in law, unlike other disciplines, students determine publication content, and our students often seem to follow the lead of *A Current Affair*.³³ But they suggest that the dominant focus on the sexual has negatively impacted selection of issues for exposition and exploration at least by legal

(the latter published seven of the articles on pay equity, and only one on sexual harassment, reflecting - most probably - its economic orientation.) Eleven of twenty-eight concerned sexual harassment, and ten of the seventeen on other subjects concerned comparable worth or pay equity. All but one of those ten were written before 1986. *Id.* There are notable exceptions, such as Reva Siegle's article this year in the Yale Law Journal concerning household labor in the nineteenth century, Reva B. Siegle, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L. J. 1073 (1994).

³¹The WRLR is the oldest of these journals, and has the best record of covering workplace issues beyond sexual harassment.

³²Eleven concern pay equity (eight of them in the Women's Rights Law Reporter - the oldest of the feminist journals); another six articles concerned occupational segregation by sex. None concerned trends in employment which specially impact women, including the growing contingent workforce, none concerned women and unemployment, one addressed women in unions, one address welfare/work (although this has also been addressed in mainstream journals by Lucie White and Lucy Williams), one related to family leave and none concerning the status or situation of domestic workers (despite the Zoe Baird fiasco and the Congressional proposals regarding social security that have flowed from it). Mary Becker has written insightfully on women and social security benefits, [cite] but work like hers is rare. *Author's and NYLS Library Survey*. And, during the same period, the cited feminist journals published nine articles on pornography, while the elite journals surveyed *supra* note published nineteen on porn.

³³Fox 5 (WNYW).

academics, and I suspect more widely. Many of us have shied away from less sexy and hence less press-worthy, but arguably more or at least *as* important issues.

Sexual harassment is an important workplace issue. Indeed, as I will describe below, it is one of the tools most frequently deployed against women who seek to escape low-paid pink collar employment by entering traditionally male - and especially so-called non-traditional³⁴ - occupations. But sexual harassment is hardly the full explanation for ghettoization, underemployment, and women's status as the fastest growing group within the rapidly growing contingent workforce.

Our Analysis Can Get Better: Sexual Harassment and the Swedish Bikini Team

When you
tell me the story, you've changed the point of view. No longer
victim, you've become a witness to the accident, to the slaughter
of the Indians, to the years of food stamps and lousy jobs.....

The Accident, Robin Becker³⁵

It is not only that feminist subject matter selection is skewed. For by the story we tell about sexual subject matter - for instance, as it relates to the workplace, our tale of sexual

³⁴The term usually refers to blue collar occupations such as construction and mining, uniformed services, and certain sorts of industrial manufacturing employment, in which women's numbers have been few. William Goodman, Stephen Antczak & Laura Freeman, *Women and jobs in recessions: 1969-92*, MONTHLY LABOR REVIEW, July 1993, at 26. And the numbers can be smaller than they at first appear. For example, while women make up 2% of the construction trades, more than 85% of them perform office work. The same is true for the 14% women who work in mining. *Id.*

³⁵PITTSBURGH POETRY, *supra* note 2, at 27. The poem describes the transformation in point of view by the victim of an accident in which an uninsured Native American man slammed her from behind and, because she is on Indian land, has no legal recourse. The victim is able to see the complexities which underlie what she might otherwise view as simply bad behavior.

aggression and harassment by hostile men, heavily influenced by media imagery to view female co-workers primarily as sex objects - we misrepresent the causes of gender inequity, we thereby shrink our field of vision in ways that render crucial facts invisible, create deep chasms between male and female co-workers, and make it extremely difficult to find common ground among them along other fault-lines (race, class, and common workplace status or concerns). I use the Stroh's sexual harassment case as emblematic of these problems.

In the 1991 Strohs case, eight women who had newly penetrated (forgive the word choice) the traditionally all-male world of beer-making (one plaintiff was Stroh's first female forklift operator; another its first female journeyman (sic)), were viciously harassed to they point that all ultimately left the plant.³⁶ They sued, naming thirty-two male workers who had allegedly harassed them.³⁷ Let me describe in a bit more detail the allegations of the Stroh's plaintiffs, lest your picture from media exposure remain one of pin-ups and specifically sexual mistreatment. Their complaints detail extremes of the types of treatment all too typically endured and sometimes, but not always, challenged (many women quit instead) by women

³⁶Stroh's has for over a hundred years been making beers such as Stroh's, Schlitz, Pabst, and Hamm's, aimed at a blue collar market. Beer is made at the Minnesota plant where the women complainants worked - a red-brick affair operating round-the-clock in a stridently working class locale in downtown Twin Cities. Noreen O'Leary, *Trouble Brewing: Stroh Brewery SExual Harassment Case Raises Commercial Free Speech Questions*, ADWEEK, Feb. 22, 1993, at 20.

³⁷In re Stroh Litigation, Minn. Dist. Ct., No. C1-92-1336, 12/1/93; [complaints of Jean Keopple, Diane Novotny-Young, Lana Haston, Tammy Meyers, Lisa Meagher, District Court, Second Judicial District, (Ramsey, Minnesota), filed 4/16/91; and Dianne Chaves, Antonia Felipe, and Beth Gruber, District Court, Second Judicial District, (Ramsey, Minnesota), filed 1/17/92. The case was settled December 1, 1993; the terms are confidential. See, BNA DAILY LABOR REPORT, Dec. 2, 1993, at D-8. See also, *Stroh settles "bikini team" bias lawsuit*, HOUSTON CHRONICLE, Dec. 2, 1993, at 25.

entering non-traditional workplaces: they were threatened, assaulted, their machinery was jammed or filled with noxious substances, they were told women couldn't hold certain jobs and that they should take low-paid jobs elsewhere or stay home; a variety of epithets - racial, ethnic and sexual - were levelled at them, slogans were scrawled on pin-ups left in their work areas.³⁸ It was a cruel and successful campaign to shut the door to women seeking better paid blue collar jobs.

Jean Keopple, Stroh's first female journeyman-machinist, had excrement-like material, hairspray, beer, pipes and other substances used to render her tools and machine unusable. She was physically threatened by having a fork lift driven at her, and told she was over-reacting when she complained.³⁹ Diane Novotny-Young was constantly told that women couldn't and wouldn't be allowed to do certain jobs, assaulted by one worker and told she could lose her job if she defended herself, and retaliated against in job assignments and other ways for complaining. Lana Haston's tool box was regularly messed up and the air repeatedly let out of her car tires. Haston, a Native American woman who worked in the machine shop, was constantly referred to as "a fucking Indian," "squaw," and "fucking nigger lover" (she had an African-American friend), had derogatory comments made about her Native American heritage including references to three native American women killed in Minneapolis, was given an extra-heavy workload after she injured her back and requested light duty, and was intentionally exposed by a fellow worker to toxic chemicals. Antonia Felipe was repeatedly referred to as

³⁸*Id.*

³⁹All of the information that follows has been taken from allegations in plaintiffs' sworn complaints. Since the matter was settled without trial, no judicial finding of fact were made.

a "bitch", a "dumb, Mexican spic" who didn't "belong here". She, too, had her machinery tampered with. All the women were told in words and threatening deeds that they didn't belong,⁴⁰ were told by supervisors that they couldn't and wouldn't be allowed to work certain jobs such as "warehouse" or "oiler" jobs;⁴¹ were subjected to racial, ethnic and sexual epithets and commentary, and were excluded from workplace training and conversation. One was subjected to screaming tantrums from her boss when she complained;⁴² others' complaints simply went unanswered.⁴³

The specifically sexual aspects of the harassment ranged from crass verbal abuse to assault: Keopple was said to "fuck pigs" and "suck black dick", had rumors spread about her sexual activities with co-workers and called variously a "cow," "fresh meat" and "worn out"; Novotny-Young was called "Miss Fancy Pants", whistled at and cat-called; overheard a male co-worker loudly saying she "drives that forklift around so much because she likes to feel her boobs bounce up and down." Lisa Meagher's buttocks were slapped; male co-workers played jokes on her using condoms, barraged her with cat-calls, and freely dispensed sexual comments such as that she had the "nicest ass I've seen in a long time". Beth Gruber was repeatedly asked

⁴⁰Beth Gruber was told to "go home and have babies", others were told to stay home or to get "\$5.00 a day jobs" like other women.

⁴¹Diane Novotny-Young, for example, was told by management that women wouldn't be allowed in "the warehouse", and by a co-worker that women would work there only "over my dead body." Another told her "women can't handle the work and men won't be able to concentrate if women are allowed in", while another posited that "women can't drive" and "you're a good driver for a woman". NOVOTNY-YOUNG complaint, *supra* note .

⁴²Novotny-Young complaint, *supra* note .

⁴³Age was also a mode of attack: Koepple, 39, was told she was old and worn out; and Haston, 36, that she was "too old to make a career change here".

to give "blow jobs", to "suck beer foam from the pubic hair of a male co-worker" who obligingly displayed it, was grabbed and kissed, stroked, rubbed and touched on breasts, buttocks, arms, mouth and head by various male employees, and subjected to graphic sexual comments like "suck me off", "do you swallow?", "can you get it all in your mouth?", "are Black men better in bed?", "why don't you try it with me?" Antonia Felipe had rumors spread about supposed sex acts with co-workers, was grabbed and "humped" by a male co-worker while others watched. Male employees were overheard rating the women's bodies; the lunchroom and locker room were replete with graffiti-cover sexually explicit calendars and pin-ups.

The Stroh's case quickly became known, not primarily for the egregious treatment the women received, but for the role played by Stroh's crass Swedish Bikini Team advertising campaign in fomenting sexual harassment.⁴⁴ The charge highlighted by the media,⁴⁵ the one for which the case has become known and written about, was that Stroh's Old Milwaukee beer advertisements fostered an atmosphere in which sexual harassment thrived and was implicitly condoned.⁴⁶ The ads in question featured the "Swedish Bikini Team," a group of bikini-clad

⁴⁴Indeed, many mistakenly believe that the plaintiffs sought suppression of the advertisements in their claims for relief. In fact, they did not, and hence the case did not even really raise the much talked of First Amendment issues; rather, the issue of whether they could be plead in order to suggest corporate responsibility for the harassment became an evidentiary one; the judge in the case rule that only those items actually displayed in the workplace were sufficiently relevant to be introduced. [cite]

⁴⁵The NEW YORK TIMES, WALL STREET JOURNAL, WASHINGTON POSTE, TIME, DER SPIEGE 1, REUTERS, and the BBC, as well as *Larry King*, *Maury Povich*, *Entertainment Tonight* and *A Current Affair* covered the Swedish Bikini Team/ First Amendment aspects of the story, as did newspapers and news media all across the country. I read more than 200 pages of news stories myself; all focussed almost exclusively on the Bikini Team issue.

⁴⁶While the charge was not made explicit in the complaint, which did not seek to have the advertisements enjoined, plaintiff's attorney highlighted the ads, and they became the center of media and scholarly discussion of the case. [cite *supra* to complaint; and to several of the

barbie-doll bodied women in platinum wigs parachuted into sites in which men are engaging in stereotypically male bonding activities (camping, fishing, and, of course, drinking beer).⁴⁷ The Bikini team women appear bearing cases of Old Milwaukee just when the men are posing (per a longstanding Old Milwaukee ad theme) "that it can't get any better than this;" the new ad suggests that the Team's appearance can, after all, make it better. The Bikini Team became popular for a time, posing for an eight page nude spread in (and the cover of) PLAYBOY.⁴⁸ For a time, the Team established a "900" telephone number as well.⁴⁹

In addition, sexist posters were displayed at the Minneapolis plant: one featuring a topless woman with the heading "Homegrown in MinneStrohta", another explaining that "Beer is Better Than Women [because]..."⁵⁰ Together, the ads and posters were billed as contributing

articles or to other notes which cite them.]

⁴⁷Most of the incidents constituting the harassment apparently occurred before the airing of the Swedish Bikini Team ads in spring 1991. O'Leary, *supra* note .

⁴⁸See PLAYBOY, Jan. 1991, cover and at 78-85.

⁴⁹See Cooper, *supra* note , and Rorie Sherman, *Stroh's Case Plaintiffs Take Case to Public*, NATIONAL LAW JOURN. Dec. 30, 1991, at 7. Stroh's and its ad agency claimed that the Bikini Team ads were so crass as to be "pure parody," with their obviously identical wigs, and ridiculous outfits, but their popularity appears to have had more to do with sex than with spoof. Indeed, although it is beyond the scope of this paper to explore the issue, it would appear that a veneer of self-mockery is one of the most common ways to get around moral strictures against public displays of sex.

⁵⁰The poster posits that beer is better than women because..."you can enjoy a beer all month long; Beer stains wash out; When your beer goes flat you toss it; Beer labels come off without a fight; After you have a beer the bottle is still worth ten cents; If you pour it right you'll always get good head; A beer always goes down easy; You can share a beer with your friends; you always know you're the first one to pop beer; A beer is always wet; Beer doesn't demand equality; A frigid beer is a good beer; You don't have to wash a beer before it tastes good; etc. See complaint of Jean Keopple, *supra* note .

Those of us inclined to view the "Beer is better" poster as evidence of the incurable sexual vulgarity of masculine humor might first take a look at a book currently on the market

significantly to the harassment the Stroh's women endured.

It may well be, as plaintiffs attorney and others have argued, that Stroh's sexist advertisements encouraged a "corporate culture" of sexual harassment which fostered or implicitly condoned the actions of the Stroh's men.⁵¹ And it is surely the case that men at Stroh's, not only the plant workers but plant managers and executives, acted in reprehensible ways. But to analyze what went on as primarily about men treating women as sexual objects or about the responsibility of Stroh's sexually objectifying depiction of women for that treatment is to misunderstand the Stroh's story.

It is a story, first, about women seeking entry into previously male domains, especially blue collar trades; about the hostile treatment women encounter - sexual, but racial, ethnic and simply vicious⁵² - virtually every time they seek to enter such domains (irrespective of the particular corporate culture or advertising campaign.) True, often the harassment is sexual, at least partly so. At Eveleth Mines - an iron mine and taconite processing plant - women had to

entitled WHY CUCUMBERS ARE BETTER THAN MEN, which features humor in the same vein but from an opposite (female) standpoint (to paraphrase from memory: e.g. "with cucumbers, you never have to sleep in the wet spot...", "cucumbers never get soft", "with cucumbers, you can choose the size," etc.) [cite]

⁵¹*Around the Nation*, CHICAGO DAILY LAW BULLETIN, Nov. 8, 1993 (quoting plaintiffs). See also, Stephanie Gutmann, *Whining for Dollars*, PLAYBOY, Nov. 1993, at 57 (quoting plaintiffs' attorney Lori Peterson.)

⁵²Indeed, the common pattern is one of similar use of multiple forms of harassment: in a recently settled case in which four probation officers sued King County, Washington, the women were subjected to racial as well as gender-based harassment and retaliation. *COLLIER V. KING COUNTY*, Wash. Super. Ct., No. 94-2-03952-1, 4/19/94. One male, a supervisor who supported the complainants, sued also.

work in a hostile sexual environment.⁵³ But, equally important, the harassment also entails unequal treatment in job assignment, promotions, and the like.⁵⁴ In Jacksonville shipyards, the black female plaintiff endured not only sexual harassment, but racial harassment: Robinson had her boss take pains to point out that some of her co-workers were members of the Klu Klux Klan, and endured co-workers commenting that "women are only fit company for something that howls, "there's nothing worse than having to work around women," and "black women taste like sardines."⁵⁵ In police departments,⁵⁶ correctional facilities,⁵⁷ fire departments,⁵⁸ on

⁵³They worked surrounded by pin-ups of nude centerfolds, and were daily subjected to offensive graffiti, lewd remarks, and demeaning references.

⁵⁴JENSON V. EVELETH, 824 F. SUPP. 847 (D.C. MINN. 1993). The women also alleged, but were not victorious in, claims of unequal access to training and discriminatory hiring and overtime allocation. (The court rejected Eveleth's defense that the sexual harassment could not have been unwelcome because the women cursed.) When the women initially sued, there were 65 females of 800 in the mining operation; by the time of the decision, women represented 22 or 500 employees. Larry Oakes & Jill Hodges, *Mining New Legal Ground*, MINNESOTA STAR TRIBUNE, May 19, 1993, at 1D.

⁵⁵LOIS ROBINSON V. JACKSONVILLE SHIPYARDS, INC., 760 F. SUPP. 1486, 1498, 1516 (MIDDLE DIST. FLA. 1991).

⁵⁶Almost two-thirds of Florida's female police officers reported being sexually harassed on the job, while a survey of sexual harassment in Los Angeles singled out the police department as having "more extreme cases of harassment" than elsewhere. See, *Nearly Two-Thirds of Females in Florida Police Department Report Sexual Harassment*, BNA Daily Labor Report, Dec. 16, 1993, at A-8. *More than One-Third of Los Angeles City Female Workers Report Sex Harassment*, BNA DAILY LABOR REPORT, Sept. 25, 1992, at A-10. See also e.g. COLLINS V. CITY OF SAN DIEGO, 46 Empl. Prac. Dec. (CCH) 951 (9th Cir. 1988) (individual complaint against San Diego police department.)

⁵⁷See Dana Wilkie, *Prison Unit Tops in Sex Complaints*, SAN DIEGO UNION-TRIBUNE, Oct. 15, 1992, at A-3 (800 sexual harassment complaints lodge against California Dept. of Corrections since mid-1989, 35 times the average number against large state agencies), and e.g. MINTEER V. AUGER, 46 Emp. Prac. Dec. (CCH) 937 (8th Cir. 1988) (female correction officer harassed at Iowa Men's Reformatory); EASTWOOD V. DEPT. OF CORRECTIONS OF OKLAHOMA, 846 F.2d 627 (10th Cir. 1988) (sexual harassment including publication of offensive drawings of plaintiff, coercive inquiries about her sex life, insulting and offensive remarks about her.)

construction sites,⁵⁹ in auto dealerships and plants,⁶⁰ women report experiencing specifically *sexual* harassment as only one of a panoply of tactics use to stigmatize, terrorize, control and exclude them.⁶¹

Focussing solely on the sexual is problematic. First, and especially when linked to advertising's portrayals of women - it suggests that the *reason* men sexually harass women in such workplaces has primarily to do with men's (media-influenced) view of women as sexual targets and sex objects. Patriarchal constitution of women as sex objects surely has something to do with the treatment of the Stroh's women. But there is a great deal more to it. Moreover, women's constitution as sex objects is accomplished in far more complex ways than by crassly sexist advertising campaigns. While advertising plays a central role in influencing our impressions of and even our beliefs about many things, it is but one such influence, one which

⁵⁸See, *City Violated Fourteenth Amendment by Inaction on Sexual Harassment Claim*, BNA DAILY LABOR REPT., Sept. 12, 1986 (reciting harassment of female firefighter); cite Berkman articles

⁵⁹cite Non-trad. emp. for women stuff; see e.g. HALL V. GUS CONSTR. CO., 46 Empl. Prac. Dec. (CCH) 905 (8th Cir. 1988) (female "flag person", single mother, subjected to verbal abuse as well as unequal and vicious treatment by co-workers).

⁶⁰See, e.g. *Ford Motor Co. Ordered to Reinstate Women Who Complained of Harassment*, BNA DAILY LABOR REPT., Aug. 12, 1991, at A-2 (first woman in department subjected to offensive remarks, drawing and behavior); HUDDLESTON V. ROGER DEAN CHEVROLET, INC., 845 F.2d 900, 902-4 (11th Cir. 1988) (first female to work in new car sales subjected to behavior ranging from being "boxed" out of gaining sales, to derogatory comments in presence of customers such as calling her "bitch" and "whore", to receiving threatening phone calls and having her car vandalized.)

⁶¹Sander Gilman cite

itself reflects changes in political and institutional norms that occur outside its domain.⁶²

Further, our emphasis on the sexual suggests that the worst treatment women suffer in workplaces - or that the Stroh's women did suffer or would have suffered if they stayed at Stroh's - is sexual harassment. Brewery workers suffer inordinately high rates of alcoholism, as well as serious injuries and occupational disease.⁶³ Regional displacement of brewery workers, as well as increasing competition in the industry, has caused layoffs, plant closings, unemployment and all of the concomitant and well-documented hardship that accompanies job loss.⁶⁴ These are issues that women workers entering these workplaces share in common with male workers, but that commonality is difficult to access so long as we focus solely on sex. Finally, overemphasis on the sexual aspects of the harassment tends to render invisible the men who oppose the harassment and seek to assist its victims, especially those who themselves have been subjected to racial and ethnic harassment.⁶⁵

In other words, there is a lot more to this story than those involving the sexual, and these other aspects nowhere surfaced in discussion or debate. We might begin with Lana Haston -

⁶²Indeed, recent polls reported in advertising trade publications suggest that consumers prefer less obviously sexual and sexist advertising, and that such advertisements are, today, more effective. cite to trade publication articles.

⁶³Until 1988, Stroh's offered free beer to its workers after each shift. [cite] This may well explain injury and occupational disease rates that were, in 1991, 16.4 cases per 100 workers!!! [cite - OSHA administration, May 23, 1994]. [cite stats on alcoholism from union and if possible, quote union official re suspicion that Fulton Plant is closing largely to avoid costs of past largesse resulting in high rates of alcoholism and disease.]

⁶⁴cite example of closing of Miller plant in Fulton, New York, and layoffs at Stroh's in Minn., and article indicating workforce reduction at Stroh's Minn. plant from 800 plus to 500.

⁶⁵cite again cases of men retaliated against for assisting, and overlap cases such as black woman security guard in plant with several hundred security guards and only 3 blacks. [see supra note approx. 50]

harassed not only as a women, but as a "squaw", a Native American women.⁶⁶ Her story is framed by the shocking rates of unemployment, alcoholism and poverty in Minnesota's Native American community. Only 58% of Minnesota's Native American population is employed; 19.9% are unemployed.⁶⁷ On reservations, unemployment ranges from 40% to 90%.⁶⁸ 43.7% of the Native American population lives below the poverty line; approximately 70% of families headed by women live in poverty.⁶⁹ Lana's is a population with rare access to the \$30,000-45,000 incomes earned in Stroh's blue collar jobs.⁷⁰

The repeated denigration of her heritage by Stroh's workers, along with the references to three Native American women recently killed in Minnesota, surely evoked for Lana the role

⁶⁶To understand this story fully, we would have to begin even earlier, with the stories of the far more numerous women channelled, like Marie and Lou-Ann, into low-paid, often dead-end, pink collar, manufacturing or service employment. And the even larger numbers of unemployed and underemployed, who would have been happy for either the pink or blue collar as they struggle as the sole supports of families. The Stroh's plaintiffs were, the lucky ones, able to escape the pink collar ghetto, at least for a time. And although their escape was short-lived, that fact is not due primarily, I think, to their construction as sexual objects, by media advertising or otherwise.

⁶⁷1990 Census of Population & Housing. Actual unemployment is usually much higher than reported, because the unemployment system chooses to consider unemployed only those who are actively seeking employment, not those who have become discouraged and no longer report to unemployment offices.

⁶⁸Susan Stanich, *For Chippewas, Money Is Riding on a Paradox*, WASHINGTON POST, Jul. 23, 1990, at A4.

⁶⁹Office of the State Demography, Minnesota, 1990 Census. Approximately 40% of Minnesota's female-headed families live in poverty (compared with 7.3% of all families.) *Id.*

⁷⁰O'Leary, *supra* note , (incomes at Stroh's). Nearly 15% of Minnesota's Native American women are unemployed; those that are employed are concentrated in service, administrative support (clerical), and lower echelon manufacturing jobs (assemblers, inspectors, machine operators). They are almost entirely absent from occupations like construction and mining, technicians and sales, and, of course, the professions. Minnesota Census Data, 1990 Census, from Minnesota Research and Statistics Office of the Dept. of Economic Security.

played by the ancestors of Stroh's owners, managers and workers - male but also female - in the duplicitous theft and destruction of Native American lands. She may have found it ironic (if she knew) that the very name of the beer she produced was itself expropriated from the Algonquian tribe, for whom the word "millioke" (Milwaukee) designated the "beautiful land" or "good land" that white settlers stole.⁷¹ However sexist the pin-ups and posters that surrounded her, Lana may well have found more painful the suggestion by a co-worker that he'd marry her to gain access to Indian fishing rights, referencing a history as virulent as that to which the "klan" remark at Jacksonville Shipyards referred. And the repeated reference to her as a "squaw," surely reminded Haston of Native American women's frequent capture to serve men not only as sexual slaves but also as abused and overworked laborers.

And Lana's story would require remembering the role of alcohol manufacturers like Stroh's⁷² in encouraging - indeed, helping to create - the rampant alcoholism that has helped destroy Native American communities and culture, and has made available a cheap labor force willing to compete for (and lower wages in) the tedious, often unrewarding⁷³ and frequently hazardous jobs at Stroh's.⁷⁴ Which might, in turn, evoke the tales of exclusionary all-white-male unions seeking to fend off that competition - whether Native American, hispanic, black or female - using racism and sexism. Perhaps, after all, it didn't begin with the Swedish bikini

⁷¹19 *ENCYCLOPEDIA AMERICANA* 139 (1985).

⁷²Stroh's has been producing beer for over 130 years at the plant at which the women labored. O'Leary, *supra* note .

⁷³One's sense of reward depends, of course, on the available alternatives. Thus [one of the Stroh's plaintiffs] said she found her work both challenging and rewarding. [find quote, check it.]

⁷⁴See *infra* n.

team!

Indeed, our exploration might reach to examine whether Stroh's practice, until 1988, of making beer freely available to its employees at break times, including a breakfast "cocktail hour" for the night shift, not only encouraged the atmosphere which lead to the harassment, but discouraged active organizing against the oppressive working conditions faced there. And we might go further to ask whether Stroh's responsibility, today, for new advertising campaigns directed to youth, women and blacks,⁷⁵ (at the very time when employers are cracking down on workplace alcoholism, and pregnant women are being vilified when they take a sip), to ask how that will likely impact the next generation of Lana Hastons.⁷⁶ Lana's story is made partial, indeed her particular identity and real concerns become almost invisible, when the sole frame of reference is the Swedish bikini team.

Another untold story is that of Antonia Felipe, denigrated as a "dumb, Mexican spic." Hers is a story of a long history of hostility to immigrants - especially non-European immigrants - of denigration, assault, exclusion and persecution. It is a story of laws such as the IRCA⁷⁷, whose foster discrimination against hispanic immigrants,⁷⁸ so that the rate of hispanic unemployment in Minnesota is nearly 15%.⁷⁹ And again, a story of poverty which especially affects women: approximately 25.6% of Minnesota's hispanic population lives in poverty, as do

⁷⁵cite ad and alcohol industry articles

⁷⁶cites. Cigarette advertising, too, is being targeted to women, youth and minorities, again, at the same time that employers, citing health care costs, are refusing to hire smokers. cites

⁷⁷cite for Immigration Reform and Control Act of 1986, 8 U.S.C....

⁷⁸cite the l. revs. on discriminatory impact of IRCA

⁷⁹1990 Census of Population & Housing.

about 58.7% of hispanic families headed by women.⁸⁰

It is a story of the passage of NAFTA,⁸¹ and the threat that families long ago left behind in the search for jobs, may soon inherit the very American jobs that women like Antonia now desperately want and need, because blue collar industries like Stroh's⁸² are rapidly shifting (and were without the added impulse of NAFTA)⁸³ to a region where labor is cheap because unions have been persecuted into near non-existence, benefits are pitifully low if they exist, and health and safety protections are virtually non-existent.⁸⁴

These stories of race, of cultural genocide, of job competition are missing from the Stroh's picture as presented not only in the media, but in most academic writing.⁸⁵ They are

⁸⁰1990 Census.

⁸¹cite North American Free Trade Act

⁸²Stroh's has not itself moved south of the border, but it has experienced significant layoffs recently, and layoffs are often the precursor to cost-cutting measures that send plants overseas. [cite] And Stroh's larg[est?] operation is centered in anti-union Right-to-Work North Carolina. Other beer makers are closing operations. cite Fulton, N.Y. Miller plant.

⁸³cite NATION NAFTA analysis (and NYT Op Ed).

⁸⁴cite NY/Cal. heavy metals case (moved to Mexico when OSHA enforced against them for failing to control "metal dust;" never even informed Mex workers of the horrific lung disease.

⁸⁵Race and class issues were rendered virtually invisible: not a single media report in over 200 pages of them that I read mentioning the racial and ethnic slurs - or placed the attack on Haston as nothing but a squaw in the context of treatment of Native Americans in Minnesota (let alone the responsibility of alcohol manufacturers for the situation of Native Americans). Few bothered to mention the physical harassment, or the class issues - none with analytic depth. Only three law review articles have directed more than passing attention to the Stroh's case, and all have focussed on the role of the ad campaign, mentioning in passing that if the other allegations are true they surely meet legal definition of sexual harassment. Neither focuses on either the interrelation of sexual, racial and ethnic harassment, nor addresses the causes or class dimensions of the story. And neither addresses the role of advertising generally, or of advertising to sell beer, or beer manufacturing in general. This is not to fault the authors of these articles, who set out to write about sexual harassment and speech; rather it is to suggest

as important to women as sexual harassment, as women being constituted by the media as sexual objects or playthings for men.

Yet, one might argue, it is impossible to tell all of the stories all of the time - and feminists must focus, make our points sharp - today, perhaps, put them in the academic equivalent of sound-bites. So what difference does it make if we focus our story on the sexual, and leave these other stories for another exposition?

It matters a lot. It matters because it not only distorts the picture we see - that is, lends itself to framing the problem as one of media-influenced, sex-obsessed men (or inadequately enlightened, boorish, working class joes) - but also seriously warps the strategies and solutions we fashion. It leads us to accentuate a male/female divide; one which not only underemphasizes other divisions, but prevents us from seeing and underscoring potential unifying elements. And our solutions skew far too much to the sexual, not only when it comes to workforce retraining, but in the deployment of resources to redress workplace problems. Compare, for example, the willingness of corporate America to spend resources on sexual harassment training with its positions on passage of the Family Leave Act (mandating *unpaid* leave), which most opposed, or with testimony from major industries on creating occupational safety and health standards on repetitive motion injury.⁸⁶

that all of us collectively have allowed our focus on the sexual to leave other issues unexamined. Stacy J. Cooper, *Sexual Harassment and the Swedish Bikini Team: A Reevaluation of the "Hostile Environment" Doctrine*, 26 COLUM. J. L. & SOC. PROBS. 387 (1993); Nadine Strossen, *Regulating Workplace Sexual Harassment and Upholding the First Amendment - Avoiding a Collision*, 37 VILL. L. REV. 757 (1992).

⁸⁶cites Indeed, it would be interesting to know what the unfortunately confidential Stroh's settlement provides concerning amounts to be spent on sexual harassment training, as against recruitment and training of women to *fill non-traditional jobs* there.

But even within the tale of the *sexual* misdeeds at Stroh's, its more complex aspects and underpinnings remain unexplored. Without doubt, the Stroh's men used everything from sexual jokes, vulgarity, and humiliation, to veiled and not so veiled sexual threats, to keep the Stroh's women in their places (and out of the mens'.) They acted in a way rarely openly on display in the boardrooms, on the golf courses, and in the clubs where the more genteel and refined keepers of the glass ceiling linger.⁸⁷

Yet the Stroh's workers' actions need to be understood not simply, as they are generally presented in the media and often implicitly presented in academic writing, as sexist acts by testosterone-driven, vulgar, unenlightened or aggressive men, but in a context that takes into account their own situation as working class men, often men of color - themselves largely excluded from the main corridors of economic and political power. These are men struggling in conditions of downward economic mobility, loss of social power (over women and children), and changing gender roles to shore up a failing sense of masculinity - a masculinity which once, as bell hooks has pointed out - was accorded them simply because they were male, but today must be earned in ability to produce income and orgasms.⁸⁸

These are men who see women as increasingly demanding and powerful in bedrooms and boardrooms, and who find these threatening women suddenly competing with them for

⁸⁷I do not mean to suggest that upper class locker room talk is less vulgar; merely that it less often is publicly expressed as vulgar sexual behavior in the manner of the Stroh's workers. One does not hear of it, for example, at Stroh's River Place headquarters in Detroit - a complex of luxury apartments and restaurants where the beer served is unlikely to be Old Milwaukee, Pabst, or other working class fare. See, O'Leary, *supra* note .

⁸⁸cite hooks, black looks, masculinity chapter. [and Rotundo] [do parenthetical contrasting access to masculine status of others, and ways to get: political office, corporate power, wealth, sports prowess, military.]

increasingly scarce blue-collar jobs. These are men who, a couple of decades earlier, used all the weapons at their command to keep men of color out of their workplaces and, a century earlier, used them to try to exclude immigrants.⁸⁹ These are men who as they fight to hold on to their precious jobs are almost able to convince themselves that they don't find them tedious, painful and lonely.

The Stroh's men are made to take the blame for a phallocentrism of which they, themselves, are victims as well as beneficiaries. Feminism has failed to come to grips with the fact that - as bell hooks points out - men's phallic focus, their use of the penis as status symbol and weapon, occurs in part because it is the one emblem of masculinity which enables all men to feel powerful, regardless of whether they possess real power. Hence it is unsurprising that less powerful men "flaunt it" more in words and whistles.⁹⁰ And unsurprising that media institutions little interested in genuine redistribution of power prefer to focus on the "crass" flaunting than, for example, the often violent or cruel results of their corporate advertisers' exercise of economic and political power. But feminism should know and do better.

Why We Romance the Sexual

....People have (with the help of conventions) oriented all their solutions toward the easy and toward the easiest side of the easy, but it is clear that we must hold

⁸⁹These men, too, are complemented by many who have helped women gain entry into non-traditional trades and stood up for them when they have been harassed. [cite to cases in which men are also retaliated against for supporting the women, etc.]

⁹⁰The work atmosphere at Stroh's River Place headquarters in Detroit - a complex of luxury apartments and restaurants where the beer served is unlikely to be Old Milwaukee - does not appear to foster the sort of crass harassment the Stroh's plaintiff's endured.

to what is difficult....

Letters to a Young Poet, Rainer Maria Rilke⁹¹

Why the feminist romance with the sexual? It isn't very surprising - especially to those of us who have long argued that the personal is political. Most of us are by background, or have risen as academics to be considered middle class. Thus the economic issues are not as personal to us as the sexual. Our salaries, if not stunning, are adequate; we don't lack benefits - however deficient they may be; the safety hazards we face, while often quite real, are less stark by far than those of Marie and Lou-Ann and are seldom at the center of our own workplace battles. Our jobs generally both isolate us from and give us power over those less well off - so that we are either not reminded daily of these issues, or are made uncomfortable by them - by our uneasy authority over and unjustifiably greater economic security than the clerical employees, caretakers and domestic workers who labor for us.

But we do have dramatic and daily battles on the sexual front: all of us struggle with our own complex feelings about sex - from intercourse and/or orgasm to flirtation and everything in between. We all have the usual post-modern malaise about maintaining relationships in a world of changing sex roles and sexual norms. We worry about biological time-clocks - as well as their imminent elimination by new reproductive technology. We worry about dating in the age of AIDS, about sex education and free condom distribution in our children's schools.

Moreover, we are part of the media generation, and our interests are influenced just as much as other consumers by media coverage which stresses the sexual. Even when we don't watch television, our students, children, friends and colleagues make us well aware of the

⁹¹Translation by M.D. Herter Norton, 1934, at 53.

content of programming from court T.V. to Ted Koppel, from soaps to sit-coms. In addition, we ourselves like media attention, and are more likely to get it by addressing "sexy" topics. Of the many Op Ed pieces I've submitted - on topics ranging from Supreme Court jurisprudence to legal remedies for NIMBY⁹² community resistance - the only one ever accepted concerned a New York Court of Appeals' decision ambivalently permitting women to go bare-breasted, which the Times editors chose to title: "Women's Breasts, So What?"!⁹³ Finally, of course, many of us are struggling to get tenure: we need to publish, and sexy articles get acceptance more than do articles about the economic status of contingent workers or the occupational health hazards women face - except when the health hazards affect reproduction.

Granted, feminists academics control neither the journals of prestigious law schools nor book publishers, and we are hence to a degree blameless for our choices of and frames for topics because we must publish or perish.⁹⁴ Blame aside, the result is that feminists are not dissecting and deconstructing in areas we should be - and are being successfully diverted from important work. Equally important, we are ignoring large numbers of allies, and alienating women who look to us for leadership, by giving them the sense that we are uninterested in their issues and welfare.

But there are other more complicated reasons for our choice to focus on sexuality, as well as problems with the manner in which we have done so. First even those of us who disagree with them are influenced by theories which posit sexuality as *the* central causative element in

⁹²Not In My Back Yard (NIMBY).

⁹³*Women's Breasts: So What?* Op Ed, NEW YORK TIMES, July 29, 1992.

⁹⁴Yet surely we have the creativity to couch our non-sexual subject matters in sufficiently provocative ways to gain entry to these electronic age citadels.

women's oppression,⁹⁵ and analyze it largely as a matter of male aggression and violence.⁹⁶ As Carol Smart has pointed out, that influence - visible in both in our choice to and manner of focus on rape, harassment, pornography and other sexual depiction - is made possible by our own unexamined moralism, both sexual and social.⁹⁷ We are uncomfortable with sex - many of us avert our eyes from explicitly sexual portrayal - even that which, on reflection, probably contributes less to harmful cultural attitudes than much of the imagery we ignore.⁹⁸ It is for this reason that, as feminist theorist Anne McClintock, among others, has pointed out, for all the supposed focus on sexuality in recent decades, women's sexuality is a phenomenon that continues to remain largely unexplored and unanalyzed.⁹⁹

⁹⁵cite to MacKinnon.

⁹⁶cite MacKinnon and a bunch of other folks ranging from Dworkin to Diana Russell (to Brownmiller?), etc.

⁹⁷Carol Smart, *Unquestionably a moral issue: Rhetorical devices and regulatory imperatives*, *id.* at 184 (unexamined moralism pervades feminist attitudes about sex, making theorists like MacKinnon popular). Moralism about sex is visible not only in the assumption that the only acceptable sex is that which is egalitarian, sensitive, connecting, romantic, and intimate, and feature no power imbalances, fetishism, role-playing, but also in the insistence that the lines between real intimacy and egalitarianism on the one hand, and objectification and coercion on the other, are ones feminists are easily able to draw and see. Moralism is visible as well in the current fashion to view men not, as in the past, as biologically, but instead as socially constituted sexual predators and aggressors. [connect this to the current fashion with media and text?] [cites to ONLY WORDS, etc.

⁹⁸The question of whether a given depiction degrades women is too complex to address in a footnote. For discussion of this issue see *Sex, Sin, and Women's Liberation: Against Porn-Suppression*, forthcoming TEXAS L. REV. (April 1994). See also [cite sources re slasher film & violence, McClintock essay, *supra*, etc.

⁹⁹See Anne McClintock, *Gonad the Barbarian and the Venus Flytrap: Portraying the female and male orgasm*, in *SEX EXPOSED*, *supra* note 2, at 111 (describing as a "global erasure" the practice of denying and rendering female sexual desire invisible). Many others have made this point as well. See, Patricia Y. Miller & Martha R. Fowlkes, *Social and Behavioral*

Many of us, in our deepest selves, would like not only to remove sex from view, but to blame men for all of the problems we associate with it.¹⁰⁰ Thus we are led subconsciously to reflect in our work, if not explicitly to adopt, the moralistic bright-line picture that theorists like MacKinnon, Dworkin and Russell draw - of evil (violent, aggressive, testosterone driven) men and good (innocent, victimized, morally superior because inclined to "connection" and egalitarian intimacy) women.¹⁰¹ It is a picture whose nineteenth century Victorian roots remain firmly planted in the Disneyland of virginal heroines victimized by malevolent bad guys in which most of us have been submerged throughout our lives. And it fits in well with today's trend toward identity politics, carving out women as a class "superior" to aggressive, phallogentric men - a class bonded in victimhood. This, in turn, not only leads us to select topics in which men and women can be portrayed in this way¹⁰² but deflects us from adequately addressing and accounting for issues other than gender, especially race and class, and

Constructions of Female Sexuality, in *SEX AND SCIENTIFIC INQUIRY* 147-164 (Sandra Harding and Jean F. O'Barr eds. 1987)(analysis of failure of sex researchers to deal adequately with women's sexuality); Smart, *supra* note []; cite Lynne Segal, Ellen Willis; Ehrenreich, et al.

¹⁰⁰Moreover, in typical post-modern academic fashion, the focus has tended toward analysis of words and text, and away from structural and institutional reality.

¹⁰¹Cite to only words, intercourse etc. and perhaps quote MK ¶ from only words... and some from Feminism Unmodified. cite to my porn piece?

¹⁰²This is a trap which I believe academics in the field of law are more prone to. In the first place, we are steeped by legal training (or perhaps by youthful propensities which led us to law in the first place) in an adversarial view of the world in which one side (truth? justice?) must prevail over the other - a perspective which accords well with a morality model of gender relations. In the second, law tends to focus on individuals - individual rights or wrongs - and to solutions which can select out bad guys as those who deviate from behavioral norms. [fix this and explain better]

from adequately exploring their intersection with gender.¹⁰³

Moreover, as women and men who have "succeeded" in academia, we often carry expectations that we can control the world and achieve our chosen goals. And that control is far easier to achieve by positing a world of easily identifiable bad guys and bad images, and by seeking to jail, fire or suppress them. Impatient with long-term and complex strategies, we like the sense of achievement we gain by focussing on individual responsibility and punishment, by quick fix solutions: damage actions, injunctions, jail or firing for harassers, and legislative or boycott-fostered suppression of sexual imagery we dislike. These achievable goals, with their visible results, are more immediately fulfilling than is the laborious process of deconstructing the complex ideologies embodied in and purveyed by the institutions that surround us,¹⁰⁴ and challenging them by analytic attack and difficult - often alienating and always slow and difficult - collective organizing.¹⁰⁵ Indeed, after twelve - or more - years of republican economics, we can hardly be faulted for wanting to find a realm in which visible progress seems possible.

But the focus is problematic, the more so because of the influence of theories which not only see sexuality as central, but overemphasize the role of media influences on the construction

¹⁰³Even those of us who write in opposition to this picture allow ourselves to be defensively deflected into responding to it, rather than taking the offensive by designating our own agenda. My own work is of this sort, and I wonder, now, whether I have fallen into the very trap which titles today's paper.

¹⁰⁴It is far easier to blame the Swedish Bikini team imagery for the behavior of the Stroh's men, then to account for the role of the religious imagery in which they had been steeped (a women's place is in the home; a female is worth 60 shekels to the man's 100), or the sports culture in which they were raised at to which Stroh's is closely tied. [cite stuff on campaign to preclude Stroh's from stadium advertising for the Bikini Team ads.]

¹⁰⁵While highlighting the Swedish Bikini team represented an analytic attack on the institution of advertising, as I demonstrate below, it was partial, one-sided, and hence inadequate.

of women's sexuality. For within the story of the Bikini Team is another untold tale - a tale about advertising.

Material Bases, Material Girls

My supermarket is bigger than your supermarket. That's what America's all about.

Supermarket, Peter Meinke¹⁰⁶

Despite all of the attention given to advertising's sexist depiction of women - attention necessary and worthwhile - it, too, misses crucial elements when it fails to address and link its analysis to the other ways that advertising impacts women. Advertising - by far the most omnipresent imagery consumed by the American public - spent \$130 billion in 1990 alone¹⁰⁷ (as compared with roughly \$38 billion gross motion picture industry revenues¹⁰⁸) to convince Americans, and women especially, to see and express ourselves primarily as consumers of

¹⁰⁶PITTSBURGH BOOK OF POETRY, *supra* note 3, at 170.

¹⁰⁷Amy Hersh, *The image of women in ads still suffers*, BACK STAGE, Jun. 7, 1991, at 26. As Hersh notes, \$130 billion represents \$6 a week for every man, woman and child in the United States, and 50% more than is spent by any other country. Moreover, increasingly "advertisers are drawn to children because children have more influence over the household pocketbook than ever before" spending \$8 billion annually themselves and influencing household expenditure to the tune of another \$1 billion a week. *Id.*

¹⁰⁸Statistical Abstract of the United States, 1993 (113th ed. U.S. Dept. of Commerce) at Table 789.

objects, and to derive our sense of achievement and status from success in that role.¹⁰⁹ Feminists need to look closely - especially now, when "three-strikes-you're-out" and other quick-fix solutions to the "crime problem" swirl around us¹¹⁰ - at stories like that of Tanisha Franklin, a 15 year old girl whose boyfriend robbed and ultimately killed to keep her in consumer goods. Tanisha, "decked out in Esprit shirt, Guess jeans and Timberland boots" was interviewed beneath a wall "covered with glossy magazine advertisements of gaunt, patrician-looking women in Ralph Lauren pinstripes and Buxom Guess vixens in lacy bras," while in the corner stood *twenty boxes* of Nikes and Reeboks. Freely admitting that, "I'm, like, materialistic," she acknowledged that she knew her boyfriend robbed to feed her consumption habit.¹¹¹ Advertising's use of sex and sexual imagery has something, perhaps a great deal, to do with this story.¹¹² But it is not the whole story: we need also inquire more deeply into the construction of consumption: into the ways in which we are "sold" buying as fulfillment, and goods as status and identity; into the meaning and effect of the reality that young, poor, black women like Tanisha live awash in images of gaunt white *patrician* women.¹¹³ We might ask ourselves about the degree to which the stories of those Stroh's women who are parents are driven by their children's early addiction to television, and to the consumption habits it

¹⁰⁹cite adv. lit: John Berger, *WAYS OF SEEING* (1977); DIANE BARTHEL, *PUTTING ON APPEARANCES: GENDER AND ADVERTISING* (1988), etc.

¹¹⁰cites

¹¹¹Celia W. Dugger, *A Boy in Search of Respect Discovers How to Kill*, NEW YORK TIMES, May 15, 1994, at A1, A36.

¹¹²cite to literature re need to keep up with sexual imagery (some cited supra already)

¹¹³cite hooks, especially *Eating the Other*.

increasingly foists on them.¹¹⁴ The harms advertising causes women cannot be encapsulated by its presentation of us as sexual objects - even though that presentation causes women grave harm.¹¹⁵

Indeed, advertising follows (as it impacts) culture, and women were hardly less harmed in the 1950's and '60's, when we were presented as relatively dowdy household managers, not sex objects but "demented housewives" obsessively seeking shinier floors and cleaner toilet bowls.¹¹⁶ It is hardly likely that women who break into sales at Hyundai or other car dealerships will find themselves better treated because Hyundai in their latest ad campaign, following the current trend toward reverse sexual humor, presents women scoffing at men driving racy sports cars for "compensating for a shortcoming" while approvingly pondering what the driver of the modest Hyundai Elantra has "under his hood."¹¹⁷

¹¹⁴Today's children are offered a diet of shows which are essentially half to full hour advertisements tied directly to products, are made to feel inadequate if their stock of toys is not immediately up to date, and are encouraged to eat large amounts of junk food. [cites] These issues do get *some* attention from feminism (after all, we are the caretakers of children, still), by contrast with issues concerning working class men or men in general, which get little (at least among legal academics.)

¹¹⁵See Meyer, *supra* note [Sex, Sin, and Women's Liberation: Against Porn-Suppression] (arguing that advertising causes violence against women, and describing the 750,000 women who annually engage in self-mutilation of cosmetic surgery, ("scalpel slaves"), those who subject themselves to skin bleachers, silicone injections, bulimia and anorexia, etc.)

¹¹⁶cite Jean Kilburne and history of advertising stuff (maybe cite Stuart Ewen re history of style, and add parenthetical re transformation from hefty women as expressing status to anorexia as parallel leanness in style throughout culture.)

¹¹⁷Michele Ingrassia, *Hunk-ogling babes reverse roles, but it's all just selling pop*, THE GAZETTE, Mar. 12, 1994, at C7. The ad, by the way, is targeted to the 28 to 35 year old post-feminism professional who doesn't "have much reverence toward anything." Paula Span, *Advertising's Lust Horizon...Men are the Sex Objects*, WASHINGTON POST, Feb. 26, 1994, at D1 (quoting creative director of Hyundai's ad agency.)

Moreover, in our focus on the Bikini Team, we fail to notice the ways in which advertising's idealizations of working class masculinity also influence and construct, as they reflect, our social reality. In the Old Milwaukee world (with and without the Bikini Team), men find pleasure in exclusively masculine company, in which the talk may turn to women, or to pleasure in macho pursuits, but never to anxiety concerning job loss or family difficulties, or to their confusion about coping in a world of changing economic and social realities, as well as sexual attitudes and roles. Beer is always just a pleasant pastime, like fishing, never the cause of workplace accidents, family abuse, job loss and misery.¹¹⁸ All present are "hunks" (no hair loss; no absence of muscularity) - men, too, are sold anxiety about aging. In our emphasis on the construction of women as sexual objects of men, we miss how men are presented to themselves and to women, and fail to look at the ways in which advertisements set up a competition between men and women, between children and adults, over the definitions of happiness and resources with which to purchase it.

Nor can we rest with analyzing advertising's "texts" - much as it may be enjoyable and academically fashionable to engage with them. Overemphasis on language and texts - whether pin-ups, pictures, sexual words or advertisements - tends to underplay not only acts (the direct physical threats against the Stroh's women, for example), but to distort the larger picture by failing to highlight the structural and institutional forces at play, that is, by failing to look for

¹¹⁸For a fascinating argument that late 1970's and '80's working class hero films are not an exploration of the working class, but rather represent an expression of white middle class men's anxieties about the turn away from "old fashioned male virtues" like physical courage and loyalty, and projection onto working class men of values no longer fully acceptable for middle class men, see Peter Biskind and Barbara Ehrenreich, *Machismo and Hollywood's Working Class*, in *AMERICAN MEDIA AND MASS CULTURE: LEFT PERSPECTIVES 201* (Donald Lazere, ed. 1987).

what may be hidden beneath the texts. For instance, advertising harms women by its direct influence over the viewpoints presented in major media news, soap operas, and sit-coms, as well as over the manner in which they are presented. Numerous scholars have demonstrated the industry's influence over, indeed virtual control of, communication - over editorial point of view of and substantive coverage by news media, television shows, print media.¹¹⁹ Surely this aspect of advertising - its influence over, for instance, media presentation of feminism¹²⁰ - is just as dangerous as that of its sexualized portrayal of women.

Indeed, one might go so far as to ask whether Esprit's clothing's effect on working women is less harmful than Stroh's because Esprit's advertising is carefully socially and environmentally conscious (no blonde bimbos for them). When we concern ourselves exclusively with text - with ensuring that ads don't portray women as sex objects - we are failing to speak to women like Marie, who work in the San Francisco sweatshops that make Esprit clothing, about the underpayment, injuries and even deaths they suffer. Industry has repeatedly lauded Esprit for its socially conscious charitable works, advertising, and product content,¹²¹ but when the Asian and Latina women in one Esprit plant sought to unionize to gain decent

¹¹⁹[cite media critics re ad role.] Marilyn Gardner, *When Advertising Gnaws Away at Editorial Independence*, CHRISTIAN SCIENCE MONITOR, Aug. 14, 1990, at 15 (describing Gloria Steinem essay concerning advertisers' pressure to control content of MS MAGAZINE.) See also C. EDWIN BAKER, *ADVERTISING AND A DEMOCRATIC PRESS* (1994) (arguing that print advertising distorts the news toward a false objectivity and blandness, as well as to avoid criticizing advertisers, thereby undermining the democratic debate.)

¹²⁰cite BACKLASH and similar info.

¹²¹cite ad industry awards, etc.

wages and working conditions, management closed the plant to bust the drive.¹²² We need to campaign for truth-in-advertising not just about women's bodies, but about the conditions under which women and men labor to make the advertised products.¹²³ And, as noted earlier, while Stroh's may well have contributed through its advertising to the attitudes that led to harassment of its female workforce, we ought equally to point to the impact on women of alcohol advertisers' recent choice to target female consumers - by "getting women to drink like men".¹²⁴

The campaign against the Swedish bikini team was successful in getting the ads permanently off the air.¹²⁵ Yet we might ask ourselves what, precisely, women have gained now that Old Milwaukee advertises beer with "two regular guys in their Winnebago", Michelob with four women in a restaurant drinking beer, and Miller Light, with women rodeo riders, jazz

¹²²Laurie Udesky, *Sweatshops Behind the Labels: The 'Social Responsibility' Gap*, THE NATION, May 16, 1994, at 665.

¹²³Other less sexist advertisers have equally disastrous records: Levi-Strauss stands accused by women workers in Juarez, Mexico of knowingly using a contractor who cruelly exploited them, along with many children 14, until he disappeared owing \$400,000 in back wages. Udesky, *supra* note .

¹²⁴Bruce Horovitz, *Brewers Raise Glasses to New Pals -- Women*, LOS ANGELES TIMES, Mar. 24, 1992, at D1. Similarly, cigarette advertisers have targeted women and young people as prime purchasers of its addictive and lethal products. Jean Kilbourne, *Cigarette ads target women, young people*, ALCOHOLISM & ADDICTION MAGAZINE, Dec. 1988, at 22. And the ultimate irony: cigarettes are promoted to young women as a means of weight control. *Id.*; Irene Sege, *A smoker's voice*, BOSTON GLOBE, Oct. 28, 1992, at 69 (describing cigarette advertiser's aim at women audiences, and late 1920's origin of link between thinness and smoking: "Reach for a Lucky instead of a sweet.") .

¹²⁵Stroh's claims they weren't getting men to buy more beer, and in any case were taken off the air as originally planned, not because of the lawsuit. [cite to articles showing that even other *advertisers* were so offended and off-put that they gave it the "worst ad" award. Are we tacitly letting advertisers off the hook for all the other things they do, so long as they avoid overt sexism?]

dancers and surfers.¹²⁶ Are fewer men drinking to excess? Are fewer of the drunk ones beating up women? Not that advertising imagery is meaningless when it purveys blond bimbos as perfection - but it is still aimed at selling a product that unleashes violence on women,¹²⁷ and it can do that with or without blond bimbos. Indeed, the advertisements had no appreciable effect in increasing beer sales,¹²⁸ lately advertising industry publications are suggesting that less explicitly sexual,¹²⁹ and less sexist¹³⁰ ads may sell products better.

While sexist sexual imagery, in advertising as in Hollywood, may harmfully influence men and women, eliminating sexually charged imagery will probably do little to alter the reality of sexual harassment unless it is accompanied by, indeed flows from, more basic structural changes. Men's views of, and attitudes and behavior toward, women are inculcated not only by advertisers, but by sports culture and institutions,¹³¹ military training,¹³² and religious imagery and doctrine,¹³³ - all of which present women as inferior (often by contrasting normal women with idealizations of feminine purity just as potent as the body-idealizations of

¹²⁶Cyndee Miller, *Liberation for women in ads*, MARKETING NEWS TM, Aug. 17, 1992, at 1.

¹²⁷cite well-documented connection between alcohol and abuse.

¹²⁸O'Leary, *supra* note .

¹²⁹cite the 3 articles on this

¹³⁰cite s on this

¹³¹cite Messner and Kimmel

¹³²cite Enloe and porn other cite

¹³³cites from porn piece

advertising).¹³⁴

Beyond the Politics of Identity

My twentieth summer I got a job in Door Locks
at the Ford plant where my father has worked
for twenty years....

There weren't any women in my department.
At first the men would ask me to lift
what I couldn't, would speed up the turntable,
juggling the greasy washers and bolts,
winking at each other, grinning at me.
In the break room they would buy me coffee,
Study my check to see if I got shorted.
*Assembler, Debra Allbery*¹³⁵

Finally, I want to reiterate the ways in which our skewed focus has negatively influenced feminist strategy and practice. As noted earlier, our sexual focus has tended to intensify the dangerously divisive pattern of identity politics: women are pitted against men (and each other), rather than encouraged to unite with allies who may be (indeed, inevitably will be) sexist and in other ways imperfect, but who share a basic interest in redistribution of power and wealth.

We need to pay close attention to the fact that the men we sometimes argue should be fired, working class men, sometimes men of color, while they are surely acting like sexist pigs and should be stopped from doing so, are hardly the pigs with the power. They are rarely the

¹³⁴Of course, part of this teaching is precisely sexual. But the association of failure in sports and the military with being a "sissy", for example, cannot be reduced to sexual objectification. See ANTHONY ROTUNDO, *AMERICAN MANHOOD....ETC.*

¹³⁵PITTSBURGH POETRY, *supra* note 3, at 14.

architects - far more often the instruments - of women's exclusion from the workplace, as any historian of anti-discrimination law or women's employment knows. As long as sexual harassers are viewed *only* as evil, as sex perverts or workplace deviants, as long as our main tactics are their vilification and our main demands their discharge (and for others, sensitivity training), we allow ourselves to be diverted from more exacting demands for change in a system which has always pitted employed against unemployed, and used divisions of gender, race, and increasingly nationality and national borders, to keep profits high (so that their River Place luxuries remain intact.) And as long as we view all men, or all working men, primarily as potential harassors, and fail to see them also as potential allies, we doom the feminist project to failure.

Building unity across racial, ethnic and gender lines is always difficult. Male hostility to women's entry into workplaces has been strongly evident for more than a century, and recent sexual harassment cases reveal hostility, even by unions, to the point that some have openly voted to oppose women's efforts at redress.¹³⁶ Yet for the men and women - for there are still women (indeed lately more women)¹³⁷ - at Stroh's, it is essential to find common ground by which together to challenge plant safety conditions,¹³⁸ layoffs (or in today's polite euphemism "downsizing"), possibly even plant closure in the post-NAFTA environment.

It will not be easy to maintain common ground - as the many reverse discrimination layoff cases have taught us. Identity politics have proved dangerously divisive in the 1990's. Coalitions between conservative politicians and feminists (in the case of porn, for example), or

¹³⁶ cite the San Diego case w/ union vote!

¹³⁷ O'Leary, *supra* note

¹³⁸ In the malt and beverage industry the rate of illness and injury was in 1991 an astonishing 16.4 per hundred workers. Library conversation with OSHA Administration, May 23, 1994.

black activists and conservatives (in the case of attacks on prevailing wage protections)¹³⁹ follow the well-worn track of pitting us against one another, rather than against those who pay the pitifully low wages, or who, in the name of empowering women to stay home and work, ensure that the conditions under which they and others work will be left to the mercy of a market increasingly geared to third world wages and working conditions. We simply cannot afford to assert the primacy of race or gender in a context in which the gap between rich and poor increases apace, and a disproportionate number of women, persons of color and those born in non-industrialized nations share pride of place at the bottom of the poverty pyramid.

But it is not merely that we fail to build unity with men. We also tend to isolate those women who do not believe that workplace sexuality is all and always bad. Those who have come through the school of sexual-banter-as-a-means-of-coping, those who can and do choose to joke and flirt either as a defense or because they enjoy it - are not only made invisible, but, implicitly made to feel that they are the enemy. They are treated as if they *should have* felt terrible, used and abused, and that there is something deficient about them that they do not.¹⁴⁰

[amplify this ¶ - needs more discussion of failure of subtle analysis of sexuality itself.]

¹³⁹On November 9, 1993, the conservative Institute for Justice filed a lawsuit on behalf of several minority construction contractors, together with the National Tenant Union, attacking prevailing wage protections under the Davis-Bacon Act, providing that government must pay union wage whenever it hires contractors for sizeable projects. [cite Davis-Bacon and regs.] See *BRAZIER CONSTRUCTION, ET. AL. V. ROBERT REICH, ET AL.*, D.C.D.C. Civ. Action No. 93-2318, Nov. 9, 1993. The lawsuit, highlighting the many expressions of racism by trade unionists at the time of the Act's passage in 1931, mischaracterizes the effort to gain prevailing wage protections as having been primarily aimed at preventing competition from members of minority groups, and seeks to declare it unconstitutional.

¹⁴⁰Here feminism has, I think, a double standard rooted in class. Most of us flirt. But when we flirt in our genteel ways, we treat it as acceptably non-sexist (or sexist within tolerable and manageable proportions).

Finally, feminism must avoid buying into the conservative picture, common in legal circles, that segregable bad acts, far easier to target and "correct" than institutional or systemic problems, are the main problem. We must not permit litigation strategies, though they are a useful and necessary tool and often an excellent method of achieving concrete results for groups of individual plaintiffs, to drive feminist inquiry or strategy. Not only is litigation hit and miss, not only does it focus primarily on the most egregious cases - rather than the systemically common ones - but, as too much repeated already, it focuses attention more on the working class whistlers than on those whose oppression of women is more subtle, but often more effective.¹⁴¹ We should incline to skepticism before taking the lead of feminism's "legal wing". As community organizers have long known, when the lawyers take over, the political strategy and tactics tend to get distorted.

What working women most need is collective organization with the capacity not only to achieve but to monitor and refine our victories. Traditional unions have often failed women, and I am not today suggesting that they are women's only alternative. But neither should feminism abandon collective organizing - whether within traditional unions or in other forms. There is a growing literature, much of it written by men¹⁴² (perhaps a failure of feminism?) but some by women¹⁴³ about the need for truly democratic workplace organizations, about the legal reforms that might make it possible,¹⁴⁴ about the tasks necessary to accomplish it.¹⁴⁵

¹⁴¹cite glass ceiling stuff if I haven't already.

¹⁴²cite Karl Klare and others

¹⁴³cite Cathy Stone, Nussbaum, others

¹⁴⁴cite KK testimony

Greater understanding of and struggles to alter the ways in which sexuality constructs or impacts us is important - perhaps essential - to successfully creating such organizations, for they will need to include men as well as women. But that understanding and those struggles around questions of sexuality will not be enough. And they surely must not be all.

¹⁴⁵In today's international economy, those tasks include building labor bridges across national boundaries. See [cite writing re borders - Fran Ansley? KK?]

