

MUSEUMS MOVING FORWARD

MMF Convening: Legal Issues in Museum Workplaces

October 5 2021
12–1:30PM EST

ATTENDEES: 20

- I. INTRODUCTION AND GROUP AGREEMENTS
- II. MMF SURVEY:
- III. SPEAKER BIOS

Candice Banjes-Small is the Head of Research at William & Mary, Department of Libraries. Banjes-Small earned a bachelor's degree in history from Haverford College and a master's degree in library and information science from the University of Texas at Austin. She sits on the university's Assessment Steering Committee, and has worked on numerous instruction assessment projects, culminating in articles in *Reference Services Review* and *Academic Exchange Quarterly*, and presentations at ACRL and LOEX. Along with Jennifer Knievel and Joanna Hunter, she co-authored the 2021 study “#MeToo in the Academic Library: A Quantitative Measurement of the Prevalence of Sexual Harassment in Academic Libraries.”

Wendy Fox-Kirk is an Assistant Professor of Business Administration in the Goddard School of Business & Economics at Weber State University. Her research interests include gender, power, leadership and identity aiming to address issues of disadvantage with a particular focus on women's careers and the gendered organization. She has a BSc in Human Psychology, an MSc in Work Psychology & Business from Aston University, and a PhD from the University of Birmingham (UK). Wendy serves on the board for YWCA's Real Women Run, and is a Research Fellow for Utah's Women's Leadership Project (UWLP). She has written book chapters including: *Women's leadership identity: exploring person and context in theory* in *The Handbook of Research on Gender and Leadership*, and is published in the *Journal of Strategic Management Studies*, *Advances in Developing Human Resources*, and *Critical Care Medicine*. She is also a consulting editor for the *Journal of Education for Business*, and a guest editor for a special issue of *Gender in Management: An international journal* (Leadership in an age of #MeToo: Global Conversations).

L. Camille Hébert is a Professor of Law at Moritz School of Law at Ohio State University. In law school, Professor Hébert served as editor-in-chief of the *Kansas Law Review* and was elected to the Order of the Coif. Following graduation from law school, she clerked for Judge James K. Logan of the U.S. Court of Appeals for the Tenth Circuit and practiced labor and employment law, representing management, for five years with

MUSEUMS MOVING FORWARD

Spencer, Fane, Britt, and Browne in Kansas City, Mo. Professor Hébert has published a number of law review articles on employment discrimination, sexual harassment, employee privacy, and alternative dispute resolution (ADR). Her treatise *Employee Privacy Law* was published in 1993 and is supplemented annually. Professor Hébert makes frequent presentations to academic and professional audiences on issues of sexual harassment and employee privacy, including genetic testing and electronic surveillance. Professor Hébert served as Chair of the Employment Discrimination Section of the Association of American Law Schools in 1998. She currently serves as a member of the Workplace Mediation Advisory Committee of the State of Ohio Commission on Dispute Resolution and Conflict Management. From 1997 to 2000, Professor Hébert served as associate dean for academic affairs at the Moritz College of Law. Professor Hébert is a member of the Associated Graduate Faculty of the Department of Women's Studies at Ohio State. Professor Hébert's courses include *Employment Discrimination Law*, *Employment Law*, *Employee Benefits*, *Alternative Dispute Resolution in the Workplace*, *Legal Writing and Analysis*, and a *Sexual Harassment* seminar. She taught *Comparative Employment Discrimination and Comparative Dispute Resolution* during the Oxford semester program in 2010.

Joanna Hunter is an Associate Professor of Sociology at Radford University. Hunter also works with the Women's Resource Center of the New River Valley in Radford, VA, which runs a sexual assault prevention program. Along with Candice Banjes-Small and Jennifer Knievel, she co-authored the 2021 study “#MeToo in the Academic Library: A Quantitative Measurement of the Prevalence of Sexual Harassment in Academic Libraries.”

Jennifer Knievel, Professor and Lead, Researcher & Collections Engagement Team, University Libraries, University of Colorado, Boulder. Jennifer received her Master's of Library Science in 1999. After working just over a year in the Denver Public Library system, she came to the University of Colorado. She has been Director of Arts & Humanities since the library reorganized in February of 2012. Her research interests encompass library instruction to various populations and the research patterns of humanities scholars. She was tenured in 2009 and is currently an associate professor. Along with Candice Banjes-Small and Joanna Hunter, she co-authored the 2021 study “#MeToo in the Academic Library: A Quantitative Measurement of the Prevalence of Sexual Harassment in Academic Libraries.”

IV. PRESENTATIONS

MUSEUMS MOVING FORWARD

Wendy Fox-Kirk: Genderwashing and the Myth of Equality

Despite the passage of laws and implementation of policies to combat gender discrimination, sexual harassment and sexual violence, the workplace for women in academia is still rampant with abuse. In some cases, things have got worse, even with the will to change from HR practitioners. Why the disjunct?

Genderwashing

- Term first coined by Martha Burke in 2011; Wendy and Rita expanded on the definition.
- An analytical tool used by an organization/corporation to manage its outward reputation while doing nothing internally.
- Focus is on economics, not ethics:
- Huge gap between organizational rhetoric and lived experience of employees.
- Policy is weaponized to justify the status quo, e.g., Test case against Walmart was lost because Walmart has a gender equity policy and the policy is trusted more than its implementation.
- The result is Institutional Sexism.
- One solution: Conduct gender equity audits/diversity audits to determine if corporate policies are having an inadvertently negative impact.

Misuse of NDAs

The BBC reported in 2019 that £87m was spent on NDA payouts in academia (“[UK universities pay out £90m on staff ‘gagging orders’ in past two years](#)”)

- NDAs shouldn’t be used to make secret things that shouldn’t be secret:
- NDAs are used to silence victims and protect organizational reputations.
- Perpetrators often get payout and new job assignments.
- Discovered similar trends in museums, e.g., Joshua Helmer (“[The Erie Art Museum Has Pushed Out Its Director, One of the Youngest in the US, Amid Sexual Harassment Allegations](#)”)

L. Camille Hébert: How the Sexual Harassment Law Failed its Feminist Roots

Sexual harassment law has not been a complete failure, but the law has not developed in the way its original developers envisaged. Instead of allowing women to challenge denigrating experiences in the workplace, it is used as a tool to protect workplaces and the perpetrators by blaming women. How has this happened?

The 4 Aspects of the Law

1. The “Unwelcomeness” Requirement. Women who are harassed provoked/incited the behavior through “inappropriate” dress, using profanity or not objecting sufficiently to the bad behavior.

MUSEUMS MOVING FORWARD

- As long as behavior is objectively abusive or offensive, it shouldn't even matter whether it was subjectively experienced as such.
- Absence of a complaint shouldn't mean there isn't abuse.
- 2. The "Because of Sex" Requirement. Under Title VII, discrimination on basis of sex needs to be present -- the word "harassment" doesn't even appear in the law.
 - Women are judged for non gender-based criteria, for being a "bad employee".
 - But sexual harassment is chosen as a weapon to objectify and diminish women and their role in the workplace.
- 3. The Pervasive or Severe Requirement. "Right to be free from only worst harassment": only extreme conduct meets the threshold, e.g. rape.
 - Single instances of inappropriate conduct are discounted, to avoid federal lawsuits for "trivial" conduct.
 - Sets a high threshold to meet a determination of "unlawful" behavior.
 - But conduct should not need to be horrific to be actionable.
- 4. Employer Liability.
 - Employers can be held liable but individual perpetrators cannot.

Candice Benjes-Small, Jennifer Knievel and Joanna Hunter: Sexual Harassment in Academic Libraries

Began as an informal discussion of the topic in 2017. Their 2021 study, "[#MeToo in the Academic Library: A Quantitative Measurement of the Prevalence of Sexual Harassment in Academic Libraries](#)," is a 30-question questionnaire sent to library employees. They were inspired by a 1995 study, "Measuring Sexual Harassment: Theoretical and Psychometric Advances", by Louise F. Fitzgerald, Michele J. Gelfand and Fritz Drasgow.

- Over 600 respondents.
- Asked about workplace experiences, described as a series of events, to move away from binary of yes/no for experience of sexual harassment.
 - Offered "Gender harassment" definition, "Seductive behavior" definition, and "Sexual assault" definition.
- Findings
 - Gender Harassment - 78.1%
 - Seductive Behavior - 64.4%
 - Sexual Assault (including unwelcome touching) - 35.2%

83% of respondents said they hadn't been harassed, and yet 77% had answered "yes" to questions about harassment. Pinpoints pervasive acceptance and normalization of abusive behavior (<https://www.inthelibrarywiththeleadpipe.org/2018/vocational-awe/>)

V. DISCUSSION

Audits

What would a gender audit look like?

1. Review Organizational Policies.
 - How can they be abused? Look for holes in the language and work

MUSEUMS MOVING FORWARD

arounds.

2. Processes.

- Lots of internal processes are hidden. Force hiring and promotion processes to be documented for greater transparency.

Library Survey

What has been the response to the library survey?

- Received several emails (30 in the first 3 hours). Struck a nerve in the community.
- Survey was published in Library Journal and received a lot of attention on Twitter.
- Some universities are launching discussions but nothing concrete yet.
- Most university policies apply to employees not patrons -- public spaces not taken into consideration.
- Hoping that the ALA will address these issues, to help educate new librarians.

What were the practical strategies used to bring the survey to fruition?

- Used organizational listservs.
- Reached out to professional networks.
- “Snowball Sample”: asked respondents to pass surveys along to their networks.
- Used the 1995 survey as a template of sorts -- adapted the language to suit libraries.
- Moved away from questions that focused on binaries.

Roadblocks to Museum Culture Shift

- HR and Legal Depts are “management adjacent”.
 - Their job is to protect the museum’s reputation and the directors (who are primarily white, hetero men).
 - HR doesn’t have to power to effect change -- may just cover up harassment issues.
- Vocational Awe harms museum workers.
 - We’ve been trained to believe that these things don’t apply to us.
 - Our gratitude makes us blind to the realities of our workplace environments.

Solutions to Roadblocks

- Look to other companies for inspiration, e.g. tech:
 - Better at listening to worker’s voices to improve retention.
 - Making the effort to build a better culture through diversity hiring.

Move away from binary thinking in surveys and internal discussions.

Give worker examples of harassment; share stories of abuse and discrimination.

Advocating against bias, e.g. 1972 Project

MUSEUMS MOVING FORWARD

- Creating a database of actions: litigation, arbitration and improper use of NDAs.
- Creating a pay scale resource to assist job seekers: by company and role.
- Make a list of questions to ask during performance reviews to recognize when discrimination is at play.

What to do if experiencing harassment within the workplace without an obvious inciting incident/smoking gun?

- Document everything; keep meticulous records of incidents.
- Raise questions.
- Consult an employment attorney.
 - The courts are not necessarily a good place to resolve claims but an employment attorney can provide helpful advice and strategies around creating a paper trail and formally filing internal complaints.