# RECENT DEVELOPMENTS

## SEXUAL HARASSMENT HITS HOME

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Sexual harassment in the workplace has been receiving a significant amount of attention recently from the national media, the courts, and corporate America. The Clarence Thomas confirmation hearings,[1] the *New York Times Magazine* cover story featuring feminist scholar Catharine MacKinnon,[2] and the recent, groundbreaking Ninth Circuit Court of Appeals decision in *Ellison v. Brady*[3] all demonstrate the current focus on workplace harassment. Likewise, Stroh Brewery's advertising featuring the "Swedish Bikini Team," and its subsequent impact on interactions between Stroh's male and

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1. *See, e.g., The Thomas Nomination: Four Friends Who Say They Heard of Harassment; Statements to Senators from Witnesses for Anita Hill*, N.Y. TIMES, Oct. 14, 1991, at A12.

2. Fred Strebeigh, *Defining Law on the Feminist Frontier*, N.Y. TIMES, Oct. 6, 1991, § 6 (Magazine), at 28.

3. 924 F.2d 872 (9th Cir. 1991). *See also* Peter D. Guattery, *A Turnaround on Harassment*, THE RECORDER, Oct. 15, 1991, at 6.

female employees, has drawn further national attention to the issue.[4]

Yet some people did not follow the Thomas hearings, did not read *The New York Times Magazine*, have never heard of the *Ellison* case, and are unfamiliar with the controversy at Stroh Brewery. I† know one of them. Her name is Carmen.[5] Carmen is a victim of a kind of sexual harassment that most attorneys, commentators, and — with rare exceptions — even the media overlook: sexual harassment of tenants by their landlords or building managers.

Carmen's experience typifies that of residential sexual harassment victims. She moved into a one-bedroom apartment with her mother and three children in September, 1990. The following month, the building manager came to Carmen's door at seven o'clock in the morning, demanding the rent and the balance of her deposit. When she asked him to wait outside for her to dress, he entered the apartment and walked directly into Carmen's bedroom, where her children were sleeping. The building manager then told her that they would get along if she agreed to have sex with him, and if having sex in the bedroom would disturb the children, they could have sex in the living room.

The morning visits continued for about a week; each time the building manager demanded to be let into the apartment, and each time Carmen refused. After a week of being refused entry, the building manager forcefully entered the apartment, went to the kitchen, and began to throw Carmen's belongings on the floor. He also offered her rent receipts if she would have sex with him. To get him out of the apartment, Carmen agreed to meet him at noon. When she again refused to have sex with him, he raped her. Carmen was three months pregnant at the time.

The harassment continued for eight months. During this time, Carmen's building manager and two other men forcefully attempted to evict Carmen, her elderly mother, and her young children at seven o'clock in the morning; they broke some of her furniture and one of the men pushed her one year old son down, causing him to injure his lip. Fortunately, the police intervened to prevent the eviction.

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4. *See, e.g.*, Stuart Elliott, *No Bikini Team in New Stroh Ads*, N.Y. TIMES, Feb. 13, 1992, at D10; Stuart Elliott, *Suit Over Sex in Beer Ads Comes as Genre Changes*, N.Y. TIMES, Nov. 12, 1991, at D22.

† We use the first person in this Recent Development to refer to William Litt and his personal dealings with Carmen.

5. We have omitted Carmen's last name to protect her identity.

About two months later, an unidentified man came to her door and threatened to harm Carmen and her family physically if they did not vacate the premises. Two months after that, Carmen's landlord and two of his employees destroyed some property which she kept in her backyard, including a barbecue grill Carmen had been using for cooking since the landlord stopped paying the gas bills.

Additionally, Carmen's building manager and landlord withheld necessary repairs to the apartment, even ignoring notices to repair from both the Southern California Gas Company and the Los Angeles County Health Department. According to Carmen, these actions occurred in retaliation for her refusal to have sex with the building manager.

Remarkably, there is a dearth of lawsuits premised on sexual harassment in rental housing. In contrast to the large number of workplace sexual harassment cases tried in federal and state courts and various administrative agencies, only three federal cases have been decided which involve allegations of sexual harassment in violation of Title VIII[6] of the Federal Fair Housing Act.[7] Only a handful of cases are based on state fair housing statutes.[8] For example, while California has a comprehensive Fair Housing Act,[9] the Unruh Act,[10] and the Ralph Civil Rights Act,[11] no cases have been brought alleging sexual harassment in rental housing.

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6. 42 U.S.C. §§ 3601–3619 (1991).

7. The three federal cases are: Abrams v. Merlino, 694 F. Supp. 1101 (S.D.N.Y. 1988); Grieger v. Sheets, 689 F. Supp. 835 (N.D. Ill. 1988); Shellhammer v. Lewallen, 1 Fair Housing-Fair Lending Cases ¶ 15,472 (W.D. Ohio Nov. 22, 1983). The Ninth Circuit Court of Appeals has yet to hear a rental housing sexual harassment case.

8. *See, e.g.,* Gnerre v. Massachusetts Comm'n Against Discrimination, 402 Mass. 502, 524 N.E.2d 84 (1988); Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (Wis. Ct. App. 1985).

9. CAL. GOV'T CODE § 12955 (West 1992).

10. CAL. CIV. CODE § 51 (West 1992). The Unruh Civil Rights Act provides in pertinent part:

> All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, or blindness or other physical disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

*Id.*

11. Section 51.7 of the California Civil Code, sometimes referred to as the Ralph Civil Rights Act, also known colloquially as a "hate crimes" statute, delineates the right of all persons "to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute." CAL. CIV. CODE § 51.7 (West 1992). Sections 52 and 52.1 of the California Civil Code prescribe penalties and remedies, respectively. CAL. CIV. CODE §§ 52, 52.1 (West 1992).

This Recent Development examines the reasons why so few rental housing sexual harassment cases are litigated, attempts to reveal the pervasiveness and severity of the problem,[12] and suggests several legal strategies for addressing rental housing sexual harassment. Part I examines the underreporting of rental housing sexual harassment. Part II explores the factors contributing to this underreporting and the severity of residential sexual harassment. Part III outlines possible legal responses to sexual harassment in the rental housing context, emphasizing Title VIII litigation while also exploring the use of state civil rights statutes and tort and contract causes of action.

## I. THE PREVALENCE OF RESIDENTIAL SEXUAL HARASSMENT

Victimized tenants rarely report instances of harassment by landlords or building managers, resulting in few rental housing sexual harassment lawsuits. The Los Angeles Fair Housing Councils and the Fair Housing Congress each reportedly average one complaint of rental housing sexual harassment per year.[13] Statistics from the California Department of Fair Employment and Housing ("DFEH") indicate that 3.2% of all housing complaints involve allegations of sexual harassment, but these complaints often include additional charges of discrimination. DFEH officials admittedly pursue few of these complaints unless they involve physical violence and thus can be addressed under the Ralph Civil Rights Act.[14]

In 1986, Regina Cahan conducted a sexual harassment survey assessing the incidence of residential harassment nationwide. She sent the survey to 150 Fair Housing Agencies throughout the United States.[15] Of the eighty-seven responses, fifty-seven reported a total of 288 incidents of residential housing sexual harassment over the previous five years. Cahan concluded that, in light of women's reluctance to report sexual harassment, "it is likely the actual

12. Although sexual harassment is not limited to harassment of women by men, this Recent Development concentrates on women, like Carmen, who have been harassed by their male landlords or building managers. This limitation is not to suggest that women cannot sexually harass men, or that sexual harassment cannot occur between members of the same sex. Sexual harassment of a woman by a man, however, is by far the most common scenario, and women, therefore, comprise the vast majority of sexual harassment victims.

13. Telephone Interview with Michelle White, Directing Attorney of the Fair Housing Congress of Los Angeles (Aug. 2, 1991); Telephone Interview with unnamed staff member at Westside Fair Housing Council (Aug. 2, 1991).

14. Telephone Interview with Anabell Hwa of the DFEH (Aug. 5, 1991).

15. Regina Cahan, *Home is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 WIS. L. REV. 1061, 1066.

incidents of sexual harassment in housing number more than the 288 reported."[16] Given the frequency of sexual harassment in the workplace,[17] the data Cahan collected may grossly understate the actual incidence of residential sexual harassment.

Cahan suggests that a more realistic assessment of rental housing sexual harassment may be derived by extrapolating from the data collected by the Merit System Protection Board ("MSPB") in its 1980 study of the extent of sexual harassment in the federal workplace. The MSPB survey found that "only 2%-3% of victims took formal institutional remedies against the sexual harassment."[18] Based on the MSPB study,[19] Cahan determined that the approximately 300 incidents reported by the fifty-seven fair housing agencies in reality should represent between 6,818 and 15,000 actual cases of sexual harassment in housing between 1981 and 1986.

In 1986, there were approximately thirty-two million rental housing units in the United States.[20] Considering the pervasiveness of sexual harassment in other settings, it seems unlikely that just one tenant out of 111,111 experienced sexual harassment between 1981 and 1986. Thus, in light of the millions of rental housing units throughout the United States and the unique position of power that landlords and building managers occupy in relation to their tenants, even Cahan's estimates may be low.

Nonetheless, Cahan's estimates demonstrate the extensive underreporting of residential sexual harassment, the gravity of which we have not even begun to appreciate. Unfortunately, it is impossible to estimate the scope of rental housing sexual harassment until

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16. *Id.* at 1066.

17. *See, e.g.*, UNITED STATES MERIT SYSTEMS PROTECTION BOARD, SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE: IS IT A PROBLEM? 26 (1981).

18. Cahan, *supra* note 15, at 1069. Considering the attention focused on sexual harassment in the workplace since 1980, it is likely that a higher percentage of federal employees victimized by sexual harassment take formal remedial action against harassers now than in the late 1970s. Nevertheless, many employees doubtless still feel constrained by the belief that reporting sexual harassment will have an adverse effect on their careers. Anita Hill's testimony before the Senate Judiciary Committee during the Thomas confirmation hearings exemplifies this attitude. *See also* CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN (1979).

19. A similar study was also conducted in Madison, Wisconsin, in which 4.4% of victims filed complaints. Cahan, *supra* note 15, at 1069.

20. U.S. DEP'T OF COMMERCE, ECON. AND STATISTICAL BUREAU OF THE CENSUS, CURRENT HOUSING REPORT SERIES H-150-87 — AMERICAN HOUSING SURVEY (1987). Nineteen ninety census figures indicate that 32,922,599 of the 102,263,678 housing units in the United States are renter-occupied, *available in* Dialog, Cendata File.

its victims understand their legal right to live free from harassment, and come forward to assert this right.

## II. FACTORS CONTRIBUTING TO THE UNDERREPORTING OF SEXUAL HARASSMENT IN RENTAL HOUSING

Most victims face powerful deterrents to reporting rental housing sexual harassment. In general, these deterrents parallel those that prevent women from reporting sexual harassment in the workplace and in academia: fear of retaliation, silence as the preferred method of coping, aversion to the perceived stigma attached to victims of sexual harassment, the tendency of some victims to blame themselves for the harassment, anticipation of ridicule, and the desire to avoid further suffering.[21] Rental housing exacerbates at least some of these factors.

Fear of retaliation deters many women from reporting sexual harassment. Retaliation presents a serious risk in the workplace and in school, potentially impairing both one's quality of life and the opportunity to acquire tangible benefits.[22] Arguably, retaliation in the housing context can present an even more serious risk to a tenant. A landlord has the power to evict a tenant who refuses his sexual advances. Although unpleasant and inconvenient for anyone, eviction can be overwhelming for the poor, and particularly so for poor women.

In fact, a poor woman's difficulty in meeting rental payments may further subject her to sexual harassment when, as in Carmen's case, a manager "offers" to forgive her rent payment if she has sex with him.[23] In addition, harassing landlords can retaliate against women who report sexual harassment by blacklisting them and preventing them from getting other low-income housing.[24] For low income tenants,[25] housing options are extremely limited. The effects of being blacklisted can be devastating, especially in cities with expensive rental markets and poor public transportation, such as

21. *See infra* note 110.

22. For example, an employer may withhold a promotion or a raise, or a professor may give a student a bad grade for refusing his or her sexual advances.

23. Moreover, women who fail to meet their rental obligations on time may be precluded from bringing sexual harassment claims altogether, because a small claims judge could grant an eviction based solely on a tenant's failure to pay rent, thus never reaching the issue of sexual harassment.

24. Cahan, *supra* note 15, at 1067.

25. Regina Cahan's survey indicates that 75% of the tenants who had been sexually harassed had annual incomes under $10,000; only 2% earned over $20,000 per year. *Id.*

Los Angeles. Low income women face daunting housing problems: more than one-third of women incur housing costs exceeding 25% of their monthly income,[26] and a single female parent is twice as likely as other householders to live in substandard housing.[27] For minority women and women with large families, chances are even greater that they live in inadequate housing.[28]

Stereotypical notions of women as poor credit risks, and less desirable tenants in general, have resulted in widespread housing discrimination against women.[29] Often, poor tenants, unaware of their legal rights, become fair game for such illegal techniques as lockouts, termination of utilities, removal of mailboxes or locks, and quite commonly, retaliatory eviction.[30] Even without resorting to actual or constructive eviction, a landlord can retaliate simply by refusing to make repairs,[31] enforcing rules more strictly against a particular tenant, restricting the activities of certain tenants or their children, or raising a tenant's rent.

Retaliation often exceeds interference with the rights and privileges of tenancy. Landlords frequently make explicit or implied threats of violence toward the tenant or her family. Such threats act as powerful incentives for victims to suffer sexual harassment in silence.[32] One landlord in Wisconsin patrolled the halls of his building with a guard dog, terrorizing many of his tenants.[33] A New York City building superintendent, while changing a lightbulb in a female tenant's apartment, picked up a kitchen knife and asked

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26. The usual measure of affordable housing is 25% of income. Irene Diamond, *Women and Housing: The Limitations of Liberal Reform, in* WOMEN, POWER AND POLICY 109, 112 (E. Boneparth ed., 1982).

27. More than ten million families headed by women live in housing below the minimum standards set by the Department of Housing and Urban Development. Kathleen Butler, *Sexual Harassment in Rental Housing*, 1989 U. ILL. L. REV. 175, 176–77.

28. *Id.* at 177 n.16.

29. *Id.* at 177–79.

30. *Id.* at 179–80. *See also* Second Amended Complaint for Damages, Fiedler v. Dana Properties, Inc., No. CIVS 89–1396 (E.D. Cal. May 29, 1990); Robin Abcarian, *Harassed at Home*, L.A. TIMES, Nov. 24, 1991, at E1; Sylvia Rubin, *Sex Harassment Close to Home*, S.F. CHRON., Jan. 8, 1992, at B3.

31. Failure to make necessary repairs usually constitutes a violation of municipal, county, or state health and safety codes, or state civil codes. *See, e.g.*, CAL. CIV. CODE § 1941.1 (West 1985); CAL. HEALTH & SAFETY CODE § 17920.3 (West 1984).

32. *See* Butler, *supra* note 27, at 180 n.46; Second Amended Complaint for Damages, *Fiedler*, *supra* note 30 (a virtual catalog of harassment allegedly inflicted by the manager of a Fairfield, California, apartment complex).

33. Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (Wis. Ct. App. 1985).

the tenant what she would do if she were raped.[34] An Illinois landlord threatened to shoot a tenant's husband after the woman refused the landlord's demands for sexual favors.[35] And, in a highly publicized case, model Marla Hanson's former landlord hired two men to slash her face with razors after she spurned his advances and moved out of her apartment.[36]

Rental housing sexual harassment is particularly invasive because it violates the sanctity and safety of home. One commentator notes:

> The woman sexually harassed at work can go home to find peace and safety; the woman harassed by her landlord has no such safe haven. Sexually harassed tenants must be continually watchful; indeed, some women completely alter their living patterns to avoid contact with the harasser.[37]

Since landlords and building managers hold keys to their tenants' apartments, harassers commonly enter or attempt to enter the victim's unit without permission. For instance, in *Fiedler v. Dana Properties, Inc.*[38] the defendant building manager allegedly entered several tenants' apartments without permission, and at least once entered an apartment while a female tenant was asleep. The tenant woke to find the building manager standing by her bed with his pants around his knees.[39] Similarly, a Michigan landlord often used his passkey to walk in on tenants while they were in bed or in the shower.[40]

Sexual harassment, whether at home or in the workplace, cuts across socio-economic lines. Nonetheless, it especially devastates poor women. Low income tenants are more vulnerable to economic intimidation than are their wealthier counterparts. They are also

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34. Andrea Boroff Eagan, *The Girl in 1-A: Sexual Harassment Hits Home*, MADEMOISELLE, Apr. 1987, at 252, 253.

35. Grieger v. Sheets, 689 F. Supp. 835 (N.D. Ill. 1988).

36. *See, e.g.*, Eagan, *supra* note 34, at 252. *See also* Robert D. McFadden, *Rejection Called Motive in Attack on City Model*, N.Y. TIMES, June 9, 1986, at B12; Robert D. McFadden, *Wounded Model Retains Her Faith in Career and City*, N.Y. TIMES, June 7, 1986, at 29; Todd S. Purdum, *Model Slashed; An Ex-Landlord Is Among 3 Held*, N.Y. TIMES, June 6, 1986, at B3; *Three Indicted in Slashing of Manhattan Model*, N.Y. TIMES, June 12, 1986, at B12.

37. Butler, *supra* note 27, at 181 (citations omitted).

38. Second Amended Complaint for Damages, *Fiedler, supra* note 30. *Fiedler* is a California case that received some media attention but was settled before establishing any legal precedent. *See, e.g.*, Abcarian, *supra* note 30; Rubin, *supra* note 30.

39. Abcarian, *supra* note 30, at E8; Rubin, *supra* note 30, at B4. The tenant managed to push the building manager out of her apartment, and thereafter strung empty tin cans across her doors to sound a warning should the manager try to enter again. She was evicted within the month. Abcarian, *supra* note 30, at E8.

40. Eagan, *supra* note 34, at 253.

less likely to know their rights and how to negotiate the legal system, and are more likely to believe that they cannot avoid harassment.[41] For undocumented aliens, the threat of exposure to immigrant authorities offers harassers yet another club to wield against their victims.

As in Carmen's case, sexual harassment in rental housing can be viewed not only as subordination of women by men,[42] but also as an example of the exploitation of poor people by those in positions of power. Moreover, Carmen is Latina and speaks very little English. Her experiences thus illustrate some ways in which race and lack of assimilation into the dominant culture exacerbate class and gender subordination in rental sexual harassment.[43]

## III. ANALOGIES AND UNCHARTED WATERS: LEGAL RESPONSES TO SEXUAL HARASSMENT IN RENTAL HOUSING

Title VIII[44] of the Federal Fair Housing Act provides the most accessible legal remedy for rental housing sexual harassment. Title VIII makes it unlawful "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."[45] Attorneys bringing rental housing claims under Title VIII draw analogies to sexual harassment doctrine developed under Title VII, and the few reported decisions under Title VIII suggest that federal and state courts are amenable to applying Title VII doctrine

41. *See, e.g., supra* note 27, at 180–81, 209–10.

42. *See supra* note 12.

43. *See* Deborah D. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology, in* FEMINIST THEORY IN PRACTICE AND PROCESS 75 (Micheline R. Malson et al. eds., 1989).

> Although the complexities and ambiguities that merge a consciousness of race, class, and gender oppressions make the emergence and praxis of a multivalent ideology problematical, they also make such a task more necessary if we are to work toward our liberation as blacks, as the economically exploited, and as women.

*Id.* at 105. The role of multiple consciousness in combatting subordination is explored in a more narrow, legal context in Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989); *see also* Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991) (accent discrimination and the price one pays for not being completely assimilated into the dominant American culture; primarily focusing on these issues in the employment context, but with much broader implications).

44. 42 U.S.C. §§ 3601–3619 (1991) (sometimes referred to as the Fair Housing Act of 1968).

45. 42 U.S.C. § 3604(b) (1991).

to Title VIII claims.[46] Courts hearing Title VIII cases are likely, however, to permit remedies unavailable under Title VII.[47] In addition to Title VIII, a wide variety of state statutes and common law causes of action can provide relief for victims of rental housing sexual harassment.

### A. *The Federal Fair Housing Act (Title VIII)*

Title VIII in part prohibits discrimination in housing on the basis of sex.[48] Since judicial interpretations of Title VIII have closely paralleled those of Title VII in dealing with racial discrimination, courts agree that the elements and burdens of proof in Title VIII sexual discrimination cases can draw heavily upon those developed in Title VII litigation. Until nine years ago, however, courts interpreting Title VIII did not consider sexual harassment a form of gender discrimination prohibited under the Act, unlike Title VII under which courts have explicitly held sexual harassment to be sex discrimination. In 1983, an Ohio district court, in the case of *Shellhammer v. Lewallen*,[49] broke with this tradition and for the first time recognized that sexual harassment *in rental housing* constitutes sexual discrimination for Title VIII purposes.

In *Shellhammer*, eviction proceedings were brought against the plaintiffs because Mrs. Shellhammer had refused her landlord's requests for her to pose nude for photographs and to have sexual intercourse with him.[50] The court applied Title VII sexual harassment doctrine to the Title VIII housing context, emphasizing the shared purposes of the two acts:

> Like Title VII of the Civil Rights Act of 1964, the Fair Housing Act was enacted to ensure the removal of artificial, arbitrary, and unnecessary barriers when the barriers operate invidiously to discriminate on the basis of impermissible characteristics. Congress

46. *See, e.g.*, Abrams v. Merlino, 694 F. Supp. 1101 (S.D.N.Y. 1988); Grieger v. Sheets, 689 F. Supp. 835 (N.D. Ill. 1988); Shellhammer v. Lewallen, 1 Fair Housing-Fair Lending Cases ¶ 15,472 (W.D. Ohio Nov. 22, 1983).

47. For example, the cap placed on damages in Title VII cases by the Civil Rights Act of 1991 does not apply to housing discrimination cases. Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991). Plaintiffs can also maintain Title VIII actions against individual employees of their landlords if the employees were guilty of discriminatory conduct, whereas victims of harassment at work can bring Title VII actions only against their employers. Although this aspect of Title VIII reduces the need for excursions into difficult areas of agency theory, in practice it may be less important than it seems, since few employees of landlords have the financial resources to permit recovery of large damage awards.

48. 42 U.S.C. § 3604 (1991).

49. 1 Fair Housing-Fair Lending Cases ¶ 15,472 (W.D. Ohio Nov. 22, 1983).

50. *Id.*

> designed it to prohibit "all forms of discrimination, sophisticated as well as simple-minded." The act, therefore, is to be construed generously to ensure the prompt and effective elimination of all traces of discrimination within the housing field.[51]

Thus, the *Shellhammer* court extended the prohibitions of the Fair Housing Act to sexual harassment in rental housing:

> In view of the policy of broad interpretation of the Fair Housing Act, the statute's remedial purposes, and the absence of any persuasive reason in support of the . . . contention[ ] that sexual harassment is not actionable under the Act . . . it is entirely appropriate to incorporate this doctrine into the fair housing area.[52]

In assessing the plaintiff's sexual harassment claim and in determining that sexual harassment in rental housing constituted actionable sexual discrimination under Title VIII, the *Shellhammer* court relied upon the definitions and theories of sexual harassment developed by the Eleventh Circuit in *Henson v. City of Dundee*,[53] a workplace sexual harassment case decided under Title VII. The Eleventh Circuit in *Henson*, in turn, relied heavily on the Equal Employment Opportunity Commission's ("EEOC") Title VII Guidelines ("Guidelines").[54] Although the Guidelines were binding neither on the *Henson* court nor on the *Shellhammer* court, the court in *Shellhammer* adopted the provisions of the Guidelines, as interpreted by the *Henson* court.

The Guidelines define sexual harassment as "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature."[55] Further, the Guidelines describe *quid pro quo* sexual harassment as occurring when "[s]ubmission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment . . . [and] submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual."[56] Hostile environment sexual harassment is also defined in the Guidelines as "[s]uch conduct [that] has the purpose or effect of unreasonably in-

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51. *Id.* at 136 (quoting United States v. City of Parma, 494 F. Supp 1049, 1053 (N.D. Ohio 1980), *aff'd*, 661 F.2d 1100 (6th Cir. 1982)).

52. *Id.*

53. 682 F.2d 897 (11th Cir. 1982).

54. 29 C.F.R. § 1604.11 (1981). The EEOC is the federal administrative body which investigates claims of sexual and racial discrimination.

55. 29 C.F.R. § 1604.11(a) (1991).

56. *Id.*

terfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."[57]

The *Shellhammer* court applied the Guidelines' theories about sexual harassment, as interpreted by the *Henson* court in the employment context, in the rental housing context. For example, the court in *Shellhammer* found that a claim for either hostile environment or *quid pro quo* harassment, both of which are recognized forms of sexual harassment under the Guidelines, would be actionable under Title VIII.[58] To establish a claim for the creation of a hostile environment, according to the *Shellhammer* court, a plaintiff must show that the "harassment makes continued tenancy burdensome and significantly less desirable than if the harassment were not occurring,"[59] and that the harassment was "pervasive and persistent."[60] In addition, according to the *Shellhammer* court, *quid pro quo* sexual harassment could affect a "term[ ], condition[ ], or privilege[ ]" of one's tenancy,[61] just as it could one's employment.

Although the definition of "hostile environment" sexual harassment adopted by the *Shellhammer* court does not establish an unusually rigorous standard, the Shellhammers lost on this claim. The court held that two propositions to pose nude for photographs and to have sex with the landlord during three or four months of tenancy were not sufficiently pervasive and persistent instances of harassment to constitute a violation of Title VIII.[62] The Shellhammers, however, did prevail on their claim of *quid pro quo* sexual harassment because the court found that eviction proceedings instituted against the Shellhammers resulted from Mrs. Shellhammer's rejection of her landlord's sexual advances.[63]

The hostile environment determination of the *Shellhammer* court illustrates the serious problems that result when courts too closely equate the effects of workplace sexual harassment with the effects of rental housing sexual harassment. Without understating the seriousness of sexual harassment in the workplace, judges and juries must recognize that conduct which may be a mere annoyance

57. *Id.*

58. *See Henson*, 682 F.2d at 903 (citing Guidelines, 29 C.F.R. § 1604.11(a) (1981)).

59. *Shellhammer*, 1 Fair Housing-Fair Lending Cases ¶ 15,472, at 136.

60. *Id.* (citing *Henson*, 682 F.2d at 904 (citing Guidelines, 29 C.F.R. § 1604.11(b) (1981) (additional citations omitted))).

61. *Id.* at 137. *See also Henson*, 682 F.2d at 909 (citing Guidelines, 29 C.F.R. § 1604.11(a)(1), (2) (1981)).

62. *Shellhammer*, 1 Fair Housing-Fair Lending Cases ¶ 15,472, at 137.

63. *Id.*

at work can be a nightmarish violation of privacy and personal autonomy when it takes place in one's home.

One year after the *Shellhammer* decision, the United States Supreme Court recognized both *quid pro quo* and hostile environment sexual harassment claims in the employment context in *Meritor Sav. Bank, FSB v. Vinson*.[64] It remains unclear whether the Supreme Court will follow the lead of the Sixth Circuit in adopting *quid pro quo* and hostile environment claims in the rental housing context.

Two 1988 district court opinions, *Grieger v. Sheets*[65] and *Abrams v. Merlino*,[66] relying on *Shellhammer* and the "shared purposes" of Title VII and Title VIII, agreed that Title VII sexual harassment principles should govern Title VIII litigation.[67] The *Merlino* court explicitly accepted the application of the hostile environment cause of action to rental housing harassment claims.[68]

Neither the Ninth Circuit nor the United States Supreme Court has examined residential sexual harassment. However, in the Title VII context, the Supreme Court has recognized both hostile environment and *quid pro quo* sexual harassment. Should the

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64. 477 U.S. 57 (1986). The Supreme Court, like the *Shellhammer* court, sought the EEOC's guidance in determining what conduct constituted sexual harassment.

65. 689 F. Supp. 835 (N.D. Ill. 1988). As in Carmen's situation, in *Grieger* an initially *quid pro quo* offer of rent or repairs for sex developed into continued harassment and threats after the tenant refused to submit to the harasser's demands. Ms. Grieger, like Carmen, lived with her young children, and the children witnessed some of the harassment in each case.

While the *Grieger* decision primarily concerned statute of limitations, election of remedies, and standing questions, with respect to each issue, it is worth noting that Title VIII's provisions were interpreted quite favorably toward the plaintiffs by the *Grieger* court. For example, the court found that pursuing an administrative remedy under section 3610 of the Fair Housing Act does not bar subsequent litigation under section 3612; they are "dual contemporaneous remedies;" thus, the plaintiff's filing of a complaint with the Department of Housing and Urban Development ("HUD") does not constitute an election of remedies. *Id.* at 839.

66. 694 F. Supp. 1101 (S.D.N.Y. 1988).

67. Both *Merlino* and *Grieger* involved denials of motions to dismiss. Although neither case was decided on the merits, they are both instructive since they outline the elements of claims under Title VIII.

68. The *Merlino* court reasoned:

> We are aware the Second Circuit has "pointedly" reaffirmed the view that Title VII cases are relevant to Title VIII cases on recognition of the fact the "two statutes are part of a coordinated scheme of federal civil rights laws enacted to end discrimination." Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 934 (2d Cir. 1988) (additional citations omitted). In light of this and the rule in *Meritor*, we are reluctant at this stage of the proceedings to dismiss a claim of sexual harassment for failure to state a cause of action.

*Merlino*, 694 F. Supp at 1104.

Supreme Court hear a Title VIII sexual harassment case, it would probably find *Meritor* sufficiently analogous to be controlling. Despite the Court's sharp move to the right, and its demonstrated lack of sympathy towards women's rights in contexts such as abortion,[69] considering both the Court's willingness to accept *quid pro quo* and hostile environment claims in the employment arena, and lower court decisions such as *Grieger* and *Merlino*, it would not be unimaginable for the Supreme Court Justices to extend the *Meritor* sexual harassment doctrine to Title VIII if such a case were presented to them.

Virtually every federal court of appeals which has considered the issue has concluded that the "shared purposes" of Title VII and Title VIII allow actions for the same types of discrimination under either statute.[70] Incidents of *quid pro quo* and hostile environment sexual harassment are equally serious, whether they occur at work or at home. As one commentator argues: "Sexual harassment, directed at women because they are women, does not cease to be disparate treatment when it occurs in housing. Thus, if sexual harassment discriminates against women at work, it must also discriminate against them at home and violate fair housing policy."[71]

Furthermore, the Supreme Court's recent decision in *Franklin v. Gwinnett County Public Schools*[72] suggests a willingness to interpret broadly civil rights statutes to provide remedies for sexual harassment. The Court in *Gwinnett* allowed monetary damages under Title IX[73] of the Education Amendments of 1964 for a high school student who was sexually harassed by her teacher.

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69. *See, e.g.*, Rust v. Sullivan, 111 S. Ct. 1759 (1991) (upholding Department of Health and Human Services regulations prohibiting any program receiving Title X funds from engaging in abortion counseling, referral, or advocacy); Webster v. Reproductive Health Serv., 492 U.S. 490 (1989) (upholding Missouri statute which, *inter alia*, bars the use of public employees and facilities to perform or assist with abortions not necessary to save the mother's life, and prohibits the use of public funds, employees, or facilities for the purpose of "encouraging or counseling" a woman to have an abortion not necessary to save her life) (The Court also upheld expensive and arguably unnecessary viability testing requirements, and let stand the preamble to the statute which contained "findings" by the Missouri legislature that "[t]he life of each human being begins at conception" and "[u]nborn children have protectable interests in life, health, and well-being." *Id.* at 501.).

70. *See, e.g., supra* note 46 and accompanying text; United States v. Starrett City Associates, 840 F.2d 1096 (2d Cir. 1988); Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032 (2d Cir. 1979); United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974).

71. Butler, *supra* note 27, at 201.

72. 112 S. Ct. 1028 (1992).

73. 20 U.S.C. § 1681(a) (1992). This statute provides, in pertinent part, that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in,

In addition to recognition of both *quid pro quo* and hostile environment claims, Title VIII litigation would benefit if courts applied the "reasonable woman" standard adopted by the Ninth Circuit in the Title VII case of *Ellison v. Brady*[74] to Title VIII claims. Under the "reasonable woman" standard:

> a female plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.[75]

The *Ellison* court adopted "the perspective of a reasonable woman primarily because . . . a sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women."[76] For example, Rehnquist's opinion in *Meritor* suggested that the clothes a woman wears may indicate whether or not the advances were unwelcome.[77] Given Rehnquist's opinion, the Supreme Court may be unwilling to adopt the reasonable woman standard in either Title VII or Title VIII cases without a legislative directive.

Some may criticize *Ellison* for establishing a potentially ambiguous standard, or for perpetuating differences in perception between most men and women. Nevertheless, this landmark decision will make it easier to prove discriminatory harassment. For instance, the *Ellison* decision suggests an answer to vexing questions about the harasser's intent. Under *Ellison*, if a female victim reasonably feels harassed, the perpetrator's actual intent is immaterial. If the Court does decide to apply, with or without a legislative directive, the reasonable woman standard to assess the alleged harasser's conduct in Title VII cases, the same standard should apply to Title

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be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ." *Id.*

74. 924 F.2d 872 (9th Cir. 1991). The *Shellhammer* Court concluded that the offensiveness of the landlord's conduct should be judged by a subjective standard, 1 Fair Housing-Fair Lending Cases ¶ 15,472, at 136, but in light of *Meritor*'s use of an objective standard, it is unlikely that *Shellhammer* remains persuasive.

75. 924 F.2d at 879.

76. *Id.* A thorough analysis of *Ellison* and its underlying rationale is beyond the scope of this Recent Development. For a more detailed analysis of this landmark case, see Debra A. Profio, *Ellison v. Brady: Finally, A Woman's Perspective*, 2 UCLA WOMEN'S L.J. 249 (1992).

77. 477 U.S. at 68–69 (1986). In practice, the relevancy of a woman's clothes may emphasize the difference in male and female perceptions. What a woman considers stylish, a man may consider alluring. *See, e.g.*, Jacqueline Goodchilds & Gail Zellman, *Sexual Signaling and Sexual Aggression in Adolescent Relationships*, *in* PORNOGRAPHY & SEXUAL AGGRESSION (Neil Malamuth & Edward Donnerstein eds., 1984).

VIII cases, since Congress enacted both Title VII and Title VIII to combat the same kinds of discrimination, only in different contexts.

In addition to deciding *what kind* of conduct constitutes sexual harassment, courts must determine *who* should be held liable for such conduct. Courts must also decide whether to use agency theory to hold owners liable for sexually harassing acts of building managers and other employees.[78] Under Title VII, employers will be liable for the *quid pro quo* harassment of their employees, since "sex for tangible benefits" threats can only be made by managerial employees whose powers were conferred by the company.[79] Thus, analogizing to the Title VIII context, even if the landlord did not personally sexually harass the tenant, under agency theory, not only will the harasser be liable, but the landlord who knew or should have known about the harassment will also be held responsible for the actions of his or her employees.

*Meritor* also held that an employer's adequate grievance procedures may shield an employer from liability for the harassing conduct of its employees. However, those procedures which require the victim to complain to the harasser are not considered adequate.[80] Influenced by an *amicus curiae* brief filed by the EEOC (which was "in some tension with" existing EEOC guidelines favoring strict liability for employers), the *Meritor* opinion also suggests that an employer will not be held liable for hostile environment claims without actual notice of the harassment, unless the employer provides inadequate grievance procedures.[81]

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78. For example, Carmen's landlord did not sexually harass her. Only the building manager demanded to have sex with her. The landlord did, however, personally destroy some of her property and attempt to intimidate her.

In *Meritor*, the Court declined to rule explicitly on the issue of employer liability, instead suggesting that courts look generally to agency law to determine employer liability. Justices Marshall, Brennan, Blackmun, and Stevens favored imposing strict liability on the employer for both types of harassment under most circumstances. *Meritor*, 477 U.S. at 76–78 (Marshall, J., concurring in the judgment). However, the Court's majority expressly rejected imposing strict liability on employers for the sexual harassment committed by their employees. And, with the retirement of Justices Brennan and Marshall, it seems unlikely that the concurring opinion will state a majority position in the foreseeable future.

79. *Id.* at 70.

80. The grievance procedures in *Meritor* required the victim to complain first to her supervisor, the same man who had allegedly harassed her. As a result, the employee did not use her employer's grievance procedures at all. In finding these procedures inadequate, the Court cautioned that grievance procedures should be "better calculated to encourage victims of harassment to come forward." *Id.* at 72–73.

81. *Id.* at 72.

In rental housing, most tenants have little or no contact with their landlords except through building managers. Although some owners provide tenants with an address to which to send complaints, owners do not always respond to such complaints.[82] Where a building manager harasses a tenant and the tenant has neither an accessible nor an adequate method for complaining to the landlord, the grievance procedures should be found inadequate. As more victims attempt to litigate rental housing sexual harassment cases, courts will be faced with the question of whether landowners are required to provide grievance procedures to avoid liability for sexual harassment by their employees. And, as the public, the courts, and federal and state legislatures become more aware of the problem of rental housing sexual harassment, landlords will be held to the standards imposed on employers to reduce and eliminate the incidence of sexual harassment.

### B. *The 1988 Amendments to Title VIII*

The 1988 Amendments to the Fair Housing Act ("1988 Amendments") make litigating Title VIII claims easier and more attractive for potential plaintiffs.[83] The 1988 Amendments eliminated the $1,000 cap on punitive damages and revised many of the procedural requirements which previously limited the effectiveness of Title VIII.[84] The removal of the cap on damages should appeal to attorneys who litigate Title VIII cases.[85] In addition, the 1988 Amendments extended the statute of limitations from 180 days to two years after the last incident of sexual harassment.[86] This extension should make it easier for victims to bring claims by giving them more time to gather the resources (and strength) to bring a suit against their landlord or former landlord. Tenants, however, must

82. *See, e.g.*, Abcarian, *supra* note 30, at E8.

83. 42 U.S.C. § 3613 (1991).

84. *Id.*

85. For example, the *Fiedler* case settled for almost $600,000 in individual awards, plus $259,000 in legal fees. Robin Abcarian, *Fast Forward: Sex-Harassment Suit Settled*, L.A. TIMES, Jan. 30, 1992, at E1.

86. 42 U.S.C. § 3613. For an exploration of the potential impact of the 1988 Amendments on the Fair Housing Act, see James A. Kushner, *The Fair Housing Act of 1988: The Second Generation of Fair Housing*, 42 VAND. L. REV. 1049, 1090–91, 1096–1103 (1989). For the "nuts and bolts" of litigating a residential sexual harassment claim, see Jane M. Draper, Annotation, *State Civil Rights Legislation Prohibiting Sex Discrimination in Housing*, 81 A.L.R.4th 205 (1991); *see also* Dave Linn, *Sexual Harassment by Landlord*, 3 AM. JUR. *Proof of Facts* 3d 581 (1989) (provides a useful and thorough discussion of the elements, burdens of proof, and methods of gathering evidence in a residential sexual harassment action, but does not reflect the 1988 Amendments to Title VIII).

be educated about sexual harassment and encouraged to take advantage of the greater relief now available under Title VIII and its Amendments. Unless tenants seek redress under these statutes, the potential relief provided remains meaningless.

### C. *Other Statutory and Common Law Causes of Action*

In addition to statutory remedies under Title VIII, claims in contract, in common law tort, or under state civil rights statutes may offer a broader range of remedies and longer statutes of limitations.[87] State civil rights and fair housing statutes offer promising alternatives to redress rental housing sexual harassment claims. For instance, a Wisconsin statute makes it unlawful for any person to discriminate on the basis of sex "[b]y refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant."[88] Likewise, the California Government Code prohibits discrimination in housing based on sex, *inter alia*, and prohibits retaliation against a person who has opposed discriminatory practices.[89] Furthermore, California's Unruh Act declares that all persons, regardless of "sex, race, color, religion, ancestry, national origin, or blindness, or other physical disability are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments . . . ."[90]

Most state courts have not had the opportunity to apply state fair housing and civil rights statutes to residential sexual harassment claims.[91] Consequently, pleading causes of action based on state statutes risks dismissal for failure to state a claim if judges do not recognize sexual harassment in housing as violative of state fair housing and civil rights statutes.

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87. For example, section 338(a) of the California Code of Civil Procedure stipulates a three-year statute of limitations for "[a]n action upon a liability created by statute, other than a penalty or forfeiture." CAL. CIV. PROC. CODE § 338(a) (West 1991); section 337 of the code grants a four-year statute of limitations for actions on a written contract. CAL. CIV. PROC. CODE § 337 (West 1982).

88. WIS. STAT. § 101.22(2)(f) (1988). *See also* Chomicki v. Wittekind, 128 Wis. 2d 188, 381 N.W.2d 561 (1985) (holding that "harassment" encompasses sexual harassment of a tenant, which may be determined with reference to the statutory definition of sexual harassment under fair employment law).

89. CAL. GOV'T CODE § 12955 (West 1992).

90. CAL. CIV. CODE § 51 (West 1991). *See supra* note 10.

91. *See* Draper, *supra* note 86 (overview of state statutes, including the handful of cases applying them to sexual harassment claims).

Plaintiffs can also turn to tort and contract causes of action for redress of rental housing sexual harassment claims.[92] A victim of such harassment could potentially allege several tort causes of action including: assault,[93] sexual battery,[94] negligent or intentional infliction of emotional distress,[95] negligent hiring or negligent retention[96] (of a building manager or other employee), conversion,[97] trespass,[98] creation and maintenance of a nuisance,[99] retaliatory eviction,[100] or engaging in unfair business practices.[101] Claims such as breach of the covenant of quiet enjoyment[102] or breach of the implied covenant of good faith and fair dealing[103] give rise to contract actions. Contract causes of action may provide liberal damages or statutes of limitations, and in certain circumstances, framing the complaint as a landlord's breach of contract may excuse the tenant from her obligation to pay rent.[104] Given the various legal alternatives, Title VIII is truly just the tip of the iceberg for victims of rental housing sexual harassment, although the possibility of large awards and settlements[105] and the availability of attorneys' fees may render Title VIII the most attractive option.

## CONCLUSION

In analyzing the legal theories and strategies applied in residential sexual harassment cases, we may lose sight of what a tenant suffers as a victim of such harassment in her own home, often in front of her family or friends. I have been involved with Carmen's case off and on since July of 1991, first as a volunteer at the Legal Aid Foundation of Los Angeles, and then while assisting the private attorney acting as lead counsel on her case. Until I accompanied

92. Many tort claims, such as assault, battery, or infliction of emotional distress, do not require that the incidents occur in a residential setting, but such causes of action demonstrate that sexual harassment can implicate more than just civil rights and fair housing laws. *See* Linn, *supra* note 86, at 590–92.

93. *See generally* W. KEETON ET AL., PROSSER AND KEETON ON TORTS 44–47 (5th ed. 1984).

94. *See, e.g.*, CAL. CIV. CODE § 1708.5 (West 1992).

95. KEETON ET AL., *supra* note 93, at 54–66.

96. *See generally id.* at 499–508 (servants), 509–512 (independent contractors).

97. *See generally id.* at 90–106.

98. *See generally id.* at 67–88.

99. *See generally id.* at 616–54.

100. *See, e.g.*, CAL. CIV. CODE § 1942.5 (West 1985).

101. *See, e.g.*, CAL. BUS. & PROF. CODE § 17200 (West 1987).

102. *See, e.g.*, CAL. CIV. CODE § 1927 (West 1985).

103. *See, e.g.*, CAL. CIV. CODE § 1493 (West 1982).

104. Linn, *supra* note 86, at 591–92.

105. *See supra* note 85.

Carmen to small claims court in October, 1991, to help defend against an eviction attempt by her landlord, I felt confident about her future. Despite the lack of case law addressing rental housing sexual harassment, I thought that Carmen would eventually win a large award or settlement, as the facts of her case seemed so egregious.

I could not imagine that the small claims judge would refuse to transfer Carmen's case to Superior Court[106] after reviewing the harassment complaint. But he did; he ordered Carmen's eviction simply for failure to pay rent, without considering all the issues.[107] During the hearing, the judge seemed alternately amused and exasperated. His wide, banker's face occasionally broke into a smile, as if he had no conception of how serious this proceeding was to Carmen. I could almost read his mind: "What will these people dream up next to avoid being evicted?"

Following the hearing, I accompanied Carmen back to her apartment. After a continuance had been granted at a previous hearing, the landlord and building manager had come over to intimidate Carmen. She and her attorneys hoped that my presence would discourage a similar episode. The landlord and the building manager must have been pleased with the hearing's outcome, since no one disturbed us. The apartment seemed a bit nicer than when I had last visited: a few walls were freshly painted, some of the falling plaster had been replaced, and the landlord had begun repairs on the bathroom. I assumed he was preparing the apartment for rental to a new tenant.

As the next two hours passed, I watched Carmen gradually realize the significance of the hearing. She could not believe that she had to vacate the apartment within twenty days. She had no place to go. She lacked the security deposit which was required to

106. The Superior court is the proper forum to decide issues of harassment and possible retaliatory motives for the eviction.

107. At the time this Recent Development was written, Carmen was appealing her case, and her attorneys were attempting to consolidate the actions. A trial *de novo* on Carmen's eviction was scheduled for April 1, 1992. Telephone Interview with Rita Morales, Carmen's attorney (Feb. 28, 1992). Subsequently, Carmen's appeal was taken off the calendar, pending a motion to consolidate her eviction and sexual harassment claims. The trial *de novo* was never held. Telephone Interview with Rita Morales (Apr. 27, 1992). Carmen's landlord also faces a hearing before the Los Angeles City Attorney on a destruction of property charge stemming from his attempts to evict her. Telephone Interview with Rita Morales (Feb. 28, 1992).

lease a new apartment, and she told me that once there is an eviction on your record, no landlord will rent to you.[108]

Perhaps Carmen will ultimately prevail in her harassment case. For the time being, she is trying to save enough money to pay the security deposit at a new apartment, but her attorney tells me that Carmen fears being sexually harassed at the next apartment, too.[109]

What is most disturbing is that Carmen may not be safe anywhere she moves. There must be tens of thousands of women like Carmen who have been sexually harassed by building managers or landlords. Maybe there are hundreds of thousands. We will probably never know the exact number of sexual harassment victims because most of them fear reporting harassment. Many of them do not understand the legal system,[110] and thus do not realize that the law can both protect them from retaliation and provide monetary reparation for their suffering. Victimized tenants will not come forward until attorneys, advocates, and fair housing agencies[111] educate tenants about their right to be free from sexual harassment in their own homes.

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108. There is actually a service called U.D. Registry which keeps track of all unlawful detainer actions filed in the greater Los Angeles area. Landlords can contact U.D. Registry and determine whether a prospective tenant has an unlawful detainer suit on his or her record. Telephone Interview with an unidentified receptionist at U.D. Registry (Feb. 28, 1992).

109. Telephone Interview with Rita Morales (Feb. 28, 1992).

110. *See generally* William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631 (1980–81) (discussing the limitations of rights discourse and the reasons that many wrongs and disputes never make it to court).

111. Tenant empowerment is also important. Some of the former plaintiffs in *Fiedler*, for instance, have started an organization called Women Refusing to Accept Tenant Harassment ("WRATH"). WRATH plans to promote public awareness of sexual harassment in housing, and provide resources and information to women in need. Abcarian, *supra* note 30, at E8. Some of WRATH's goals are very straightforward: " 'We want background checks on apartment managers. . . . We don't understand why a manager is given a key to everyone's apartment. If there's an emergency, break my damn door down and charge me for it.' " Rubin, *supra* note 30, at B3–B4 (quoting former tenant Catherine Hanson).

Empowerment can only go so far, however. Many harassers are capable of violence. Self-help and consciousness raising can be dangerous. Tenants in small buildings are especially vulnerable, since they may have no one with whom to band together for support and protection. Some landlords and building managers, like the manager in *Fiedler*, try to turn tenants against one another or single out activists for retaliation.

Attorneys and other advocates should apprise tenants of their options, and then allow them to make informed choices. The *Fiedler* case illustrates that lawsuits and tenant empowerment are not mutually exclusive.