

## **What Happens Next – Sunday March 7, 2021**

### **Thomas Edison, MeToo, Bonfire of the Vanities, and Consumer Behavior**

#### **Christine Rosen QA**

Patrick Allitt:

Thanks very much, indeed, Christine, that's great. You probably remember the legal scholar Catharine MacKinnon, who used to say there's American law itself has a male's eye view. And I think some members of the Me Too movement have responded by saying the due process and approach and the presumption of innocence just isn't quite good enough. Is there a way around the traditional presumption of innocence standard if the accused harasser simply denies it and cases come down to a he said, she said standoff?

Christine Rosen:

That's such an important question. I am not a fan of MacKinnon's line of logic because one of the things I think that's very powerful about our justice system is the willingness to treat each person who comes forward as an individual. That said, it's true that particularly with regard to sexual harassment, a lot of it can be said to be in the eye of the holder. What one person thinks is just a harmless joke can be quite offensive and, if repeated over time, harassing to someone else.

So I think that that's where some of our, one of the huge benefits of the Me Too movement and something I think we should continue to encourage is that just talking about what is and isn't considered offensive as culturally is important. And being able to have conversations where people can air those concerns is important. There are separate legal standards that we should see things through a reasonable woman standard, for example, rather than the reasonable person standard starts to get for me a little murkier, because it then could bleed into arguing for special protections for people based on sex, for example. Which I think a lot of more radically individualistic approaches to the law, which I share, would not really approve of.

Patrick Allitt:

Well is the concept of harassment intrinsically ambiguous? And even more so, what about phrases like the perceived hostile working environment? Is it definitely going to be possible to come to a consensus about what constitutes those things?

Christine Rosen:

No. To put it bluntly, no. This is actually where a lot of the problems emerge. And why the training, the sort of sexual harassment training we see in human resources departments is really ineffective because it's by mandating this training, which is really teaching people what the law says, not trying to help them gain more empathy and insight into what might or might not be offensive or harassing, it doesn't actually keep the conversation moving forward.

And we know from government statistics, for example, the general accounting office has shown that very small numbers of federal government employees, for example, around 11% who claimed to have experienced harassment ever file a formal complaint. So, there are a lot of barriers even to reporting this right now. Part of that is that it can be difficult to prove in a he said, she said situation.

However, I do think if we're talking about cultural norms, those conversations with the kinds of things we should be having, but they have to be done in an environment where the human resource managers who are sponsoring them can allow people to have free and open-ended conversations without fear of liability, without fear of being ostracized or labeled a harasser for raising questions that I think are legitimate.

For example, the ones that a lot of men in corporate America have raised about their discomfort and the ambiguity about what the new standards are with regard to mentoring their female employees. Most of them want to do the right thing. The question is who's setting the rules for those. And I think as a culture, we're still trying to come to terms with that.

Patrick Allitt:

Yeah. One of the very savage things you said just now was that the EEOC regarded the increased number of reported cases as a good sign. Although presumably you could also regard it as a bad sign. That leads to the question of whether it's possible for us to have any kind of estimate about how widespread workplace harassment really is.

Christine Rosen:

There's a lot of battling about the statistics with that regard. I will say that one of the most encouraging things we've seen in workplaces that have really tried to examine an overhaul, how they talk about harassment is catalyst. Which looks at women in the workplace in particular in corporate America. Has found that about 40% of the management level positions in this country are now held by women. But interestingly for this discussion, 74% of managers in human resources are women. These are the people who are actually implementing and fostering a lot of these policies. So, there's a real opportunity here to have the HR people who are implementing these, often it should be said as a preventive liability measure for the companies that they work for, but still women are themselves often in charge of fostering these conversations.

So to say that somehow women are placed in the role of kind of being preyed upon or always being victims isn't quite right. So yes, the statistic from the EEOC is only encouraging in the sense that I do think the Me Too movement was effective at making people feel more comfortable discussing these matters in a way that perhaps before they were ashamed or fearful of doing.

Patrick Allitt:

We tend to pay most attention to stories like this when it comes from politics or from Hollywood. Are cases easier or harder to resolve when they happen in obscure and unglamorous work places where there's no danger of partisanship leading to double standards?

Christine Rosen:

Yes, actually. I think they are. And I think one of the criticisms of the Me Too movement was that it did focus a lot of efforts on well-known cases, people there's a lot of interest in the Hollywood producer who's abusing starlets and the politician who says one thing and does another. But in fact, the most vulnerable communities here are say, if you're a female factory floor worker and your supervisor is harassing you and you fear being able to find another job, but you can't take the harassment, and you don't want to be a troublemaker, what do you do?

So I think it's when the power relationships and the power dynamics for women and men are highly unequal and the woman isn't a celebrity or doesn't have an outlet with which to share her concern and to bring forward a complaint or fears doing that. That is actually the more common situation. And even with laws on the books and processes on the books that have that option, because remember under title 7 of Civil Rights Act of 1964 and subsequent Supreme Court decisions about this, certain forms of harassment are sex discrimination.

So there are legal avenues, but the both the emotional, the financial, and the professional costs to women to bring those complaints is quite high. And we don't talk enough about that in the context of everyday working people. We tend to enjoy the Hollywood stories more I think for their salaciousness.

Larry Bernstein:

I have a quick question for you. So your key insight here is that the Me Too movement has undermined cultural norms of daily interactions between, I'll call it male managers and their female colleagues. And that this lack of interaction will harm female careers.

I have a question as it relates to how COVID has changed the dynamics of the workplace. Given that we're on a lot of Zoom calls and we no longer see other workers day to day, does that benefit women in this sort of environment? In other words, because men don't feel under the gun by having these one-on-one meetings or being in uncomfortable situations to be challenged, do you think that will foster and improve male-female relations at work?

Christine Rosen:

It's an interesting question. I mean, it's possible in the sense that there's a kind of flattening effect that everyone having to conduct business via Zoom, rather than an informal in-person relationship type of interaction might allow for more equality in that sense. I actually think though that long-term, it's not going to have that effect because it's often in the building of relationships between mentors and mentees and among coworkers that important, professional connections and career are created.

There's also the issue of course, of where the domestic and childcare burden has fallen during COVID, onto whose shoulders. And we do have some preliminary evidence that more women than men have taken up the slack, even if they are still working themselves, of taking on more of the domestic burden. So that would eventually lead to sort of unequal outcomes for them professionally, if they can't devote as much time to the workplace.

Christine Rosen:

So it is an interesting question. I actually, I hate Zoom meetings. So, I personally hope they can't end soon enough for my taste. But I still think that those important professional relationships should be encouraged. And that part of the way we're going to get back to being able to having them between the sexes is to be able to talk about what the ground rules are and not to always presume that every man is a suspected predator and every woman a potential victim.

Patrick Allitt:

Do you think we can at least assume that the situation is better now than it was back in the 1960s and 70s when the concept of sexual harassment in the workplace first developed?

Christine Rosen:

Absolutely. No, I mean, I think just the fact that the way that we all discussed what was going on during the Me Too movement is evidence of that. Legally, in terms of crafting effective enforcement policy, we still have a long way to go, but culturally, yes. I mean, anyone who goes back and watches a movie from the sixties or seventies and see some of the gender stereotypes and things that were laughed off as humor that actually now look quite awful and predatory, that's a sign, I think, of how far we've come that we don't actually accept as, or ignore when power differences are brought to bear unfairly on women. Particularly in the workplace by men who are either their peers or their bosses. So yeah, I do. I think this is actually an optimistic story long-term.