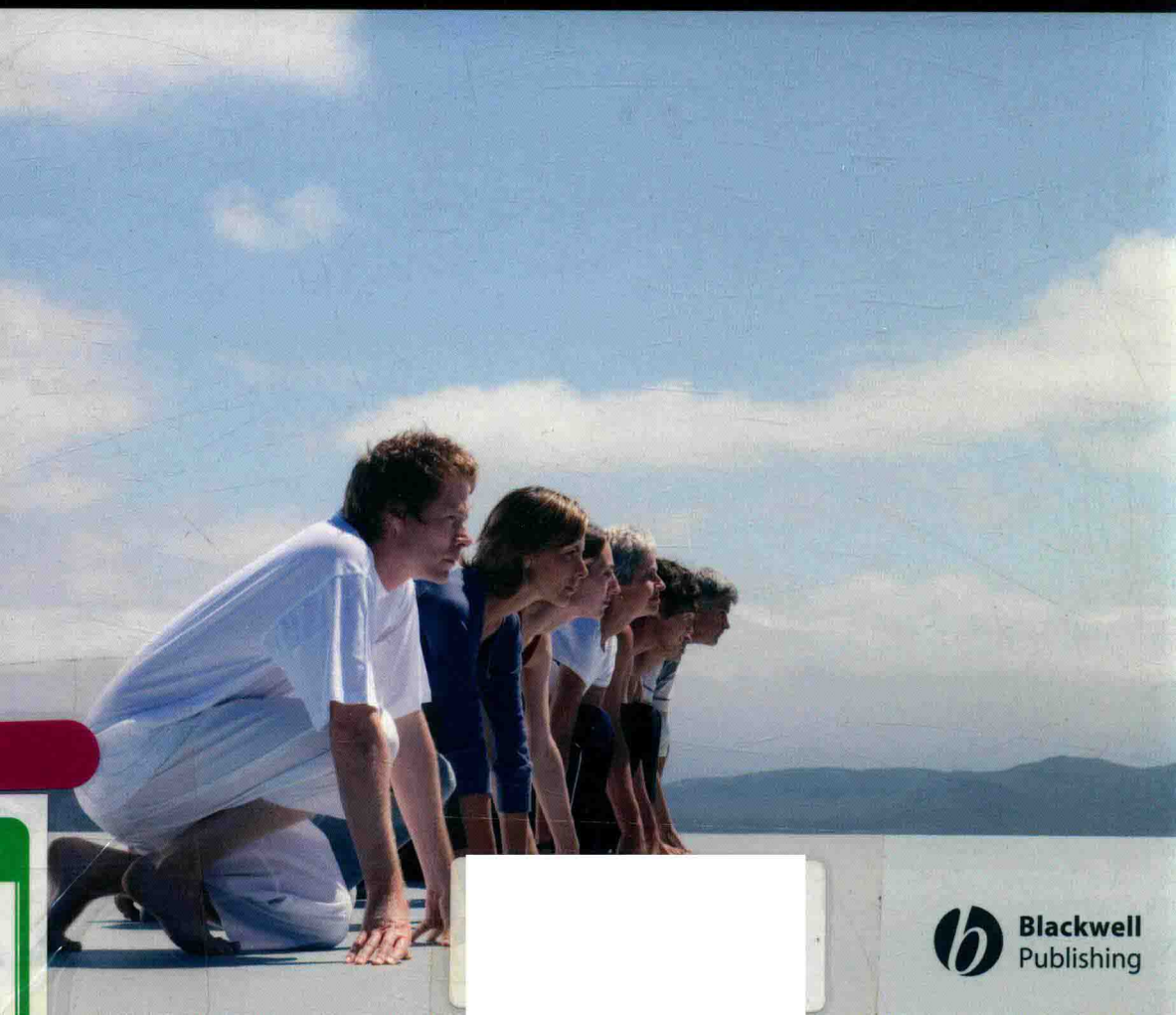


Edited by
Faye J. Crosby,
Margaret S. Stockdale,
and S. Ann Ropp

Sex Discrimination in the Workplace



**Blackwell
Publishing**

Sex Discrimination in the Workplace

Multidisciplinary Perspectives

Edited by

Faye J. Crosby
Margaret S. Stockdale
S. Ann Ropp



Blackwell
Publishing

© 2007 by Blackwell Publishing Ltd

BLACKWELL PUBLISHING

350 Main Street, Malden, MA 02148-5020, USA
9600 Garsington Road, Oxford OX4 2DQ, UK
550 Swanston Street, Carlton, Victoria 3053, Australia

The right of Faye J. Crosby, Margaret S. Stockdale, and S. Ann Ropp to be identified as the Authors of the Editorial Material in this Work has been asserted in accordance with the UK Copyright, Designs, and Patents Act 1988.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, except as permitted by the UK Copyright, Designs, and Patents Act 1988, without the prior permission of the publisher.

First published 2007 by Blackwell Publishing Ltd

1 2007

Library of Congress Cataloging-in-Publication Data

Sex discrimination in the workplace / edited by Faye J. Crosby, Margaret S. Stockdale, S. Ann Ropp.

p. cm.

Includes bibliographical references and index.

ISBN-13: 978-1-4051-3449-1 (hardback)

ISBN-13: 978-1-4051-3450-7 (pbk.)

1. Sex discrimination in employment—United States. 2. Women—Employment—United States. 3. Sex discrimination in employment—Law and legislation—United States. I. Crosby, Faye J., 1947– II. Stockdale, Margaret S. III. Ropp, S. Ann.

HD6060.65.U5S49 2007

331.4'1330973—dc22

2006027521

A catalogue record for this title is available from the British Library.

Set in 10.5 on 13.5 pt Plantin
by SNP Best-set Typesetter Ltd, Hong Kong
Printed and bound in the Singapore
by Markono Print Media Pte Ltd

The publisher's policy is to use permanent paper from mills that operate a sustainable forestry policy, and which has been manufactured from pulp processed using acid-free and elementary chlorine-free practices. Furthermore, the publisher ensures that the text paper and cover board used have met acceptable environmental accreditation standards.

For further information on
Blackwell Publishing, visit our website:
www.blackwellpublishing.com

Sex Discrimination in the Workplace

To the memory of Mady Karsenty, with love.
FJC

To my students for putting up with me.
MSS

Contributors

Theresa M. Beiner is the Nadine H. Baum Distinguished Professor of Law at the University of Arkansas at Little Rock, William H. Bowen School of Law. Her areas of expertise include Employment Discrimination Law as well as Civil Procedure, Federal Jurisdiction, judicial appointments, and Constitutional Law. In 2005, her book *Gender Myths v. Working Realities: Using Social Science to Reformulate Sexual Harassment Law* was published by the New York University Press. Her law school has awarded her its faculty excellence awards for scholarship and teaching. Professor Beiner is the mother of three children. tmbeiner@ualr.edu

Barbara R. Bergmann writes on economic and social policy. She formerly served as Professor of Economics at the University of Maryland and at American University in Washington, DC. She received the PhD in economics from Harvard University. Dr. Bergmann served as a senior staff member of the President's Council of Economic Advisers during the Kennedy Administration. Other government experience includes service as Senior Economic Adviser with the Agency for International Development, and as an economist with the Bureau of Labor Statistics. She has served on advisory committees to the Congressional Budget Office and the Bureau of the Census. In the early 1980s, she wrote a monthly column on economic affairs for the *New York Times* Sunday Business Section. She has served as President of the Eastern Economic Association, the Society for the Advancement of Socio-Economics, the American Association of University Professors and the International Association for Feminist Economics. She is currently working on a book entitled *The Decline of Marriage and What to Do About It*. brbergmann@verizon.net

Susan Bisom-Rapp is Professor of Law and Director of the Center for Law and Social Justice at Thomas Jefferson School of Law. She is a founder of the law school's Women and the Law Project. Professor Bisom-Rapp's scholarly work focuses on globalization and the workplace, legal sociology, and employment discrimination law, subjects upon which she has written and lectured widely. Her co-authored casebook, *The Global Workplace: International and Comparative Employment Law* (Cambridge University Press, 2007), is the first law school text in that emerging field. Before beginning her academic career, she practiced labor and employment law in New York City. susanb@tjssl.edu

Eugene Borgida is Professor of Psychology and Law and Adjunct Professor of Political Science at the University of Minnesota. He is a Morse-Alumni Distinguished Teaching Professor of Psychology. He is a Fellow of the APS and an APA Fellow, and has served on the Board of Directors for the Association for Psychological Science and the Social Science Research Council. He received his BA from Wesleyan University and PhD from the University of Michigan. He has written on the use of psychological science in court and served as an expert witness in both class action and single-plaintiff sex discrimination cases. Borgi001@umn.edu

Wayne F. Cascio is US Bank Term Professor of Management at the University of Colorado at Denver and Health Sciences Center. He has written extensively on human resource management issues, including downsizing, restructuring, and the economic impact of behavior in organizations. An elected Fellow of the Academy of Management, the American Psychological Association, and the National Academy of Human Resources, he received the Distinguished Career award from the Academy's HR Division in 2000, and an honorary doctorate from the University of Geneva (Switzerland) in 2004. Currently he serves on the Boards of Directors of CPP, Inc., the Society for Human Resource Management Foundation, and the Academy of Management. Wayne.Cascio@cudenver.edu

Faye J. Crosby is a social psychologist and an expert on affirmative action. She has authored, co-authored, edited, or co-edited 14 volumes and over 100 articles and chapters in scholarly books. Since receiving her PhD in 1976, Crosby has been the fortunate recipient of numerous awards including an honorary degree from Ball State University, the Carolyn Sherif Award from Division 35 of the American Psychological Association, and the Kurt Lewin Award from the Society for the Psychological Study of Social Issues. Crosby is Professor of Psychology at the University of California, Santa Cruz, where she has been Chair of the Academic Senate since 2005. fjcrosby@ucsc.edu

Colleen E. Crangle was born in South Africa. She spent her childhood in Zimbabwe (then known as Southern Rhodesia), Miami Beach, USA, and South

Africa. In 1980 she immigrated to the United States for graduate study. Born to an Irish father, she held Irish citizenship until 1991 when she became a citizen of the United States. She holds a PhD in Philosophy from Stanford University and a Master's degree in Computer Science from the University of South Africa. She has two teenage children who live with her in Palo Alto, California. crangle@ix.netcom.com

Paula England is Professor of Sociology at Stanford University. She is the author of *Comparable Worth* (Aldine de Gruyter, 1992) and *Households, Employment, and Gender* (Aldine de Gruyter, 1986, with George Farkas). From 1994–1996 she was editor of the *American Sociological Review*. She was the 1999 recipient of the American Sociological Association's Jessie Bernard Award for career contributions to the study of gender. pengland@stanford.edu

Susan T. Fiske, Psychology Professor at Princeton, has investigated gender bias since graduate school at Harvard. Fiske expert-witnessed in a landmark gender discrimination case, *Hopkins v. Price Waterhouse*. With Glick, she developed Ambivalent Sexism Theory in lab, survey, and cross-cultural contexts, and now in close relationships. With Cuddy and Glick, her Stereotype Content Model identifies universal dimensions of intergroup bias. She authored *Social Cognition* (McGraw Hill 3rd ed., in press) and *Social Beings* (Wiley, 2004); she edits the *Handbook of Social Psychology* (McGraw Hill and Oxford University Press) and the *Annual Review of Psychology* (Annual Reviews). Fiske was elected President of the Association for Psychological Science (formerly American Psychological Society). sfiske@princeton.edu

Peter Glick (AB, Oberlin College, 1979; PhD, University of Minnesota, 1984) is Professor of Psychology at Lawrence University and a Fellow of the American Psychological Association and the Association for Psychological Science. His work on ambivalent sexism (with Susan Fiske of Princeton University) was recognized with the 1995 Gordon W. Allport Prize for best paper on intergroup relations. This theory and related empirical work challenge conventional views of prejudice as an antipathy by showing how "benevolent sexism" (subjectively positive, but patronizing attitudes toward women) as well as hostile sexism is related to gender inequality. peter.s.glick@lawrence.edu

Barbara A. Gutek is Professor and Eller Chair in Women and Leadership in the Department of Management and Organizations, University of Arizona. She authored over 100 books and articles. In 1994, Gutek received the Sage Scholarship Award from the Gender and Diversity in Organizations Division of the Academy of Management, the American Psychological Association's Division 35 Heritage Award for a "substantial and outstanding body of research on women and gender" and the Committee on Women in Psychology Award as a "Distinguished Leader for Women in Psychology." *The Brave New Service*

Strategy (AMACOM, 2000), with T. Welsh, was selected one of the 30 best business books of the year 2000 by Soundview, publishers of Business Executive Summaries. bagutek@aol.com

Ann Branigar Hopkins is a gardener, carpenter, speaker, and occasional writer. She was born in Texas, the oldest child of a career army officer and a nurse. As an army brat, she grew up in Germany and moved a lot. She earned degrees in mathematics from Hollins College (BA, 1965) and Indiana University (MA, 1967) and began her professional work as a theoretical physicist at IBM in the late sixties. In the early seventies she moved from technical work into project management and became a management consultant at Touche Ross & Co and later at Price Waterhouse. Along the way she married and had three children. In the eighties, she was involved in a seven-year discrimination litigation with Price Waterhouse that ended in the early nineties when she returned to the firm as a court ordered partner. After eleven years as a partner, she retired in 2002. annhopkins@earthlink.net

Anita Kim is a graduate student in the social psychology doctoral program at the University of Minnesota. She is interested in a variety of fields within social psychology, including its application to the legal system. She received her BS in psychology from the University of California at San Diego in 1999, and has also worked in litigation consulting and market research. kimx0917@umn.edu

Ellen B. Kimmel retired in 2003 from the University of South Florida where she was Distinguished Professor of Psychology. A prolific writer, and the recipient of numerous grants and awards, Kimmel has been recognized as a leader in the fight for gender equity. She has served as president of the Southeastern Psychological Association and of Division 35 of the American Psychological Association. Her current interests center on issues of wellness. kimmel@tempest.coedu.usf.edu

Linda Hamilton Krieger is a Professor of Law at the University of California, Berkeley School of Law (Boalt Hall). She is a graduate of Stanford University (BA 1975) and the New York University School of Law (JD 1978). Before entering law teaching, Professor Krieger worked as a civil rights lawyer, serving as a Staff Attorney at the Employment Law Center in San Francisco and as a Senior Trial Attorney for the United States Equal Employment Opportunity Commission, where she litigated sex, race, national origin, age, and disability discrimination cases, including class actions. Her legal scholarship centers on the application of insights from cognitive social psychology to issues in antidiscrimination law and policy in particular, and on the role of science in law and legal policy more generally. lkrieger@law.berkeley.edu

Jocelyn D. Larkin is the Director of Litigation and Training for The Impact Fund, a legal foundation that provides funding and representation in support of

complex public interest litigation. Her practice focuses on complex employment discrimination and class action practice on behalf of plaintiffs. She currently serves as class counsel in the gender discrimination class action, *Dukes v. Wal-Mart Stores*, the largest certified civil rights class action in history. Ms. Larkin is the co-chair of the Employment Subcommittee of the ABA Litigation Section's Class Actions and Derivative Suits Committee. jlarkin@impactfund.org

Maureen O'Connor is Associate Professor and Chair of the Psychology Department at John Jay College of Criminal Justice and has appointments on the faculty of the doctoral programs in Forensic Psychology, Social/Personality Psychology, and Criminal Justice at the Graduate Center of the City University of New York. She received her JD and her PhD with specialization in Law, Psychology, and Policy, from the University of Arizona (with a minor in Organizational Behavior). Research interests focus on the intersection of gender, psychology, and law, and include stalking and sexual harassment, with particular attention to lay and legal definitions of those concepts. moconnor@jjay.cuny.edu

Deborah L. Rhode is the Ernest W. McFarland Professor of Law and Director of the Stanford Center on Ethics at Stanford University School of Law. She is the former Chair of the American Bar Association's Commission on Women in the Profession, former president of the Association of American Law Schools, and former director of Stanford's Institute on Women and Gender. She is the author or co-author of 17 books and over 150 articles in the areas of gender and professional ethics. Her publications include *The Difference "Difference" Makes: Women and Leadership* (Stanford University Press, 2003), *Gender and Law* (Aspen, 2006, with Katherine Bartlett), and *Women/Leadership* (Forthcoming, Jossey Bass, with Barbara Kellerman). rhode@stanford.edu

Cecilia L. Ridgeway is the Lucie Stern Professor of Social Sciences in the Department of Sociology at Stanford University. Her research addresses the role that social hierarchies in everyday interaction play in stratification and social inequality, especially in regard to gender. She is the author of *Gender, Interaction, and Inequality* (Springer-Verlag, 1992) and articles on this topic in *American Journal of Sociology*, *American Sociological Review*, *Social Forces*, and *Journal of Social Issues*. She is past editor of *Social Psychology Quarterly* and recipient of the 2005 Cooley-Mead Award for career contribution to social psychology. ridgeway@leland.stanford.edu

S. Ann Ropp has been an assistant professor of psychology at the University of Alaska, Southeast, and is currently the program director at AWARE, a local women's shelter in Juneau, Alaska. She received her PhD in social psychology from the University of California, Santa Cruz, in 2003. She has published in the area of discrimination and inter-group relations. Ropp has received a number of awards for her outstanding teaching. ann.ropp@uas.alaska.edu

Donna Ryu earned a BA from Yale University and a JD from University of California, Boalt Hall, where she was a founding member of the Berkeley Women's Law Journal. She serves on the clinical faculty of Hastings College of the Law. Prior to that, she was the Associate Director of the Women's Employment Rights Clinic at Golden Gate University Law School. She spent the first 12 years of her career in private practice, specializing in civil rights class actions. During her partnership in Ryu, Dickey and Larkin, an all-women's civil rights firm, she and Jocelyn Larkin litigated the sex discrimination class action described in Chapter 7. ryud@uchastings.edu

Margaret (Peggy) Stockdale is Professor of Psychology and Area Head of Applied Psychology at Southern Illinois University Carbondale (SIUC). She holds a MS and PhD in Industrial-Organizational Psychology from Kansas State University and is pursuing a Master's of Legal Studies at SIUC's School of Law. Her research focuses on gender issues in the workplace, with specific attention to sexual harassment and sex discrimination. She has served as an expert witness on both single-litigant and class action sex discrimination cases for both plaintiffs and defendants. pstock@siu.edu

Richard S. Ugelow has been a member of the faculty of the Washington College of Law, American University, Washington, DC, since June 2002. Prior to joining the law school faculty, he was a Deputy Section Chief of the Employment Litigation Section, Civil Rights Division, U.S. Department of Justice. Over the course of his 29-year career at DOJ, he supervised and lead investigations and litigation to enforce Title VII of the Civil Rights Act of 1964. Mr. Ugelow was also the government's lead trial attorney in defending challenges to the constitutionality of federally sponsored affirmative action programs, particularly statutes and programs designed to provide contracting opportunities to minority, disadvantaged, and women-owned businesses. Before joining the Department of Justice, Mr. Ugelow served in the Army's Judge Advocate General's Corps for four years. rugelow@wcl.american.edu

Jonathan D. Wetchler is a partner in the law firm of Wolf, Block, Schorr and Solis-Cohen LLP, where he heads the Employment Service Department's employment litigation practice. Mr. Wetchler has extensive experience in handling employment litigation of all kinds, including but not limited to class actions involving FLSA, ERISA and employment discrimination claims, as well as cases concerning covenants against competition, employment contracts and the wide variety of other statutes governing the employment area. Mr. Wetchler also works closely with clients in the development and implementation of executive employment contracts and policies and practices to reduce potential exposure to liability in all areas of employment. His practice includes training employers and employees about sexual harassment, the Americans with Disabilities Act and other work-related legal issues. He received his BA degree, summa cum laude, from the State University at Buffalo and his JD degree from

Northwestern University. Mr. Wetchler is a member of the Philadelphia, Pennsylvania and American bar associations. jwetchler@WOLFBLOCK.com

Joan C. Williams is Distinguished Professor of Law, and founding Director of the Center for WorkLife Law at University of California, Hastings College of the Law. A prize-winning author and expert on work/family issues, she is author of *Unbending Gender: Why Family and Work Conflict and What To Do About It* (Oxford University Press, 2000), which won the 2000 Gustavus Myers Outstanding Book Award. She has authored or co-authored four books and over fifty law review articles. She co-edited, with Monica Biernat and Faye Crosby, a special issue of the *Journal of Social Issues* (2004), which was awarded the Distinguished Publication Award by the Association for Women in Psychology. Williams@email.uchastings.edu

Preface

Every book has a story. This is ours.

Feeling perhaps a little too proud of ourselves for the success of our previous collaboration, *The Psychology and Management of Workplace Diversity*,¹ and a vaguely formed idea that *the book* on sex discrimination hadn't been written yet (or that it was time for a new one), Faye Crosby and Peg Stockdale sat down to breakfast with Christine Cardone at a Washington DC hotel in September, 2004. The point was to brainstorm what would the book look like. What would it contain? What would it accomplish? Our first thought was – multidisciplinary.

Although Peg and Faye were well versed in the psychological research on sex discrimination, we knew that ours was not the only voice in the wilderness. Faye quickly rattled off the names of preeminent scholars who could write hand-book-style chapters representing their discipline's approach to the subject: Peter Glick and Susan Fiske; Cecilia Ridgeway and Paula England; Barbara Bergmann; Deborah Rhode and Joan Williams. Then we thought that what's missing from most scholarly treatises are the voices of people who have actually been in the trenches – the plaintiffs, their lawyers, defense lawyers, and expert witnesses. We envisioned fairly short but highly autobiographical essays that would bring the academic concepts and theories to life. Finally, we knew we could not leave this hanging without forward-looking chapters that would consider “remedies” or possible means for diminishing sex discrimination.

Christine Cardone of Blackwell was excited and willing to take the risk with us and to convince her editors to support this project. Faye then suggested that a newly minted PhD scholar, Ann Ropp, join us. The project and the team were in place.

Unlike most edited books that are accomplished as individual works that the editors weave together, those of us who could – editors and contributors – gathered for a weekend in Lake Tahoe in early November, 2005, to read and discuss preliminary drafts of the chapters, brainstorm ideas for chapters that had not yet made it into print form, and to encourage each other through the revision process. We also hiked, swam in the hot springs pool, and had great meals together.

As with any great idea, however, things change. By the time we finished, we realized that the book would be better organized as four sections instead of three. Thus, we could start with two powerful chapters that remind employers and potential complainants (and those who research them or what they do) about how sex discrimination incidents play out in typical workplaces, and what their responsibilities and options are to avoid or deal effectively with such instances.

We give full credit to our contributors, among whom are some of the nation's leading experts on the topic of sex discrimination. We recognize that editing a book of this nature was at times like herding cats. We thank the authors for their patience, flexibility to bend when we needed them to, and their foresight to stick to their guns when they had a better vision than we did. We appreciate all of our authors who cooperated in the revision process, long and tortured as it was.

We also give thanks to our support network that surrounded us throughout this project. Christine Cardone and Sarah Coleman of Blackwell are a terrific editing team. They were always encouraging, completely responsive to our needs, and helped us make intelligent decisions about the various twists and turns we needed to take to complete the project. Thanks go to Marilyn Patton, who staffed the Tahoe meeting, and to Amanda Crabe, Justin Lin, and Phil Seneca for their editorial assistance. We also thank our partners and families for doing what they do so well – being there for us!

FJC, MSS, SAR

Note

1. Stockdale, M. S., & Crosby, F. J. (Eds.) (2004). *The psychology and management of workplace diversity*. Oxford: Blackwell.

Contents

Notes on Contributors	vii
Preface	xv
Part I What Employers and Employees Should Know about Sex Discrimination	1
1 Introduction: Understanding Sex Discrimination <i>Faye J. Crosby and Margaret S. Stockdale</i>	3
2 Avoiding Sex Discrimination Litigation and Defending Sex Discrimination Suits <i>Jonathan D. Wetchler</i>	7
3 When an Individual Finds Herself to be the Victim of Sex Discrimination <i>Theresa M. Beiner and Maureen O'Connor</i>	19
Part II From the Trenches: Individual Narratives from Plaintiffs, Attorneys, and Expert Witnesses	57
4 Opposing Views, Strongly Held <i>Ann Branigar Hopkins</i>	59
5 Gender Equity at Stanford University: A Story Behind the Statistics <i>Colleen E. Crangle</i>	69
6 How Did a Nice Girl Like You . . . ? <i>Ellen B. Kimmel</i>	83
7 A Gender Discrimination Class Action from the Point of View of Plaintiffs' Lawyers <i>Donna M. Ryu and Jocelyn D. Larkin</i>	97

8	Title VII of the Civil Rights Act of 1964, the U.S. Department of Justice, and the Gender Integration of Physically Demanding Positions <i>Richard S. Ugelow</i>	107
9	Reflections on Being an Expert Witness in Class Action Sex Discrimination Litigation <i>Eugene Borgida and Anita Kim</i>	117
10	My Experience as an Expert Witness in Sex Discrimination and Sexual Harassment Litigation <i>Barbara A. Gutek</i>	131
11	Sex Discrimination in the Workplace: Lessons from Two High-Profile Cases <i>Wayne F. Cascio</i>	143
	Part III Disciplinary Perspectives	153
12	Sex Discrimination: The Psychological Approach <i>Peter Glick and Susan T. Fiske</i>	155
13	Sociological Approaches to Sex Discrimination in Employment <i>Cecilia L. Ridgeway and Paula England</i>	189
14	Discrimination through the Economist's Eye <i>Barbara R. Bergmann</i>	213
15	Legal Perspectives on Employment Discrimination <i>Deborah L. Rhode and Joan C. Williams</i>	235
	Part IV Potential Solutions to the Problems of Sex Discrimination in Employment	271
16	A Critical Look at Organizational Responses to and Remedies for Sex Discrimination <i>Susan Bisom-Rapp, Margaret S. Stockdale, and Faye J. Crosby</i>	273
17	The Watched Variable Improves: On Eliminating Sex Discrimination in Employment <i>Linda Hamilton Krieger</i>	295
	References	331
	Index	369

Part I

What Employers and Employees Should Know about Sex Discrimination