

Running head: SEXIST HARASSMENT

*Sexual Harassment... Not so Sexual???*

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How do we understand sex discrimination? Do we understand it by what motivates people? Love? Hate? Power? Money? A sense of duty? Who benefits when our conceptualization of sex discrimination is limited to *sexual* harassment? There seems to be less stigma (for the man) when the motive is presumed to be sexual. If the motive is sexual, then it can be dismissed as a natural, even biological drive or attraction, just another unfortunate case of “boys will be boys” that gets a little too out of hand. We have found a way of making sexual harassment permissible. That is, as long as the conduct is not too severe or pervasive, then society has found a way to rationalize unwanted sexual attention as permissible. What are the implications of confining sex-based discrimination to *sexual* conduct?

Over the past three decades the “sexualization” of sex discrimination has blocked sexist harassment from being widely recognized as illegal, sex-based discrimination. This paper examines how sexist/gender harassment has consistently been left out of research and legal opinions on sexual harassment. Specifically, this paper examines how sexual harassment dominates our conception of sex discrimination by emphasizing the sexual nature of the behavior, both in psychological research and in legal opinion. In this examination, I first explore the legal development of sexual harassment. Secondly, I review the past research on gender and sexual harassment. Finally, directions for future research are explored.

*Legal history*

In 1964, Title VII of the Civil Rights Act was the first document to codify the illegality of sex discrimination. However, it took another 13 years before sexual harassment was recognized as a form of sex discrimination (Barnes v. Costle, 1977; Franke, 1997). Legal theorists have written extensively on sexual harassment law. Within law reviews, a notable group has emerged

arguing that gender discrimination needs to be included our understanding of sex-based discrimination (e.g. Epstein, 1998; Franke 1995; 1997; Growe, 2007; Hébert, 2005; Shultz, 1998). As I am neither a legal scholar nor a historian, this paper is not an attempt to rewrite their arguments. Instead, this section on the legal history of sex discrimination intends to overview Title VII and the guidelines presented by the Equal Employment Opportunity Commission (EEOC), as these express what are understood as the legal definitions of sex-based discrimination. Secondly, I highlight some of the major cases that have addressed gender discrimination.

### *Title VII*

With few exceptions, the courts have generally agreed that the alleged offensive behavior needs to be sexualized in order to be considered sex discrimination (Schultz, 1998). But where did this assumption come from? It took thirteen years after Title VII for a federal court to find that sexual harassment was sex discrimination (*Barnes v. Costle*, 1977). It was another nine years before the US Supreme Court would rule that “hostile work environment” sexual harassment violates Title VII (*Meritor Savings Bank v. Vinson*, 1986). Following the position put forth seven years earlier by MacKinnon (1979), the US Supreme Court declared that Title VII recognizes two types of sex-based harassment: quid pro quo harassment and hostile work environment harassment. Unfortunately, the question of what these two types mean in practice does not have a simple answer. Legal definitions of sexual harassment have been shown to vary from the definitions used in social science research (Fitzgerald, Swan & Magley, 1997). Researchers point out that just because an action meets a lay definition of sexual harassment does not mean the law was broken (Bowes-Sperry & Tata, 1999). Even legal definitions change as court cases interpret and refine precedent.

The criteria for sex discrimination under Title VII that sexual harassment researchers are most familiar with have been assembled across multiple court cases. These criteria include the behavior must be unwelcome, perceived as hostile, and “sufficiently severe or pervasive” thus creating an “abusive working environment” (*Harris v. Forklift Sys., Inc.*, 1993; *Meritor v. Vinson*, 1986 at 67). But what does this mean? And how does this fit into the two types of sex discrimination recognized under Title VII?

Generally, quid pro quo harassment is defined as requests for sexual favors in exchange for a tangible work benefit, (for example, if a woman is promised a promotion if she will sleep with her supervisor). This is the type of sexual conduct most easily recognized as sexual harassment (Fitzgerald & Hesson-McInnis, 1989; Icenogle, Eagle, Ahmad, & Hanks, 2002). Hostile work environment harassment is much more ambiguous, and thus open to interpretation by the courts. Courts have mainly conceptualized hostile work environment harassment as unwelcome, explicitly sexual conduct (come-ons, etc.), presumably driven by sexual desire (Schultz, 1998). Underlying this conceptualization seems to be the assumption that the sexual desire is expressed as sexual advances by men, towards women. Yet these assumptions and conceptualizations have evolved over time, none of which were explicit under Title VII. The actual text of Title VII is extremely nonsexual (see Appendix).

### *EEOC Guidelines*

What is the role of the EEOC with regard to the issue of sex-based discrimination? As a part of Title VII, in 1964 Congress established EEOC’s role in enforcing Title VII and helping to establish rules that implement the Act (Grove, 2007). In 1980 the Equal Employment Opportunity Commission (EEOC) released Guidelines on Discrimination Because of Sex (“EEOC Guidelines”). These guidelines defined sexual harassment as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature... when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The EEOC Guidelines explicated criteria for determining what constitutes sexual harassment. However, the Guidelines failed to delineate conduct "relating to hostile and denigrating non-sexual conduct motivated by gender" (Grove, 2007, p. 282). Even so, the role these guidelines play in court proceedings remains unclear. The guidelines are not legal documents – they have no legal authority; however, according to the EEOC, judges sometimes rely on definitions laid out in the guidelines when making their decisions (EEOC, 1990). Based on reading individual cases, it appears to be the decision of the judge as to whether the guidelines inform his or her decision. While the function of the EEOC Guidelines may vary, it is clear that the guidelines neglect nonsexualized, sex-based harassment. For this reason, some legal theorists are calling for the EEOC to reissue their Guidelines, hoping this would transform the interpretation of sex discrimination law (Grove, 2007).

### *Legal Cases*

*"[Judges] have sexualized the hostile work environment claim by singling out sexual advances and other sexually oriented conduct as the essence of harassment. To establish a hostile work environment, most courts have required proof not only that the harassing conduct occurred 'because of sex' ... but also that the conduct is sexual in nature" (Schultz, 1998, p. 1716).*

According to statistics found on the EEOC website, US workers filed over 12,000 sexual harassment charges in 2006 (EEOC, 2007). Many (most?) of these cases are resolved outside of court. While Title VII does not explicitly address nonsexualized, sex-based harassment, and the

EEOC's guidelines neglect this issue, as well, that has not stopped cases of nonsexualized, sex-based harassment from being filed. When issues of gender discrimination arise in court, judges are forced to address them. In this case, even dismissing the complaints as irrelevant sends a message about what is and is not permissible under law. In cases where both sexual and nonsexual, sex-based harassment are present, the courts have generally addressed this by "disaggregating sex from gender," that is to say, they considered them as two independent issues (Franke, 1995). This section reviews how courts have addressed nonsexualized, sex-based discrimination. Three cases are described; the first two cases were found in favor of the defendant, the last case was found for the plaintiff.<sup>1</sup>

*Price Waterhouse v. Hopkins (1989)*. This case, which was eventually heard by the Supreme Court, describes how Hopkins was not offered partnership in the firm. When she was informed of the firm's decision, one of the partners said she could improve her chances if she would appear and act more femininely. The court ruled that sex stereotyping motivated the firm's decision not to promote Hopkins, but that did not constitute sex discrimination (which has come to be understood as either quid pro quo or hostile work environment sexual harassment).

*Peterson v. Scott County (2005)*. This case involved a county correctional officer (Peterson) who worked for the county sheriff's department. In the case, she describes how her immediate supervisor made derogatory comments to her (for example, saying she "didn't have the right parts" to do certain tasks). The supervisor's comments repeatedly implied (explicitly and implicitly) that she was unable to do her job because she was a woman. However, according to Growe's (2007) summary of the case, the court cited previous Supreme Court analysis, which stated that "mere offensive utterance[s]" such as "abusive language" or "gender related jokes" did not qualify as sexually discriminatory conduct.

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<sup>1</sup> Information about these cases was drawn from law reviews by Schultz (1998) and Growe (2007).

*Harris v. Forklift Sys., Inc. (1993)*. This case also ended up at the Supreme Court. Harris was a rental manager at a company that repaired forklifts. She was subject to sexualized comments, in addition to general incivility (denying her an individual office, a company car, and other benefits that men in her position were accorded). Harris was also subjected to sexist comments from the company president such as “You’re a dumbass woman” and “You’re a woman, what do you know?” Schultz (1998) (talking about the decision of the lower courts, in favor of the defendant) states, “The magistrate made the classic analytical move made by courts... He began by parceling out the sexual and nonsexual conduct into separate claims” (p. 1711). Schultz criticizes the Supreme Court for failing to address what she sees as the “real problem in this case: the lower court’s application of those standards from an overly narrow, sexualized perspective” (p. 1711). Instead, while the Supreme Court found in favor of Harris, they emphasized the lower court’s narrow definition of psychological harm.

While a few cases have found in favor of the plaintiff when nonsexual, sex-based discrimination is at issue, the vast majority of cases have been found in favor of the defendant. Furthermore, even when the case goes in favor of the plaintiff, the disaggregation of sex from gender fails to account for the broader context of the sex-based harassment. The broader context is relevant for two reasons. First, in cases where both sexist (or gender) and sexual harassment are present, neither may meet the criteria for “hostile work environment harassment.” However, if taken together, they may provide evidence as to the pervasiveness and abusiveness of the conduct in question. Second, as Thorton (2002) points out, sexual harassment occurs within a social context that permits the behavior to happen. “The privileging of the *sexual* in sexual harassment means that the focus is on the aberrant behavior of the individuals rather than the structural and systemic manifestations of discrimination” (Thorton, 2002, p. 424). This issue is

being discussed in law reviews – people sense the legal injustice present in the current interpretation of sex-based discrimination and are working to repair it. But the legal field is not the only place discussing these issues. Sexual harassment is a prominent field of research within academia, as well. In the following section, I examine how academic research is making sense of sex-based discrimination.

### *The Academy*

Our theoretical understanding of why sexual harassment occurs strongly influences what questions are asked and how they are asked. Thus, before examining what research has been done on sexual harassment, I will first discuss the theories that have informed the research. Second, I will discuss the Sexual Experiences Questionnaire (SEQ), which is the most common way sexual harassment is measured empirically. Finally, I will provide a brief overview of past research, paying particular attention the way sexual harassment is conceptualized by the researchers.

### *Theories of Sexual Harassment*

An extensive review of the theories of sexual harassment suggests four different perspectives: natural/biological, organizational, individual differences, and sociocultural (Tangri & Hayes, 1997). These four categories are not homogenous, as many (sometimes competing) perspectives are subsumed in each of the categories. In this section, I describe each of these theories, and the major perspectives present within each category. I also consider the implications of each theory on sexual harassment research.

The natural/biological perspective suggests that sexual harassment occurs because of the naturally strong sex drive of men. Natural/biological theories of sexual harassment may rely heavily on evolutionary theory (see Browne, 2006). Browne suggests that both the motivation



behind sexual harassment, and women's responses to it, can be explained evolutionarily. Others suggest that sexual harassment may have evolved as a way to ensure reproduction (Studd & Gattiker, 1991).

In the first sexual harassment legal cases, the judges often dismissed the behavior using natural/biological explanations. This is seen through statements such as: "Natural sexual attraction can be subtle. If the plaintiff's view were to prevail, no superior could, prudently, attempt to open a social dialogue with any subordinate of either sex" (*Tomkins v. Public Service Electric & Gas Co.*, 1976, as cited in Franke, 1997, p. 699). Franke (1997) suggests that these early cases reflected beliefs about men's "natural" sexuality. She states, "The cases both reified and legitimized a view of workplace sexual harassment that regards the plaintiffs' claims as private 'gripes' rather than discriminatory 'grievances,' and regards the defendants' conduct as normal and healthy... manifestations of male sexuality that have simply gotten out of hand" (1997, p. 701). Presently, natural/biological explanations seem to appear less often in court cases, however the perspective has not disappeared altogether.

A second theoretical explanation for why sexual harassment occurs is an organizational perspective. Some organizational perspectives consider how the structure of workplaces provides conditions that enable sexual harassment to occur. These theories point to the hierarchical structure of organizational power, which some suggest is linked to gender and breeds abuses of power (Cleveland & Kerst, 1993).

Another organizational perspective is sex-role spillover theory. It was proposed by Gutek (1985) and is defined as "the carryover into the workplace of gender-based expectations that are irrelevant or inappropriate to work, occurs because gender role is more salient than work role, and because under many circumstances, men and women fall back on sex-role stereotypes

to define how to behave and how to treat those of the other sex” (Gutek & Done, 2001).

Psychological research testing sex-role spillover theory has found evidence supporting this model (see Burgess & Borgida, 1997). Burgess and Borgida (1997) examined whether a women’s type of occupation (a traditionally male job versus a traditionally female job) influenced an outside observer’s perception of sexual harassment. Sex-role spillover theory would predict that women would experience more sexual harassment when they are in traditionally masculine jobs, or when the gender of the organization is largely skewed. Burgess and Borgida (1997) found that male and female undergraduate students were less likely to perceive sexual coercion as harassment when women were in traditionally male occupations, suggesting that an outsider’s perception of sexual harassment might rely on perceiving the target as feminine and vulnerable.

A third theoretical perspective is one that emphasizes individual differences. This perspective is concerned with personality characteristics that predict why some men harass women and some men do not. This approach is most associated with research using personality and behavioral scales said to measure individual differences in things such as likelihood to sexually harass (Pryor, 1987) and ambivalent sexism (Fiske & Glick, 1995). For example, using the Ambivalent Sexism Inventory, which measures both benevolent and hostile sexism, Fiske and Glick (1995) have suggested that people who score highly in hostile sexism may be more likely to perpetrate hostile work environment harassment.

Finally, the fourth theoretical perspective is a sociocultural explanation. This perspective asserts that the broader sociocultural context influences and shapes organizational culture. There are at least two ways of thinking about how this is accomplished (Tangri & Hayes, 1997). First, one may argue, “behavior at work is merely an extension of male dominance that thrives in the

larger society” (Gutek & Done, 2001, p. 378). This perspective underlies much of MacKinnon’s (1979) argument that sexual harassment is sex-based discrimination, and thus violates Title VII. A second way to think about this is that “sexual harassment is an organizing principle of our system of heterosexuality, rather than the consequence of systematic deviance” (Gutek & Done, 2001, p. 379). When describing sociocultural theories, Gutek and Done (2001) place legal theories about sexist/gender harassment in this category. For example, Franke (1997) argues that sexual harassment is problematic because it enforces strict gender norms, not because it is sexual. Schultz (1998) is also less concerned with the *sexual* nature of the harassment. Instead, she argues that sexual harassment is discriminatory because it undermines and disadvantages women in the workplace. The perspectives of both Franke and Schultz provide theoretical explanations for why it is important to pay attention to sexist/gender harassment as well as more sexualized forms of sex-based discrimination.

The above perspectives drive the research on sexual harassment. Even when they are not explicitly noted in journal articles, these perspectives shape which questions are asked, how the questions are asked, and how results are interpreted. The remainder of this paper examines the past research on sexual harassment; specifically, how sexual harassment is measured, prevalence rates, who is targeted, effects of sexual harassment, and reporting.

### *Measuring Sexual Harassment*

The most common measure of sexual harassment is the Sexual Experiences Questionnaire (SEQ), developed by Fitzgerald et al (1988) (see also Fitzgerald, Gelfand, & Drasgow, 1995). Fitzgerald and colleagues suggest that researchers should separate the legal definition of sexual harassment from a psychological definition (Fitzgerald, Swan, & Magley, 1997). Their proposed psychological definition of sexual harassment is: “unwanted sex-related

behavior at work that is appraised by the recipient as offensive, exceeding her resources, or threatening her well-being” (p. 15). This psychological definition is reflected in the three subscales imbedded in the measure: gender harassment, unwanted sexual attention, and sexual coercion. The sexual coercion subscale is closely related to quid pro quo harassment, while unwanted sexual attention is most closely linked to what has legally been considered hostile work environment harassment. The gender harassment subscale can be further separated into scales that measure sexist hostility and sexual hostility (see Langhout Bergman, Cortina, Fitzgerald, Drasgow, & Williams, 2005). The gender harassment subscales measure behaviors that are not regularly seen as meeting the criteria for legally punishable sexual harassment at this time. Despite the SEQ’s subscales, most research that relies on the SEQ to measure the prevalence of sexual harassment collapses across the scales for an overall score of sexual harassment.

### *Past Research*

Psychologists and other researchers interested in sexual harassment have played an important role in advancing what we know about the prevalence, effects, and management of sexually harassing situations. This section discusses some of that research.

*Prevalence.* Early sexual harassment research set out to document the prevalence and describe the experience of sexual harassment. A large effort went into figuring out how to measure sexual harassment, the result of which (the SEQ) was described in the previous section (see Fitzgerald et al, 1988; Fitzgerald, Gelfand, & Drasgow, 1995). Research on the prevalence of sexual harassment (using the SEQ) has found that gender harassment is the most common form of sexual harassment (Langhout et al, 2005). Langhout et al (2005) sampled 22,543 women in the military. Of those women, 13,743 reported at least one significant experience of sexual

harassment, the most common of which was sexist hostility. According to Gutek & Done (2001) there is no known social science research that has studied the prevalence of illegal sexual harassment (social science research has mainly used Fitzgerald et al's (1997) psychological definition of sexual harassment, which includes illegal sexual harassment, but also measures sexual harassment that is not considered illegal). However, even if social science researchers were to attempt to measure such a prevalence rate, its external validity would be questionable. As was discussed at the beginning of this paper, although many may believe the legal definition of sexual harassment is fixed, as courts interpret and apply precedent, the legal understanding changes.

*Who is targeted?* Other research has examined what women are targeted with sexual harassment. For example, Berdahl (2007) suggests that if sexual harassment is motivated by sexual desire (as those supporting a natural/biological theory would suggest), then one would expect that more feminine women would experience the most sexual harassment (as past research has shown that women who subscribe more strongly to gender ideals are viewed as most desirable by men). Alternatively, if sexual harassment is motivated by the desire to punish those who violate gender ideals (a motive Berdahl labels "sexist antipathy"), then one would expect sexual harassment to be most often directed at women who violate feminine ideals (Berdahl, 2007, 425). Berdahl studied this using the Bem Sex Role Inventory (Bem, 1978), which rates participants in both masculinity and femininity. She found that women who scored high in masculinity were more likely to report sexual harassment than women who scored low in masculinity, regardless of their score of femininity. This supports the theory that sexual harassment is motivated by "sexist antipathy."

*Negative effects.* Research has also explored how experiencing sexual harassment affects various outcomes such as mental and physical health, work satisfaction, and organizational commitment. While it may seem intuitive that experiencing sexual harassment may affect mental health, research has shown that the relationship between sexual harassment psychological well-being is more complicated than one might expect. Using a sample of military personnel, Langhout and colleagues (2005) found that the relationship between sexual harassment and mental health was moderated by pervasiveness of the harassment and the status of the perpetrator. A structural equation model suggested that the more pervasive the harassment, coupled with the higher status of the perpetrator, resulted in victim appraising the situation as more stressful. Furthermore, the more negatively the victim appraised the experiences, the more she reported negative outcomes (such as lower work satisfaction and lower organization commitment).

It may seem obvious that severe experiences of sexual harassment will have deleterious effect on mental health. However, research is showing that even “less severe” experiences – experiences that would not meet most judges criteria for sexual harassment – also have significant negative effects. In a US military sample, women who experienced sexist hostility scored significantly lower in mental and physical health, and had significantly lower work satisfaction and organizational commitment (Leskinen & Cortina, 2007). This research supports the arguments of legal theorists like Schultz (1998) and Franke (1995;1997) who argue for expanding the legal conception of sex-based discrimination (which is primarily limited to sexualized behaviors) to include sexist/gender discrimination. This research also suggests that sexist hostility already meets many of the criteria for sex-based discrimination, even though it remains unrecognized as such in many courtrooms. The EEOC’s Guidelines (1980) require that

offending conduct "...has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." The Leskinen & Cortina (2007) research suggests that in instances of sexist hostility, the criteria are being met.

*Reporting.* Research on sexual harassment has also examined situations in which women report their experiences. Early in sexual harassment research, Fitzgerald et al (1988) found that most women do not report their experiences. Since then, researchers have tried to understand what predicts when women report, and what happens when they do report. One study found that women who report are often met with retaliation (Bergman, Langhout, Palmieri, Cortina, & Fitzgerald, 2002). They also found that women who reported their experiences often expressed decreased job satisfaction and greater psychological distress. However, Bergman et al (2002) also found that the negative effects were not because of the reporting itself, but because of the subsequent response of those in the organization; the negative effects of reporting were mediated by the climate of the workplace.

### *Conclusion*

Sexual harassment is "wrong" because it is sex-based discrimination based on Title VII. Sexist/gender harassment should be considered by the same standards. Previous legal decisions have stated that nonsexualized forms of harassment did not fall within the purview of Title VII because the actions in question were not explicitly sexual in nature. However, studies have shown similar psychological consequences in the victims of sexual and nonsexual, sex-based harassment. While nonsexual, gender-based harassment is often rendered invisible within the courtroom, the psychological and organizational effects suggest that more study of this issue, both in the legal and academic fields, is necessary.

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\* The court cases with stars next to them have not been accessed directly at this time.

This is the beginning of a longer-term project, so those cases are in process of being located. All cases were drawn from summaries offered by Schultz (1998), Growe (2007), and Franke (1995; 1997).