The Effect of Gender, Victim Job Performance, and Victim Employment Status on Individual and Jury Perceptions of Sexual Harassment

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THE EFFECT OF GENDER, VICTIM JOB PERFORMANCE, AND VICTIM EMPLOYMENT STATUS ON INDIVIDUAL AND JURY PERCEPTIONS OF SEXUAL HARASSMENT

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THE EFFECT OF GENDER, VICTIM JOB PERFORMANCE, AND VICTIM EMPLOYMENT STATUS ON INDIVIDUAL AND JURY PERCEPTIONS OF SEXUAL HARASSMENT

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Abstract

The current study investigated the impact of gender, victim job performance, and victim employment status on individual juror and jury perceptions of sexual harassment. Gender, victim job performance, and victim employment are all extralegal factors that were found to influence individual jurors’ perceptions of sexual harassment. The present study revealed individual female jurors were more likely than male jurors to find sexual harassment. Although gender did not have a significant effect in jury perceptions of sexual harassment, further analysis revealed females were more likely than males to change their decision on sexual harassment in a jury. Victim job performance and employment status were both found to influence jury perceptions of sexual harassment. When the victim was a good, average performer, or no information was provided on victim job performance, the individual jurors were more likely to find sexual harassment than cases where the victim was a poor performer. When the victim was a good or poor performer or no information was provided for victim job performance, the jury was more likely to find sexual harassment than cases where the victim was an average performer. Individual jurors were more likely to find sexual harassment when the victim was currently employed or no information was provided than when the victim was fired from
the organization. Juries were more likely to perceive sexual harassment when no employment information was provided than when the victim was currently employed or fired. These results have implications for the legal system.
Introduction and Review of Literature

Sexual harassment occurs in academia (Fitzgerald & Ormerod, 1991), the private sector (Fitzgerald et al., 1988), and the public sector (U.S. Merit System Protections Board, 1995). Sexual harassment affects both the target of sexual harassment and the organization in which sexual harassment occurs. Consequences experienced by targets of sexual harassment range from psychological to physiological reactions (Fitzgerald & Ormerod, 1993). Job related consequences for the organization and the employees range from decreased job satisfaction to job loss (U.S. Merit Systems Protection Board, 1988, 1995).

In the twentieth century, sexual harassment gained prominence in the legal system. In 1964, sexual harassment was prohibited by Congress in the Title VII of the Civil Rights Act which made discrimination at work on the basis of sex, race, color, religion, and national origin illegal (EEOC, 1990). In 1972 further steps were taken by Congress for the prevention of sexual harassment with the passing of the Equal Employment Opportunity Act and the Title IX of the Education Amendments, prohibiting sex bias in academic institutions that receive Federal funding (EEOC, 1990; Jones, 1996). In the case of *Williams vs Saxby* (1976) *quid pro quo* sexual harassment was officially recognized (Jones, 1996). In 1980, the EEOC published guidelines on sexual harassment and the legal precedent for hostile environment sexual harassment was set in *Brown vs City of Gutherie* (1980). In 1986, the Supreme Court ruled that hostile environment sexual harassment is actionable under Title VII because the law is not limited to only tangible or economic injury but may include noneconomic or intangible consequences (Hoffspiegel, 2002; Jones, 1996). In 1991 the reasonable person standard for deciding on
hostile environment sexual harassment changed to the reasonable woman standard, adopted for some jury cases (Perry, Kulik, & Bourhis, 2004). In addition, Congress amended the Civil Rights Act of 1964 by clarifying disparate impact actions in the Civil Rights Act of 1991 (Jones, 1996). In 1998, the Supreme Court Case of Oncale vs. Sundowner Offshore Services set the precedent for same sex sexual harassment as actionable under the Title VII Civil Rights Act of 1964 (Hoffspiegel, 2002). Thus, since the mid 1960s, the United States Legal System has helped clarify sexual harassment in the workplace.

Guidelines provided by the EEOC (1980) defined sexual harassment and included examples of sexual harassment. However, the EEOC guidelines do not clearly identify specific actions that constitute sexual harassment, leaving sexual harassment decisions by the courts open to interpretation, subjectivity, and bias from extralegal factors (Elkins & Phillips, 1999). An extralegal factor is information irrelevant to a legal determination of sexual harassment that still influences perceptions and decisions of sexual harassment in court (Elkins & Phillips, 1999). Some extralegal factors found to influence the perception of sexual harassment include gender (Rotundo, Nguyen, & Sacket, 2001), physical attractiveness of the victim and/or perpetrator (Wuensch & Moore, 2004), and ambiguity of the harassment (Dougherty, Turban, Olson, Dwyer, & Laporeze, 1996).

Due to the prevalence of sexual harassment and its serious consequences, further investigation into the extralegal factors that affect perceptions of sexual harassment is warranted. Identified extralegal factors could be incorporated to create more effective sexual harassment training and education. The present literature review will provide an overview of the legal standards of sexual harassment, including EEOC guidelines, and a
discussion of the extralegal factors found to influence perceptions of sexual harassment, specifically gender, performance, and job status.

**EEOC Definitions of Sexual Harassment**

The EEOC in 1980 ruled sexual harassment is in violation of Section 703 of Title VII of the Civil Rights Act of 1964 and, therefore, an illegal employment practice. The EEOC provided valuable guidelines for employers, employees, and the legal community in examining sexual harassment claims. Even though the EEOC (1980) provided a definition, guidelines, and examples of sexual harassment, there is still confusion concerning specific actions that constitute sexual harassment.

The EEO guidelines defined sexual harassment as unwelcome sexual conduct that is a term or condition of employment (EEOC, 1990). Note, sexual conduct is only unlawful if it is unwelcome. The Code of Federal Regulations, Section 1604.11 from Title 29, defines sexual harassment:

> Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (c) 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 (p.186).
The EEOC guidelines define two distinct types of sexual harassment. The first, *quid pro quo*, involves unwelcome sexual conduct explicit or implicit to employment or when complying with sexual conduct is a deciding factor in an employment decision. *Quid pro quo* sexual harassment must involve a tangible or economic loss (EEOC, 1990). *Quid pro quo* sexual harassment can occur as a single workplace event, provided it is part of an employment practice (EEOC, 1990). The second form of sexual harassment, hostile work environment harassment, occurs when unwelcome sexual conduct interferes with an employee’s job performance or creates a negative work environment. Furthermore, to constitute hostile work environment sexual harassment, the inappropriate behavior must alter conditions of employment and create an abusive work environment. In addition, the case of *Burlington v. Ellerth* (1998) mandated that companies can be held accountable for an employee’s behavior even if there are no tangible consequences to the victim’s employment or economic status (Black & Allen, 2001). In many instances, *quid pro quo* and hostile work environment sexual harassment occur simultaneously, which makes distinguishing between the two difficult in practice.

The guidelines provided by the EEOC identified six factors to be considered when making determinations of hostile work environment sexual harassment. They are:

1. whether the conduct was verbal or physical, or both;
2. how frequently it was repeated;
3. whether the conduct was hostile and patently offensive;
4. whether the alleged harasser was a co-worker or a supervisor;
5. whether the others joined in perpetrating the harassment; and
(6) whether the harassment was directed at more than one individual

(EEOCb, 1990, p14).

All six factors need not be present in the event of hostile environment sexual harassment. However, each of the six EEOC factors should be examined in reference to the specific claim or case. No specific factor is more important than another in determining hostile environment sexual harassment. Instead, the presence of any of the six EEOC Guideline factors in the situation make hostile environment sexual harassment more likely. Hostile environment sexual harassment does not necessarily involve an economic or tangible loss as does *quid pro quo* sexual harassment, but it must be *sufficiently severe or pervasive* to create an *abusive working environment* (EEOC, 1990). Within the United States legal system, the standard of a *reasonable person* is used for determining if the behavior(s) constitute hostile environment sexual harassment (EEOC, 1990). In a court case, juries are asked to view the situation from the victim’s perspective when deciding if the work environment was hostile in nature and interfered with the victim’s job performance.

Hostile environment sexual harassment is rarely found with only a single harassing act unless the claim involved severe physical harassment. Most hostile environment sexual harassment is identified from a pattern of prolonged abusive behavior.

Although the EEOC provided some clarification of sexual harassment by providing a definition and examples, it did not completely clarify all aspects of sexual harassment. The guidelines use language that can be interpreted in a variety of ways. The ambiguity of the EEOC guidelines results in wide variations in their understanding and leaves gray areas in the law. Further confusion creeps into legal cases through extralegal factors that influence the perception of sexual harassment.
Theories of Forming Attributions

Attribution Theory. Attribution theory can provide some insight into jury
that people are constantly confronted with an enormous amount of information that must
be reduced to a manageable amount by relying on heuristics, information processing
shortcuts, and schemas. Fisk and Taylor (1991) suggested that humans are motivated
tacticians who can shift from less accurate but faster cognitive tactics to more thoughtful,
 thorough strategies to help form impressions of the surroundings and other humans
encountered throughout the day. As a juror, there is a high motivation to make an
accurate decision, therefore jurors are more likely to use a thoughtful and thorough
strategy to form decisions. However, Uleman, Newman, and Markowitz (1996) suggested
that humans continuously make inferences about others’ behavior and personality
automatically, with no conscious cognitive effort. Therefore, jurors are still susceptible to
making automatic inferences about other people based on stereotypes, schemas, and other
information processing shortcuts. The automatic inferences leave an opportunity for
situational and individual factors to influence attributions about others and their behavior
because humans cannot turn off these inferences. Researchers have suggested that these
situational and individual factors may influence the judgments of jurors in sexual
harassment trials where there is a lack of evidence and/or the case is ambiguous (Elkins
& Phillips, 1999). Hurt et al. (1999) found that respondents perceived social-sexual
conduct to be harassing not by actions alone, but rather by the context and circumstances
that surrounded the actions (i.e., extralegal factors). Furthermore, Stockdale, Vaux, and
Cashin (1995) suggested that people are more likely to perceive sexual harassment if they
can attribute the cause of the harassing behavior to enduring attributes of the perpetrator rather than of the victim. Court cases that lack strong evidence are more susceptible to bias and subjective interpretation because they do not have objective facts on which jurors can base their decisions. Furthermore, court cases that are clear-cut and have strong supporting evidence are usually settled outside of court or dismissed before trial. Therefore, the cases that are more ambiguous or have evidence that can be used to support both the prosecutor and the defense's argument are more likely than clear-cut cases to make it to court and result in a jury decision.

Sexual harassment cases are usually civil trials rather than criminal trials. There are some notable differences between criminal and civil court cases. Specifically, the burden of proof differs in a civil and criminal case. In a civil case, the jurors examine if the preponderance of evidence supports the claim. However, in a criminal case, the jurors must decide if the alleged perpetrator is guilty beyond a reasonable doubt. In criminal trials jurors must reach a unanimous decision, whereas in a civil trial jurors must reach a consensus or majority decision. In addition, the jurors have more responsibility in a criminal trial because the jurors influence whether or not the individual on trial goes to prison. In a civil trial, jurors are responsible for awarding monetary settlements. Because civil trials require less responsibility of jurors than criminal trials and jurors must reach only a majority decision, Elkins and Phillips (1999) suggested that jurors in civil trials may make an increased amount of attributions based on extralegal factors compared to jurors in criminal trials.

Discounting Principle. The Discounting Principle also provides an explanation for jury decision-making. According to Kelley's (1971) theory of discounting, adults often
discount other people’s internal disposition to engage in a behavior when a plausible external or situational reason is present. McBride (1998) suggested that people use the discounting principle when no explanation is present to account for an individual’s behavior. The discounting principle is useful in situations where an individual’s actions are motivated solely by the external environment rather than internal attributes.

The discounting principle was applied to forming attributions of responsibility for contracting HIV (McBride, 1998). Using vignettes of an HIV-positive male in which the behavioral explanation for the male’s contraction of HIV and sexual orientation was manipulated, McBride found that when the behavioral information was present, the attribution of responsibility was not affected by the stigma of homosexuality, while when no information was given, the stigma of homosexuality impacted attributions of responsibility. McBride (1998) found that participants’ attributions of responsibility for contracting HIV were based on the individual’s characteristics. This study suggested that the discounting principle is utilized when no behavioral explanation is at hand to account for an individual’s behavior.

*The Just World Theory.* The Just World Theory provides another explanation for jury decision-making. According to Lerner (1997), belief in a just world describes an individual’s belief in an inherent fairness of the universe such that bad actions or good actions will be suitably compensated. Lerner (1991) suggested that people’s belief in a just world acts as a filter to help people interpret everyday situations and world events. When events do not fit into one’s belief in a just world, people consciously reinterpret the events so that they can maintain their just world belief. Lerner suggested that a belief in a just world helps individuals function at two levels of consciousness, consciously
acknowledging that the world is not fair while internally subscribing to the belief that the world is a fair place where bad people are punished and good people are rewarded.

When the belief in a just world hypothesis is applied to research on victim responsibility, findings suggest that in certain situations, victims are blamed rather than perpetrators. Smith, Keating, Hester, and Mitchell (1976) found that attributions of responsibility were greater for rape victims who previously knew their rapist than victims who did not previously know their rapist. The Smith et al. findings suggested that individuals are more likely to attribute responsibility to a victim if they had previous experience with the perpetrator. Shoenfelt and Arnold (2000) found that currently employed employees were perceived to be victims of sexual harassment more often than employees who had been fired from the organization. The belief in a just world can provide an explanation for these findings. Participants high in the belief in a just world would hold the fired victim responsible for his or her own bad outcome because the fired employee must have performed poorly and, therefore, the participants would not believe the fired victim as often as the employed victim who did not deserve the bad outcome.

*Extralegal factors that influence perceptions of sexual harassment*

Extralegal factors that influence perceptions of sexual harassment have become a popular research topic over the past few years. In general, hostile environment sexual harassment has been the focus of research rather than *quid pro quo* sexual harassment (Elkins & Phillips, 1999; Rotundo et al., 2001). *Quid pro quo* cases that involve sexual requests or demands in exchange for promotions, hire, or other benefits are more objective and are more likely to settle out of court (Runtz & O’Donnell, 2003). In contrast, hostile environment sexual harassment involves various forms of conduct (e.g.,
verbal comments, nonverbal gestures, physical touch) that tend to be more ambiguous (Runtz & O'Donnell, 2003). The ambiguity found in hostile environment sexual harassment allows for bias and extralegal factors to influence perceptions and produce less agreement in perceptions of sexual harassment. There are many factors found to influence perceptions of sexual harassment including the physical attractiveness of the victim and perpetrator (Wunsch & Moore, 2004), the gender of the evaluator (Rotundo et al., 2001; Runtz & O'Donnell, 2003; Gowan & Zimmerman, 1996), the type of behavior (verbal or physical) (Dougherty et al., 1996), the previous performance on the job of the victim (Shoenfelt & Arnold, 2000) and the employment status of the victim (Shoenfelt & Arnold, 2000).

**Gender.** Previous research has established that women are more likely than men to view potentially harassing behaviors as inappropriate and sexually harassing (Fitzgerald & Ormerod, 1991; Gowen & Zimmerman, 1996; Rotundo et al., 2001; Runtz & O'Donnell, 2003; Shoenfelt & Arnold, 2000; Weunsch & Moore, 2004). Women, more than men, tend to view a broader range of social-sexual behaviors as harassing (Rotundo et al., 2001). Women are more likely than men to perceive sexual harassment in cases that lack strong evidence or are ambiguous in nature (Gowen & Zimmerman, 1996; Rotundo et al., 2001; Runtz & O'Donnell, 2003). Hurt, Weiner, Russell, and Mannen (1999) found that women qualified social-sexual behavior as harassing whenever the behavior occurred at work while men qualified the behavior to be non-harassing if it did not violate the workplace norms. A meta-analysis investigating gender influences on perceptions of sexual harassment found slight but significant gender difference (Rotundo et al., 2001). Rotundo et al. found that men and women agreed that behaviors constituting
quid pro quo sexual harassment were sexually harassing behavior; perceptions of hostile environment sexual harassment resulted in the most disagreement by gender.

Runtz & O’Donnell (2003) suggested that women are more attuned to social-sexual behaviors because they are the traditional targets of those behaviors and therefore are more likely to be victims of sexual harassment. Runtz & O’Donnell (2003) suggested that gender differences in the perception of sexual harassment could be due to different socialization and attribution processes.

Much of the current research on sexual harassment has involved extralegal factors such as gender differences (e.g., Gowan & Zimmerman, 1996; Rotundo et al., 2001; Runtz & O’Donnell, 2003) and the physical attractiveness of the victim or perpetrator (e.g., Wuensch & Moore, 2004). However, there is a need for exploratory research into additional extralegal factors that impact perceptions of workplace sexual harassment including the victim’s previous performance and the victim’s employment status. This study will attempt to examine these two extralegal factors in conjunction with gender differences using the framework of a sexual harassment trial.
The present study investigated the effects of the jury member’s gender, victim’s job performance, and victim’s employment status on individual juror and jury group perceptions of sexual harassment. Research conducted on perceptions of sexual harassment have primarily focused on hostile environment sexual harassment rather than quid pro quo sexual harassment (e.g., Elkins & Phillips, 1999; Rotundo et al, 2001). Quo id pro quo sexual harassment is more objective in its determination and produces more agreement between people due to its straightforwardness. Hostile environment sexual harassment results in less agreement in perceptions of sexual harassment because of its ambiguous and subjective nature. Therefore, the present study addressed hostile environment sexual harassment.

Participants were given a hypothetical scenario describing a female employee who claimed to have been verbally and physically sexual harassed by a male boss during a staff meeting and throughout the workday for a period of fifteen months. The victim’s job performance (good performance, average performance, poor performance, no information) and the victim’s employment status (still employed, fired, no information) were manipulated in twelve scenarios. All participants were given a briefing on the EEOC guidelines, definition of sexual harassment, and consensus decision-making that was similar to what a juror in a court case of sexual harassment would receive. After reading the scenarios and completing the materials as an individual juror, participants were then split into juries where they came to a group verdict. Finally, participants made a final decision individually on whether or not they believed the incidents in the hypothetical scenario constituted sexual harassment.
Consistently, researchers have found gender differences in the perception of sexual harassment (Hurt et al., 1999; Rotundo et al., 2001; Runtz & O’Donnell, 2003). Rotundo et al. (2001) found that women were more likely to classify a wider variety of behaviors as sexual harassment than men although the type of harassment mediated the gender difference. Specifically, both men and women are more likely to agree on *quid pro quo* cases of sexual harassment but are much less likely to agree on the presence of sexual harassment when ambiguous behaviors such as those found in hostile environment sexual harassment cases are involved.

Hypothesis 1: Female participants will be more likely than male participants to label behaviors as sexual harassment, therefore a gender difference in perceiving sexual harassment will occur.

Shoenfelt & Arnold (2000) investigated the effects of victim performance information (good performance, poor performance, no information) and victim employment status (employed, dismissed, no information) on individual jurors perceptions of sexual harassment. There were no differences between perceptions of sexual harassment for employees with either good or poor performance records. However, participants were more likely to perceive the employee as a victim of sexual harassment when no performance information was included in comparison to when performance information was present. On the other hand, research on attributions, the discounting principle, and the belief in a just world would suggest that poorly performing employees would be perceived as more responsible for their own sexual harassment (Elkins & Phillips, 1999; Lerner, 1991; Smith et al., 1976). The present research
attempted to clarify the conflict between Shoenfelt & Arnold’s (2000) findings and previous research on attributions, the discounting principle, and a belief in a just world.

Hypothesis 2: Job performance of the victims of sexual harassment will be significantly related to participant’s perceptions of sexual harassment.

(a) Victims with poor performance records will be perceived to be victims of sexual harassment less often than will victims with good performance records. (b) Victims with average performance will be perceived to be victims of sexual harassment more often than will victims with poor performance records and less often than good performance records.

Shoenfelt & Arnold (2000) found that employees currently employed by the organization were perceived to be victims of sexual harassment more often than employees who were dismissed from the organization. These findings are consistent with previous research on attributions, the discounting principle, and a belief in a just world (Hurt et al., 1999; Kelley, 1971; Lerner, 1997). In the present study, participants would likely believe that a person who is fired probably did something to deserve it and therefore the claim of sexual harassment may be ignored or attributed to the vengeful personality of the victim.

Hypothesis 3: The employment status of the victim of sexual harassment will influence the perceptions of sexual harassment. Employees currently employed by the organization will be perceived by the participants to be victims of sexual harassment more often than employees who have been fired from the organization.
Method

Participants

Precisely 382 students enrolled in psychology classes at a mid-sized southeastern United States university participated in the study. The participants were given extra credit for their participation. The mean age was 21.4 years (SD=6.25), with the age of participants ranging from 18 to 54. All participants were over 18 and therefore potentially eligible for jury duty. Of the participants in the present study, 210 or 55% were female. The majority of participants (87.9%) were Caucasian; 7.1% were African American; 2.9% were Asian; 1% Hispanic, and 1% Other.

Some 99.5% of the participants indicated they had been employed in a business, industry, or organizational setting. The participants average length of time employed was 3.36 years. When asked, 70.9% of the participants indicated that their environment was not at all sexually harassing; 26.8% stated their environment was somewhat sexually harassing; while 2.4% said the environment was extremely harassing. Participants were asked if they believed they had personally been a victim of sexual harassment, 82.9% indicated they had not been a victim, 11.6% were uncertain, and 5.5% indicated they were victims of sexual harassment.

Exactly 107 participants failed the manipulation check and were therefore excluded from the analysis. The mean age of the participants that failed the manipulation check was 20.06 years (SD= 4.36), with the age of participants ranging from 18 to 48. Of the participants in the present study who failed the manipulation check, 64 or 62.1% were female. The majority of participants who failed the manipulation check (84.3%) were Caucasian. The remaining exclusions were 10.8% were African American; 2.9% were...
Asian; 1 % were Hispanic, and 1% were Other. The participants who failed the manipulation check did not statistically differ in their demographic information from those who passed the manipulation check.

Materials

Informed Consent. The informed consent document provided a brief summary of the study, explained the procedures, addressed the potential for discomfort and risks as well as the benefits of participation. The document also addressed issues of confidentiality and the participant’s right to withdrawal at any time from the study (see Appendix A). After participants read the entire document, they were asked to sign it, indicating their willingness to participate in the study.

Demographic Items. Data were collected from the participants addressing: (a) gender, (b) race, (c) age, (d) the extent to which his/her current work or school environment is sexually harassing, (e) whether he/she has ever been the victim of sexual harassment, and (f) whether he/she has ever experienced some of the negative consequences of sexual harassment. The biographical items are located in Appendix B.

Design. A 4 (victims performance: good, average, poor, unknown) x 3 (victims employment status: employed, fired, unknown) factorial design was used. These factors were manipulated in a hypothetical, but realistic, scenario describing facts from a hostile environment sexual harassment court case. The manipulation check consisted of two items located on the Sexual Harassment Study Response Sheet (Appendix B).

Manipulation Check. The manipulation check items assessed whether participants were able to correctly identify the experimental manipulation of the victim’s performance (good, average, poor, no information) and the victim’s employment status (employed,
fired, no information) in the scenario they read. Participants circled adjectives describing the victim’s performance and employment status (Item 8) from items included among a list of semantic differential scales. Data from participants who failed the manipulation check (i.e., incorrectly identified the manipulation of the victim’s performance and employment status in the scenario they read) were not included in the analyses. Only data from participants who correctly identified the manipulation were included in the data analyses.

Scenarios. The scenarios used in the present study were adapted and modified from the scenarios used in Shoenfelt and Arnold (2000), *Meritor Savings Bank v. Vinson* (1986), and *Min Jin v. Metropolitan Life Insurance Company* (2002). The basic organizational setting was taken from *Meritor Savings Bank v. Vinson* (1986), while the time frame of fifteen months was updated based on *Burlington Industries, Inc. v. Ellerth* (1998). In this case, Kimberly Ellerth quit her job after 15 months of verbal and physical sexual harassment by a male supervisor who had the authority to make hiring and promotion decisions of employees. Kimberly Ellerth alleged her boss made three thinly veiled threats to deny her job benefits if she would not appease his sexual advances. However, she refused all of her boss’s advances and was not denied any tangible job benefits. Kimberly Ellerth did not report the sexual harassment to anyone of authority despite her knowledge of Burlington’s policy against sexual harassment. The Supreme Court decided in favor of Kimberly Ellerth. The scenarios in the present study contain both verbal and physical conduct occurring over 15 months.

The location of the initial comment in the present study’s scenario is similar to the New York, 2nd U.S. Circuit Court of Appeals case of *Min Jin V. Metropolitan Life Insurance Company* (2002). In this case, Min Jin was continually forced to have sex with her immediate
supervisor at meetings based on threats of firing her if she did not comply with his demands. The court ruled in favor of Min Jin based on the threats to her tangible job benefits. In the present study’s scenario, the harassment started before a meeting at work which is similar to what took place in Min Jin v. Metropolitan Life Insurance Company (2002) case.

The present scenarios describe a woman who files a sexual harassment lawsuit after repeated incidents of unwelcome verbal comments about her body and physical behaviors of her boss, the perpetrator. The victim’s performance and employment status were manipulated across twelve scenarios (Refer to Appendix C). The sexually harassing conduct utilized in these scenarios was calibrated in a stimulus-centered rating study conducted by Shoenfelt and Mack (2003), in which participants rated the degree of perceived sexual harassment on a scale from 1 (“Definitely not sexual harassment”) to 5 (“Definitely sexual harassment”) of a list containing both comments and behaviors. The mean ratings of the comments and behaviors used in the present study were: “Placed his hand on her shoulder” and comment “Your ass sure looks good in that dress” (M= 4.56, SD= .73), “You must be working out. Your body looks great.” and “Placed his hand on her shoulder” (M= 3.03, SD= 1.12), and “Brush his hand across her breast and says nothing” (M= 4.11, SD=.97). These particular behaviors and comments were selected based on their midrange ratings from the stimulus-center rating study, which are most likely to represent ambiguous conduct, resulting in greater variability among participants in determining whether the perpetrator’s conduct constitutes hostile environment sexual harassment.

**Dependent Measures.** The dependent measures consisted of two items located on the Sexual Harassment Study Response Sheet (Appendix B). Item 9 asked if the participant believed the perpetrator’s behavior is sexual harassment (Yes/No). Item 11 asked participants to indicate the degree of confidence in their decision on Item 9 on a
five-point scale (A “Not at all confident” to E “Completely Confident”; Refer to Appendix B). These two items were combined to create a continuous dependent variable, described in detail in the results section. Both the dichotomous and continuous variables were used in the analyses.

**EEOC items.** The five EEOC criteria for making a determination of hostile environment sexual harassment were included in the Sexual Harassment Study Response Sheet (Appendix B). Participants were asked to reply to the following five EEOC criteria items with a Yes/No response: (a) Does this have the effect of unreasonably interfering with the victim’s work performance?, (b) Does this incident described create an intimidating environment?, (c) Does the incident described create a hostile environment?, (d) Does the incident described create an offensive environment?, and (e) Does the perpetrator’s behavior constitute hostile environment sexual harassment? In addition, participants indicated their degree of confidence with regard to each of the five EEOC items on a five-point scale (A “Not at all confident” to E “Completely confident”; Refer to Appendix B).

**Procedure**

Once all the participants were seated, a brief introduction was given to the study and the informed consent form was completed by the participants. Following the completion of the consent form, participants received a brief training session, which included the EEOC (1990) definitions and examples and the two types of sexual harassment, similar to what a jury would receive in a court case. Furthermore, the training emphasized the three key features outlined in the EEOC (1990) guidelines (i.e., the behavior must be sexual in nature, unwelcomed, submission to such conduct is a term or condition of employment) and that must be present in both types of sexual harassment.
(Appendix D). Overhead transparencies containing definitions and key features of sexual harassment were displayed throughout the training session and the duration of the data collection session. Participants were given the opportunity to ask the experimenter questions following the training session.

Every participant received an envelope containing the Sexual Harassment Response Sheet, one of 12 case scenarios, a Jury Record Sheet (Appendix F), and an Individual Record Sheet (Appendix G). Participants were instructed to complete items 1 through 7 on the Sexual Harassment Response Sheet that included the demographic questions. Upon completion of the demographic items, participants were instructed to carefully read the scenario and to then fill out items 8 to 22 on the Sexual Harassment Response Sheet. Envelopes were labeled with the letters A through L to facilitate the random assignment of the participants into juries. During each data collection session, four to six individuals received a envelope marked with each letter, representing the jury to which they belonged. After the participants finished filling out the response sheet, participants were instructed to form groups representing juries based on the packet letter (A through L) representing the scenario they read. After the formation of juries, participants were instructed to make a jury decision as to whether the case (scenario) constituted hostile environment sexual harassment. Prior to letting the groups start to deliberate, the participants were trained on the guidelines for group consensus (Appendix D). Upon completion of the consensus training, juries were instructed to discuss the case and make a decision on the Jury Record Sheet. After all juries had deliberated and concluded, participants were asked to individually review their first decision and their
jury decision and to record a final individual decision on the Individual Record Sheet.

After completing the final task, participants were thanked for their time and dismissed.
Results

The ambiguous behaviors and comments made by the perpetrator in the scenarios were designed to produce an equivalent number of findings of sexual harassment and no sexual harassment. Some 23.6% of individual jurors responded that the perpetrator’s behavior was not sexually harassing, while 76.4% of individual jurors believed that the perpetrator’s behavior was sexually harassing. When jurors were combined into juries of 4 to 6 participants, 32% of the juries indicated that the perpetrator’s behavior did not constitute sexual harassment, while 68% of the juries indicated that the perpetrator’s behavior constituted sexual harassment. Juries and individual jurors in the present study were more likely to make a decision that the scenario constituted hostile environment sexual harassment.

Individual Jurors

A continuous dependent variable was created to evaluate individual juror decisions. The new variable was created by coding the jurors’ decision of whether or not sexual harassment had occurred in the scenarios as 1 for “yes” and -1 for “no” and then multiplying this number by the confidence level the juror indicated for his/her decision (1-Not at all confident to 5-Completely Confident). Consequently, a negative response indicates a juror’s perception that no sexual harassment took place in the scenario, whereas a positive response represents a juror’s perception that sexual harassment took place in the scenario.

A 2 (Gender: male, female) X 4 (Victim Job Performance: good, average, poor, no information) X 3 (Victim Employment Status: employed, fired, no information) analysis of variance (ANOVA) was conducted on individual jurors’ decisions to test all three hypothesis (see Table 1). Hypothesis 1 suggested that females would be more likely than males to perceive sexual harassment in the scenarios. The results revealed a main effect for gender, $F(1, 245)= 5.93$, $p= .02$. Females ($M = 2.31$, $SD = 2.50$) were more likely than males ($M = 1.48$, $SD = 2.31$).
$SD = 2.88$) to find the conduct of the perpetrator in the scenario to be sexually harassing, thereby supporting Hypothesis 1.

Table 1.

ANOVA Table for individual juror perceptions of sexual harassment.

<table>
<thead>
<tr>
<th>Source</th>
<th>df</th>
<th>MS</th>
<th>$F$</th>
<th>$p$</th>
<th>$Etc^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender (G)</td>
<td>1</td>
<td>37.90</td>
<td>5.93</td>
<td>.02*</td>
<td>.02</td>
</tr>
<tr>
<td>Performance (P)</td>
<td>3</td>
<td>39.16</td>
<td>6.13</td>
<td>.00**</td>
<td>.07</td>
</tr>
<tr>
<td>Employment Status (E)</td>
<td>2</td>
<td>54.24</td>
<td>8.49</td>
<td>.00**</td>
<td>.07</td>
</tr>
<tr>
<td>G X P</td>
<td>3</td>
<td>9.28</td>
<td>1.45</td>
<td>.23</td>
<td>.02</td>
</tr>
<tr>
<td>G X E</td>
<td>2</td>
<td>17.18</td>
<td>2.69</td>
<td>.07</td>
<td>.02</td>
</tr>
<tr>
<td>P X E</td>
<td>6</td>
<td>4.42</td>
<td>.69</td>
<td>.66</td>
<td>.02</td>
</tr>
<tr>
<td>G X P X E</td>
<td>6</td>
<td>7.03</td>
<td>1.10</td>
<td>.36</td>
<td>.03</td>
</tr>
<tr>
<td>Error</td>
<td>245</td>
<td>6.39</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The ANOVA revealed a main effect for victim job performance, $F(3, 245) = 6.13$, $p < .001$. Tukey’s HSD post hoc test revealed that individual jurors were unsure of the perpetrator’s behavior constituting sexual harassment when the victim had poor job performance ($M = 0.66$, $SD = 3.05$), while individual jurors tended to find sexual harassment for victims with average performance ($M = 2.09$, $SD = 2.75$), good performance ($M = 2.25$, $SD = 2.37$), or when no information was provided about the victim’s job performance ($M = 2.51$, $SD = 2.37$). Perceptions of victims with average or good job performance, and no performance information provided did not statistically differ from each other. These results partially support the hypothesis that job performance of the victim of sexual harassment would be significantly related to participant’s perceptions of sexual harassment. Specifically,
it was hypothesized that victims with poor job performance records would be perceived to be victims of sexual harassment less often than would victims with good performance records. The findings suggest that the victim’s poor performance record resulted in an unsure decision by individual jurors, while there was no differences between sexual harassment findings for good, average, or no information conditions.

A main effect was found for victim employment status, $F(2, 245) = 8.49, p< .00$ (refer to Figure 1). The Tukey’s HSD post hoc test indicated that individual jurors were less confident in their decision that the perpetrator’s behavior constituted sexual harassment when the victim had been fired from the organization ($M = 0.96, SD = 2.75$) than when the victim was still employed ($M = 2.51, SD = 2.36$) or when no information was provided on the employment status of the victim ($M = 2.18, SD = 2.77$). Furthermore, the results indicated that perceptions regarding the employed victim of sexual harassment condition did not significantly differ from perceptions of the no information provided condition. These results support the hypothesis that employment status of the victim of sexual harassment would influence the perceptions of sexual harassment. Specifically, employees currently employed by the organization would be perceived by the participants to be victims of sexual harassment more often than employees who have been fired from the organization. Sexual harassment was less likely to be found for a fired victim than when no information was presented for the victim’s employment status or if the victim was currently employed by the organization; there was no difference between sexual harassment findings for employed victims and the no information provided condition.
Figure 1. Mean individual juror response for victim employment status by victim job performance.

To analyze the perceptions of sexual harassment in a jury decision, a continuous dependent variable that ranged from -5 to 5 was created in the same manner as the variable used to analyze individual juror decisions, that is, by multiplying the dichotomous sexual harassment perception by the five-point confidence rating. A 2 (Gender: male, female) X 4 (Victim Job Performance: good, average, poor, no information) X 3 (Victim Employment Status: employed, fired, no information) ANOVA was conducted on the jury perceptions of sexual harassment to test all three hypothesis (refer to Table 2). The continuous variable allows for the analysis of data using ANOVA,
which can test for main effects and interactions. However, real juries are required to make a dichotomous decision. Therefore, a significant main effect for jury decision was also tested by utilizing a $X^2$ test on the dichotomous (yes/no) jury decision.

The ANOVA revealed that the gender effect found in individual jurors was not statistically significant in jury perceptions of sexual harassment $F(1, 248) = 0.04$, n.s. A chi squared test was conducted for the gender on the dichotomous (yes/no) jury decisions. The $X^2$ test confirmed gender was a nonsignificant factor $X^2(1, N=272) = .14$, $p=.721$ (refer to Table 3) in jury decisions. Of 130 male participants, 87 (66.9%) perceived sexual harassment; of 142 female participants, 98 (69.0%) perceived sexual harassment (see Table 3). Therefore, both males and females were more likely than not to perceive sexual harassment in a jury.

Table 2.

ANOVA Table for jury perceptions of sexual harassment.

<table>
<thead>
<tr>
<th>Source</th>
<th>$df$</th>
<th>$MS$</th>
<th>$F$</th>
<th>$p$</th>
<th>$Eta^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender (G)</td>
<td>1</td>
<td>.25</td>
<td>.04</td>
<td>.85</td>
<td>.00</td>
</tr>
<tr>
<td>Performance (P)</td>
<td>3</td>
<td>89.02</td>
<td>13.06</td>
<td>.00**</td>
<td>.14</td>
</tr>
<tr>
<td>Employment Status (E)</td>
<td>2</td>
<td>75.52</td>
<td>11.08</td>
<td>.00**</td>
<td>.08</td>
</tr>
<tr>
<td>G X P</td>
<td>3</td>
<td>23.27</td>
<td>3.42</td>
<td>.02*</td>
<td>.04</td>
</tr>
<tr>
<td>G X E</td>
<td>2</td>
<td>3.62</td>
<td>.53</td>
<td>.59</td>
<td>.00</td>
</tr>
<tr>
<td>P X E</td>
<td>6</td>
<td>35.72</td>
<td>5.24</td>
<td>.00**</td>
<td>.11</td>
</tr>
<tr>
<td>G X P X E</td>
<td>6</td>
<td>7.83</td>
<td>1.15</td>
<td>.33</td>
<td>.03</td>
</tr>
<tr>
<td>Error</td>
<td>248</td>
<td>6.81</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 3.

*Frequencies and percentages juror, and jury finding by genders.*

<table>
<thead>
<tr>
<th>Gender</th>
<th>Juror Finding</th>
<th>Jury Finding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Finding Yes</td>
<td>Finding No</td>
</tr>
<tr>
<td>Male</td>
<td>91 (70.0%)</td>
<td>39 (30.0%)</td>
</tr>
<tr>
<td>Female</td>
<td>116 (82.3%)</td>
<td>25 (17.7%)</td>
</tr>
</tbody>
</table>

The ANOVA revealed a main effect for victim job performance, $F(3, 248)=13.06$, $p<.001$ (refer to Table 2). The Tukey’s HSD post hoc test showed that jurors were less likely to perceive sexual harassment when the victim had performed at an average level ($M = -.35, SD = 3.28$) than they were when victims had good performance ($M = 1.52, SD = 2.65$), poor performance ($M = 1.06, SD = 3.18$), or no information was provided about the victim’s job performance ($M = 2.06, SD = 2.23$). The perceptions of conditions with victim good or poor job performance, and no performance information provided did not statistically differ from each other. These results failed to support Hypothesis 2, that victim’s job performance would be significantly related to perceptions of sexual harassment. Specifically, it was hypothesized that victims with poor job performance records would be perceived to be victims of sexual harassment less often than would victims with good performance records, and that victims with average job performance would be perceived to be victims of sexual harassment less often than poor performers and more often than good performers. However, the findings suggest that scenarios with victim job performance at an average level resulted in juries less likely to perceive sexual harassment than when juries read scenarios with good or poor victim job performance or no information conditions.
A chi-squared test was conducted for victim performance on the dichotomous (yes/no) jury decision (refer to Table 4). The chi-squared results were significant, $\chi^2 (3, N=272) = 15.50, p = .001$, revealing that juries were more likely to perceive sexual harassment when the victim was a good performer 51 (73.9%), poor performer 40 (64.5%), or no information was provided for victim job performance 57 (81.4%). The suggestion is that juries were impacted differently by the average performance of the victim than were individual jurors in forming determinations of sexual harassment. Individual jurors were more likely to be unsure of occurrences of sexual harassment when the victim performed at a poor performance level.

Table 4.

*Frequencies and percentages of jury findings by victim performance.*

<table>
<thead>
<tr>
<th>Victim Performance</th>
<th>Jury Finding Yes</th>
<th>Jury Finding No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No information</td>
<td>57 (81.4%)</td>
<td>13 (18.6%)</td>
<td>70</td>
</tr>
<tr>
<td>Poor Performance</td>
<td>40 (64.5%)</td>
<td>22 (33.5%)</td>
<td>62</td>
</tr>
<tr>
<td>Average Performance</td>
<td>37 (52.1%)</td>
<td>34 (47.9%)</td>
<td>71</td>
</tr>
<tr>
<td>Good Performance</td>
<td>51 (73.9%)</td>
<td>18 (26.1%)</td>
<td>69</td>
</tr>
</tbody>
</table>

The ANOVA for jury perceptions of sexual harassment indicated a main effect for victim employment status, $F(2, 248) = 11.08, p < .001$ (refer to Table 2). Tukey’s HSD post hoc test revealed that juries presented with no information about the employment status of the victim ($M = 1.87, SD = 3.53$) or where the victim was still employed in the organization ($M = .99, SD = 2.77$) did not statistically differ from each other in their perceptions of sexual harassment. Furthermore, juries perceptions of sexual harassment with a scenario that
included the victim as employed ($M = .99, SD = 2.77$) was not statistically different from a jury’s perceptions when the victim was fired ($M = .11, SD = 3.53$). However, juries were more likely to find sexual harassment when there was no information provided about their employment status than when the victim was fired.

A chi-squared test was conducted for victim employment status on the dichotomous (yes/no) jury decisions (refer to Table 6). The chi-squared results were significant, $\chi^2 (2, N=272) = 19.17, p = .001$, revealing that juries were more likely to perceive sexual harassment when the victim was employed 57 (69.5%) or no information was provided for victim employment 86 (80.4%). The chi-squared test was not significant for juries perceptions of sexual harassment when the victim was fired. These results fail to support Hypothesis 3, that the employment status of the victim of sexual harassment would influence the perceptions of sexual harassment. Employees currently employed by the organization would be perceived by the participants to be victims of sexual harassment more often than employees who have been fired from the organization. The results revealed that the employed and fired victim conditions did not statistically differ. Thus, neither an employed nor a fired victim would be anymore likely than the other to be perceived as a victim of sexual harassment by a jury. When a victim of sexual harassment is still employed, an individual juror is more likely to find sexual harassment while a jury is more likely to be uncertain whether sexual harassment occurred. The findings suggest that when a victim was fired, both individual jurors and jury perceptions of sexual harassment become less certain of sexual harassment than when no information was provided on the victim’s employment status.
Table 5.

*Frequencies and percentages of victim employment status and jury findings.*

<table>
<thead>
<tr>
<th>Victim Employment</th>
<th>Jury Finding Yes</th>
<th>Jury Finding No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>No information</td>
<td>86 (80.4%)</td>
<td>21 (19.6%)</td>
<td>107</td>
</tr>
<tr>
<td>Fired</td>
<td>42 (50.6%)</td>
<td>41 (49.4%)</td>
<td>83</td>
</tr>
<tr>
<td>Employed</td>
<td>57 (69.5%)</td>
<td>25 (30.5%)</td>
<td>82</td>
</tr>
</tbody>
</table>

The ANOVA revealed two significant interactions, Gender X Performance interaction, $F(3, 248) = 3.42$, $p = .02$ and a Performance X Employment Status interaction, $F(6, 248) = 5.24$, $p < .001$. In order to explore the Gender X Performance interaction, separate one-way ANOVAs (performance) were conducted for each gender (See Figure 2 and Table 6). The ANOVA results were significant for males, $F(3, 126) = 8.31$, $p < .01$ (refer to Table 7). Tukey’s HSD post hoc test revealed that male jury members were less likely to perceive sexual harassment in their jury decision when the victim had average ($M = -.88$, $SD = 3.14$) or good performance ($M = .81$, $SD = 2.99$) than male jury members who read scenarios with victims performing at a poor level ($M = 1.87$, $SD = 2.88$) or no information was provided on victim performance ($M = 2.31$, $SD = 2.25$). Perceptions of average and good victim job performance conditions did not statistically differ for male jury members. Furthermore, perceptions of good and poor victim job performance conditions as well as the no information provided on victim performance condition did not statistically differ for male jury members. The good, poor, and no information victim job performance conditions resulted in males being more confident in their juries finding sexual harassment
compared to males reading scenarios with average performance of the victim job performance.

Figure 2. Mean jury response for gender by victim job performance.

Table 6.

*One-Way ANOVA of jury perceptions of sexual harassment for victim job performance by gender.*

<table>
<thead>
<tr>
<th></th>
<th>df</th>
<th>MS</th>
<th>$F$</th>
<th>$p$</th>
<th>$\eta^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job</td>
<td>3</td>
<td>66.02</td>
<td>8.31</td>
<td>.00**</td>
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<tr>
<td>Performance</td>
<td>126</td>
<td>12.33</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Females</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Job</td>
<td>3</td>
<td>39.15</td>
<td>4.90</td>
<td>.00**</td>
<td>.10</td>
</tr>
<tr>
<td>Performance</td>
<td>138</td>
<td>7.98</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The ANOVA results were also significant for female jury members, $F(3, 67)=4.90$, $p=.10$ (refer to Table 6). Tukey’s HSD post hoc test revealed that female jury members were less likely to perceive sexual harassment when the victim had average ($M = .08$, $SD = 3.37$) or poor performance ($M = .26$, $SD = 3.30$) than female jury members who read scenarios with victims performing at a good level ($M = 2.11$, $SD = 2.22$) or no information was provided on victim performance ($M = 1.79$, $SD = 2.21$). The results revealed that the average or poorly performing victim conditions did not statistically differ for female jury members. Furthermore, good and no information provided on victim performance conditions did not statistically differ for female jury members. However, perceptions of average or poor victim job performance conditions were less likely to indicate sexual harassment than scenarios with victims with good job performance records or when no victim performance records were provided.

In order to explore the Performance X Employment Status interaction, separate one-way ANOVAS (3 levels of employment status) were conducted for each performance condition (refer to Figure 3).

*Figure 3.* Mean jury response for victim employment status by victim job performance.
When the jury was presented with no information on the victim’s performance, there were no significant affect for employment status, $F(2, 67)= .31$, $p=.74$, (refer to Table 7). All victim employment status conditions, that is employed ($M = 2.09$, $SD =1.54$) and fired ($M = 2.32$, $SD =2.82$), and no information on victim employment ($M = 1.81$, $SD =2.23$), resulted in juries perceiving sexual harassment. The ANOVA for poor performance indicated a significant effect for victim’s employment status, $F(2, 59)= 9.60$, $p<.001$. The Tukey’s HSD post hoc test revealed that when the victim was performing poorly at work and was employed ($M = -.60$, $SD =.66$) or fired ($M = .57$, $SD =3.85$) the juries were less likely to perceive sexual harassment. In contrast, when the victim was performing poorly at work and no information was provided on the employment status of the victim ($M = 3.14$, $SD =1.28$) the juries were more likely to perceive sexual harassment. The ANOVA for average performance indicated a significant effect for victim employment status, $F(2, 68)= 7.18$, $p=.001$. The Tukey’s post hoc test revealed that when the victim performed at an average level at work and the victim was fired ($M = -2.45$, $SD =2.44$) the juries were more likely to find no sexual harassment in the case. Yet, when the juries received scenarios with the victim performing at an average level and either the victim was still employed in the organization ($M = -.05$, $SD =3.28$) or no victim employment status was provided ($M = .81$, $SD =3.19$), the juries were unsure of their perceptions of sexual harassment. Finally, the ANOVA for good job performance revealed a significant effect for employment status on jury perceptions of sexual harassment, $F(2, 66)= 7.55$, $p=.001$. The Tukey’s post hoc test revealed that juries who received scenarios in which the victim was a good performer were unsure if sexual harassment occurred when the victim was fired ($M = -.25$, $SD =3.23$). On the contrary, when the victim was a good performer and no employment status information was provided for the victim ($M= 2.14$, $SD =1.87$) or the victim was still employed at the organization ($M = 2.40$, $SD =2.23$), juries were likely to perceive sexual harassment in the case.
Table 3.

One-Way ANOVAs on employment status for each level of job performance for jury group sexual harassment.

<table>
<thead>
<tr>
<th></th>
<th>df</th>
<th>MS</th>
<th>F</th>
<th>p</th>
<th>$\eta^2$</th>
</tr>
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<tbody>
<tr>
<td>No information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Groups</td>
<td>2</td>
<td>1.57</td>
<td>.31</td>
<td>.74</td>
<td>.01</td>
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<tr>
<td>Error</td>
<td>67</td>
<td>5.08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poor Performance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Groups</td>
<td>2</td>
<td>75.61</td>
<td>9.60</td>
<td>.00**</td>
<td>.25</td>
</tr>
<tr>
<td>Error</td>
<td>59</td>
<td>7.87</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Average Performance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Groups</td>
<td>2</td>
<td>65.73</td>
<td>7.18</td>
<td>.00**</td>
<td>.17</td>
</tr>
<tr>
<td>Error</td>
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<td></td>
</tr>
<tr>
<td>Good Performance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Between Groups</td>
<td>2</td>
<td>44.61</td>
<td>7.55</td>
<td>.00**</td>
<td>.19</td>
</tr>
<tr>
<td>Error</td>
<td>66</td>
<td>5.90</td>
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</table>

Analyses were conducted to explore the gender difference in individuals' perceptions and perceptions in the jury setting. A difference score was calculated by subtracting the jury decision continuous variable from the individual juror decision continuous variable. Both the jury and the individual juror continuous dependent variables ranged from -5 to 5, with a negative number representing a finding of no sexual harassment while a positive number represented a finding of sexual harassment. The new variable ranged from -10 to 10, with a negative number representing a change to a finding of no sexual harassment in a jury while a positive number represented a change to a finding of sexual harassment in a jury. Persons who did not change their perception of sexual harassment in a jury group would have a 0 for the difference variable. A one-way
ANOVA was conducted on gender and the difference variable to examine which gender tended to change their decision when in a jury (refer to Table 8). These results would explain the absence of a gender effect in the jury condition. The significant results indicated that females ($M = -1.26$, $SD = 3.20$) were more likely than males ($M = -0.34$, $SD = 3.83$) to change from a perception of sexual harassment as a juror to not perceiving sexual harassment as a jury member, $F(1, 267) = 4.52$, $p = .03$. The results suggested females are more likely to change their perceptions of sexual harassment in juries than are male and, therefore, explained the absence of a gender effect in juries’ perceptions of sexual harassment.

Table 8.

*One-Way ANOVA of change from juror to jury sexual harassment perception by gender.*

<table>
<thead>
<tr>
<th>Gender</th>
<th>$df$</th>
<th>$MS$</th>
<th>$F$</th>
<th>$p$</th>
<th>$\eta^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between Groups</td>
<td>1</td>
<td>55.76</td>
<td>4.52</td>
<td>.03*</td>
<td>.02</td>
</tr>
<tr>
<td>Error</td>
<td>267</td>
<td>12.33</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>
Discussion

The present study provides interesting findings on individual juror and jury perceptions on hostile environment sexual harassment. Specifically, the results revealed that gender, victim job performance, and victim employment status were all found to influence individual juror perceptions of sexual harassment. Jury perceptions of sexual harassment were influenced by victim job performance and victim employment, but the gender differences found in individual juror decisions were not found for jury perceptions of sexual harassment.

Hypothesis 1, that female participants would be more likely than male participants to perceive sexual harassment, was partially supported. Sexual harassment was perceived more by individual female jurors than male jurors, however there was no gender effect found for jury group perceptions of sexual harassment. The gender effect found in the individual juror’s perceptions of sexual harassment in the present study have been substantially supported by prior research (Runtz & O’Donnell, 2003; Rotundo et al., 2001). Rotundo et al. (2001) found that women more than men tend to view a broader range of social-sexual behaviors as harassing. Furthermore, Runtz & O’Donnell (2003) attributed the gender differences in the perception of sexual harassment possible to different socialization and attribution processes. Both the present individual juror findings and previous research support the notion that men and women perceive sexual harassment in different ways.

However, when men and women are combined into a jury, the results of the present study suggest that the well-established gender differences in perception of sexual harassment are no longer present. Civil trial juries are mixed gender and are required to
reach a common decision. Therefore, when man and women in a jury reach the same finding, any gender differences in perceptions are obscured. In the current study, there was no gender main effect for jury group sexual harassment decisions. However, an interaction was found between gender and victim performance for jury decisions. The results revealed that males tended to be more confident than females in their jury’s perception of sexual harassment when no information was provided on victim job performance and when the victim performed poorly. In addition, males in a jury group tended to be less confident than females in a jury group when the victim performed at an average or poor level. Further analysis revealed that women were more likely than men to change their perception of sexual harassment in a jury group from their initial perception of sexual harassment as an individual juror to no harassment in the jury setting. The tendency for female participants more than male participants to change their decision when in a jury group atmosphere offers an explanation for the nonexistent gender effect for juries found in the present study.

Generally, research on sexual harassment has not utilized jury groups, instead relying on individual jurors. However, substantial previous research has focused on jury decision-making. MacCoun and Kerr (1988) found that the majority initial finding of the individuals prior to deliberation results in the same outcome as the jury group findings 82% of the time. The present research supports MacCoun and Kerr’s (1988) findings. In the present study, 91 male jurors found sexual harassment initially and when the jurors were combined into a jury, 87 (i.e., 95.6% retained their original position) males perceived sexual harassment. In comparison, 116 female jurors found sexual harassment initially and when the jurors were combined into juries, 98 (i.e., 84.8% retained their
original position) females perceived sexual harassment. MacCoun and Kerr (1988) suggested that group polarization, this is, when group discussion moves preferences toward the perception initially favored by the majority of the individuals, may explain why some jurors change their perception in a jury situation. Although a large percentage of our jurors retained their original position in jury decisions, in our study the jury decisions reflected less preference rather than more for the original position. Thus the current findings fail to support MacCoun and Kerr’s (1988) polarization theory.

The findings in the present study could be a result of the level of ambiguity in the case presented to the participant. In cases where the claims are less ambiguous, the jury may not have much discussion about the findings in the case because initial juror decision may all be in agreement. However, in cases where the claims of sexual harassment are more ambiguous, the jury may have more discussion about whether or not sexual harassment had occurred and thus polarization may take place. Shoenfelt and Nickel (2004) studied the effects of extralegal factors on juror and jury sexual harassment perceptions and found that if the majority of the jury group members had the same initial finding as an individual juror, it affected the jury’s outcome. Shoenfelt and Nickel (2004) specifically found that if the majority’s initial individual finding was perceived sexual harassment, then the jury was more likely to perceive sexual harassment in their final decision. Therefore, previous research shows deliberation by groups of jurors when the majority of the group had the same initial individual finding will most likely result in the same jury finding as the majority’s individual decision.

In the present study, females were more likely to change their decision in a mixed gender jury group from their initial individual decision as sexual harassment. Although
the present study did not examine jury gender composition, the gender composition of the jury may influence perceptions of sexual harassment. In the legal system, jurors do not make formal individual decisions, but rather deliberate as a group to arrive at a verdict. Therefore, more research on this topic is needed to understand how underlying mechanisms cause or explain that females change from the independent initial decision to a group jury decision. The implications for both the individual juror and jury perceptions of sexual harassment are that the gender of the individual juror can influence the perceptions of sexual harassment. Furthermore, since juries in civil trials are always mixed gender, jury decision may be biased by the gender composition of its members. Because the present study did not control for gender composition of the juries, further research is needed to explore this topic.

Hypothesis 2 predicted that job performance of the victims of sexual harassment would be significantly related to participants’ perceptions of sexual harassment. Specifically, Hypothesis 2 stated that victims with poor performance records would be perceived to be victims of sexual harassment less often than would victims with good performance records and that victims with average performance would be perceived to be victims of sexual harassment more often than would victims with poor performance records and less often than good performance records. The results partially supported this hypothesis. Individual jurors tended to perceive sexual harassment when the victim performed at an average or good level or when no information was provided on victim job performance, while individual jurors were unsure of the perpetrators behavior constituting sexual harassment when the victim performed poorly on the job. The individual results supported the portion of the hypothesis regarding the victim’s poor job
performance; however, the remainder of the hypothesis was not supported. Providing individual jurors with either no information, average, or good job performance for the victim did not result in perceptions statistically significant from each other.

When jurors were combined into a jury group, the effect of job performance information differed. Hypothesis 2 was not supported in that the results revealed that juries were less likely to perceive sexual harassment when the victim performed at an average level while they tended to perceive sexual harassment in cases with a victim performing at either a good or poor level or when no information was provided on victim job performance. Victims with average job performance were less likely to be perceived as sexual harassment victims by a jury than individuals in the other levels of job performance or when no information was provided.

The results suggest that jurors in groups were less confident in their perceptions of sexual harassment when the victim performed at an average level, while individual jurors were unsure of the perpetrator’s behavior constituting sexual harassment when the victim performed at a poor level on the job. The results for individual jurors and victim job performance are consistent with Kelly’s (1971) discounting principle. The discounting principle applied to the present study would suggest that participants would dismiss the victim’s sexual harassment claims when the participant can attribute it to some other factor (e.g., the poor job performance of the victim). In the present study when no information for victim job performance, good performance, or average job performance were provided, individual jurors were more likely to perceive sexual harassment than when the victim performed at a poor level at work. Therefore, the individual juror results in the present study are consistent with the discounting principle.
However in jury groups, cases with no information on victim job performance, good performance or poor job performance were more likely to be perceived as sexual harassment than cases with the victim performing at an average level. Hence, the jury results in the current study are inconsistent with the discounting principle.

The results of the present study are somewhat consistent with previous research on victim intoxication in hostile environment sexual harassment (Shoenfelt & Nickel, 2004), attributions of responsibility of rape victims (Smith, Keating, Hester, and Mitchell, 1976), and the conceptualization of a just world (Lerner, 1991). In the present study, cases with poor victim performance resulted in individual jurors being unsure of whether or not sexual harassment had taken place. A belief in a just world applied to the present study would suggest that participants would assign more responsibility to victims for their own sexual harassment incident when the participant behaved poorly (e.g., the poor job performance of the victim). In the present study, when no information for victim job performance, good performance, or average job performance were provided, individual jurors were more likely to perceive sexual harassment than when the victim performed at a poor level at work. Therefore, the individual juror results in the present study are consistent with a belief in a just world. However in jury groups, cases with no information on victim job performance, good performance or poor job performance were more likely to be perceived as sexual harassment than cases with the victim performing at an average level. Hence, the jury results in the current study are inconsistent with a belief in a just world. However in a jury group, the previous findings of Shoenfelt and Nickel (2004), Smith et al. (1976), and Lerner (1991) were not supported because the poor performers did not statistically differ from good, or no information provided on victim
job performance in terms of perceptions of sexual harassment. The present study and Shoenfelt and Arnold (2000) found that in sexual harassment cases, providing a participant with no information on victim employment status, results in finding sexual harassment more often than not. However, the rest of the results were inconsistent with Shoenfelt and Arnold’s (2000) study.

Although victim job performance status is an extralegal factor, it may influence a jury’s perception of sexual harassment. Specifically, the implications to hostile environment sexual harassment cases suggest that it would be in the plaintiff’s best interest to provide the jury with information on the victim’s job performance if he or she were a good performer or to provide no information. In both jury and individual juror results, good job performance or no information provided promotes perceptions of sexual harassment. Furthermore, the benefit to the plaintiff to providing no victim job performance information was supported by the present study and Shoenfelt and Arnold (2000).

The third hypothesis predicted the victim’s employment status would influence perceptions of sexual harassment. Specifically, it was hypothesized that currently employed victims would be perceived to be victims of sexual harassment more often than employees who have been fired from the organization. The individual juror results in this study support Hypothesis 3. Individual jurors were less likely to perceive the incident as constituting sexual harassment when the victim was fired as opposed to when no information was provided on victim employment status or when the victim was employed. These individual juror findings are consistent with Shoenfelt and Arnold’s (2000) findings that fired victims were less likely to be perceived as victims of hostile
environment sexual harassment than currently employed victims. In addition, the juror findings are consistent with previous research on attributions and a belief in a just world (Hurt et. al., 1999, Kelley, 1971). The results suggest that individual jurors likely believed that a person who is fired probably did something to deserve it, and therefore the claim of sexual harassment was attributed to the vengeful personality of the victim. Hence, the individual participant’s belief in a just world affected his or her perceptions of sexual harassment.

The results for Hypothesis 3 for jury groups were inconsistent with a belief in a just world and Shoenfelt and Arnold’s (2000) results. The jury results showed that jury groups were less likely to find sexual harassment in cases with the victim currently employed or fired than when compared to when no information on victim employment status was provided. A sexual harassment case is typically a civil trial that involves a jury decision by your peers. Therefore, the individual juror results are not as applicable as the jury group results to an actual sexual harassment case. Hence, the implications of the victim employment status to a hostile environment sexual harassment cases would suggest that a plaintiff’s attorney should not provide the jury with information on the victim’s employment status because in the jury results not providing victim employment information increases the chances of a jury’s perceptions of sexual harassment.

Interestingly, jury perceptions of sexual harassment differed as a function of an interaction of Victim Performance and Victim Employment Status. When no victim job performance information was provided, all three victim employment statuses (i.e., employed, fired, and no information) resulted in juries perceiving sexual harassment. When the victim performed at a good or average level, juries were more likely to
perceive sexual harassment when the victim was currently employed or no information was provided than when the victim had been fired by the organization. These findings are consistent with a belief in a just world because the juries reading these scenarios may have held the fired victim responsible for his/her own sexual harassment and therefore may not have believed the claim. In addition, these findings also support the discounting principle in that the juries may have dismissed the fired victim’s claim simply because he/she was fired and could be looking for revenge. When the victim in the scenario was a poor performer at work, the juries were more likely to perceive sexual harassment when there was no information on victim employment status than when the victim was either currently employed or had been fired from the organization. These findings are inconsistent with a belief in a just world or the discounting principle. These combinations of victim information may directly apply to a defendant or plaintiff’s case in that certain information combinations may influence jury decisions to find or not find sexual harassment.

Limitations

A question may be raised regarding how representative the sample population is to typical juries used in a sexual harassment case; that is, the relatively young age of the participants (M=21.4 years, SD=6.25) in the current study is younger than the actual population that typically serves jury duty. The target population includes US citizens 18 years and older who have registered to vote. Although 99.5% of the participants had work experience in business, industry, or in an organizational setting, the average length of employment was only 3.36 years. Therefore, the average brief period of employment in the present study may not be representative of the target population that incorporates
citizens who have never had a job to older people who have retired from their place of business. In addition, the lack of diversity among participants poses a problem for the results to be generalized to a diverse jury. The present study consisted mainly of Caucasian participants (87.9%). Conversely, juries in civil trials are typically more diverse in terms of age, gender, race, ethnicity, and experience.

The other limitations to the current study relate to the methodology used in the study. An important limitation of note was that over 27% of the participants failed the manipulation check. The relatively large number of participants failing the manipulation check may have been a result of the researcher’s not establishing the saliency of the manipulation (i.e., victim job performance and victim employment status) for the participants. In addition, participants may have failed the manipulation check based on their lack of attentiveness and motivation. Future researchers should attempt to make the manipulation more salient and increase the attentiveness of participants by emphasizing in the directions to pay close attention to the specific details in the scenario they will be reading and stress the importance of this research. The present study lacked a realistic setting of a sexual harassment trial that could have influenced the mock juries and mock jurors’ perceptions of sexual harassment. It is quite possible that the extralegal factors such as attorneys, the judge, and the setting of the courtroom may influence or change the jurors’ and juries’ perceptions of sexual harassment in the case. However, the physical setting of the present study was a typical classroom; therefore, the results of this study may not be generalized to an actual sexual harassment trial found in a courtroom.

The current study attempted to provide some similarities to a sexual harassment trial by providing a brief training on the topics of sexual harassment, EEO law, and
consensus guidelines, to participants similar to what a jury would receive in a sexual harassment trial. Furthermore, the current study had jurors make an independent individual decision before deliberating in a jury group, which is somewhat representative of a jury situation in a trial. In civil trials, jury members are instructed not to talk about the case with each other until the deliberation process begins. This practice is somewhat analogous to making an individual decision prior to the group decision.

Summary

The current study investigated the impact of gender, victim job performance, and victim employment status on individual juror and jury perceptions of sexual harassment. Gender, victim job performance, and victim employment are all extralegal factors that were found to influence individual jurors' perceptions of sexual harassment. The present study revealed individual female jurors were more likely than male jurors to find the perpetrators behavior constituted sexual harassment. Although gender did not have a significant effect in jury perceptions of sexual harassment, further analysis revealed that females were more likely than males to change their decision on sexual harassment in a jury group. Victim job performance and victim employment status were both found to influence jury perceptions of sexual harassment. When the victim was a good, average performer at work, or no information was provided on victim job performance, the individual jurors were more likely to find sexual harassment than cases where the victim was a poor performer. When the victim was a good or poor performer at work or no information was provided on victim job performance, the jury was more likely to find sexual harassment than cases where the victim was an average performer. Individual jurors were more likely to find sexual harassment when the victim was currently
employed or no information was provided than when the victim was fired from the organization. Jury groups were more likely to perceive sexual harassment when no employment information was provided on the victim than when the victim was currently employed or fired from the organization. Further research should investigate and identify these factors in a jury setting that cause the change from individual juror’s perceptions to a jury perception of sexual harassment. In addition, future investigations on sexual harassment should conduct the study in a courtroom setting to further increase the external validity of the study. The current study provides further clarification in identifying extralegal factors that bias perceptions of sexual harassment, despite the limitations in the study. In conclusion, the research on extralegal factors that bias jurors and juries can be used by both legal sides of a case to impact perceptions of sexual harassment.
References


*Guidelines on discrimination because of sex*, 29 C. F. R. § 1604.11.


Appendix A:

Informed Consent
Informed Consent Document

Project Title: The Effects of Gender, Performance, and Employment Status on Sexual Harassment Perceptions
Investigator: Dr. Betsy Shoenfelt, Psychology Department – 745-4418

You are being asked to participate in a research project conducted through Western Kentucky University. The University requires that you give your signed agreement to participate in this project. The investigator will explain to you in detail the purpose of the project, the procedures to be used, and the potential benefits and possible risks of participation. You may ask him/her any questions you have to help you understand the project. A basic explanation of the project is written below. Please read this explanation and discuss with the researcher any questions you may have. If you then decide to participate in the project, please sign this form in the presence of the person who explained the project to you.

1. **Nature and Purpose of the Project:** To study jury decisions about sexual harassment.

2. **Explanation of Procedures:** You will receive instruction on how courts decide cases of sexual harassment. You will then read a scenario depicting a court case and answer questions as though you are a member of a jury.

3. **Discomfort and Risks:** No anticipated risks or discomfort are expected from participating in this study.

4. **Benefits:** You will receive the satisfaction that comes from contributing to behavioral research. You may also learn about legal aspects of sexual harassment.

5. **Confidentiality:** Absolute anonymity is guaranteed. No identifying information (name, social security number, etc.) will ever be linked to the questionnaires you are filling out.

6. **Refusal/Withdrawal:** You are free to withdraw from this study at any time with no penalty to you at all.

Refusal to participate in this study will have no effect on any future services you may be entitled to from the University. Anyone who agrees to participate in this study is free to withdraw from the study at any time with no penalty. I understand also that it is not possible to identify all potential risks in an experimental procedure, and I believe that reasonable safeguards have been taken to minimize both the known and potential but unknown risks.

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**Signature of Participant**  
**Date**

**Witness**  
**Date**

THE DATED APPROVAL ON THIS CONSENT FORM INDICATES THAT THIS PROJECT HAS BEEN REVIEWED AND APPROVED BY THE WESTERN KENTUCKY UNIVERSITY HUMAN SUBJECTS REVIEW BOARD TELEPHONE: (270) 745-4652
Appendix B

Sexual Harassment Study Response Sheet
Sexual Harassment Study Response Sheet

Instructions: DO NOT put your name anywhere on these materials. However, the researchers are interested in whether males vs. females or people of different ages, etc. view sexual harassment differently. Thus, we need the following background information.

1. Gender: Male  Female (circle one)  

2. Race/Ethnicity: 

3. Age: 

4. Have you ever been employed in a business, industry, or any organizational setting? 
   a. If yes, total length of time employed 

5. Please indicate the extent to which you believe your present work (or school) environment is sexually harassing (e.g. offensive posters, jokes, sexual remarks or behaviors, etc.): 
   1 Not at all harassing  2 Somewhat harassing  3 Extremely harassing 

6. Have you ever experienced negative consequences of sexual harassment? 
   1 No  2 Uncertain  3 Yes 

7. Do you believe you have ever been a victim of sexual harassment? 
   1 No  2 Uncertain  3 Yes 

Answer the following questions based on the case you just read.

8. For each word group, circle the word you believe describes Janet Wilson:
   a. Disrespectful Neutral Courteous 
   b. Employed Unknown Fired 
   c. Happy Neutral Angry 
   d. Dishonest Neutral Honest 
   e. Good Performance Average Performance Poor Performance 
   f. Introverted Neutral Extroverted 

9. I believe that George Morton’s behavior is sexual harassment. Yes / No (circle) 

10. What was the most important factor in your decision in question number 9? (circle one of the factors):
   The number of alleged victims
   The number of alleged harassers
   The frequency of George Morton’s conduct
   Janet Wilson’s previous job performance
   The physical behavior of George Morton
   The comments George Morton made
   Janet Wilson’s employment status
   That George Morton was Janet Wilson’s boss
11. How confident are you in your answer to #9 that George Morton’s behavior is/is not sexual harassment? (circle A, B, C, D, or E):

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all confident</td>
<td>Somewhat Confident</td>
<td>Confident</td>
<td>Very Confident</td>
<td>Completely Confident</td>
</tr>
</tbody>
</table>

12. What was the most important factor in your decision from number 11? (Please circle the single most important factor)

- The number of alleged victims
- The physical behavior of George Morton
- The number of alleged harassers
- The comments George Morton made
- The frequency of George Morton’s conduct
- Janet Wilson’s employment status
- Janet Wilson’s previous job performance
- That George Morton was Janet Wilson’s boss

13. Does George Morton’s behavior have the effect of unreasonably interfering with Janet’s work performance? Yes No

14. How confident are you in the accuracy of your above answer? (That is, it did/ did not unreasonably interfere with the individual’s work performance) A B C D E

15. Does the incident described create an intimidating environment? Yes No

16. How confident are you in the accuracy of your above answer? (That is, it did/ did not create an intimidating environment) A B C D E

17. Does the incident described create a hostile environment? Yes No

18. How confident are you in the accuracy of your above answer? (That is, it did/ did not create a hostile environment) A B C D E

19. Does the incident described create an offensive environment? Yes No

20. How confident are you in the accuracy of your above answer? (That is, it did/ did not create an offensive environment) A B C D E

21. Does George Morton’s behavior constitute hostile environment sexual harassment? Yes No

22. How confident are you in your answer to #21? A B C D E
Appendix C

The Twelve Case Scenarios
Scenario, Case A

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson's performance evaluations reflected exceptional work. Ms. Wilson received excellent performance evaluations stating she had performed her work quickly and efficiently, she was frequently complimented by many of her customers, and very rarely made mathematical errors. In October 2003, Janet notified George that she was taking sick leave for an indefinite period.

While still employed with Apex Savings Bank, on November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had "constantly been subjected to sexual harassment" by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

Janet testified that during her ninety-day (90) probationary period as a teller-trainee, George treated her in a fatherly way and made no sexual comment or advances. During the first week of August, 2002, while waiting for a weekly staff meeting to begin, George placed his hand on Janet's shoulder and said "Your ass sure looks good in that dress." Janet immediately moved away from George and was going to leave because she was offended, but out of fear of losing her job she ignored it and moved back to where she was sitting. According to Janet, George thereafter made repeated remarks about her attire and her body in a sexual manor during work hours. Janet claimed that she received numerous comments from George similar to "You must be working out. Your body looks great." while placing his hand on her shoulder. Janet estimated that over the next year George had made numerous remarks about her clothing and/or her body in a sexual explicit manor. In addition, Janet testified that George would bump into her and brush his hand across her breast. Finally, Janet testified that because she was afraid of George she never reported his harassment to any of his superiors and was unsure whether Apex Savings Bank had any other complaint procedure.

George Morton denied Janet Wilson's allegations of sexual harassment, testifying that he never made sexually suggestive remarks to her about body or her clothing or brushed against her chest. He contended that Janet made her accusations in response to a business-related dispute. The bank also denied Janet's allegations. Janet Wilson filed action against George Morton and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Scenario, Case A

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson’s performance evaluations reflected exceptional work. Ms. Wilson received excellent performance evaluations stating she had performed her work quickly and efficiently, she was frequently complimented by many of her customers, and very rarely made mathematical errors. In October, 2003, Janet Wilson notified George Morton that she was taking sick leave for an indefinite period. On November 17, 2003, the bank fired her for excessive use of the leave.

On November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had “constantly been subjected to sexual harassment” by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

Janet testified that during her ninety-day (90) probationary period as a teller-trainee, George treated her in a fatherly way and made no sexual comment or advances. During the first week of August, 2002, while waiting for a weekly staff meeting to begin, George placed his hand on Janet’s shoulder and said “Your ass sure looks good in that dress.” Janet immediately moved away from George and was going to leave because she was offended, but out of fear of losing her job she ignored it and moved back to where she was sitting. According to Janet, George thereafter made repeated remarks about her attire and her body in a sexual manor during work hours. Janet claimed that she received numerous comments from George similar to “You must be working out. Your body looks great.” while placing his hand on her shoulder. Janet estimated that over the next year George had made numerous remarks about her clothing and/or her body in a sexual explicit manor. In addition, Janet testified that George would bump into her and brush his hand across her breast. Finally, Janet testified that because she was afraid of George she never reported his harassment to any of his superiors and was unsure whether Apex Savings Bank had any other complaint procedure.

George Morton denied Janet Wilson’s allegations of sexual harassment, testifying that he never made sexually suggestive remarks to her about body or her clothing or brushed against her chest. He contended that Janet made her accusations in response to a business-related dispute. The bank also denied Janet’s allegations. Janet Wilson filed action against George Morton and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Scenario, Case C

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson’s performance evaluations reflected average performance. Ms. Wilson received satisfactory performance evaluations stating she had performed her work at an adequate speed, she was occasionally complimented by her customers, and made within the acceptable number of mathematical errors. In October 2003, Janet Wilson notified George Morton that she was taking sick leave for an indefinite period.

While still employed with Apex Savings Bank, on November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had “constantly been subjected to sexual harassment” by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

Janet testified that during her ninety-day (90) probationary period as a teller-trainee, George treated her in a fatherly way and made no sexual comment or advances. During the first week of August, 2002, while waiting for a weekly staff meeting to begin, George placed his hand on Janet’s shoulder and said “Your ass sure looks good in that dress.” Janet immediately moved away from George and was going to leave because she was offended, but out of fear of losing her job she ignored it and moved back to where she was sitting. According to Janet, George thereafter made repeated remarks about her attire and her body in a sexual manner during work hours. Janet claimed that she received numerous comments from George similar to “You must be working out. Your body looks great.” while placing his hand on her shoulder. Janet estimated that over the next year George had made numerous remarks about her clothing and/or her body in a sexual explicit manner. In addition, Janet testified that George would bump into her and brush his hand across her breast. Finally, Janet testified that because she was afraid of George she never reported his harassment to any of his superiors and was unsure whether Apex Savings Bank had any other complaint procedure.

George Morton denied Janet Wilson’s allegations of sexual harassment, testifying that he never made sexually suggestive remarks to her about body or her clothing or brushed against her chest. He contended that Janet made her accusations in response to a business-related dispute. The bank also denied Janet’s allegations. Janet Wilson filed action against George Morton and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Scenario, Case D

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson’s performance evaluations reflected average performance. Ms. Wilson received satisfactory performance evaluations stating she had performed her work at an adequate speed, she was occasionally complimented by her customers, and made within the acceptable number of mathematical errors. In October, 2003, Janet Wilson notified George Morton that she was taking sick leave for an indefinite period. On November 17, 2003, the bank fired her for excessive use of the leave.

On November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had “constantly been subjected to sexual harassment” by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

Janet testified that during her ninety-day (90) probationary period as a teller-trainee, George treated her in a fatherly way and made no sexual comment or advances. During the first week of August, 2002, while waiting for a weekly staff meeting to begin, George placed his hand on Janet’s shoulder and said “Your ass sure looks good in that dress.” Janet immediately moved away from George and was going to leave because she was offended, but out of fear of losing her job she ignored it and moved back to where she was sitting. According to Janet, George thereafter made repeated remarks about her attire and her body in a sexual manor during work hours. Janet claimed that she received numerous comments from George similar to “You must be working out. Your body looks great.” while placing his hand on her shoulder. Janet estimated that over the next year George had made numerous remarks about her clothing and/or her body in a sexual explicit manor. In addition, Janet testified that George would bump into her and brush his hand across her breast. Finally, Janet testified that because she was afraid of George she never reported his harassment to any of his superiors and was unsure whether Apex Savings Bank had any other complaint procedure.

George Morton denied Janet Wilson’s allegations of sexual harassment, testifying that he never made sexually suggestive remarks to her about body or her clothing or brushed against her chest. He contended that Janet made her accusations in response to a business-related dispute. The bank also denied Janet’s allegations. Janet Wilson filed action against George Morton and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Scenario, Case E

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson's performance evaluations reflected unsatisfactory work. Ms. Wilson received poor performance evaluations stating she performed her work slowly, routinely received complaints from customers, and made an unacceptable number of mathematical errors. In October 2003, Janet notified George that she was taking sick leave for an indefinite period.

While still employed, on November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had “constantly been subjected to sexual harassment” by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

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George Morton denied Janet Wilson’s allegations of sexual harassment, testifying that he never made sexually suggestive remarks to her about body or her clothing or brushed against her chest. He contended that Janet made her accusations in response to a business-related dispute. The bank also denied Janet’s allegations. Janet Wilson filed action against George Morton and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Scenario, Case F

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson’s performance evaluations reflected unsatisfactory work. Ms. Wilson received poor performance evaluations stating she performed her work slowly, routinely received complaints from customers, and made an unacceptable number of mathematical errors. In October 2003, Janet Wilson notified George Morton that she was taking sick leave for an indefinite period. On November 17, 2003, the bank fired her for excessive use of the leave.

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On November 24, 2003, Janet Wilson brought action against George Morton and the Apex Savings Bank, claiming that during her year and a half at the bank she had “constantly been subjected to sexual harassment” by George Morton. She sought injunctive relief, compensatory, punitive damages against Mr. George Morton and the bank, and attorney fees.

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Scenario, Case 1

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. With George Morton as her supervisor, Janet Wilson’s performance evaluations reflected unsatisfactory work. Ms. Wilson received poor performance evaluations stating she performed her work slowly, routinely received complaints from customers, and made an unacceptable number of mathematical errors.

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Scenario, Case K

In May 2002, Janet Wilson met George Morton, a vice-president of Apex Savings Bank and manager of one of its branch offices. When Janet asked whether she might obtain employment as a teller at the bank, George gave her an application, which she completed and returned the next day. Later that same day George called her to say that she had been hired. In October 2003, Janet Wilson notified George Morton that she was taking sick leave for an indefinite period.

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Appendix D

Script for Running Participants
Thank you for agreeing to participate in our research study. To ensure that all participants in the research, whether in this class or another class, receive the same standardized instructions, I will be reading the instructions to you today (or I will be referring to these printed instructions today.)

The research in which you are participating today is studying court decisions about sexual harassment. In particular, we are looking at how individuals serving on a jury make decisions about the facts in a case to determine whether or not sexual harassment has occurred. We will first provide a brief training session in how sexual harassment is defined legally by both the courts and the Equal Employment Opportunity Commission (EEOC). The EEOC is the official body that provides guidelines to businesses and organizations on how to comply with the laws concerning fair employment practices, such as providing a workplace that is free of sexual harassment.

After the brief training session, you will be asked to assume the role of an individual serving as a juror on a sexual harassment case. After you have read the case, you will be asked to make a number of judgments about that case. You will be given specific questions to answer. This case is based on a situation that has been used in previous research and may contain some passages that contain what some may find to be offensive language. If you believe you may be offended and prefer not to participate in the study, you may withdraw from the study at any time.

Now we will distribute the “Informed Consent Document.” The university requires that all research participants sign this form that states that you are a voluntary participant in the research. Please read and sign this form.

After signing the “Informed Consent Document”, please pass this sheet to the front.

Since our training program is brief, it may not answer all of the questions you have about sexual harassment. The training will, however, focus on the key points you will need to know if you were a juror serving in a sexual harassment trial. After we have finished the research session, I can answer other questions you may have about sexual harassment and we can direct you to other resources on campus that can also answer any further questions you may have.

Are there any questions at this time?

Now we will begin our training session on Sexual Harassment. If you would like to do so, you may take notes.
First, we will start with a definition of sexual harassment. Sexual harassment is a violation of Title VII of the 1964 Civil Rights Act, as amended in 1972, and the 1991 Civil Rights Act. According to the definition contained in the Equal Employment Opportunity Commission (EEOC) guidelines:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment such that:

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual (quid pro quo harassment);

An example of Quid Pro Quo Harassment is when a boss tells his subordinate that she must sleep with him to receive a promotion or that if she does not sleep with him, she will be fired. Most people agree that this type of behavior constitutes sexual harassment.

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 (hostile environment).

An example of Hostile Environment Sexual Harassment would be where an employee was subjected to sexual comments that were offensive as part of his or her regular workplace. Hostile Environment Sexual Harassment is not always as clear cut as Quid Pro Quo Harassment.

The line between the two types of sexual harassment is not always clear and the two forms often occur together.

Sexual harassment can occur in situations where one person has power over another, but it can also occur between persons of the same status. Both men and women can be sexually harassed, although women are most often victimized.

In both types of sexual harassment, there are three key features that must be present for the behavior to constitute sexual harassment:

The behavior must be sexual in nature. This may at times be difficult to determine. However, these questions may provide some guidance.

Would a reasonable person consider the behavior sexual in a similar environment under similar circumstances?

Does the individual do the same behavior in the same way to members of his own sex? If the answer is no, his/her behavior may constitute sexual harassment.
The behavior must be unwelcome. Sexual conduct is unlawful only when it is unwelcome. By unwelcome the law means that (a) the employee did not solicit the behavior, and (b) the employee regarded the conduct as undesirable and offensive. Sexual harassment is "unwelcome... verbal or physical conduct of a sexual nature..." Because sexual attraction may play a role in the day-to-day social exchange between employees, the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected sexual advances may be difficult to discern. However, this distinction is essential because sexual conduct becomes unlawful only when it is unwelcome.

The Supreme Court has stated that the proper inquiry focuses on the "welcomeness" of the conduct rather than the "voluntariness" of the victim's participation. (i.e., Did the employee by his/her conduct indicate that the alleged sexual advances were unwelcome, not whether his/her actual participation was voluntary?) Giving in to sexual conduct in the workplace may not mean that the individual welcomes the conduct.

The conduct must be a term or condition of employment. This would include:
If the behavior is a "requirement" of the job
If, in order to appropriately perform his/her job, the individual must work near or with the person performing the offensive behavior
If, in order to appropriately perform his/her job, the individual must work in a place where the offensive conduct is present. It also includes situations away from the work site if the employee's presence is expected or required.

The basic point to remember is that sexual harassment is unwelcome, unsolicited, or undesired attention of a sexual nature. It should be remembered that "unwelcome" is determined by the person at whom the behavior is directed and/or by third parties- not by one's intent.

Instructions...

Now we will distribute packets containing the materials you will need to participate in this research study. Please do not remove any materials from your packet until you are instructed to do so.
(Distribute packets)

(Case information is likely to be on top of packet)
Please remove the white "Response Sheet" from your packet. Please do not write your name on this sheet. The first 7 items on this sheet ask for demographic information, that is, your age, gender, race, and work history. We are asking for this information so that we can see if, for example, males and females or older versus younger individuals view situations differently. You will not be identified by name at any time in this study. Please indicate your gender - if you are male, circle male; if you are female, circle female. (pause)
Write in your age. (pause)
Write in your ethnicity. (pause)
Indicate if you have been employed in a business, industry, or organization. (pause)
Please answer questions 5, 6, and 7, which ask you to indicate if you believe you have
ever been sexually harassed in your place of work. (pause)
After completing the 7 background items, please place the white sheet on your desk and
look up. (pause)

Has everyone completed the background items?
(When everyone has completed the background items . . . )

Our research today is focusing on perceptions of sexual harassment. You will now
evaluate a summary of an incident of alleged sexual harassment. At this time, please
remove the yellow sheet with the facts of the case from your envelope. This is a yellow
sheet that says, “Scenario, Case A, B, C, etc.” at the top. Please carefully read the facts
of the incident, and then answer the questions on the Response Sheet about the case, i.e.,
items #8-#22. When you have finished, please place all the materials back in the
envelope. What questions do you have at this time? (pause) You may begin.

(Leave overhead of 3 key dimensions of SH up on screen)

(Wait until most have finished, but no longer than 8 minutes… then ask) Is there anyone
who has not finished reading the case and answering the questions?
(If there is . . . ) Please take just a minute more and try to finish this part of the study.

We’re now going to ask you to serve as a jury to make a decision on the case you just
read. Like a jury, you will be asked to discuss the case you just read and come to a group
conclusion of whether or not it constitutes sexual harassment. But first, we are going to
give you some guidelines on how to reach a consensus as if you were actual members of
a jury…having to make a verdict.

Consensus Guidelines: (Put up overhead transparency – leave up for jury task)

View initial agreement as suspect. Explore the reasons underlying apparent agreements;
make sure people have arrived at similar solutions for either the same basic reason or for
complementary reasons before accepting it as the jury’s decision.

Avoid arguing for your own point of view. Present your position as clearly and logically
as possible, but consider seriously the reactions of the group in any subsequent
presentations of the same point.

Avoid “win-lose” situations. Discard the notion that someone must win and someone
must lose in the discussion.

Avoid changing your mind only in order to avoid conflict and to reach agreement and
harmony.
Avoid conflict-reducing techniques such as majority vote, averaging, bargaining, coin flipping, and the like. Treat differences of opinion as an indication of an incomplete sharing of relevant information. Use additional information sharing to resolve conflicts.

View differences of opinion as both natural and helpful rather than as a hindrance to decision making. If another juror has a different opinion, try to understand why he or she holds that opinion.

Work to produce the solution that is most acceptable to every member of your group.

A unanimous decision is not necessary – but every member of the jury must feel his/her opinion has been heard and understood and must be willing to support the jury's final decision.

Are there any questions on the Consensus Guidelines?

In the lower right corner of each of your packets there is a Case letter. This same case code letter should be at the top of your response sheet. You should form a jury group according to the code letter. (Point to different locations for each jury code. Try to separate the groups as much as possible so they cannot hear the other juries discussing the case)

Take out the blue “Jury Record Sheet” and the White Case description-leave the other sheets in your packet. We now want you to serve as a jury to make a group decision. Like a jury, based on the scenario you have just read, please discuss the scenario and come to a conclusion of whether or not it constitutes sexual harassment. Remember to use the Consensus guidelines. Discuss the scenario quietly among your jury members-different juries will be discussing different cases with different facts. After 15 minutes, you should have come to a decision and fill out the blue “Jury Record Sheet.” Each member in the jury should fill out the blue “Jury Record Sheet” Likewise, the “Jury Record Sheets” should be filled out the same as the other members in your jury such that the decision and the confidence level you choose as a jury is the same on the “Jury Record Sheet” for all individual members. Please begin discussing now.

After 5 minutes state: “The first 5 minutes are up.”
After 10 minutes state: “You have five minutes left.”
After 13 minutes state: “This is your 2-minute warning. You have 2 minutes to reach your final decision as a jury.”

After 15 minutes state: “Now record your jury’s decision and the explanation for that decision if you have not already done so. Each juror needs to write the jury decision and the reason on their own blue Jury Record Sheet.”

(After jury decision is recorded)
Now return the blue Jury Record Sheet to the envelope and take out the last page of your packet, the green Individual Record Sheet. Think back to when you made your initial decision and think about your jury’s decision. Now decide one final time on your own. If you were a juror, would you find sexual harassment in this case?

When you have completed this last individual decision, return all of your materials to your envelope and I will collect the envelopes.

(After you have collected all the materials)

We would like to thank you for your time today. Your cooperation was greatly appreciated. Since there may be other students in other classes that would like to participate in this research, we ask you not to discuss the details of the case you read today with anyone outside of this class. Thank you.
Appendix E:

Jury Record Sheet
JURY RECORD SHEET
SEXUAL HARASSMENT STUDY

Case Code __________

(1) Jury decision.

Does George Morton's behavior described in the scenario constitute hostile environment sexual harassment? (please circle one)

Yes  or  No

(2) How confident is your jury in your decision that George Mortons's behavior is/is not sexual harassment.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all confident</td>
<td>Somewhat</td>
<td>Confident</td>
<td>Very</td>
<td>Completely</td>
</tr>
<tr>
<td></td>
<td>Confident</td>
<td></td>
<td>Confident</td>
<td>Confident</td>
</tr>
</tbody>
</table>

(Every member of the jury needs to record the jury's decision on their own copy of this sheet and the reason for the decision. Then return this sheet to your own envelope. – Thanks)
Appendix F:

Individual Record Sheet
INDIVIDUAL RECORD SHEET
SEXUAL HARASSMENT STUDY

Case Code __________

(1) After reviewing your initial decision and your jury’s decision, what would YOU now decide individually as a juror?

Does George Morton’s behavior described in the scenario constitute hostile environment sexual harassment? (please circle one)

Yes or No

(2) How confident are YOU in your decision that George Morton’s behavior is/is not sexual harassment.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at all confident</td>
<td>Somewhat Confident</td>
<td>Confident</td>
<td>Very Confident</td>
<td>Completely Confident</td>
</tr>
</tbody>
</table>