"Reasonable Person" vs. "Reasonable Woman": An Evaluation of the Standards Used in Determining Hostile Work Environment Sexual Harassment

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"REASONABLE PERSON" VS. "REASONABLE WOMAN": AN EVALUATION OF THE STANDARDS USED IN DETERMINING HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT

A Thesis
Presented to
the Faculty of the Department of Psychology
Western Kentucky University
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Master of Arts

by
Allison E. Maue

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"REASONABLE PERSON" VS. "REASONABLE WOMAN":
AN EVALUATION OF THE STANDARDS USED IN DETERMINING
HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT

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Currently, there is a debate in progress over which standard is appropriate for use when evaluating hostile work environment sexual harassment. Traditionally the "reasonable person" has been used as the viewpoint from which to evaluate potentially harassing behavior. However, the historical 1991 federal court case Ellison vs. Brady introduced the "reasonable woman" standard due to the belief that the traditional standard may unwittingly be biased toward men. Most research to date has focused on the benefits and/or disadvantages of utilizing one standard over the other. The present research represents an attempt to discover whether the implementation of a standard truly makes a difference; that is, if invoking a particular standard results in altering the evaluation of hostile work environment sexual harassment by a juror. Results indicated that standard had no effect on an individual's interpretation of hostile environment sexual harassment, whether the data were examined as males, as females, or the group.
Introduction and Review of Literature

Sexual harassment may be considered one of the most sensitive workplace issues of the 1990's. The general public has recently focused on the issue of sexual harassment due to allegations of harassment by prominent government figures, including the President of the United States. Alongside the media frenzy that this issue has caused, sexual harassment is increasingly a legitimate and serious concern for corporations throughout the country. In a recent survey, 40%-55% of females reported receiving unwanted sexual attention (Sheffey & Tindale, 1992). Other self-reported incidence rates of sexual harassment have indicated even higher percentages, ranging from 42% to 90% (United States Merit Systems Protection Board [USMSPB], 1988). Variations in reportings of sexual harassment may be due to the fact that the term itself is ambiguous. It holds different meanings for different people. A coherent definition has been offered by the United States Office of Personnel Management: “deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome” (USMSPB, 1988, p. 6). The Equal Employment Opportunity Commission (EEOC, 1990b) defines sexual harassment as “unwelcome sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature” (p. 2) when submission to or rejection of the conduct enters into employment decisions, and/or the conduct interferes with work performance or creates a hostile work environment.

Although sexual harassment is a troublesome issue because of its vague and ambiguous nature, many would agree that sexual harassment is a widespread problem with important consequences (e.g., USMSPB, 1988). Sexual harassment interferes with an organization's efficient functioning. Its ramifications can be detrimental to workers, their
careers, and the organization itself (Fitzgerald, Drasgow, Hulin, Gelfand, & Magley, 1997; Gutek, 1993). A study conducted by Schneider, Swan, and Fitzgerald (1997) indicated that women who were sexually harassed, even at low rates, had negatively impacted "psychological well-being, job attitudes, and work behaviors" (p. 412). The researchers emphasized that low-levels of sexual harassment consisted primarily of sexist put-downs and offensive remarks. Fitzgerald et al. found that sexual harassment produced, "higher levels of absenteeism, stronger turnover intentions ... and more time thinking about leaving" (p. 586). In another study, approximately 12,000 female federal workers were found to be victims of rape or attempted rape by supervisors or co-workers in a two-year period (USMSPB, 1988). More pointedly, a 1991 report by Klein and Associates indicated that 90% of those who experience sexual harassment never even report the incidents for fear of retaliation and loss of privacy (as cited in Miller, 1998). Surveys suggest that approximately one out of every two women will be harassed at some point during their lives (Fitzgerald, 1993).

Along with the negative impact that sexual harassment has on a female's welfare, there are legal fees to be reckoned with as well as turnover and decreased performance and productivity. From 1991 to 1997, the number of sexual harassment complaints filed by employees with the EEOC more than doubled, from 6,900 to 16,000 (Goldstein & Vobejda, 1998). The 1988 United States Merit Systems Protection Board study found that sexual harassment claims over a two-year period cost the federal government $267 million (cited in Reinders, 1992). Negligence now costs companies millions of dollars in legal expenses. In August of 1997, one American company paid $9.5 million to settle with 27 of its female employees (Goldstein & Vobejda, 1998). Another very recent case
resulted in damages of $900,000 for one individual (Lavelle, 1998). Clearly, sexual harassment remains a form of workplace discrimination that requires immediate attention. It is necessary that sexual harassment be acknowledged, investigated, and properly addressed so that positive change can occur.

Before the year 1976 the federal courts refused to recognize sexual harassment as a form of discrimination. For example, in the case Corne v. Bausch and Lomb (1975) two female clerical workers alleged that they were repeatedly sexually propositioned and molested by a supervisor. Upon hearing their testimony the court denied relief for the prosecution stating that the supervisor’s conduct was “a proclivity, peculiarity, or mannerism” that “had no relationship to the nature of employment” (Wilson, 1996). For fear of receiving a multitude of frivolous lawsuits, the courts viewed sexual harassment as a personal matter. Prior to 1976, alleged harassment was viewed by the courts as personality disputes between individuals, not as a social problem or form of employment discrimination (Baker, 1992). However, in 1976 sexual harassment was finally identified as a cause of action under Title VII of the Civil Rights Act of 1964. In the case Williams v. Saxbe (1976), the court found that a supervisor’s sexual advances towards a female employee were made because of her sex and were therefore considered under the jurisdiction of Title VII.

Sexual harassment continues to be viewed as a form of sex discrimination that is a violation of Section 703 of Title VII of the Civil Rights Act of 1964. Particularly relevant aspects of Title VII state (EEOC, 1990a, p. 6),

It shall be an unlawful employment practice for an employer . . . to fail to refuse to hire or discharge any individual, or otherwise to discriminate against any individual
with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.

Although this protection was recognized under Title VII, it was not until 1980 when the Equal Employment Opportunity Commission issued guidelines that the courts became more willing to recognize claims of sexual harassment. The guidelines established the criteria for determining when unwelcome conduct of a sexual nature constitutes sexual harassment. The guidelines also defined circumstances under which an employer may be held liable and suggested affirmative steps an employer should take to prevent sexual harassment.

It is important to note that Title VII does not prohibit all conduct of a sexual nature in the workplace. Only unwelcome sexual conduct that is a term or condition of employment is prohibited. Specifically, two types of sexual harassment are defined by the EEOC guidelines as being actionable under section 703 of Title VII as forms of sex discrimination. The first is quid pro quo harassment.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (EEOC, 1990b, p. 2).

The first successful quid pro quo case was Williams v. Saxbe (1976), which found that retaliatory actions such as poor performance appraisals and undeserved reprimands had been taken against an employee for refusing unwanted sexual advances. This opinion
was the very first one holding sexual harassment as a form of sex discrimination under Title VII.

The second, more subtle form of sexual harassment that is protected under Title VII is hostile work environment harassment.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute hostile environment sexual harassment when 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. (EEOC, 1990b, p. 2)

In Meritor Savings Bank v. Vinson (1986), the United States Supreme Court first recognized hostile environment sexual harassment as a separate type of sexual harassment protected under Title VII. Specifically, the court held that a plaintiff may recover on a hostile environment claim by showing that conduct resulted in a “sufficiently severe or pervasive” “hostile or abusive” work environment (Darmer, 1992).

The distinction between the two forms of sexual harassment is not always clear, and the two forms can -- in fact -- occur together. Quid pro quo sexual harassment is easier to determine. Hostile work environment is often a matter of debate because it is based on an individual’s perception of another’s behavior. In fact, the court has been criticized for its failure to clearly define the language or test for hostile work environment (Darmer, 1992). Popovich, Gehlauf, Jolton, Somers, and Godinho (1992) note that a major problem with sexual harassment interpretations is its perceptual nature. For example, it is often the case that one individual may deem a particular incident offensive, whereas another might not.
A situation considered pervasive enough to constitute a "hostile" environment is a matter of debate. The EEOC notes that in order for an environment to be considered hostile it must "alter the conditions of [the victim's] employment and create an abusive working environment" (EEOC, 1990b, p. 10). Several factors should be taken into consideration when evaluating the environment, (a) whether the conduct was verbal or physical or both, (b) how frequently it was repeated, (c) whether the conduct was hostile and patently offensive, (d) whether the alleged harasser was a co-worker or a supervisor, (e) whether others joined in perpetrating the harassment, and (f) whether the harassment was directed at more than one individual (EEOC, 1990b). No one of the aforementioned factors controls the outcome of a sexual harassment case. An assessment should be made based upon the totality of the circumstances.

Traditionally, a hostile work environment sexual harassment case was to be evaluated from the objective standpoint of a "reasonable person." Initially this standard was utilized to prevent hypersensitive employees from barraging the workplace and the courts with complaints. For example, a charging party alleges that her co-worker made repeated unwelcome sexual advances toward her. An investigation disclosed that the alleged advances consisted of invitations to join a group of employees who regularly socialized at dinner after work. The co-worker's invitations viewed in that context and from the perspective of a reasonable person would not have created a hostile environment and therefore did not constitute sexual harassment. A reasonable person would not consider the co-worker's invitations sexual in nature (EEOC, 1990b).

The "reasonable person" standard should not be applied in a vacuum. Examination of the context is necessary. The sixth court stated that the person evaluating the case
should “adopt the perspective of a reasonable person’s reaction to a similar environment under similar or like circumstances” (EEOC, 1990b, p. 13). The EEOC also warns that it is the victim’s perspective that should be considered, and not stereotyped notions of acceptable behavior.

**The Reasonable Woman**

Because women are disproportionately victims of sexual assault, they may be more concerned about displays of sexual behavior at work. According to Gordon and Riger (cited by Baker, 1992), the likelihood that a woman will be victimized during her lifetime is a 1/5 to 1/8 chance. Often women face sexual violence in society in a way that men do not. As a result, even mild forms of harassment might by viewed by them as threatening because they could be seen as a prelude to sexual assault (Wolkinson, 1996). Since a sex-blind reasonable person standard might ignore the experiences of women, some courts have upheld the “reasonable woman” standard in order to evaluate hostile work environment harassment (Abrams, 1995). The traditionally employed “reasonable person” standard has been criticized as being prejudicial to women. When applying this standard, courts may adopt societal norms reflecting sexual behavior that is acceptable to men but offensive to women (Wolkinson). Utilizing a “reasonable person” standard in circumstances where harassment is the prevailing norm would perpetrate the discrimination because the offensive conduct would be considered acceptable (Almony, 1992).

There is an abundance of research investigating gender differences in interpreting sexual harassment. Findings indicate, with few exceptions (e.g., Dougherty, Turban, Olson, Dwyer, & Lapreze, 1996; Stockdale & Vaux, 1993), that females exhibit lower
thresholds for perceptions of sexual misconduct in the workplace (e.g., Ford & Donis, 1996; Garlick, 1994; Gowan & Zimmerman, 1996; Saal, Johnson, & Weber, 1989; Saperstein, Triolo, & Heinzen, 1995; Shotland & Craig, 1988; Thacker & Gohmann, 1993; USMSPB, 1988;) that is, females are more likely than males to view a given behavior as sexual harassment (Powell, 1986; Wolkinson, 1996). Murrell and Dietz-Uhler (1993) extended this finding to discover that gender group identity also predicts attitudes toward sexual harassment. Gowan and Zimmerman’s study suggested that women’s tendency to perceive behaviors as more offensive than men actually carries over to influence whether individual jurors would vote for the plaintiff or for the defendant. Thus, there are important implications for juries. Results in Abbey’s classic study (1982) indicated that men were more likely than women to perceive the world in sexual terms and to make more sexual judgments. In 1997 Burgess and Borgida found differences in perceptions of men and women for hostile work environment sexual harassment, but not for sexual coercion or quid pro quo. In a study conducted by Baird, Bensko, Bell, Viney, and Woody (1995), it was found that, on the whole, women rated hostile environment scenarios as more harassing than men. They used a seven-point scale for every scenario and found that on every one of the 34 scenarios presented, the full range of the scale was used. The implication is that there is a definite lack of agreement on what constitutes sexual harassment; it also highlights the debate concerning the standard. Popovich, Gehlauf, Jolton, Somers, and Godinho (1992) found that females perceived scenarios as more negative, more likely to be considered to be sexual harassment, and more likely to have an effect on the victim. According to one author (Pryor, 1985), the differences
found between the sexes is the most salient characteristic in determining what constitutes sexual harassment.

In the landmark case, *Ellison v. Brady* (1991), the ninth circuit was the first to utilize the "reasonable woman" standard. The dissent in an earlier case, *Rabidue v. Osceola Refining Co.* (1987), is partly responsible for the switch in standards. In *Rabidue*, the plaintiff was subjected to regular verbal harassment by a male co-worker. For example, he called her a "fat-ass" and said things such as, "all that bitch needs is a good lay." Also, posters of naked women (at least one with violent imagery) were displayed in the workplace. The majority opined that the obscenities did not seriously affect the psyches of either the plaintiff or her female co-workers and that the pornography had only a minimal effect on the work environment. Prevalence of pornography in society undercut the plaintiff's claim that pornographic displays could interfere with a conducive work environment. Also, because the plaintiff had voluntarily chosen to work in an environment that was replete with "humor," Osceola was not found guilty. The dissent in this case was vigorous. Judge Keith found "anti-female animus" on the above facts. Judge Keith called for a better standard which he named the "reasonable victim." This standard "simultaneously allows courts to consider salient sociological differences as well as shield employers from the neurotic complainant" (Baker, 1992). He felt that the "reasonable person" standard forced the "sustain(ing) ingrained notions of reasonable behavior fashioned by the offenders, in this case, men" (Almony, 1992, p. 206).

Based on the dissent in *Rabidue* and the social science research that has found gender differences in interpretations of sexual harassment, the objective test that courts
used to determine the hostile work environment in *Ellison vs. Brady* (1991) had been recast. The facts of the case were as follows:

Kerry Ellison and Sterling Gray worked for the Internal Revenue Service (IRS) in San Mateo, California. The two were not friends and did not work closely together. In June 1986, Ellison and Gray went to lunch together, a common practice among employees in their office.

From that point forward, Gray began to “hang around” Ellison’s desk and to pester her with unnecessary questions. In October, Gray asked Ellison to meet him for a drink after work. Ellison declined and tried to avoid Gray during work hours.

Late in October Gray gave Ellison a note that read: “I cried over you last night and I’m totally drained today. I have never been in such constant term oil [sic]. Thank you for talking with me. I could not stand to feel your hatred for another day.” After handing her the note, Gray followed Ellison into the hallway and demanded that she speak to him, but she left the building.

Ellison was “shocked and frightened” by the note. She immediately contacted their supervisor, Bonnie Miller, who said that the note was “sexual harassment,” but (Miller) took no action because Ellison asked to handle the situation herself. Ellison then asked a fellow employee to tell Gray to leave her alone.

Ellison then left California for a four-week training program in St. Louis. Shortly after she left, Gray sent a three-page letter to her in St. Louis that she described as “twenty times, a hundred times, weirder” than his prior note. The letter stated in part, “I know that you are worth knowing with or without sex . . . I have enjoyed you so
much over these past few months. Watching you. Experiencing you from so far away.” The letter stated that he would write her again “in the near future.”

Ellison was frightened by the letter and thought Gray was “crazy.” She immediately telephoned Miller and requested either she or Gray be transferred because she felt uncomfortable working in the same office with him. That same day Miller met with Gray and ordered him to leave Ellison alone. Miller repeated that order several times over the next few weeks. Shortly before Ellison returned to San Mateo, Gray was transferred to the IRS’s San Francisco office.

Three weeks later, Gray filed a union grievance requesting a return to San Mateo. The grievance was resolved in Gray’s favor, and he was allowed to transfer back to San Mateo provided that he spend four more months in San Francisco and promise not to bother Ellison. The notification letter to Ellison stated that management had resolved her problem by requiring that Gray be separated from her for six months. The letter promised to take additional action if the problem recurred.

Ellison was “frantic” upon being notified of Gray’s pending return to San Mateo. She filed a formal complaint of sexual harassment with the IRS and obtained permission to transfer temporarily upon Gray’s return to San Mateo. While she was in San Francisco, Gray sent her another letter.

The IRS ultimately rejected Ellison’s complaint because it believed that Gray’s conduct did not constitute a “pattern or practice” of sexual harassment within regulations established by the Equal Employment Opportunity Commission (EEOC). The EEOC later affirmed on the ground that the IRS had taken adequate steps to prevent Gray’s conduct from recurring.
Ellison then filed suit against the IRS for sexual harassment. The IRS moved for summary judgment on the ground that Ellison had failed to state a prima facie case of sexual harassment due to a hostile working environment. The district court granted the motion, and Ellison then appealed. (Simon, 1991, p. 72-73)

Ultimately, the court ruled in favor of Kerry Ellison by judging from the perspective of the victim (using the "reasonable woman" standard). The actual victim's reaction was compared with that of a reasonable woman in her same situation (Baker, 1992). The court opined that this standard be used in place of the "reasonable person" because the "reasonable person" tends to be male-biased and may ignore the experiences of women. The use of the "reasonable woman" standard was an attempt by the courts to ensure that all jurors were using the same standard in evaluating potential sexual harassment (Gutek, 1995).

The victim-based, "reasonable woman" standard has been said to be more appropriate for two reasons: (a) the EEOC says that the courts should adopt a victim's perspective, and (b) using a reasonable person standard may run the risk of reinforcing the prevailing levels of discrimination (Baker, 1992).

Gender is a factor in one's experiences and one's perceptions. Therefore, testing the severity or offensiveness of alleged behavior by asking whether a genderless reasonable person would find them so will systematically lead to error in this context, error that will disadvantage female victims. (Baker, p. 704)

According to Abrams (1995) the purpose of using the reasonable woman standard is two-fold: (a) to reiterate the gender element of sexual harassment and prevent resorting to 'common sense' that often leads to a maintenance of the status quo, and (b) to allow
women to participate on equal footing in the workplace by acknowledging their unique perspective. "The standard recognizes the different perspectives of men and women and attempts to reconcile them with legal reality" (Almony, 1992, p. 221).

Against the Reasonable Woman

There is a reluctance to adopt the "reasonable woman" standard for various reasons. One reason is that it may cause problems for the traditional jury system in that male judges and jurors may not have the ability to apply a "reasonable woman" standard (Almony, 1992; Gedrose, 1991). Male jurors and judges may have difficulty in determining harassing behavior from a woman's point of view. If this is the case, Gedrose (1991) then asks, "Should male judges and jurors be excluded from evaluating sexual harassment cases because of their 'male bias'? In the alternative, should they have internalized the standards of the Ellison majority?" (p. 170). Other researchers questions whether it is fair to hold men to a standard of conduct that, because they are men, they might not be able to fully comprehend or appreciate (Adler & Pierce, 1993). Also, it is difficult to determine what evidence should be presented to jurors in order to enlighten them as to what a "reasonable woman" might experience (Starr, 1994). This approach, according to Gedrose and Almony, would be more problematic than utilizing the gender neutral objective.

Gedrose (1991) proposes another argument: although the court in Ellison v. Brady (1991) provided a justification for adopting a "reasonable woman" test, it did not indicate, why female plaintiffs in sexual harassment cases should be treated differently than other distinct groups whose cases are judged under the "reasonable person" standard. Gedrose notes the attempt by a prosecutor to utilize the "reasonable black person" in Harris v.
International Paper (1991), which was ultimately refused by the court. The Ellison court did not explain why female plaintiffs in sexual harassment cases should be judged differently than other groups (cultural, racial, economic, religious, etc.) whose cases are judged under the reasonable person standard. Attention has been given to the possibility that an infinite number of "reasonable" standards could be argued for by the courts - race, religion, etc. (Meads, 1993). Given the notion that a "reasonable black-person" could exist, Meads believes that

Any white individual should be offended by the proposition that he or she is incapable of determining when racial harassment has occurred, simply because he or she happens to be white and the victim happens to be black. . . Similarly, any male should be offended that some women and judges do no think that he is capable of deciding the merits of a sexual harassment claim objectively and fairly, simply because the victim in most sexual harassment claims is a woman. . . People are different from one another. Some are utterly ignorant of sexism and racism. Nevertheless, these truths do not justify the creation and application of different standards of "reasonableness." (p. 221).

It has also been recognized that the utilization of the "reasonable woman" standard may perpetuate rather than diminish discrimination (Haag, 1993; Meads, 1993; Nordin, 1992; Wolkinson, 1996). The new standard may, in fact, do more harm than good to the female gender's pursuit of equal and decent treatment. "The reasonable woman standard illuminates the notion that the women's responses are strictly female, rather than normal, human experiences" (Haag, p. 341). Wolkinson (1996) lists four ways in which more harm may occur. First, judges/jurors may impart their own personal biases concerning the
types of women who work in traditionally male dominated jobs. Second, the standard may limit certain occupational opportunities for females because the separate standard may suggest that women are delicate and less capable than men. Third, the standard may be used to reinforce stereotypes of the intuitive or irrational woman. This attitude is often the feminist argument against the standard. Those who argue against the "reasonable woman" because of the possibly increased discrimination want to eliminate sex-based generalizations by getting rid of the "reasonable woman" standard which establishes a higher level of protection for women than men. Finally, the perspective taken when employing the "reasonable woman" standard will be that of the privileged white middle class women, thereby ignoring the experiences of other classes and ethnicities. It is problematic to assume that all races, ethnicities, religions, etc. will respond similarly to issues of sexual harassment (Eisenman, 1995; Treger, 1993).

It has also been found that differences in perceptions between groups of men and women are smaller than differences within groups (Frazier, Cochran & Olson, 1995; Gutek, 1995; Gutek & O'Connor, 1995). Gutek (1995) notes that, "although many studies reported significant differences in the way men and women define sexual harassment, the finding is not by any means universal" (p. 457). The gender of an individual does affect a person's definition of sexual harassment, but the effect is usually small and may occur only when (a) the sexually harassing behavior is relatively mild and (b) the scenario is ambiguous due to scant or conflicting information. Basically, Gutek argues that gender does not account for a lot of the variance when perceiving sexual harassment. Both characteristics of the behavior and characteristics of the situation often account for more of the variance. Similarly, Katz, Hannon, and Whitten's (1996) results
indicated no gender differences in sexual harassment perceptions when a man was the perpetrator and a woman was the victim. However, when a woman was the perpetrator and a man was the victim, gender differences were found. Men rated harassment by a woman less negatively. In contrast, in a study utilizing high school students as participants, there was still little perceived difference in harassing behavior committed by a male toward a female from that of a female toward a male (Loredo, Reid, & Deaux, 1995). On a parallel note, it has been argued that simple biology does not determine modes of knowing (Abrams, 1995; Starr, 1994). Information does and can be cultivated in both men and women. Thus, simply being a man does not limit one to being and thinking only like men. Within-sex variation in interpreting sexual harassment is as likely, if not more likely, to be greater than between-sex variation.

Current Status on the Standard Argument

Although one author believes that the “reasonable woman” standard has been, “snaking its way through our courts, legislatures, and administrative agencies” (Starr, 1994, p. 48) and will eventually be applied nationwide, the United State Supreme Court has not resolved the debate over which standard is more appropriate; it has not commented on the legitimacy of the “reasonable person” standard. The EEOC, however, has continued its support for the application. The lower courts have rendered divergent responses as to the appropriateness of standard. As iterated by some researchers, “Currently the debate about whether to use a reasonable person or a reasonable woman standard has not been resolved” (Baird, Bensko, Bell, Viney, and Woody, 1995, p. 82).

In the future, the courts will undoubtedly consult social science research to aid in determining whether or not perceptions of sexual harassment vary significantly from males
to females. However, to date, social science research has significant deficiencies including a number of methodological limitations such as insufficient descriptions of items (respondents are unable to properly make interpretations) (Wilson, 1996), the sacrificing of external validity for attention to internal validity (Gutek & O'Connor, 1995), non-representative sampling (Gutek & O'Connor, 1995; Pryor & McKinney, 1995), indecisive operationalization of sexual harassment (Frazier, Cochran, & Olson, 1995), over-reliance on self-administered questionnaires or pencil-and-paper/vignette experiments (Pryor & McKinney, 1995), and failure to employ sufficient control variables. According to Wilson (1996), one of the major downfalls of social science research concerning perceptions of sexual harassment is that it has not been conducted with the intention of assisting the legal system.

Do people actually change their perspectives when given different standards? Is a juror actually capable of changing his/her perspective? The standard debate is moot if individuals are incapable of changing their perspectives. For example, a study conducted by Davis (1980) investigated the construct of perspective taking and found that males were less able to adopt another's point of view. More pointedly, the existing literature to date has failed to address the appropriate research questions to determine the practical utility of the reasonable person versus the reasonable woman debate; that is, when men are faced with the task of applying the "reasonable woman" standard, they are confronted with the problem of, "reconciling their view of reality with that of a reasonable woman" (Almony, 1992, p. 219-220). The feasibility of this occurrence is questionable. If that is the case, the "reasonable woman" standard would not be expected to change juror decisions. In a study conducted by Wiener, Watts, Goldkamp, and Gasper (1995), the
researchers attempted to determine if the particular standard adopted (person vs. woman) would have any influence on judgments of harassment. There were some cases in which the standard impacted the process by which judgments were made, but there was no evidence that final judgments were different as a function of the standard adopted. As Wiener et al. noted, these results provide interesting legal implications: it is unlikely that jurors will actually change their perceptions of sexual harassment as the result of the court invoking a particular standard.

An Alternate Explanation

While some research has suggested gender differences in perceptions of hostile environment—more specifically, that women are more likely than men to change perceptions (Baird, Bensko, Bell, Viney, & Woody, 1995; Burgess & Borgida, 1997; Gowan & Zimmerman, 1996; Powell, 1986; Wolkinson, 1996)—the literature to date has not addressed the possibility that the underlying characteristic determining this behavior is not gender but a cognitive capability. Research to date has been so designed that only the perspective of men has been analyzed for changes. What happens if a male’s perspective changes but a female’s perspective does not? Perhaps the indication is that it is not gender but some other catalyst that causes an individual to change perceptions. We addressed this issue by investigating the role of perspective-taking in decision making under different standards for determining hostile work environment sexual harassment.

The present research extended the Wiener, Watts, Goldkamp, and Gasper (1995) study. Research in the past, including that of Wiener et al., has explained the differences in perceptions of sexual harassment by examining information between groups. A within-subjects study has yet to be conducted; that is, research to date has not answered the
question of whether or not a particular individual can change his/her perspective. The present researchers asked a question similar to that of Wiener et al. but the question is being posed from a within-subjects perspective. Addressed then was the practical question of whether or not an individual juror can change when presented with a standard instructing him or her to assume a different perspective.

Davis (1980) found that females score higher than males on a perspective-taking sub-scale his Interpersonal Reactivity Index. Logically, those who are able to change perspectives should change perceptions under the different standards of reasonable woman and reasonable person. Thus Hypothesis 1a is as follows:

**Hypothesis 1a:** Male participants will be less likely than female participants to change their perceptions of hostile work environment under the different standards of reasonable person and reasonable woman.

Based on the cited research, the present research used a within-subjects design to test the same question that has been addressed by prior research with between-subjects designs: does gender influence one’s ability to alter perceptions of hostile work environment? While past research has utilized a between-subjects design, the present study implemented a within-subjects design. The following situations are possible:

**Situation A:** If under the standard of “reasonable person”, all individuals do not find evidence for hostile environment sexual harassment, but under the standard of “reasonable woman”, females find evidence for sexual harassment but men do not, this would indicate that women have changed their perspective, but men did not.
Situation B: If under the standard of "reasonable person," all individuals do not find evidence for hostile environment sexual harassment, but under the standard of "reasonable woman," both men and women find evidence for sexual harassment the indication would be that both men and women have changed their perspective.

Situation C: If under the standard of "reasonable person," women find evidence for hostile environment sexual harassment but men do not, but under the "reasonable woman" standard, both men and women find evidence for sexual harassment, that indication would be that men have changed their perspective.

Situation D: If under the standard of "reasonable person," women find evidence for hostile environment sexual harassment but men do not, and under the "reasonable woman" standard, women find evidence for sexual harassment but men do not, the indication would be that men have not changed their perspective.

Hypothesis 1b: Situations B and C will occur. Situations A and D will not occur.

In the present study the researcher attempted to isolate the cognitive mechanism which enables an individual to change his/her perception. Pryor (1985) noted the importance of understanding the underlying cognitive processes involved in interpreting potential sexually harassing behavior. Davis (1980) acknowledged that individuals who were adept at perspective-taking had a corresponding keen ability to anticipate the behavior and reactions of others. Davis' research indicated that females scored
significantly higher than men on his scale of perspective-taking. Consistent with Davis’ results, the present authors believe that the reason females, but not males, will be more prone to alter perceptions of sexual harassment is that females have better perspective-taking skill.

*Hypothesis 2a:* Individuals who score high on Davis’ Perspective-Taking sub-scale of the Interpersonal Reactivity Index will be more likely to change perceptions of hostile environment under the different standards of reasonable person and reasonable woman than will individuals who score low, regardless of gender.

*Hypothesis 2b:* Females’ score on Davis’ Perspective-Taking sub-scale of the Interpersonal Reactivity Index will be significantly higher than that of males.
Method

Participants

Participants were 162 undergraduate students at a mid-sized southern university who received extra credit toward a course requirement for taking part in the study. Data from five participants were dropped because of incomplete responses. Ninety-nine respondents were female (63%) and 58 (37%) were male. The mean age of participants was 21.26 (SD = 3.71) years, with a range from 18 to 46.

Materials

Perspective-Taking Scale of Interpersonal Reactivity Index (IRI). Participants completed Davis' (1980) Interpersonal Reactivity Index. Of specific interest to the researchers were the participants' scores on the perspective-taking scale of the instrument, which assesses the ability to adopt others' perspectives and see things from their point of view. The measure consists of seven 5-point Likert-scale items (found in Appendix A). Internal consistency alpha coefficients of .75 and .78, for males and females, respectively, indicate relatively high internal reliability for the perspective-taking scale. Test-retest reliabilities were moderate: .61 and .62 for males and females, respectively. No validity coefficients were reported.

McFarland's Version of the Eysenck Psychoticism Scale. Participants completed McFarland's Version (1998) of the Eysenck Psychoticism Scale (1976). Psychoticism is related to many antisocial behaviors. The researchers were interested in determining whether individuals who score high on this dimension would be less likely to score high on perspective taking and whether or not psychoticism was related to perceptions of sexual harassment under the different standards. The measure consists of ten 5-point Likert-scale
items (found in Appendix A). Internal consistency alpha coefficients of McFarland’s scale are reported as .75 for a student population and .75 for an adult population (McFarland, 1998), indicating relatively high internal consistency for the psychoticism scale.

Biographical questionnaire. Participants completed a biographical questionnaire (also in Appendix A) asking them to indicate (a) gender, (b) age, (c) race, (d) extent to which his or her work (or school) environment is sexually harassing (as indicated by posters, jokes, etc.), (e) whether she or he has ever experienced negative consequences of sexual harassment (directly or indirectly), (f) whether she or he has ever been a victim of sexual harassment.

Scenarios. In order to provide as much fidelity as possible, scenarios were based on actual federal court cases. The determination of hostile environment sexual harassment for the scenarios was difficult, but the participants had information similar to what would be known to a real jury. Scenarios were matched according to characteristics relevant to the perceptions of harassment: ambiguity, severity, length of descriptions, and frequency of occurrence. Scenarios may be found in Appendix B.

Procedure

To select the scenarios for use in the study, seven cases were identified from the hostile work environment literature. A five-member committee was formed to evaluate scenarios. Each member of the committee read each case and made three ratings on a five-point graphic rating scale: (a) ambiguity of the occurrence of sexual harassment, (b) severity of the behavior, and (c) frequency of the potentially sexually harassing behavior.

The literature (e.g., Thacker & Gohmann, 1993) suggests ambiguity is the most critical factor, as cases that clearly are or are not sexual harassment produce little
variability in judgments of hostile environment sexual harassment. Therefore clarity was used to match cases. Three cases were eliminated because there was no variance in clarity or severity. The remaining four cases were paired on clarity, then divided to create two sets of scenarios that were equivalent in terms of clarity, severity, and frequency. All four scenarios were of equal length. Means and standard deviations may be found in Table 1 for each set of scenarios.

Table 1

Means and standard deviations for scenarios

<table>
<thead>
<tr>
<th></th>
<th>Clarity</th>
<th>Severity</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set A</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrews</td>
<td>2.0 (.71)</td>
<td>2.4 (1.34)</td>
<td>2.3 (1.20)</td>
</tr>
<tr>
<td>Ellison</td>
<td>3.2 (1.10)</td>
<td>4.2 (.45)</td>
<td>3.2 (.84)</td>
</tr>
<tr>
<td>Set B</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meritor</td>
<td>2.1 (.74)</td>
<td>4.6 (.89)</td>
<td>3.7 (.84)</td>
</tr>
<tr>
<td>Rabidue</td>
<td>3.4 (1.34)</td>
<td>2.8 (1.48)</td>
<td>2.0 (.82)</td>
</tr>
</tbody>
</table>

All participants read and responded to all four scenarios. Two scenarios were read under one standard (i.e., Set A might be read under the "reasonable person") and the two remaining scenarios were read under the other standard (i.e., Set B might be read under the "reasonable woman"). The order in which the standards were presented as well as the set of scenarios responded to under each standard were counterbalanced. Specifically, out of the 157 individuals, approximately 78 were asked to evaluate a scenario under the "reasonable person" standard first and "reasonable woman" second. The remaining 77 participants were asked to evaluate the scenarios under the "reasonable woman" standard first and the "reasonable person" standard second. The first 78 individuals were then
further broken down such that 39 evaluated Set A first and Set B second, while the other 39 evaluated Set B first and Set A second. The second group of 77 individuals were also divided such that 39 evaluated Set A first and Set B second, while 38 evaluated Set B first and Set A second.

As indicated by the script found in Appendix D, participants were presented with a clear definition of sexual harassment and were provided guidance about which standard to use to determine hostile environment sexual harassment. This information is similar to the instruction a judge would provide a jury. They were then asked to read two scenarios and determine whether a hostile work environment sexual harassment infraction had occurred according to the given standard. After completing this section of the study, the definition of sexual harassment was reiterated. Information concerning the other standard was then presented. The individuals were supplied with two more scenarios. Participants were asked to read the two scenarios and determine if the behavior constituted hostile work environment sexual harassment according to the second standard. After completing these two sections, participants completed the biographical questionnaire, Davis’ Interpersonal Reactivity Index (1980), and McFarland’s Version of the Eysenck Psychoticism Scale (1998).

For the data analysis, one scenario was chosen from each set based on the responses of 157 participants. The means, standard deviations, and frequencies for responses to the item of whether the particular case constituted hostile environment sexual harassment are found in Table 2.
Table 2

Frequency of Responses for Hostile Work Environment Sexual Harassment

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Set A</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andrews</td>
<td>107 (68.2%)</td>
<td>50 (31.8%)</td>
<td>.36</td>
<td>.94</td>
</tr>
<tr>
<td>Ellison</td>
<td>122 (77.7%)</td>
<td>34 (21.7%)</td>
<td>.56</td>
<td>.83</td>
</tr>
<tr>
<td><strong>Set B</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meritor</td>
<td>85 (54.1%)</td>
<td>71 (45.5%)</td>
<td>.09</td>
<td>.99</td>
</tr>
<tr>
<td>Rabidue</td>
<td>123 (78.3%)</td>
<td>33 (21.0%)</td>
<td>.58</td>
<td>.82</td>
</tr>
</tbody>
</table>

Prior research (Thacker & Gohmann, 1993) suggested that more ambiguous cases are more likely to reveal individual differences in judgments of hostile environment sexual harassment. Accordingly, we selected for analysis the case from each set whose means were closest to the mid-point between yes - hostile work environment and no - hostile work environment -- that is, the Andrews and Meritor cases.
Results

In order to address the hypotheses, three sets of analyses were conducted. First, we compared the differences between the sexes on ability to change perceptions of whether or not sexual harassment had occurred. A trichotomous variable was created to indicate whether a change in perceptions occurred and, if it did occur, the direction of the change (i.e., “no-to-yes” or “yes-to-no”). A significant difference between the sexes was found \[\chi^2 (2, N = 156) = 6.88, p < .05\]. Overall, males were more likely to change perceptions of sexual harassment (56.9%) than females (39.46%). Although males and females were equally likely to change their perceptions from not finding sexual harassment to finding sexual harassment (28.1% and 25.3%, respectively), males were more likely than females to change perceptions from finding sexual harassment to not finding sexual harassment (29.8% and 14.1%, respectively).

When analyzing the sex differences for change under the different standards (“reasonable woman” or “reasonable person”), the analysis indicated that standard does not impact whether change has occurred \[\chi^2 (2, N = 76) = 2.14, \text{ns for Person Standard}\] and \[\chi^2 (2, N = 80) = 5.18, p = .07\] for Woman Standard], although the analysis for the Woman Standard produced marginal significance. Men are somewhat more likely than women to change perceptions under the reasonable woman standard.

Thus, the results of the first set of analyses failed to support Hypothesis 1a -- that is, that male participants would be less likely than female participants to change their perceptions of hostile environment under the different standards of reasonable person and reasonable woman.
The second set of analyses focused on two dependent variables: the determinations of hostile work environment under the person standard and under the woman standard. These variables were computed by multiplying the "yes"/"no" (i.e., 1/-1) response by the confidence rating for that response (i.e., 0 to 4), thus creating two variables whose values ranged from -4 to 4. Before conducting the analyses, we examined the correlation between the two dependent variables. Results indicated that the two dependent variables were not significantly correlated \( r = .086, (ns) \), indicating the appropriateness of separate univariate analyses of variance.

A 2 x 2 (condition: woman vs. person standard by sex) analysis of covariance (ANCOVA), with perspective taking as the covariate, was conducted for each dependent variable. The results of the analysis under the person standard for hostile work environment determination are presented in Table 3. The analysis produced significant results only for sex \( (F [1, 155] = 6.73, p = .01) \) (for males \( M = -.12, SD = 2.89 \); for females \( M = 1.22, SD = 2.64 \)). The means of hostile environment responses for each sex are depicted in Table 5 and graphically in Figure 1.
Table 3

Analysis of Variance Using Person Standard for Hostile Work Environment Determination

<table>
<thead>
<tr>
<th>Source</th>
<th>df</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex (S)</td>
<td>1</td>
<td>6.73**</td>
</tr>
<tr>
<td>Condition (C)</td>
<td>1</td>
<td>.25</td>
</tr>
<tr>
<td>S X C</td>
<td>1</td>
<td>.00</td>
</tr>
<tr>
<td>Covariate</td>
<td>1</td>
<td>1.38</td>
</tr>
<tr>
<td>Error</td>
<td>151</td>
<td>(7.52)</td>
</tr>
</tbody>
</table>

Note. Value enclosed in parentheses represents mean square error. **p = .01.

Figure 1

Mean Determination of Hostile Environment Using Person Standard
The results of the ANCOVA for the woman standard for hostile work environment determination are presented in Table 4. The analysis produced significant results for sex ($F[1, 155] = 5.71, p = .018$) (for males $M = 0.9$, $SD = 3.01$; for females $M = 1.02$, $SD = 2.64$) and marginally significant results for the interaction between sex and condition ($F[1, 155] = 3.78, p = .054$). The means of hostile environment responses for each sex are depicted in Table 5 and graphically in Figure 2.

Table 4

Analysis of Variance Using Woman Standard for Hostile Work Environment Determination

<table>
<thead>
<tr>
<th>Source</th>
<th>df</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sex (S)</td>
<td>1</td>
<td>5.71*</td>
</tr>
<tr>
<td>Condition (C)</td>
<td>1</td>
<td>.16</td>
</tr>
<tr>
<td>S X C</td>
<td>1</td>
<td>3.78a</td>
</tr>
<tr>
<td>Covariate</td>
<td>1</td>
<td>.06</td>
</tr>
<tr>
<td>Error</td>
<td>151</td>
<td>(7.66)</td>
</tr>
</tbody>
</table>

Note. Value enclosed in parentheses represents mean square error.

* $p < .05$.
a = approaching significance.
In both cases, males were less likely than females to perceive that hostile environment sexual harassment had occurred. The frequencies of responses under both standards are presented in Table 6.
Table 2
Frequency of Responses for Hostile Work Environment
by Condition and Sex for Both Cases

<table>
<thead>
<tr>
<th>Meritor</th>
<th>Yes</th>
<th>No</th>
<th>Andrews</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group</td>
<td></td>
<td></td>
<td>Group</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Person Standard</td>
<td></td>
<td></td>
<td>Person Standard</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td></td>
<td></td>
<td>First</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>14</td>
<td>17</td>
<td>Males</td>
<td>17</td>
<td>15</td>
</tr>
<tr>
<td>Females</td>
<td>26</td>
<td>15</td>
<td>Females</td>
<td>37</td>
<td>8</td>
</tr>
<tr>
<td>Woman Standard</td>
<td></td>
<td></td>
<td>Woman Standard</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td></td>
<td></td>
<td>First</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>14</td>
<td>12</td>
<td>Males</td>
<td>14</td>
<td>12</td>
</tr>
<tr>
<td>Females</td>
<td>31</td>
<td>23</td>
<td>Females</td>
<td>39</td>
<td>15</td>
</tr>
</tbody>
</table>

Two Cases Combined

<table>
<thead>
<tr>
<th>Group</th>
<th>Yes</th>
<th>No</th>
<th>Percentage of “Yes”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person Standard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>31</td>
<td>32</td>
<td>49.2%</td>
</tr>
<tr>
<td>Females</td>
<td>63</td>
<td>27</td>
<td>70.0%</td>
</tr>
<tr>
<td>Overall</td>
<td></td>
<td></td>
<td>61.4%</td>
</tr>
<tr>
<td>Woman Standard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>28</td>
<td>24</td>
<td>53.8%</td>
</tr>
<tr>
<td>Females</td>
<td>70</td>
<td>38</td>
<td>64.8%</td>
</tr>
<tr>
<td>Overall</td>
<td></td>
<td></td>
<td>61.2%</td>
</tr>
</tbody>
</table>

A chi squared analysis revealed significant differences between the sexes for the person standard \( \chi^2 (2, N = 153) = 5.59, p = .02 \) and for the woman standard \( \chi^2 (2, N = 152) = 3.8, p = .05 \). Thus, Situation D occurred, contrary to Hypothesis 1b. Under both standards women were more likely than men to find evidence for sexual harassment. No other situations in Hypothesis 1b occurred.
A third set of analyses were conducted to test Hypothesis 2a, that those high on perspective taking would be more likely to change perspectives. A dichotomous variable was created to indicate if an individual changed his or her response ("yes"/"no") to whether or not hostile environment sexual harassment had occurred across the two scenarios. This variable was not significantly correlated with scores on Davis' Perspective Taking sub-scale ($r_s = .08, \text{ns}$), indicating that Hypothesis 2a was not supported. Likewise McFarland's Version of Eyesneck's Psychoticism Scale was not correlated with Davis' perspective taking sub-scale ($r = .07, \text{ns}$) or with perceptions of sexual harassment under the person standard ($r = .02, \text{ns}$) or the woman standard ($r = -.04, \text{ns}$).

Although not addressing a specific hypothesis, it was of interest to determine whether the standard used produced an effect on the individual's determination of sexual harassment. Paired t-tests were conducted utilizing the two 9-point scales of determination of hostile environment sexual harassment under the person and woman standards. Results indicated that the standard used produced no significant difference for determination of sexual harassment for all participants [$t (1, 155) = .71, \text{ns}$] or separately for males [$t (1, 56) = .93, \text{ns}$] and females [$t (1, 98) = -.58, \text{ns}$].

In order to test Hypothesis 2b, a t-test was used to examine whether one sex would be more likely to change perspectives as indicated by scores on Davis' Perspective-Taking sub-scale of the Interpersonal Reactivity Index. Results indicated that there was a significant difference in the means between sexes ($t = -2.12, p < .05$). Females had significantly higher perspective taking scores ($M = 18.61, \text{SD} = 4.3$) than did males ($M = 17.12, \text{SD} = 4.17$), indicating support for Hypothesis 2b.
Discussion

The results of our study were mixed. Male participants were found to be more likely than female participants to change their perceptions of hostile environment under the different standards of reasonable person and reasonable woman. Thus, Hypothesis 1a failed to be supported. Research to date has suggested that gender may be responsible for one’s perception of what constitutes sexual harassment; that is, that males would be less likely to perceive sexual harassment. The present research was an attempt to demonstrate that it was not one’s gender, but one’s cognitive capability (i.e., perspective-taking) that would determine perceptions of sexual harassment. Thus, no significant differences between the sexes were expected. However, consistent with prior research (Powell, 1986; Wolkinson, 1996), women were more likely to find sexual harassment regardless of the standard.

Results were counter to both prior research and present expectations. Perspective taking was not related to changing perceptions under the different standards. Furthermore, males were more likely to modify their perceptions of sexual harassment when utilizing the different standards. When males did find evidence for sexual harassment in the first case, they were more likely than females to change their perceptions so that they did not find evidence for sexual harassment in the second case. The sexes were equally likely to change perceptions to finding sexual harassment when they initially did not find evidence for sexual harassment. The particular standard under which an individual was asked to evaluate the case did not have an impact on whether or not change occurred, although when the woman standard preceded the person standard, marginally significant results were obtained. Thus, when men evaluated a case under the woman
standard, they were marginally more likely than women to change perceptions of sexual harassment. Since this change, as previously stated, was directed from finding evidence for sexual harassment to not finding such evidence, it may be that the woman standard did in fact assist males in being able to see things from “the woman’s point of view.” However, since the effects of the standard resulted in only marginal significance, it is difficult to conclude with any confidence that the standard had any real effect.

Hypothesis 1b encompassed a series of predictions of which scenarios would and would not occur. First the researchers proposed to reject Situation A, which stated that under the reasonable person standard all individuals would not find evidence for sexual harassment but under the reasonable person standard females would find such evidence but men would not. Results indicated that under the reasonable person standard, women found evidence for sexual harassment. Thus, Situation A did not occur.

Situation B proposed that under the reasonable person standard, all individuals would not find evidence for hostile work environment sexual harassment, but under the reasonable woman standard both men and women would find evidence for sexual harassment. As explained for Situation A, under the reasonable person standard women found evidence for hostile environment sexual harassment; thus Situation B did not occur.

Situation C proposed that under the reasonable person standard, women would find evidence for sexual harassment but men would not, but under the reasonable woman standard, both men and women would find evidence for sexual harassment. Although, females did find evidence for sexual harassment under the reasonable person standard, only women found evidence for sexual harassment under the reasonable woman standard. Thus Situation C did not occur, contrary to the researcher’s hypothesis.
Situation D proposed that under the standard of reasonable person, women would find evidence for sexual harassment but men would not, but under the reasonable woman standard, women would find evidence for sexual harassment when men would not. While the researchers proposed that this situation would not occur, results supported this proposition. Women found evidence for sexual harassment under both standards and men did not. Thus, men were not more likely to find sexual harassment than women due to the different standards.

Much social science research has found that females are more likely than males to perceive sexual harassment under the reasonable person standard (e.g., Powell, 1986; Wolkinson, 1996). Such results would seemingly support those who call for a reasonable woman standard in order to increase men’s awareness of the female perspective. However, in the current study under the reasonable woman standard, women were more likely than men to find sexual harassment, just as they were under the reasonable person standard. Therefore, it appears that the reasonable woman standard did not have an effect on the outcome. In fact, paired t-tests indicated that the standard used produced no significant difference for determination of sexual harassment for all participants or for males and females alone.

The researchers proposed in Hypothesis 2a that those who scored high on Davis’ perspective taking sub-scale would be more likely to change perceptions of sexual harassment. A finding in favor of this hypothesis would support the researchers’ idea that perspective taking was responsible for one’s ability to change perceptions of whether a hostile environment sexual harassment infraction had occurred. However, perceptions of sexual harassment were found to be independent of scores on the perspective-taking sub-
scale, thereby refuting the researchers' hypothesis that perspective-taking may be responsible for changing perceptions.

In his original research, Davis' (1980) results indicated that females scored significantly higher than males on his perspective-taking sub-scale of the Interpersonal Reactivity Index. Accordingly, the researchers proposed in Hypothesis 2b that females' scores on Davis' scale would be significantly higher than that of males. This hypothesis was supported.

Limitations

While the present study attempted to identify potential differences in the way jurors might perceive and assess evidence, limitations of the experiment are acknowledged. It was the researchers' intent to maintain the external validity of the findings. A student sample was used for participants. While past research has indicated the possibility of age differences with regard to attitudes toward sexual harassment (i.e., younger individuals are more likely to perceive sexual harassment, Blumenthal, 1998), students that participated in this experiment were likely eligible candidates for jury duty, as all those included were at least 18 years of age.

The information that the potential jurors were given, however, was not akin to that which a true jury would receive. In the present study, all individuals were provided with actual court cases but were asked to evaluate these cases under two different standards. In an actual trial, individuals would not likely be exposed to both standards. Rather, one standard would be provided along with an explanation of that standard in order to elicit a judgment. The presentation of both standards may have confounded the findings. The juror may have been more cognizant of the standard utilized than the facts of the case. By
being presented both standards, by the time the second standard was invoked the
individual may be inclined to change his or her perspective because he or she thought this
outcome was the one expected and desired. However, a chi squared test on the direction
of change \( \chi^2(2, N = 156) = 1.39, \text{ ns} \) indicated that change is equally likely in either
direction.
Summary and Conclusion

In concert with most of the research to date, women were more likely than men to perceive behaviors as harassing. However, one should be cautious in interpreting this finding as researchers (Gutek & O'Connor, 1995) have demonstrated that differences between the sexes may be smaller than differences within the sexes. In fact, it is an acknowledged phenomenon in the field of individual differences that within-group differences are always larger than between-group differences for most psychological constructs. With this statement in mind, aside from solely examining sex as a moderator of perceptions of sexual harassment, the present researchers sought to identify other potential influences on a juror's perception of sexual harassment -- primarily, the standard under which the behavior was evaluated. Because current debate as to which standard optimally assists jurors in making accurate decisions in hostile environment sexual harassment cases has not yet been resolved, social scientists may aid the legal system in determining the standard debate's fate by addressing one simple question: Does the standard really make a difference? Our results answer "no," bolstering the argument against the standard argument. Although men are more likely than women to change perceptions, they are equally likely to find hostile environment sexual harassment under either standard. Women are less likely to change perceptions because they are more inclined to perceive sexual harassment regardless of the standard.

As demonstrated by Acker (1990) social scientists have made and can continue to make important contributions to the courts by conducting sound research and conveying important scientific information. The courts should not be misled into believing that sexual harassment cases may be solved by simple semantic choice. If the standard has no
influence on determinations of sexual harassment, it would seem advisable for the legal system to discontinue arguing over which standard to utilize. As Blumenthal (1998) notes it is “immaterial whether gender differences exist if using a standard based on those differences yields no discernible results” (p. 48-49).

Although the particular standard does not effect perceptions, it may be advisable for social scientists to attempt to isolate other mechanisms that might influence sexual harassment decision making. Although in the present study perspective taking was not related to one’s tendency to change perceptions of sexual harassment or to one’s determination of sexual harassment, exploring constructs such as these may aid the attorneys during jury selection. For example, during selection the plaintiff’s attorney might have sought those who scored high on perspective taking if this construct had indeed correlated with sexual harassment perceptions. Future research may be needed in this area.

It is amiable that the legal system has attempted to incorporate a standard through which women’s points of view would be considered. It is unfortunate that the route taken encountered controversial, fruitless results. The intentions of the “reasonable woman” standard should not proceed unrecognized. Although a standard aimed at bringing the woman’s point of view to the forefront failed, other avenues should be explored. For example, male jurors may benefit by being informed as to the kinds of unique things that women encounter which may account for some of the perceived differences in sexual harassment. Abrams (1995) provides guidelines about the types of information to which people should be exposed in order to be knowledgeable about women’s experiences. These guidelines include recognizing barriers that women face in the workplace, the
sexualized treatment of women on a daily basis, and the differential results of well-
intentioned remarks or gestures. Perhaps such training may produce the originally desired
results of those who promoted the "reasonable woman" standard.

Although it has been demonstrated that females are more likely to conclude that a
set of behaviors is sexually harassing than are males, the standard intended to rectify those
differences has not produced desired results. Simply expecting men's perceptions to
encompass the female's point of view due to a change in terminology does not accomplish
the intended goal. While the present study supports the conclusion of the only other
known study addressing this issue (Wiener, Watts, Goldkamp, & Gasper, 1995), it is
critical that more research be conducted concerning the standard argument. Based on the
results of this study, it can only be concluded that the argument is unwarranted.
References


Appendix A

Interpersonal Reactivity Index
&
McFarland’s Version of Eysenck’s Psychoticism Scale
The following statements inquire about your thoughts and feelings in a variety of situations. For each item, indicate how well it describes you by choosing and circling the appropriate letter on the scale provided to the left of the question: A, B, C, D, or E. READ EACH ITEM CAREFULLY BEFORE RESPONDING. Answer as honestly as you can. Thank you.

**ANSWER SCALE:**

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
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<tr>
<td>Does Not Describe Me Very Well</td>
<td></td>
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**SCORING SCALE (circle one) ITEM**

1. I daydream and fantasize, with some regularity, about things that might happen to me.
   - A B C D E

2. I often have tender, concerned feelings for people less fortunate than me.
   - A B C D E

3. I sometimes find it difficult to see things from the "other guy's" point of view.
   - A B C D E

4. Sometimes I don't feel very sorry for other people when they are having problems.
   - A B C D E

5. I really get involved with the feelings of characters in a novel.
   - A B C D E

6. In emergency situations, I feel apprehensive and ill-at-ease.
   - A B C D E

7. I am usually objective when I watch a movie or play, and I don't often get completely caught up in it.
   - A B C D E

8. I try to look at everybody's side of a disagreement before I make a decision.
   - A B C D E

9. When I see someone being taken advantage of, I feel kind of protective of them.
   - A B C D E

10. I sometimes feel helpless when I am in the middle of a very emotional situation.
    - A B C D E

11. I sometimes try to understand my friends better by imagining how things look from their perspective.
    - A B C D E

12. Becoming extremely involved in a good book or movie is somewhat rare for me.
    - A B C D E

13. When I see someone get hurt, I tend to remain calm.
    - A B C D E
ANSWER SCALE:

A  B  C  D  E
Does Not Describe Me Very Well

SCORING SCALE (circle one)  ITEM

A  B  C  D  E  14. Other people’s misfortunes do not usually disturb me a great deal.

A  B  C  D  E  15. If I’m sure I’m right about something, I don’t waste much time listening to other people’s arguments.

A  B  C  D  E  16. After seeing a play or movie, I have felt as though I were one of the characters.

A  B  C  D  E  17. Being in a tense emotional situation scares me.

A  B  C  D  E  18. When I see someone being treated unfairly, I sometimes don’t feel very much pity for them.

A  B  C  D  E  19. I am usually pretty effective in dealing with emergencies.

A  B  C  D  E  20. I am often quite touched by things I see happen.

A  B  C  D  E  21. I believe that there are two sides to every question and try to look at them both.

A  B  C  D  E  22. I would describe myself as a pretty soft-hearted person.

A  B  C  D  E  23. When I watch a good movie, I can very easily put myself in the place of a leading character.

A  B  C  D  E  24. I tend to lose control during emergencies.

A  B  C  D  E  25. When I’m upset at someone, I usually try to “put myself in his shoes” for a while.

A  B  C  D  E  26. When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me.

A  B  C  D  E  27. When I see someone who badly needs help in an emergency, I go to pieces.

A  B  C  D  E  28. Before criticizing somebody, I try to imagine how I would feel if I were in their place.
Use the following scale to answer questions 29-38.

ANSWER SCALE:
A = I strongly disagree with this statement.
B = I generally disagree with this statement.
C = I am undecided or neutral toward this statement.
D = I generally agree with this statement.
E = I strongly agree with this statement.

SCORING SCALE (circle one) ITEM

A  B  C  D  E  29. It upsets me a lot to see a child or animal suffer.
A  B  C  D  E  30. I can easily understand the way people feel when they tell me their troubles.
A  B  C  D  E  31. I would take drugs that may have strange or dangerous effects.
A  B  C  D  E  32. I have had an awful lot of bad luck.
A  B  C  D  E  33. I would like to think that other people are afraid of me.
A  B  C  D  E  34. My friendships break up easily without it being my fault.
A  B  C  D  E  35. I feel very sorry for an animal caught in a trap.
A  B  C  D  E  36. I am always specifically careful with other people's things.
A  B  C  D  E  37. Good manners and cleanliness matter much to me.
A  B  C  D  E  38. I am generally in good health.
Appendix B

Biographical Questionnaire
Background Information

Please do not put your name on this sheet!

Gender: Male  Female  Race: __________________________ Age: ________
(circle one)

1. Please indicate the extent to which you believe your present job (or school) environment is
sexually harassing (e.g., as indicated by posters, jokes, sexual remarks or behavior, etc.):
   1  2  3
   Not at All Harassing Somewhat Harassing Extremely Harassing

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

3. If you answered yes to the previous question, indicate by circling yes or no with regard to any
   of the following behavior(s) that accurately represent your experience:

   Letters/calls from supervisor  Yes  No
   Pressure for dates from supervisor  Yes  No
   Letters/calls from co-worker  Yes  No
   Pressure for dates from co-worker  Yes  No
   Touching by supervisor  Yes  No
   Sexual remarks by supervisor  Yes  No
   Touching by co-worker  Yes  No
   Sexual remarks by co-worker  Yes  No
   Suggestive looks by supervisor  Yes  No
   Suggestive posters, pictures, etc.  Yes  No
   Suggestive looks by co-worker  Yes  No

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

Scenarios
Case 1: Andrews v. City of Philadelphia

Priscilla Andrews was a member of the Accident Investigation Division (AID) of the Philadelphia Police Department. AID is an extremely busy division of the police department, which investigates vehicular accidents involving property or personal injury.

Andrews joined the police force in 1980 and went on active duty as a patrol officer in February 1982 in the Fourth Police District. There she consistently received satisfactory performance ratings though her supervisor says that she required more direct supervision than other members of the squad did. In February 1986, she was voluntarily transferred to AID.

Andrews had some difficulty with the work at AID, often making mistakes in conducting investigations and filing reports. Andrews also had organizational problems; her files were often disorganized and she often misplaced, forgot, and lost police department equipment. On two instances she even misplaced her weapon. Nonetheless, she received overall performance ratings of satisfactory.

Of particular difficulty, which plagued Andrews, was the loss of her case files. There is no direct evidence of how or why those cases were lost. Andrews contends that her coworkers stole or hid her cases in an attempt to harass her. The defendants claim that she lost the files herself as a result of her carelessness and disorganization.

Andrews further claimed that the male officers refused to assist her in her work and that she experienced some vandalism of her personal property. Her car was vandalized three times while parked in the AID parking lot. However, on the same date that Andrews’ tires were slashed, the tires of a male officer in another division were also slashed. Additionally, the same day that her case files were misplaced, somebody poured soda into her typewriter, forcing her to have it repaired. Finally, someone ripped the cover off her Motor Vehicle Codebook, and her appointment book, which she needed to keep track of investigations. She made complaints about each of these incidents but they were not investigated.

Andrews also contends that Doyle, the sergeant, acted toward her in a sexually suggestive manner. She claims that he spent an inordinate amount of time at her desk, something confirmed by another officer, and that he breathed heavily down her neck and spoke to her in seductive tones about her and his personal lives. Doyle claims that he spent a lot of time with her because she needed a great deal of supervision. He also claims that his “seductive tone” was nothing more than a hushed tone used so others in the unit would not hear him criticizing Andrews.

Debra Conn was also a female member of AID. She claimed that because of her sex her fellow workers and supervisors harassed her. According to both women, the AID squadroom was filled with sexism. They claimed that women were regularly referred to in an offensive and obscene manner, and that they personally were addressed by the obscenities. Conn, a twelve-year police veteran, went as far as to say that she “had never been called some of the names that (she) was called in AID.”

The case was filed because the women believed that their work environment was sexually harassing.
Case 2: Ellison v. Brady

Kerry Ellison and Sterling Gray worked for the Internal Revenue Service (IRS) in San Mateo, California. The two were not friends and did not work closely together. In June 1986, Ellison and Gray went to lunch together, a common practice among employees in their office.

From that point forward, Gray began to “hang around” Ellison’s desk and to pester her with unnecessary questions. In October, Gray asked Ellison to meet him for a drink after work. Ellison declined and tried to avoid Gray during work hours. Late in October Gray gave Ellison a note that read: “I cried over you last night and I’m totally drained today. I have never been in such constant (turmoil). Thank you for talking with me. I could not stand to feel your hatred for another day.” After handing her the note, Gray followed Ellison into the hallway and demanded that she speak to him, but she left the building. Ellison was “shocked and frightened” by the note. She immediately contacted their supervisor, Bonnie Miller, who said that the note was “sexual harassment,” but took no action because Ellison asked to handle the situation herself. Ellison then asked a fellow employee to tell Gray to leave her alone.

Ellison then left California for a four-week training program in St. Louis. Shortly after she left, Gray sent a three-page letter to her in St. Louis that she described as “twenty times, a hundred times, weirder” than his prior note. The letter stated in part, “I know that you are worth knowing with or without sex . . . I have enjoyed you so much over these past few months. Watching you. Experiencing you from so far away.” The letter stated that he would write her again “in the near future.” The letter frightened Ellison and thought Gray was “crazy.” She immediately telephoned Miller and requested either she or Gray be transferred because she felt uncomfortable working in the same office with him. That same day Miller met with Gray and ordered him to leave Ellison alone. Miller repeated that order several times over the next few weeks. Shortly before Ellison returned to San Mateo, Gray was transferred to the IRS’s San Francisco office.

Three weeks later, Gray filed a union grievance requesting a return to San Mateo. The grievance was resolved in Gray’s favor, and he was allowed to transfer back to San Mateo provided that he spend four more months in San Francisco and promise not to bother Ellison. The notification letter to Ellison stated that management had resolved her problem by requiring that Gray be separated from her for six months. The letter promised to take additional action if the problem recurred.

Ellison was “frantic” upon being notified of Gray’s pending return to San Mateo. She filed a formal complaint of sexual harassment with the IRS and obtained permission to transfer temporarily upon Gray’s return to San Mateo. While she was in San Francisco, Gray sent her another letter.

Ellison then filed suit against the IRS for sexual harassment.
Case 2: Meritor Savings Bank v. Vinson

In 1974 Michelle Vinson met Sidney Taylor, a vice president of Meritor Savings Bank and manager of one of its branch offices. When Vinson asked whether she might obtain employment at the bank, Taylor gave her an application, which she completed and returned the next day. Later that same day Taylor called her to say that she had been hired. With Taylor as her supervisor, Vinson started as teller-trainee, and thereafter was promoted to teller, head teller, and assistant branch manager. She worked at the same branch for four years and it was undisputed that her advancement there was based on merit alone. In September 1978, Vinson notified Taylor that she was taking sick leave for an indefinite period. On November 1, 1978, the bank discharged her for excessive use of that leave.

Vinson brought action against Taylor and the bank, claiming that during her four years at the bank she had “constantly been subjected to sexual harassment” by Taylor. She sought injunctive relief, compensatory and punitive damages against Taylor and the bank, and attorney’s fees.

Vinson testified that during her probationary period as a teller-trainee, Taylor treated her in a fatherly way and made no sexual advances. Shortly thereafter, however, he invited her out to dinner and, during the course of the meal, suggested that they go to a motel to have sexual relations. At first she refused, but out of fear of losing her job she eventually agreed. According to Vinson, Taylor thereafter made repeated demands upon her for sexual favors, usually at the branch, both during and after business hours. She estimated that over the next several years she had intercourse with him some 40 or 50 times. In addition, Vinson testified that Taylor fondled her in front of other employees, followed her into the women’s restroom when she went there alone, exposed himself to her, and even forcibly raped her on several occasions. These activities ceased after 1977, Vinson stated, when she started going with a serious boyfriend.

Vinson also testified that Taylor touched and fondled other women employees of the bank. She attempted to call witnesses to support this charge. But while some supporting testimony apparently was admitted without objection, the District Court did not allow her to present much information until rebuttal to the defendants’ case. Vinson did not offer such evidence in rebuttal. Finally, Vinson testified that because she was afraid of Taylor she never reported his harassment to any of his supervisors and never attempted to use the bank’s complaint procedure.

Taylor denied Vinson’s allegations of sexual activity, testifying that he never fondled her, never made suggestive remarks to her, never engaged in sexual intercourse with her, and never asked her to do so. He contended instead that Vinson made her accusations in response to a business-related dispute. The bank also denied Vinson’s allegations.

Michelle Vinson filed action against Taylor and the bank, asserting charges of sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Case 1: Rabidue v. Osceola Refining Company

The plaintiff, Vivienne Rabidue, entered the employ of Osceola during December of 1970. Rabidue initially occupied the job classification of executive secretary. In 1973, she was promoted to the position of administrative assistant and became a salaried rather than an hourly employee. Included in the Rabidue’s new responsibilities was the authority to assign work to a number of other Osceola employees.

Rabidue was a capable, independent, ambitious, aggressive, and opinionated individual. Her supervisors and co-employees with whom she interacted almost uniformly found her to have an abrasive, rude, antagonistic, and uncooperative personality. She consistently argued with co-workers and company customers in defiance of supervisory direction and jeopardized Osceola’s business relationships with major companies. She disregarded supervisory instruction and company policy whenever such direction conflicted with her personal reasoning and conclusions. In sum, Rabidue was a troublesome employee.

Rabidue’s sexual harassment claims arose primarily as a result of her discordant working relationship with Douglas Henry. Henry was a supervisor of the company’s key punch and computer section. Occasionally, Rabidue’s duties required coordination with Henry’s department, although Henry exercised no supervisory authority over Rabidue nor Rabidue over Henry. Henry was an extremely vulgar and crude individual who customarily made obscene comments about women generally, and, on occasion, directed such obscenities at Rabidue. Management was aware of Henry’s vulgarity, but had been unsuccessful in curbing his offensive personality traits during the time encompassed by this controversy. Rabidue and Henry, on the occasions when their duties exposed them to each other, were constantly in a confrontation posture. Rabidue, as well as other female employees, were annoyed by Henry’s vulgarity. He routinely referred to women as “whores,” “cunt,” “pussy” and “tits”. Of Rabidue, Henry specifically remarked, “All that bitch needs is a good lay” and called her “fat ass”.

In addition to Henry’s obscenities, other male employees from time to time displayed pictures of nude or scantily clad women in their offices and/or work areas to which the plaintiff and other women were exposed. One poster, which remained on the wall for eight years, showed a prone woman who had a golf ball on her breasts with a man standing over her, golf club in hand, yelling “Fore.” And one desk plaque declared “Even male chauvinist pigs need love.”

In addition to tolerating this anti-female behavior, the company excluded Rabidue from activities she needed to progress in her career. After Rabidue became credit manager Osceola prevented her from visiting or taking customers to lunch as all previous credit managers had done. Rabidue testified that upon requesting such privileges, her supervisor replied that it would be improper for a woman to take male customers to lunch and that she “might have car trouble on the road.”

After seven years as the sole woman in a salaried management position at Osceola, Rabidue was formally discharged from her employment at the company on January 14, 1977. Reasons given were her many job-related problems, including her irascible and opinionated personality and her inability to work harmoniously with co-workers and customers. The immediate
incidents that precipitated the plaintiff's termination included a heated argument with Charles Shoemaker, the vice-president of Osceola, concerning the implementation of certain accounting practices and procedures by the company and a subsequent, bitter confrontation with Robert Fitzsimmons, the vice-president of one of Osceola's customers, concerning pricing schedules that existed between the companies. The latter incident proved to be highly embarrassing to Shoemaker, especially since the plaintiff intruded into his office while he was meeting with Fitzsimmons. A male employee assumed the Rabidue's former duties as administrative assistant.

Subsequent to her discharge, the Rabidue applied for unemployment benefits with the appropriate state agency, payment of which the company opposed. Vivienne Rabidue then asserted charges of sex discrimination and sexual harassment in violation of Title VII of the Civil Rights Act of 1964.
Case 1: *Andrews v. City of Philadelphia*

Now answer the following questions based on the scenario you just read and the standard for determining hostile work environment sexual harassment. Respond as though you are serving as a juror and have just heard these facts presented in court.

Circle "Yes" or "No" on the odd-numbered items.
Use the following scale to answer all even-numbered questions:

**RESPONSE SCALE:**

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<tr>
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<th>A</th>
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<tr>
<td></td>
<td>Not at All Confident</td>
<td>Somewhat Confident</td>
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Yes No 1. Does this have the effect of unreasonably interfering with the individual’s work performance?

A B C D E 2. How confident are you in the accuracy of your above answer? (That is, that it did/did not unreasonably interfere with the individual’s work performance.)

Yes No 3. Does the incident described create an intimidating environment?

A B C D E 4. How confident are you in the accuracy of your above answer? (That is, that it did/did not create an intimidating environment.)

Yes No 5. Does the incident described create a hostile environment?

A B C D E 6. How confident are you in the accuracy of your above answer? (That is, that it did/did not create a hostile environment).

Yes No 7. Does the incident described create an offensive environment?

A B C D E 8. How confident are you in the accuracy of your above answer? (That is, that it did/did not create an offensive.)

Yes No 9. Does this constitute hostile work environment sexual harassment?

A B C D E 10. How confident are you in the accuracy of your above answer? (That is, that it does/does not constitute hostile work environment sexual harassment.)
Case 2: Ellison v. Brady

Now answer the following questions based on the scenario you just read and the standard for determining hostile work environment sexual harassment. Respond as though you are serving as a juror and have just heard these facts presented in court.

Circle “Yes” or “No” on the odd-numbered items.
Use the following scale to answer all even-numbered questions:

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Case 1: Rabidue v. Osceola Refining Company

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A B C D E 10. How confident are you in the accuracy of your above answer?
(That is, that it does/does not constitute hostile work environment sexual harassment.)
Case 2: **Meritor Savings Bank v. Vinson**

Now answer the following questions based on the scenario you just read and the standard for determining hostile work environment sexual harassment. Respond as though you are serving as a juror and have just heard these facts presented in court.

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Appendix D

Script
SCRIPT FOR RUNNING SUBJECTS

Thank you for agreeing to participate in our research study. The research in which you are participating in today is studying 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 work place 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 several sexual harassment cases. You will be asked to read several court cases that will present the facts concerning the cases. After you have read a case, you will be asked to make a number of judgments about that case. You will be given specific questions to answer for each case that you read. These cases are taken from the court record and may contain quoted 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. You will also be given a survey asking for demographic information such as your age, sex, race, and your opinion about how you feel when you are interacting with others. We are asking 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. Your materials will be identified by an arbitrary identification number that will be on the materials you complete.

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, we 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, you may take notes.

WHAT IS SEXUAL HARASSMENT?
DEFINITION OF SEXUAL HARASSMENT


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:

1. 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); or

2. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance experience or creating an intimidating, hostile or offensive working environment (hostile environment).
   (Even if it leads to no tangible or economic job consequences.)

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

Sexual harassment most often occurs 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 (90+% of victims).
In both types of sexual harassment, there are three key features that must be present for the behavior to constitute sexual harassment:

1. 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. (Did the employee by her conduct indicate that the alleged sexual advances were unwelcome, not whether her actual participation was voluntary.)? Giving in to sexual conduct at the workplace may not mean that the conduct is welcome to the individual.

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

   Would the behavior be considered sexual by most people in a similar environment under similar circumstances?

   Ask yourself if the individual does the same behavior in the same way to males. If the answer is no, his behavior may constitute sexual harassment.

3. 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 her job, the individual must work near or with the person performing the offensive behavior
   - if, in order to appropriately perform her job, the individual must work in a place where the offensive conduct is present.
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.
Our research today is focusing on the second form of sexual harassment, that is, what is called hostile environment sexual harassment. Hostile environment sexual harassment occurs when the harassment creates an intimidating, hostile or offensive working environment. Recognizing subtle sexual harassment can be difficult.

One of the most important questions facing a juror is how to determine if the situation constitutes hostile environment sexual harassment.

Fortunately, the EEOC guidelines provide guidance for us.

The courts have ruled that the conduct must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Hostile environment harassment can take a variety of forms.

No one factor controls. An assessment is made based upon the totality of the circumstances.

A hostile environment claim usually requires a showing of a pattern of offensive conduct. However, a single, unusually severe incident of harassment may be sufficient to constitute a violation of the sexual harassment law; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical.

For example, the EEOC will presume that the unwanted touching of an individual's intimate body areas is sufficiently offensive to alter the condition of his/her working environment and constitutes a violation of the law.

Verbal remarks can constitute hostile environment sexual harassment. You must evaluate the totality of the circumstances to ascertain the nature, frequency, and intended target of the remarks.

The EEOC guidelines further state that "In general, a woman does not forfeit her right to be free from sexual harassment by choosing to work in an atmosphere that has traditionally included vulgar, anti-female language" or to work in a job that traditionally has been filled by males.
(Directions for PERSON first/Women second)

Remember, the central inquiry is whether the conduct "unreasonably interferes with an individual's work performance" or creates "an intimidating, hostile, or offensive working environment."

In order to make the determination whether the total situation constitutes hostile environment sexual harassment, the EEOC Guidelines State that the standard to use is a "reasonable person." That is, the harasser's conduct should be evaluated from the objective standpoint of a "reasonable person." Would a reasonable person in a similar situation under similar circumstances find this to interfere with their work performance or to create an intimidating, hostile, or offensive environment?

The EEOC guidelines state that the law does not serve "as a vehicle for vindicating the petty slights suffered by the hypersensitive." If the challenged conduct would not substantially affect the work environment of a reasonable person, no violation should be found. Thus, sexual flirtation or innuendo or even vulgar language that is trivial or merely annoying would probably not constitute a hostile environment.

The EEOC guidelines further state that the reasonable person standard should consider the victim's perspective and not stereotyped notions of acceptable behavior. A workplace in which sexual slurs, displays of "girlie" pictures, and other offensive conduct can constitute a hostile environment even if many people deem it to be harmless or insignificant.

You will now evaluate summaries of two court cases found in the envelope labeled "A". Please carefully read the facts of each case, and then answer the questions following the case using the standard of a "reasonable person." When you have finished, please place all of the materials back in envelope "A".

What questions do you have at this time?
You just completed two cases using the standard of a "reasonable person." However, there is an abundance of social science research that suggests that men and women view the same situation differently. Conduct that may offend many women is deemed unobjectionable to most men. Therefore, some courts have used the standard of a "reasonable woman" to determine hostile environment sexual harassment.

We would now like you to consider two more sexual harassment court cases. However, this time when you are responding to the case, you should evaluate the facts from the standard of a "reasonable woman." That is, the harasser's conduct should be evaluated from the objective standpoint of a "reasonable woman." Would a reasonable woman in a similar situation under similar circumstances find this to interfere with her work performance or to create an intimidating, hostile, or offensive environment?

You should now open envelope "B". Please carefully read the facts in each case and use the standard of a reasonable woman to answer the questions that follow each case. When you have finished, please place all of the materials back in envelope "B".

What questions do you have at this time?
Remember, the central inquiry is whether the conduct "unreasonably interferes with an individual's work performance" or creates "an intimidating, hostile, or offensive working environment."

In order to make the determination whether the total situation constitutes hostile environment sexual harassment, some courts have used the standard of a "reasonable woman." There is an abundance of social science research that suggests that men and women view the same situation differently. Conduct that may offend many women is deemed unobjectionable to most men. Therefore, some courts have used the standard of a "reasonable woman" to determine hostile environment sexual harassment.

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The EEOC Guidelines state that the law does not serve "as a vehicle for vindicating the petty slights suffered by the hypersensitive." If the challenged conduct would not substantially affect the work environment of a reasonable woman, no violation should be found. Thus, sexual flirtation or innuendo or even vulgar language that is trivial or merely annoying would probably not constitute a hostile environment.

The EEOC guidelines further state that the reasonable woman standard should consider the victim's perspective and not stereotyped notions of acceptable behavior. A workplace in which sexual slurs, displays of "girlie" pictures, and other offensive conduct can constitute a hostile environment even if many people deem it to be harmless or insignificant.

You will now evaluate summaries of two court cases found in the envelope labeled "A" Please carefully read the facts of each case, and then answer the questions following the case using the standard of a "reasonable woman." When you have finished, please place all of the materials back in envelope "A".

What questions do you have at this time?
You just completed two cases using the standard of a "reasonable woman."
While a number of courts have used this standard, the EEOC Guidelines state that the standard to use is a "reasonable person." That is, the harasser's conduct should be evaluated from the objective standpoint of a "reasonable person." Would a reasonable person in a similar situation under similar circumstances find this to interfere with their work performance or to create an intimidating, hostile, or offensive environment?

We would now like you to consider two more sexual harassment court cases. However, this time when you are responding to the case, you should evaluate the facts from the standard of a "reasonable person."

You should now open envelope "B." Please carefully read the facts in each case and use the standard of a reasonable person to answer the questions that follow each case. When you have finished, please place all of the materials back in envelope "B."

What questions do you have at this time?