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The transformation of our workplaces how gender has shaped workplace sexual harassment law and award amounts

Ian Waldick
University of Central Florida

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THE TRANSFORMATION OF OUR WORKPLACES:
HOW GENDER HAS SHAPED WORKPLACE SEXUAL
HARASSMENT LAW AND AWARD AMOUNTS

by

IAN E. WALDICK

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
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at the University of Central Florida
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Thesis Chair: Chad Cronon, Esq.

ABSTRACT

Equal Employment Opportunity laws are a relatively new construct within the framework of American legal history. This area of law, however, has experienced significant development within a relatively short span of time. Over the last half-century, the Supreme Court of the United States has handed down several landmark decisions, clarifying the law as to what constitutes sexual harassment, and in which circumstances employers can be held liable for the harassing actions of employees.

The purpose of this thesis is to examine this development, and to assess the question of whether the awards given to male victims of workplace sexual harassment are comparable to the awards given to female victims.

DEDICATION

To my mother, father, sister, step-father, and step-mother, who have always been there to provide me with the encouragement necessary to succeed.

To my research advisor, Chad Cronon, who has continually encouraged me in this endeavor and provided me with the guidance to complete this undertaking.

To my research partner, Anthony Ferraro, who has inspired me to undertake such an endeavor and supplied me with encouragement and advice throughout this journey.

To Myranda Ens, who has helped me through the stress that accompanies an undertaking such as this, and provided me with emotional support.

To all of my friends who have provided me with emotional support during this exciting yet taxing project.

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I would also like to acknowledge Gina Naccarato-Fromang, Esq., as she has provided me with another unique perspective as to the direction in which I should take this research. She has also been there for encouragement and to provide friendly suggestions as to how to better refine my thesis.

I also appreciate and acknowledge the fact that Robert Cassanello, Ph.D. has met with me on several occasions for guidance and encouragement throughout the planning, research, and writing of this thesis. He has also helped me to reign in my ideas and keep them relevant to the present research.

I would further like to acknowledge the help that Rich Gause and Dr. Penny Beile provided in the initial planning regarding the statistical research and analysis for this research.

Finally, I would like to acknowledge my research partner, Anthony Ferraro. He has helped to shape this research and he took the first steps forward in order to turn this idea into a true academic endeavor. The research for this thesis is significantly tied to the research presented in his thesis, “Victims of More than Just Bias: Gender’s Influence on Jury Awards and Other Monetary Benefits in Workplace Sexual Harassment Claims.”

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INTRODUCTION

Title VII of the Civil Rights Act of 1964 (“Title VII”) was one of the first federal laws that was passed to protect private sector employees from employment discrimination. Among many other things, this law has been interpreted to protect employees from sexual harassment in the workplace. It also forbids employers from discriminating on the basis of race, color, national origin, sex, or religion. The law forbids harassment based on these classifications as well as making employment decisions based on these. Title VII was an empowering piece of legislation to the civil rights movement because it provided protection for these classes.

As a part of this law, the Equal Employment Opportunity Commission (“EEOC”) was created in order to evaluate, process, and resolve claims of employment discrimination. In order for an individual to seek redress for an act of employment discrimination, he or she must first file a complaint with the EEOC. The EEOC then investigates the claim, and offers a ruling on it. If the EEOC chooses not to resolve the claim, it offers a “Right to Sue” letter which authorize the complainant to file an action in federal court.

The United States Supreme Court and the EEOC have distinguished between two types of workplace sexual harassment: *quid pro quo* and *hostile work environment*.¹ Both types of sexual harassment have been determined to be violations of Title VII. This thesis will focus primarily on the latter.

¹ See *Meritor Savings Bank, FSB v. Vinson* (citation to follow)

The first part of this thesis will contain a literature review that examines themes such as the history of the inclusion of “sex” as a protected class in Title VII, gender attitudes, and attitudes toward sexual harassment. The next part will briefly summarize the development of case law within the United States Supreme Court pertaining to *hostile work environment* sexual harassment, examining themes such as the standards used to address whether a supervisor’s conduct should be considered harassing, the standard used to address an employer’s vicarious liability for the harassing actions of a supervisor, as well as the different types of damages available as redress in certain scenarios. This section will examine not only the advances in workplace sexual harassment law, but also the limitations on workers’ rights that have been created through the court system. The last substantial part of this thesis will revolve around a survey that was developed by Anthony Ferraro and myself for the purposes of this research. The purpose of the survey is, in short, to determine the relationship between a potential juror’s gender attitudes, attitudes toward sexual harassment, and the gender of a victim of sexual harassment in a hypothetical *hostile work environment* sexual harassment scenario, and to explore whether these things have an effect on award amounts that the victim would receive.

This research is necessary because there has been no substantial investigation into the effect that the victim’s gender in a sexual harassment scenario has on jury award amounts. Although there has been some research into the effect that the jury member’s own gender has on award amounts in the case of a female victim, this facet of sexual harassment litigation has not been adequately addressed.

BACKGROUND

In order for one to grasp the significance of the changes in workplace sexual harassment law, I believe that it is necessary to have an understanding of the political climate in which Title VII was passed. 1964, the year that the Civil Rights Act was passed, was directly in the midst of the Civil Rights Movement, the Feminist Movement, and the beginning stages of the Anti-War Movement. The political atmosphere was ripe with discontent, and people were mobilizing to do something about it.

Originally, when Title VII was proposed to Congress, there were only four protected classes: race, color, national origin, and religion. Sex was not added as a protected class until an amendment to the bill, including sex, was proposed by a southern Democrat Representative named Howard Smith on February 8th, 1964.² This amendment, which simply added the word “sex” to the protected classes section of the bill, is thought to have been introduced as a joke and a way of undermining the entire bill. At this time, some have argued that most of the members of Congress did not want the Civil Rights Act of 1964 to empower the feminist movement.³ When the amendment was proposed, it was met by laughter from members of both parties and by both those opposing and supporting the Civil Rights Act as a whole.⁴ Introducing this amendment could have accomplished several things for the southern Democrats, who opposed

² Kathleen Endres, *In Their Own Voices: Women Redefine and Frame Title VII of the Civil Rights Act of 1964*, 26 *American Journalism* 1, 59 (2009).

³ Cynthia Deitch, *Gender, Race, and Class Politics and the Inclusion of Women in Title VII of the 1964 Civil Rights Act*, 7 *Gender and Society* 2, 192 (1993).

⁴ *Ibid.*, 192

the Civil Rights Act. First, it may have divided the votes of those who supported the act by providing protection for yet another group of people from discrimination, which many of the Representatives did not want. Further, it would side-track the debate, and pull attention away from the meaning of the bill as a whole, focusing specifically on the inclusion of sex. And lastly, it would certainly place more pressure on the agency that was to be created, the EEOC, that would be charged with the task of processing Title VII claims and enforcing the law.⁵ The inclusion of sex would do this by creating many more claims that the EEOC would eventually have to investigate, process, and attempt to resolve.

Some scholars suggest that the bill would not have passed without the efforts of lobbying by groups within the Feminist Movement, namely the National Woman's Party ("NWP") and other feminist congresswomen.⁶ Alice Paul, the leader of the NWP, was one of the biggest proponents of the inclusion of "sex" in Title VII and the ERA.⁷ It was only after this lobbying and much discussion in the House of Representatives that this amendment was even voted on. Much of discussion was over whether women, in particular, *needed* protection under Title VII. Some of the comments made during the discussions sounded much more like jokes than actual consideration of the amendment. For example, when Smith introduced the amendment, he read a letter that he had supposedly received from a woman that had complained that a ". . . numerical 'imbalance of the sexes' denied spinster women their 'right to a nice husband and family'" and

⁵ Ibid., 186

⁶ Ibid., 185

⁷ Carl M. Brauer, *Women Activists, Southern Conservative, and the Prohibition of Sex Discrimination in Title VII of the 1964 Civil Rights Act*, 49 *The Journal of Southern History* 1, 37 (1983).

asking that Congress protect that right and resolve the imbalance.⁸ Several of the lawmakers did not find the inclusion of this amendment to the bill necessary, as many women would already be included in the other protected classes. This, however, left out women that were not protected under the other classes, to wit: white women. Further, the exclusion of sex would leave women unprotected if they were treated differently from other employees due to their being female.

For several years prior to the introduction of the Civil Rights Act, there was an effort to pass the Equal Rights Amendment (“ERA” being introduced for the first time in 1923.) This was a proposed amendment to the U.S. Constitution that would ensure that women could not be discriminated against based on their gender. It was eventually passed by the U.S. Congress in 1972, but was never ratified by the requisite three-quarters of states within the time-limits in order to become part of the Constitution. The gender amendment to Title VII was passed, in the view of many, as an alternative to this amendment. Many law makers thought that the ERA would be too far reaching, and settled for the gender amendment to Title VII.

The National Organization for Women (“NOW”) was one of the most influential forces behind the enforcement Title VII. NOW is an organization that was created with the purpose of furthering women’s role in society and was formed in 1966. The members of NOW were pivotal to the Feminist Movement. Feminists such as Gloria Steinem and Betty Friedan were influential in the Feminist Movement, which was happening at the same time as the passing of Title VII. Steinem is a famous journalist and activist and later became involved with NOW. Friedan

⁸ Deitch., at 191 (paraphrasing and quoting the Congressional Record)

authored the book “The Feminine Mystique,” which is said to have sparked the second wave of the Feminist Movement. Friedan was also the first president of NOW. Other women’s organizations such as “Working Women United” (“WWU”) and the Alliance Against Sexual Coercion (“AASC”) have, since the passing of Title VII, also been influential in shaping sexual harassment litigation.⁹

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

In beginning, the EEOC was created pursuant to Title VII as the federal agency charged with processing and resolving claims of employment discrimination.¹⁰ In order to file a claim of sexual harassment, an individual must first file a complaint with the EEOC. The EEOC will investigate and attempt to resolve the claim. If it cannot resolve the claim, the complainant will then be allowed to file an action in federal court. In 2011, the most recent year for which statistics are available for, the EEOC and State Fair Employment Practices Agencies (“FEPAs,”) the agencies around the country that process claims at a local level, enforcing local equal employment opportunity laws which provide greater protections at a local level, and have a work sharing agreement with the EEOC, received 11,364 charges against employers for sexual harassment. Of those, 16.3% (approx. 1,852) of the charges were filed by males.¹¹ 12,571

⁹ Carol Kates, *Working Class Feminism and Feminist Unions: Title VII, the UAW and NOW*, Labor Studies Journal, Summer, 28 (1989).

¹⁰ 42 U.S.C. §2000e-4 (1995) Equal Employment Opportunity Commission

¹¹ The reason for such a small percentage of the claims being filed by male victims could be the stigma that is attached to a male claiming that he has been sexually harassed. Being sexually harassed is often not considered to be “masculine.”

charges were resolved in 2011, resulting in \$52.3 million in monetary benefits.¹² This data, however, does not even include any benefits obtained through litigation.

¹² Sexual Harassment Charges EEOC & FEPAs Combined: FY 1997 - FY 2010, UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (March 23, 2013), http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm.

GENDER AND GENDER ATTITUDES

Before one can fully understand gender attitudes, it is necessary to understand the socially constructed idea of “gender.” Dr. Milton Diamond defines gender as “. . . society’s idea of how boys or girls or men and women are expected to behave and should be treated.”¹³

Diamond goes on to illustrate that “. . . [a person] *is* a sex and [a person] *does* gender; that sex typically, but not always, represents what is between one’s legs, whereas gender represents what is between one’s ears.”¹⁴ Diamond’s example illustrates that gender is something that is created by society. The author describes the concept of masculinity and femininity throughout the article. He goes further to describe other gender identities, however, demonstrating that gender is not strictly a dichotomous structure.

Gender attitudes are one of the underlying factors that affect how an individual perceives workplace sexual harassment.¹⁵ Sexual harassment is often driven by a pursuit of power, rather than sexual attraction.¹⁶ This is further fueled by sexism and sexual stereotypes. When discussing gender attitudes, this paper will primarily focus on the concept of sexism.

¹³ Milton Diamond, *Sex and Gender are Different: Sexual Identity and gender Identity are Different*, 7 Clinical Child Psychology and Psychiatry 3, 323 (2002).

¹⁴ Ibid., 323.

¹⁵ Richard L. Wiener, Roni Reiter-Palmon, Ryan J. Winter, Erin Richter, Amy Humke & Evelyn Mader, *Complainant Behavioral Tone, Ambivalent Sexism, and Perceptions of Sexual Harassment*, 16 Psychology, Public Policy, And Law 56, 56-84 (2010).

¹⁶ Carrie N. Baker, *Race, Class, and Sexual Harassment in the 1970s*, 30 Feminist Studies 1, 7 (2004).

TYPES OF SEXISM

Sexism, in one form or another, is present in the daily lives of most Americans. Peter Glick and Susan Fiske state that sexism “has typically been conceptualized as a reflection of hostility toward women.”¹⁷ In their research, Glick and Fiske point out that, often times, sexism can be “ambivalent” in nature.¹⁸ What the researchers mean by this is that there are two distinct sets of sexist attitudes: hostile and benevolent.¹⁹ These two types of sexism, however, are often found together and, thus, create “ambivalent” attitudes. The researchers have also found that these attitudes are not exclusively directed toward women; they can be directed toward men as well.²⁰ A basic understanding of these different types of sexist attitudes is necessary in understanding the background of this present research, as it examines, among other things, how gender attitudes affect the amount of awards that a potential juror would award a male or female victim of sexual harassment.

HOSTILE SEXISM

Hostile sexism is a term that needs little explanation. It is the type of sexism that most people equate with “sexism” in general. This is a form of a patriarchal power construct. It is the

¹⁷ Peter Glick and Susan T. Fiske, *The Ambivalent Sexism Inventory: Differentiating Hostile and Benevolent Sexism*, 70 *Journal of Personality and Social Psychology* 3, 491 (1996).

¹⁸ *Ibid.*, 491.

¹⁹ *Ibid.*, 491.

²⁰ Peter Glick and Susan T. Fiske, *The Ambivalence Toward Men Inventory: Differentiating Hostile and Benevolent Beliefs About Men*, 23 *Psychology of Women Quarterly*, 520 (1999).

harmful attitudes that tend to be subjectively “negative”²¹ for the perceiver. These are the attitudes which, traditionally, have been directed toward women and have made it more difficult for them to gain employment, and more relevant to this research, have made them more frequently the targets of sexual harassment in the workplace.²² Many of these attitudes are characterized by perceiving one gender as “less favorable” than the other. An example of this would be the view that women are too easily offended.

BENEVOLENT SEXISM

Glick and Fiske classify the other type of sexism “Benevolent.”²³ This term is more difficult to explain than Hostile Sexism. This type of sexism is characterized by attitudes that are subjectively “positive” for the perceiver. These attitudes have been found to come from three main sources: paternalism, gender differentiation, and heterosexuality.

Glick defines paternalism as relating to an individual “in the manner of a father dealing with his children.”²⁴ This definition speaks to the heart of the first source of benevolent sexism. These attitudes are mainly about making the best decisions for the other gender, particularly

²¹ I place the term “negative” in quotes here because both forms of sexism are negative. However, the term “negative” is a good fit here, because one of the main differences between the two types of sexism is that benevolent sexism contains subjectively “positive” views one gender or the other. However, these subjectively “positive” attitudes should also be considered to be “negative,” as they may act to the detriment of an individual. They act to limit women’s opportunities in the workplace by breeding a set of stereotypes which can be difficult for a woman to overcome.

²² Glick (1996) at 492.

²³ Ibid., 493

²⁴ Ibid., 493

women. A good example of this type of attitude would be the belief that “[m]en should be willing to sacrifice their own well being in order to provide financially for the women in their lives.”²⁵

Gender differentiation refers to the tendency of individuals to group themselves together with those that share similar traits. For example, individuals of the same gender grouping themselves together. This is used as a basis in all cultures for making social distinctions. There are two subsets of gender differentiation: *competitive* and *complimentary*. In the case of *competitive* gender differentiation, men tend to view women as subordinate to them. As Glick phrases it, these attitudes tend to further the view that “[o]nly men are perceived as having the traits necessary to govern important social institutions.”²⁶

In the case of *complimentary* gender differentiation, men and women view each other as *completing* each other and filling opposite roles within society. For instance, men working outside of the home and women working within the home.

Heterosexuality, of course, refers to the sexual and romantic attractions between men and women. This creates ambivalence in men’s attitudes toward women because, on the one hand, they often depend on them for happiness (as a romantic relationship is ranked among the leading

²⁵ Ibid., 512.

²⁶ Ibid., 493.

sources of happiness in life, see Berscheid & Peplau, 1983) and on the other hand resenting women due to the vulnerability that this relationship creates.²⁷

PERCEPTIONS OF SEXUAL HARASSMENT

The EEOC has defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.”²⁸ Current research shows that men and women perceive sexual harassment, in markedly different ways.²⁹ Some scholars assert that men are much more likely to be accepting of sexual harassment than women.³⁰

Much of the current research supports the notion that sexual harassment training in the workplace does raise awareness and ultimately lower workers’ tolerance of sexual harassment. In other words, in the presence of a suitable sexual harassment training policy, workers are more likely to recognize sexual harassment in the workplace and less likely to tolerate it. It also shows that prolonged exposure to well-developed sexual harassment training in the workplace expands the types of actions that individuals consider to be inappropriate and harassing. For example, workers may now consider commenting on a woman’s attractiveness to be a form of harassment, when before they did not.

²⁷ Ibid., 494.

²⁸ 29 CFR §1604.11(a) (2001)

²⁹ J. Mitchell Pickerill, Robert A. Jackson & Meredith A. Newman, Changing Perceptions of Sexual Harassment in the Federal Workplace, 1987-94, 28 Law & Policy 3, 368-394 (2006).

³⁰ Heather Antecol & Deborah Cobb-Clark, *Does Sexual Harassment Training Change Attitudes? A View from the Federal Level*, 84 Social Science Quarterly 826, (2003).

Individuals' perceptions of a victim of sexual harassment can alter their perception of the sexual harassment itself. For instance, a person would be less likely to find an "aggressive" woman to be a victim of sexual harassment than a "timid" woman who has been subjected to the same behavior. This has a lot to do with ambivalent sexism and traditional gender stereotypes of "how women should behave."³¹

³¹ Richard L. Wiener, Roni Reiter-Palmon, Ryan J. Winter, Erin Richter, Amy Humke & Evelyn Mader, Complainant Behavioral Tone, Ambivalent Sexism, and Perceptions of Sexual Harassment, 16 *Psychology, Public Policy, and Law* 56, 56-84 (2010).

DEVELOPMENT OF SEXUAL HARASSMENT CASE LAW

THE ENFORCEMENT OF HOSTILE WORK ENVIRONMENT

*Meritor Sav. Bank, FSB v. Vinson*³² was the first U.S. Supreme Court case to address the issue of *hostile work environment* sexual harassment. Through this decision the Court, although it did not conclusively address all of the questions presented, provided guidance for the first time on the issue of employer liability for a supervisor's actions. Michelle Vinson (the victim of harassment) was hired as a bank teller at Meritor Savings Bank. Shortly after being hired, her supervisor, Sidney Taylor, began pressuring her to go on a date with him. After she agreed, he began pressuring her for sexual favors. She ultimately gave into his requests, out of fear of losing her job. The demands for sexual favors continued over the following months, rising to the level of "fondling" her in front of other employees, and finally rising to forcible rape on multiple occasions. She ultimately filed complaints against the employer through the EEOC, alleging a violation of Title VII due to a hostile work environment caused by sexual harassment from Taylor.

The Federal District Court ruled in the Meritor's favor, granting summary judgment because, according to the Federal District Court, Vinson failed to state a *prima facie* case of sexual harassment. A *prima facie* case is the facts that must be proven for the Court to recognize that there is potentially a Title VII claim of harassment. This includes showing that:

³² 477 U.S. 57 (1986)

(1) he or she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, (2) that this conduct was unwelcome, and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.” (quoting Ellison at 875.)

Vinson then appealed the matter to the Federal Circuit Court of Appeals for the District of Columbia. Court of Appeals reversed and remanded the case for further proceedings, holding that Vinson sufficiently proved a *prima facie* case of sexual harassment.³³ The United States Supreme Court granted Meritor's Petition for Writ of Certiorari. A Petition for Writ of Certiorari is the legal document that must be submitted to the United States Supreme Court that, in essence, asks the Court to hear a particular case. This Petition must be granted in order for the Court to issue a Writ of Certiorari, and accept the case. When the Supreme Court accepted to hear this case, it was presented with two major issues: (1) Whether a claim of hostile work environment sexual harassment is a form of sex discrimination actionable under Title VII and; (2) whether an employer was absolutely liable any time a supervisor sexually harassed a subordinate.

On the first issue the Court held that hostile work environment sexual harassment is a form of sex discrimination actionable under Title VII. This was a landmark decision because, until *Meritor*, there was no guidance from the U.S. Supreme Court to the lower federal Circuit Courts of Appeal on the issue of hostile work environment discrimination. Although the EEOC Guidelines³⁴ provided a framework for sexual harassment claims, there was not clarification between the Circuit Courts of Appeal on its interpretation. The ruling in *Meritor* provided

³³ *Id.*, 62

³⁴ 29 CFR §1604

guidance for the lower courts on the issue. In the Court's opinion, Justice Rhenquist wrote that "[w]ithout question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminates' on the basis of sex."³⁵ However, Rhenquist's opinion limited an employer's liability from strict liability to vicarious liability notice.³⁶ This is monumental because it means that sexual harassment is actionable under Title VII. The Court goes further in its opinion, asserting that ". . .the language of Title VII is not limited to 'economic' or 'tangible' discrimination. The phrase 'terms, conditions, or privileges of employment' evinces a congressional intent 'to strike at the entire spectrum of *disparate treatment* of men and women' in employment."³⁷ [emphasis mine] It also wrote that "[t]he EEOC Guidelines fully support the view that harassment leading to noneconomic injury can violate Title VII."³⁸ In other words, although the EEOC Guidelines, which are administrative rules, are not controlling upon the courts, the Supreme Court in *Meritor* held that they should be given some deference. *Meritor* is important, as it gives Title VII more discretion, so to speak, than just being completely open to judicial interpretation.

The Court also determined that employer liability in hostile environment sexual harassment cases is rooted in the law of agency. As such, it provides guidance to the lower federal courts on employer liability. The Court provided an avenue through which employers could be held liable for the harassing actions of supervisors, which until this point in time was an

³⁵ At 64

³⁶ *Id.*, 73

³⁷ At 64 quoting *Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 707.

³⁸ At 65.

issue of debate among the Federal Circuit Courts of Appeal.³⁹ The U.S. Supreme Court held however, that the Court of Appeals erred in stating that the employer was almost always liable in cases of supervisors harassing subordinates. In *Meritor*, however, the Court limited employer liability stating that it should be rooted in agency principles. The Court will eventually create an affirmative defense⁴⁰ for employers, which will be discussed at length later in this thesis. An affirmative defense is an argument which the employer may raise that would preclude it from liability for the actions of supervisors.

SETTLING THE DIFFERENT STANDARDS BETWEEN COURTS

*Rabidue v. Osceola Refining Co., a Div. of Texas-American Petrochemicals, Inc.*⁴¹ is a Federal Sixth Circuit Court of Appeals decision that held, in significant part, that claims of *hostile work environment* sexual harassment are not actionable until the working environment affects the psychological well-being of the victim. In this decision, the Sixth Circuit Court of Appeals took a more conservative approach toward Title VII claims than other circuits. The Sixth Circuit Court, however, did state near the beginning of its decision that:

[t]his circuit has entertained cases involving a spectrum of sexual harassment issues; however, it has not directly addressed a claim asserting a violations of Title VII based upon an alleged sexually discriminatory work environment which had not resulted in a

³⁹ The conflict between the lower courts was about which standard to apply when reviewing the facts in a sexual harassment case.

⁴⁰ Established in *Burlington Industries v. Ellerth*

⁴¹ 805 F.2d 611 (6th Cir. 1986)

tangible job detriment as joined by the issues of the plaintiff's charges herein.⁴²

In other words, this was the first time that the Sixth Circuit had addressed a claim of *hostile work environment* sexual harassment in which the purported victim had not been fired, demoted, or otherwise adversely affected in his or her employment.

The Sixth Circuit Court of Appeals in *Rabidue* found that in order for a plaintiff to successfully assert a claim of *hostile work environment* sexual harassment he or she must prove five things:

- (1) the employee was a member of a protected class;
- (2) the employee was subjected to unwelcomed sexual harassment in the form of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature;
- (3) the harassment complained of was based upon sex;
- (4) the charged sexual harassment had the effect of unreasonably interfering with the plaintiff's work performance and creating an intimidating, hostile, or offensive working environment *that affected seriously the psycho logical [sic] well-being of the plaintiff*; and
- (5) the existence of respondeat superior liability.⁴³ [emphasis mine]

The Sixth Circuit Court made it difficult for a person alleging a *hostile work environment* claim under Title VII to meet the standard. It was difficult because the language in *Rabidue* required that the harassment cause psychological harm to the victim. This meant that the harassment had to be more severe than in other Federal Circuits in order for it to be actionable under Title VII.

⁴² *Id.*, at 619.

⁴³ *Id.*, at 619.

The Sixth Circuit Court made it even more difficult for a victim of sexual harassment to establish a claim with Judge Krupansky writing the following language:

It is of significance to note that instances of complained of sexual conduct that prove equally offensive to male and female workers would not support a Title VII sexual harassment charge because both men and women were accorded like treatment.⁴⁴

In other words, a victim must be treated differently from someone of the opposite sex in order to state a claim. Using this language, a supervisor could hypothetically engage in inappropriate touching with both male and female subordinates as long as the supervisor treated both of the subordinates in a similar manner, there would arguably be no sexual harassment claim under Title VII.

Another thing that *Rabidue* established was that instances of *hostile work environment* sexual harassment had to be so severe that they would affect the psychological well-being of the victim, in order for them to be actionable pursuant to Title VII. The Sixth Circuit Court wrote:

Thus, in the absence of conduct which would interfere with that hypothetical reasonable individual's work performance and affect seriously the psychological well-being of that reasonable person under like circumstances, a plaintiff may not prevail on asserted charges of sexual harassment anchored in an alleged hostile and/or abusive work environment regardless of whether the plaintiff was actually offended by the defendant's conduct.⁴⁵

In addition to the above standard, the Sixth Circuit also embraced the "reasonable person" standard for examining sexual harassment. The standard examines the actions of the

⁴⁴ *Id.*, at 620

⁴⁵ *Id.*, at 620.

harasser through the eyes of a gender neutral “reasonable person” in order to determine if his or her actions should be considered sexual harassment as defined by Title VII.

In contrast to the standard set forth in the Sixth Circuit, *Ellison v. Brady*⁴⁶ was a Federal Ninth Circuit Court of Appeals case addressed whether the “Reasonable Person” or “Reasonable Woman” should be employed to evaluate when a supervisor’s behavior should be considered harassing. The Court of Appeals held that the more gender-focused of the two standards, the “Reasonable Woman” standard, should be employed in determining whether the acts of a supervisor should be considered to be harassing. The Court of Appeals provided the following example as part of their reason for choosing the more gender-focused of the two standards:

For example, because women are disproportionately victims of rape and sexual assault, women have a stronger incentive to be concerned with sexual behavior. Women who are victims of mild forms of sexual harassment may understandably worry whether a harasser’s conduct is merely a prelude to violent sexual assault.⁴⁷

By this, the Ninth Circuit Court of Appeals is pointing out the fact that a “reasonable woman” may perceive the actions of a harasser differently than a “reasonable man.” The opinion aims to make the evaluation more tightly focused on the victim, looking at the subjective intent of the harasser. The Ninth Circuit Court of Appeals also writes that the “Reasonable Person” standard, which had previously been employed until the decision of the case, favored a male-bias, making it more difficult for female victims to state her case.

⁴⁶ 924 F.2d 872 (9th Cir. 1991)

⁴⁷ At 879

Another issue in *Ellison* is to what level the severity of harassment must rise in order for it to be actionable under Title VII. Some courts, such as the Sixth Circuit Court of Appeals, had suggested that the harassment must be so severe as to nearly cause the victim psychological harm in order for it to be considered actionable. On the other hand, the Ninth Circuit Court of Appeals addresses the issue by writing the following:

It is the harasser's conduct which must be pervasive or severe, not the alterations in the conditions of employment. Surely, employees need not endure sexual harassment until their psychological well-being is seriously affected to the extent that they suffer anxiety and debilitation.⁴⁸

The Ninth Circuit Court of Appeals asserted the idea that the conduct must be severe and/or pervasive, but that the victim need not suffer *actual* psychological harm. In other words, if the victim reasonably perceives the conduct to be harassing, then the injury or harm to the victim has been established.

*Harris v. Forklift Systems, Inc.*⁴⁹ was the next landmark United States Supreme Court decision in the area of hostile work environment sexual harassment litigation. The opinion, written by Justice Sandra Day O'Connor⁵⁰, clarified the standard set forth in *Meritor*. The United States Supreme Court further refined what actions may constitute sexual harassment, as well as resolved a major conflict between the Sixth and Ninth Circuit Courts of Appeal as to

⁴⁸ Id., At 878

⁴⁹ 510 U.S. 17 (1993)

⁵⁰ Sandra Day O'Connor was the first female justice of the United States Supreme Court.

whether psychological injury must be present as a result of the sexual harassment in order for it to be actionable under Title VII.

One of the first things the United States Supreme Court did in its opinion was reaffirm the ruling set forth in *Meritor*. Justice O'Connor reiterated the fact that discrimination claims are not limited to "economic" or "tangible" job benefits. Rather, the injury of sexual harassment may also include "terms, conditions, or privileges of employment." O'Connor points out that the congressional intent was to not require any person to work in a discriminatorily hostile environment.

In her majority opinion, O'Connor writes that:

[c]onduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.

In other words, a "reasonable person" must perceive that the harassing conduct had the effect of altering working conditions in order for the harassment to be actionable. The United States Supreme Court ultimately reaffirmed its decision in *Meritor*, while adding the "reasonable person" standard, and clarifying the fact that the conduct must be *subjectively* perceived by the

victim to be abusive. However, the Supreme Court does warn though, that “. . . Title VII comes into play before the harassing conduct leads to a nervous breakdown.”⁵¹

EMPLOYER LIABILITY

In *Burlington Industries, Inc. v. Ellerth*⁵² and *Faragher v. City of Boca Raton*⁵³ the United States Supreme Court provided meaningful guidance on the issue of employer liability for cases in which the harasser is a supervisor or has authority or power over the subordinate. The Supreme Court established an affirmative defense for employers that may be raised in a sexual harassment case. The employer’s affirmative defense consists of two prongs: 1) the employer must prove that it has implemented and enforced an adequate workplace sexual harassment policy and 2) the employer must prove that the purported victim of sexual harassment failed to make use of the sexual harassment policy. In other words, if the employer can prove that they had an intra-office system to address sexual harassment claims and that the complainant did not utilize the system, the employer will not be held liable for sexual harassment. The defense, however, may only be raised in cases where there is no tangible adverse employment action. An example of this could be an unpleasant or uncomfortable working environment. Up until this point, many employers argued that a supervisor/harasser was acting “outside the scope of the agency relationship” in order to avoid liability. The

⁵¹ At 370.

⁵² 524 U.S. 742 (1998)

⁵³ 524 U.S. 775 (1998)

argument, however, did not always prevail for employers. Courts might hold employers liable for the harassing behavior of supervisors, whether or not they could have or should have known that the harassment was taking place.⁵⁴ Clearly, neither of the “solutions” adequately addressed the problem of employer liability for sexual harassment by supervisors. For this reason the *Ellerth/Faragher* affirmative defense is important. It provides a way for employers to avoid liability for sexual harassment if they institute and utilize a system of reporting sexual harassment and addressing it internally.

Although the United States Supreme Court expanded on the standards by which lower courts should examine sexual harassment charges in *Faragher*, it also admonished that “[a] recurring point in these opinions is that ‘simple teasing’ [citation omitted], offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment.’”⁵⁵ The statement instructs lower courts to examine each case of alleged harassment independently, but also to take into account that there is a level to which harassing actions by a supervisor must rise before the behavior of the supervisor can be considered “harassment,” within the purview of the Supreme Court.

⁵⁴ e.g., the Court of Appeals in *Meritor* found an employer to be strictly liable for the harassing behavior of a supervisor because the supervisor “. . . is necessarily an ‘agent’ of his employer for all Title VII purposes, since ‘even the appearance’ of such authority may enable him to impose himself on his subordinates” *id.*, at 70. The Supreme Court limited an employer’s liability by directing lower courts to examine and apply agency principles.

⁵⁵ At 788

The Supreme Court continues in its opinion to comment on the position of supervisors, and to expand upon the principle set forth in *Meritor* that lower courts should look to the law of agency when addressing employer liability. The Supreme Court in *Faragher* writes that

. . . supervisors have special authority enhancing their capacity to harass, and that the employer can guard against their misbehavior more easily because their numbers are by definition fewer than the numbers of regular employees.⁵⁶

Justice David Souter writes further that “[t]he agency relationship affords contact with an employee subjected to a supervisor’s sexual harassment, and the victim may well be reluctant to accept the risks of blowing the whistle on a superior.”⁵⁷ When addressing the issue of employer liability, the Supreme Court in *Faragher* and *Burlington* reiterate throughout its opinions that lower courts must look to agency principles in order to properly review the actions of supervisors. Before this, many employers in similar cases might argue that the supervisor was acting “outside the scope of his or her employment.” The argument is no longer a valid defense, as the Supreme Court has held that harassing supervisors are aided in their actions by the agency relationship, potentially making the employer liable for their actions.⁵⁸

⁵⁶ At 800

⁵⁷ At 803

⁵⁸ See *Meritor*

SAME-SEX SEXUAL HARASSMENT

In *Oncale v. Sundowner Offshore Services, Inc.*⁵⁹ the Supreme Court was first faced with the question of whether sexual harassment between members of the same sex was actionable under Title VII. The question came to the Supreme Court because there was conflict among the lower courts. Some lower courts held that same-sex sexual harassment claims were never actionable under Title VII because they did not fit within the original intent of Congress in passing Title VII.⁶⁰ Others found that claims are actionable only if the plaintiff could prove that the harasser was a homosexual.⁶¹ Still others found that harassment that is sexual in context is always actionable, regardless of the harasser's gender.⁶² The Supreme Court resolved the question for lower courts. Here the Supreme Court held that workplace sexual harassment is actionable if it is *motivated by sex*, regardless of the harasser's sex. The Supreme Court's opinion gives a good example of how harassment must be interpreted by the context of the situation. Consider one of the more conservative leaning members of the Court, Justice Antonin Scalia, wrote for the majority:

. . . that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. A professional football player's working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field – even if the

⁵⁹ 523 U.S. 75 (1998)

⁶⁰ e.g., the Fifth Circuit Court of Appeals (see 697 F.Supp. 1452 (N.D.Ill. 1988))

⁶¹ e.g., the Fourth Circuit Court of Appeals (see *McWilliams v. Fairfax County Board of Supervisors*, 72 F.3d 1191 (4th Cir. 1996) and *Wrightson v. Pizza Hut of America*, 99 F.3d 138 (4th Cir. 1996))

⁶² e.g., the Seventh Circuit Court of Appeals (see *Dow v. Belleville*, 119 F.3d 563 (7th Cir. 1997))

same behavior would reasonably be experienced as abusive by the coach's secretary (male or female) back at the office. The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed.⁶³

The overall theme of the case, however, may be better characterized by Justice Clarence Thomas's concurring opinion, in which he writes "...the [Supreme] Court stresses that in every sexual harassment case, the plaintiff must plead and ultimately prove Title VII's statutory requirement that there be discrimination 'because of . . . sex.'"⁶⁴

CONSTRUCTIVE DISCHARGE

In *Pennsylvania State Police v. Suders*⁶⁵ the Supreme Court addressed, for the first time, the issue of a "constructive discharge" in a *hostile work environment* sexual harassment case. Constructive discharge is a concept that the Supreme Court has defined as creating working conditions so intolerable that the employee has no option but to resign.⁶⁶ Justice Ruth Bader Ginsburg wrote "[w]e agree with the lower courts and the EEOC that Title VII encompasses employer liability for a constructive discharge."⁶⁷

The Supreme Court held in *Suders* that constructive discharge could be considered a "tangible employment action" for the purposes of the *Faragher/Ellerth* affirmative defense. The

⁶³ At 81

⁶⁴ *Id.*, at 82.

⁶⁵ 542 U.S. 129 (2004)

⁶⁶ See *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883(1984).

⁶⁷ *Id.*, at 143

Supreme Court instructs lower courts to interpret this issue on a case-by-case basis, however, by stating that the affirmative defense could be available in some cases of constructive discharge.

MIXED-MOTIVE SEX DISCRIMINATION

*Price Waterhouse v. Hopkins*⁶⁸ was the first United States Supreme Court case to address the issue of *mixed-motive sex discrimination* and *disparate impact*. *Mixed-motive* discrimination occurs when an employer makes an adverse employment action relying on a discriminatory reason as well as a “legitimate” reason. The Court held that if the employer can prove that it would have made the adverse decision regardless of the discriminatory gender factor, that the employer may not be a violation of Title VII. If, however, the employer cannot prove that the action would have happened regardless, it is actionable.

The Supreme Court wrote that “[w]e take these words to mean that gender must be irrelevant to employment decisions. To construe the words ‘because of’ as colloquial shorthand for ‘but-for causation,’ as does *Price Waterhouse*, is to misunderstand them.”⁶⁹ Justice William Brennan writes that:

[e]ach time, we have concluded that the plaintiff who shows that an impermissible motive played a motivating part in an adverse employment decision has thereby place upon the defendant the burden to show that it would have made the same decision in the

⁶⁸ 490 U.S. 228 (1989)

⁶⁹ *Id.*, at 240

absence of the unlawful motive. Our decision today treads this well-worn path.⁷⁰

The Supreme Court, in other words, requires that an employer that makes an adverse employment decision for *mixed-motive* reasons must be able to prove that it would have made the same decision absent a discriminatory motive in order to avoid liability.

In the case of *Price Waterhouse*, for instance, the complainant, Anne Hopkins was denied a promotion due, in part, to the fact that she was determined to be “too aggressive” for a woman and that she did not conform to gender-stereotypes. The employer also relied on some “legitimate” reasons, thus creating “mixed-motives.” The Supreme Court goes further to hold that “[a]n employer may not, in other words, prevail in a mixed-motives case by offering a legitimate and sufficient reason for its decision if that reason did not motivate it at the time of the decision.”⁷¹

This type of a dynamic in hiring and promotion practices creates a very difficult environment for women or men to advance in their careers due to gender stereotyping. The Supreme Court illustrates this idea by stating that: “[a]n employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind.”⁷²

⁷⁰ *Id.*, at 250

⁷¹ *Id.*, at 252

⁷² *Id.*, at 251

DAMAGES IN SEXUAL HARASSMENT CASES

In *Kolstad v. American Dental Association*⁷³ the Supreme Court examines the issue of when punitive damages may be assessed against an employer in a Title VII violation based on sex. The Supreme Court rejects the previously held view of many lower courts that punitive damages can only be assessed in cases based upon the *employer's* egregious conduct. The Supreme Court further holds that lower courts should look instead toward the *actor's* subjective state of mind in evaluating the possibility for punitive damages. The Supreme Court writes that: “[t]he conduct committed with the specified mental state may be characterized as egregious, however, is not to say that employers must engage in conduct with some independent, ‘egregious’ quality before being subject to a punitive award.”⁷⁴ Justice O’Connor uses an example to explain the previous language as follows:

On this view, even an employer who makes every effort to comply with Title VII would be held liable for the discriminatory acts of agents acting in a ‘managerial capacity.’

Holding employers liable for punitive damages when they engage in good faith efforts to comply with Title VII, however, is in some tension with the very principles underlying common law limitations on vicarious liability for punitive damages – that it is ‘improper ordinarily to award punitive damages against one who himself is personally innocent and therefore liable only vicariously.’⁷⁵

The Supreme Court in *Kolstadt* ultimately finds that an employer’s conduct does not need to be independently “egregious” in order for a lower court to award punitive damages. The

⁷³ 527 U.S. 526 (1999)

⁷⁴ *Id.*, at 538

⁷⁵ *Id.*, at 544

lower courts may award punitive damages against an employer solely for the actions of a supervisor if the actions rise to a certain level.⁷⁶ The actions must be “egregious” in order to illicit an award of punitive damages.

⁷⁶ *Id.*, at 545

GENDER AND WORKPLACE SEXUAL HARASSMENT

DEVELOPING THE SURVEY

Gender and Workplace Sexual Harassment (“Survey”) was developed by Anthony Ferraro and this writer in order to assess how a potential juror’s gender attitudes, attitudes toward sexual harassment, and the gender of a victim of sexual harassment in a hypothetical sexual harassment scenario affected award amounts. The survey was developed by combining two previously published scales to measure gender attitudes⁷⁷ and another previously published scale used to measure sexual harassment attitudes⁷⁸. Ferraro and I also developed a hypothetical sexual harassment scenario that interchanged the sex of the actors (“Social Scenario Rating.”) The Survey also contained a demographic section that included gender and age, among several other categories. The Survey was completed by 268 participants. Of which, about half received a version of the Social Scenario Rating with a male victim of sexual harassment from a female supervisor and the other half received a version with a female victim and a male supervisor. Other than the “gender switch” the Social Scenario Rating was identical.

⁷⁷ Ambivalent Sexism Inventory, Ambivalence Toward Men Inventory

⁷⁸ Sexual Harassment Attitudes Scale

EXPECTED RESULTS

The expected results at the outset of the research was that potential jurors, especially jurors with higher levels of sexism, as determined by the first three scales, would be more likely to award damages to a female victim rather than a male victim due to the presence of paternalistic “protectionist views” of women that would typically act in favor of female victims.

DISTRIBUTION

The Survey was hosted on Surveygizmo.com and distributed mainly via social media. The survey was also distributed to students in several classes at the University of Central Florida via e-mail.

METHOD OF INTERPRETING DATA

The responses to various sections of the survey were coded as follows:

The responses on the ASI, AMI, and SHAS were averaged (as per their “grading” instructions) and interpreted based upon the authors’ instructions. For these portions of the survey, participants were provided with a 6 point likert-scale (0-5). A higher average on the ASI and AMI indicated that the participant had a higher level of “ambivalent” sexism present in his

or her gender attitudes. A higher average on the SHAS indicated that the participant was more tolerant and accepting of sexual harassment in the workplace.

The “version” of the survey that was given to each participant was classified as either “1” if the participant received the version with a female victim and a male supervisor and “2” if the version contained a male victim and female subordinate.

The responses to each question following the Social Scenario Rating were graded individually and converted to a “dummy variable”⁷⁹ of either “0” if they favored the victim and a “1” if the response did not favor the victim. The answers were construed to either favor the victim or not favor the victim as follows:

67. “Is [victim]’s claim valid?” – an answer of “yes” was construed to favor the victim and an answer of “no” was construed not to favor the victim.

68. “Should [harasser] be liable for [victim]’s claim?” – an answer of “yes” was construed to favor the victim and an answer of “no” was construed not to favor the victim.

69. “Should Fullwillow Credit Union be liable for [victim]’s claim?” – an answer of “yes” was construed to favor the victim and an answer of “no” was construed not to favor the victim.

⁷⁹ The participants offered answers based on a six-point likert scale, which was then converted into a “dichotomous” response of either “favors victim” or “does not favor victim.”

70. “Should [victim] be awarded back pay of \$51,600 for wages and benefits lost since [his/her] firing?” – an answer of “yes” was construed to favor the victim and an answer of “no” was construed as not to favor the victim.

71. “How much should [victim] be compensated for any actual psychological damage or emotional distress [he/she] may have suffered?” – an answer of “\$87,500,” “\$350,000,” “\$1,400,000,” or “all of these amounts are too low” was construed to favor the victim while an answer of “all of these amounts are too high” or “[victim] should not be awarded damages for psychological damage or emotional distress” were construed not to favor the victim.

72. “How much should [victim] be awarded in punitive damages from [harasser] (award amount used to punish the offender)?” – an answer of “\$37,000,” “\$150,000,” “\$600,000,” or “all of these amounts are too low” was construed to favor the victim while an answer of “all of these amounts are too high” or “[victim] should not be awarded punitive damages from [harasser]” was construed not to favor the victim.

73. “How much should [victim] be awarded in punitive damages from the credit union (award amount used to punish the offender)?” – an answer of “\$581,250,” “\$2,325,000,” “\$9,300,000,” or “all of these amounts are too low” was construed to favor the victim while an answer of “all of these amounts are too high” or “[victim] should not be awarded punitive damages from the credit union” were construed not to favor the victim.

An answer of “yes” to questions 67-69 were construed as favoring the victim because they established a participant’s belief that the victim in the Social Scenario Rating had a valid

claim of sexual harassment, and that either the harasser or the employer should be held liable for it. An answer of “no” on these questions did not establish that the participants held such views.

An answer of “yes” on question 70 was construed as favoring the victim because it awards compensatory damages, to wit: back-pay. This demonstrates that the participant believed that the victim was entitled to at least some form of redress. An answer of “no” does not favor the victim because it fails to establish this view.

For questions 71-73, an answer that awarded the victim any amount of money, or stated that “all of these amounts are too low,” was classified as favoring the victim, while a response providing for no awards or that “all of these amounts are too high” was construed as not favoring the victim. This is because in the former case, the participant was willing to either assign an award amount to the victim, or provide for a higher award amount than was listed by the authors, demonstrating that they believed that the victim was entitled to some substantial amount of awards. In the latter case, however, the participants either did not believe that an award was appropriate, or believed that all of the award amounts listed by the authors were in excess. This shows that those participants would be more reluctant to provide any monetary relief to the victim in the Social Scenario Rating.

The sex of the participant was classified as “0” if he was a male or “1” if she was a female.

The age of the participant was classified as “0” if he or she was not yet an adult when the decision in *Meritor* (the first landmark sexual harassment case) was decided and a “1” if he or she was an adult when the opinion was issued.⁸⁰

The coded data was then run through SPSS and analyzed via Principal Component Analysis, Inter-item Correlations, and T-tests. These tests were used because they were the best means to analyze the available data.

RESULTS

Appendices A through F show the statistical analysis of the survey responses as follows:

Appendix A demonstrates that the responses to the Social Scenario Rating questions were significantly related. The participants’ responses as to whether the victim had a claim of sexual harassment related to the issue of supervisor liability with a correlation of .722, the issue of employer liability with a correlation of .722, the issue of whether he or she is entitled to back pay with a correlation of .796, and with the amount of punitive damages that should be assessed to the supervisor with a correlation of .582. The issue of the supervisor’s liability related to the issue of back pay with a correlation of .688 and the issue of whether punitive damages should be assessed against the supervisor with a correlation of .619. The issue of employer liability had similar results, with a correlation of .741 to back pay, and .511 to punitive damages assessed against the employer. The question of back pay related to the issue of assessing punitive

⁸⁰ This classification appears to be irrelevant to the present research, as there were not enough participants that were adults when *Meritor* was decided to provide any meaningful analysis, although these statistics were analyzed alongside the present data. This will, therefore, not be discussed at length.

damages against the supervisor with a correlation of .610. Whether the victim should be awarded damages for psychological and emotional damages related to the issue of punitive damages against the supervisor with a correlation of .600 and to the issue of punitive damages against the employer with a correlation of .586. What the data suggests is that a participant is likely to either favor the victim in most of these responses (or not favor the victim), but that the responses appear to be inter-related. It is not merely random.

Appendix B further breaks down the responses, illustrating only the correlations between the first four questions of the Social Scenario Rating encompassing whether the victim has a claim and whether the supervisor or employer should be held liable.

Appendix C illustrates a surprising interpretation of the statistics. The participants were more likely to favor the victim in the version with a male victim than they were in the version with a female victim. For every single question of the Social Scenario Rating, the mean answer is lower for the responses on version 2, indicating a higher tendency to favor the victim in version 2 (male victim). The results were as follows:

As to question number 67, addressing whether the victim has a claim of sexual harassment, the mean score for the version with a female victim was .74, while the mean score for the version including a male victim was .64. This shows that participants were more willing (by a mean score of .10) to consider a claim by a male victim to be valid.

As to question number 68, addressing whether the supervisor should be held liable, the mean score for a female victim was .78, while the mean score for a male victim was .69. Once

again, this favors the male victim by .09, indicating a tendency to find valid a claim of sexual harassment by a male victim.

As to question number 69, addressing whether the employer should be held liable, the mean score for a female victim was .79, while it was .71 for a male victim. This continues to illustrate the trend that participants were more likely to favor the male victim, in this case, by a margin of .08.

As to question number 70, addressing whether the victim is entitled to back pay, the mean score for a female victim was .78, while the mean score for a male victim was .70. Once again illustrating the same principle listed above.

As to question number 71, addressing how much, if anything at all, the victim should receive as compensation for psychological and emotional harm, the mean score for female victims was .89, while it was .88 in the case of a male victim. This is a much smaller margin than the others, but still follows the same trend that participants are more likely to award damages to male victims.

As for question number 72, addressing how much, if anything at all, the victim should receive in punitive damages against the supervisor, the mean score for female victims was .85, while the mean score for male victims was .79, once again, continuing the trend.

As for the last question, number 73, addressing how much, if anything at all, the victim should receive in punitive damages against the employer, the mean score for female victims was .92 and the mean score for male victims was .83, a difference of .09.

These results, in particular, are provide important implications to the current research because they should that there is a clear difference between a participant's tendency to find liability and award damages in the case of a female victim and in the case of a male victim. This goes to the crux of the main question asked at the outset of this research, to wit: whether the gender a victim of sexual harassment plays a role in the award amounts that would be offered by a jury.

Appendix D demonstrates that there is a high level of significance (lower than .05) for all of the questions except the one concerning damages for psychological and emotional suffering. This suggests that all of these questions, with the exception of that one, provide meaningful data as to the validity of the correlations between the responses to the Social Scenario Rating questions with regard to which version of the Social Scenario Rating the participant received. This further cements the notion that whether it is a male being harassed by a female supervisor or vice-versa does have a significant effect on the responses provided.

Appendix E illustrates that male and female participants were close in their responses as to whether they favored the victim or not. The most notable statistic from this table is that male participants were significantly more likely to favor the victim, regardless of the victim's sex, on the issue of assessing punitive damages against the employer.

Appendix F demonstrates that the participants' responses on the ASI, AMI, and SHAS are all significantly related. It also shows that the responses on all of the questions of the Social Scenario Rating are also significantly related. It is notable that the responses on the ASI are significantly related to the responses to employer liability and back pay compensation.

LIMITATIONS OF STUDY

The largest limitation of this study was the fact that the responses to the Social Scenario Rating were converted to a “dichotomous” response, rather than left as a scale. This is due, in part, to the fact that half of the Social Scenario Rating questions utilized a “dichotomous” nominal response, while the other half were framed using a scale response. The responses must be uniform in order to keep the results for this section completely comparable. Thus, the conversion to all “dichotomous” responses. Using the “dichotomous” responses rather than the scale has not hindered the results, though a more in-depth analysis could be conducted if the responses were to remain in their original form. The data that has been generated as a result of this research is certainly useful, and could be analyzed and interpreted far beyond what has been done in the present setting. With a much more in-depth analysis of the data one may be able to draw many more relevant conclusions.

Another way that the research could benefit is from more responses. Due to the time constraints of the research, I was able to gather 268 usable responses. Although this was a large enough sample to produce significant data, more relevant conclusions could be drawn from continued distribution and a larger, and possibly more diverse, sample size.

IMPLICATION OF RESULTS

The most important implication that these results shows is that there is a marked difference between participants’ responses with respect to the gender of the victim of harassment

in the social scenario. The data suggests that participants were more likely to favor a male victim than a female victim.

It is also important to note that the responses to the Social Scenario Rating questions are significantly related to each other. The significance provides support for any conclusions drawn from the analysis of the data, as the responses are clearly not just random answers to the questions presented in the survey; each response has definite meaning and carries weight as far as the research is concerned.

Another important implication that can be drawn is that participants were more likely not to favor the victim in the presented social scenario. The data may illustrate the struggle that any victim of *hostile work environment* sexual harassment might face in pursuing his or her claim in a jury trial, even after facing the hurdles that are imposed by requiring the complaint to first be processed by the EEOC.

CONCLUSION

In conclusion, when looking at the development of sexual harassment law through the lens of gender attitudes and attitudes about sexual harassment, one can see that much progress has been made since the passing of Title VII and the inclusion of “sex” as a protected class. After the passing of Title VII and the Supreme Court decisions discussed *Supra*, women have an avenue for legal redress when they do experience disparate treatment or disparate impact in employment. The Supreme Court decisions, however, have created more requirements for a claim of sexual harassment to even be heard in the Court. The complainant must first prove a *prima facie* case and then the employer has the opportunity to raise the *Faragher/Elzerth* affirmative defense. It seems as if the Supreme Court is encouraging employers to attempt to police themselves for compliance with Title VII.

The survey results are of particular interest, as they show a bias toward male victims. This could demonstrate that the participants were more willing to attribute blame to the female victim for the fact that she was harassed than they were to male victim.

Developments in equal rights laws continue to happen even today. During his last term, President Barack Obama signed into law the Lily Ledbetter Fair Pay Act, which provides an avenue for women to pursue Equal Pay Act claims. The Supreme Court is also expected to hand down a ruling on the constitutionality of the Defense of Marriage Act. These are both pivotal issues in today’s society, and they both have implications for future developments in the continuing Civil Rights movements.

Although some progress has been made, many limitations on a victim of sexual harassment's rights have been put in place. There is much more work to be done. Women, as a class, still do not make the same income as men do, and there are far fewer management opportunities for women than for men.⁸¹ The only way to correct this is with a forward-thinking generation that is willing and ready to address and correct the wrongs and inequalities that have been put into place by past generations.

⁸¹ Laura Fitzpatrick, *Why do Women Still Earn Less than Men?*, Time (April 20, 2010)

APPENDIX A: SPSS Analysis Part 1

Inter-Item Correlation Matrix

	VCLAIM	SLIABLE	ELIABLE	BPCOMP	PECOMP	SPDAMAGE	EPDAMAGE
VCLAIM	1.000	.722	.722	.796	.489	.582	.450
SLIABLE	.722	1.000	.508	.688	.475	.619	.331
ELIABLE	.722	.508	1.000	.741	.443	.420	.511
BPCOMP	.796	.688	.741	1.000	.459	.610	.499
PECOMP	.489	.475	.443	.459	1.000	.600	.586
SPDAMAGE	.582	.619	.420	.610	.600	1.000	.526
EPDAMAGE	.450	.331	.511	.499	.586	.526	1.000

Table 1

APPENDIX B: SPSS Analysis Part 2

Inter-Item Correlation Matrix

	VCLAIM	SLIABLE	ELIABLE	BPCOMP
VCLAIM	1.000	.722	.722	.796
SLIABLE	.722	1.000	.508	.688
ELIABLE	.722	.508	1.000	.741
BPCOMP	.796	.688	.741	1.000

Table 2

APPENDIX C: SPSS Analysis Part 3

Group Statistics					
	Version	N	Mean	Std. Deviation	Std. Error Mean
VCLAIM	Version 1	144	.74	.442	.037
	Version 2	124	.64	.483	.043
SLIABLE	Version 1	144	.78	.417	.035
	Version 2	124	.69	.463	.042
ELIABLE	Version 1	144	.79	.408	.034
	Version 2	124	.71	.456	.041
BPCOMP	Version 1	144	.78	.412	.034
	Version 2	124	.70	.459	.041
PECOMP	Version 1	144	.89	.315	.026
	Version 2	124	.88	.327	.029
SPDAMAGE	Version 1	144	.85	.354	.030
	Version 2	124	.79	.409	.037
EPDAMAGE	Version 1	144	.92	.267	.022
	Version 2	124	.83	.377	.034

Table 3

APPENDIX D: SPSS Analysis Part 4

Independent Samples Test										
		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2- tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
VCLAIM	Equal variances assumed	11.534	.001	1.751	266	.081	.099	.057	-.012	.210
	Equal variances not assumed			1.740	251.871	.083	.099	.057	-.013	.211
SLIABLE	Equal variances assumed	9.606	.002	1.566	266	.118	.084	.054	-.022	.190
	Equal variances not assumed			1.554	250.029	.121	.084	.054	-.022	.191
ELIABLE	Equal variances assumed	9.525	.002	1.555	266	.121	.082	.053	-.022	.186
	Equal variances not assumed			1.542	249.111	.124	.082	.053	-.023	.187
BPCOMP	Equal variances assumed	9.564	.002	1.560	266	.120	.083	.053	-.022	.188
	Equal variances not assumed			1.548	249.580	.123	.083	.054	-.023	.189
PECOMP	Equal variances assumed	.251	.617	.251	266	.802	.010	.039	-.068	.087
	Equal variances not assumed			.250	256.966	.803	.010	.039	-.068	.088
SPDAMAGE	Equal variances assumed	7.535	.006	1.370	266	.172	.064	.047	-.028	.156
	Equal variances not assumed			1.356	245.278	.176	.064	.047	-.029	.157
EPDAMAGE	Equal variances assumed	23.361	.000	2.356	266	.019	.093	.039	.015	.171
	Equal variances not assumed			2.298	217.239	.023	.093	.040	.013	.173

Table 4

APPENDIX E: SPSS Analysis Part 5

Group Statistics

	Gender	N	Mean	Std. Deviation	Std. Error Mean
VCLAIM	Male	109	.67	.472	.045
	Female	159	.70	.458	.036
SLIABLE	Male	109	.73	.444	.043
	Female	159	.74	.439	.035
ELIABLE	Male	109	.76	.428	.041
	Female	159	.75	.435	.035
BPCOMP	Male	109	.74	.439	.042
	Female	159	.75	.435	.035
PECOMP	Male	109	.87	.336	.032
	Female	159	.89	.310	.025
SPDAMAGE	Male	109	.82	.389	.037
	Female	159	.83	.377	.030
EPDAMAGE	Male	109	.84	.364	.035
	Female	159	.91	.293	.023

Table 5

APPENDIX F: SPSS Analysis Part 6

Correlations

		ASI	AMI	SHAS	VCLAIM	SLIABLE	ELIABLE	BPCOMP	PECOMP	SPDAMAGE	EPDAMAGE
ASI	Pearson Correlation	1	.750**	.670**	.098	.038	.126*	.121*	.110	.048	.016
	Sig. (2-tailed)		.000	.000	.108	.540	.039	.048	.071	.431	.790
	N	268	268	268	268	268	268	268	268	268	268
AMI	Pearson Correlation	.750**	1	.558**	.029	-.021	.056	.031	.000	-.073	-.003
	Sig. (2-tailed)	.000		.000	.636	.729	.364	.619	.995	.234	.961
	N	268	268	268	268	268	268	268	268	268	268
SHAS	Pearson Correlation	.670**	.558**	1	.025	.009	.040	.021	.042	-.027	-.018
	Sig. (2-tailed)	.000	.000		.685	.883	.513	.730	.496	.655	.774
	N	268	268	268	268	268	268	268	268	268	268
VCLAIM	Pearson Correlation	.098	.029	.025	1	.722**	.722**	.796**	.489**	.582**	.450**
	Sig. (2-tailed)	.108	.636	.685		.000	.000	.000	.000	.000	.000
	N	268	268	268	268	268	268	268	268	268	268
SLIABLE	Pearson Correlation	.038	-.021	.009	.722**	1	.508**	.688**	.475**	.619**	.331**
	Sig. (2-tailed)	.540	.729	.883	.000		.000	.000	.000	.000	.000
	N	268	268	268	268	268	268	268	268	268	268
ELIABLE	Pearson Correlation	.126*	.056	.040	.722**	.508**	1	.741**	.443**	.420**	.511**
	Sig. (2-tailed)	.039	.364	.513	.000	.000		.000	.000	.000	.000
	N	268	268	268	268	268	268	268	268	268	268
BPCOMP	Pearson Correlation	.121*	.031	.021	.796**	.688**	.741**	1	.459**	.610**	.499**
	Sig. (2-tailed)	.048	.619	.730	.000	.000	.000		.000	.000	.000
	N	268	268	268	268	268	268	268	268	268	268
PECOMP	Pearson Correlation	.110	.000	.042	.489**	.475**	.443**	.459**	1	.600**	.586**
	Sig. (2-tailed)	.071	.995	.496	.000	.000	.000	.000		.000	.000

	N	268	268	268	268	268	268	268	268	268	268
SPDAMAGE	Pearson Correlation	.048	-.073	-.027	.582**	.619**	.420**	.610**	.600**	1	.526**
	Sig. (2-tailed)	.431	.234	.655	.000	.000	.000	.000	.000		.000
	N	268	268	268	268	268	268	268	268	268	268
EPDAMAGE	Pearson Correlation	.016	-.003	-.018	.450**	.331**	.511**	.499**	.586**	.526**	1
	Sig. (2-tailed)	.790	.961	.774	.000	.000	.000	.000	.000	.000	
	N	268	268	268	268	268	268	268	268	268	268

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

Table 6

APPENDIX G: SURVEY

Gender and Workplace Sexual Harassment

Page 1



The Effects of Gender on Jury Award Amounts in Workplace Sexual Harassment Cases

Informed Consent

Principal Investigator(s): Chad Cronon, J.D.

Sub-Investigator(s): Anthony Ferraro, Undergraduate Researcher

Ian Waldick, Undergraduate Researcher

Investigational Site(s): University of Central Florida, Legal Studies Department

Introduction: Researchers at the University of Central Florida (UCF) study many topics. To do this we need the help of people who agree to take part in a research study. You are being invited to take part in a research study which will include about 200 people. You must be 18 years of age or older to be included in the research study.

The person doing this research is Dr. Chad Cronon, of the UCF Legal Studies Department. UCF students learning about research are helping to do this study as part of the research team. Their names are: Anthony Ferraro and Ian Waldick..

What you should know about a research study:

- A research study is something you volunteer for.
- Whether or not you take part is up to you.
- You should take part in this study only because you want to.
- You can choose not to take part in the research study.
- You can agree to take part now and later change your mind.
- Whatever you decide to do will not be held against you.
- Feel free to ask all the questions you want, via email, before you decide.
- You must be 18 years of age or older to participate.

Purpose of the research study: The purpose of this study is to determine the role that gender and gender biases play in jury award amounts in workplace sexual harassment cases. We will be examining the correlation between participants' views about gender and views about sexual harassment.

What you will be asked to do in the study: Participants will be asked to complete an online survey about gender and sexual harassment beliefs. This survey can be completed from any computer with internet access, and it must be completed in one sitting. This survey will be hosted on SurveyGizmo. If a question makes you uncomfortable, or you would rather not answer, you will not be penalized for skipping it. There are no wrong answers to the questions asked.

Location: Participants may take the survey on any computer that has internet access.

Time required: We expect that the research will take approximately thirty minutes.

Compensation or payment: There is no direct compensation for taking part in this study.

Anonymous research: The research will not require the disclosure of any identifying information. All of the information that you provide will be treated as confidential.

Study contact for questions about the study or to report a problem: If you have questions, concerns, or complaints, or think the research has caused you any detriment, please contact Dr. Chad Cronon, Faculty Supervisor, Department of Legal Studies at (407) 823-2603 or by email at chad.cronon@ucf.edu.

IRB contact about your rights in the study or to report a complaint: Research at the University of Central Florida involving human participants is carried out under the oversight of the Institutional Review Board (UCF IRB). This research has been reviewed and approved by the IRB. For information about the rights of people who take part in research, please contact: Institutional Review Board, University of Central Florida, Office of Research & Commercialization, 12201 Research Parkway, Suite 501, Orlando, FL 32826-3246 or by telephone at (407) 823-2901. You may also talk to them for any of the following:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You want to get information or provide input about this research.

I have read and understand the informed consent. I agree to participate in this survey and understand that I may discontinue the survey at anytime, without penalty. *

- ☐ Yes
- ☐ No
-

Page 2

Below is a series of statements concerning men and women and their relationships in contemporary society. Please indicate the degree to which you agree or disagree with each statement using the following scale: 0 = disagree strongly; 1 = disagree somewhat; 2 = disagree slightly; 3 = agree slightly; 4=agree somewhat; 5 = agree strongly.

1. No matter how accomplished he is, a man is not truly complete as a person unless he has the love of a woman. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

2. Many women are actually seeking special favors, such as hiring policies that favor them over men, under the guise of asking for "equality." *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

3. In a disaster, women ought not necessarily to be rescued before men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

4. Most women interpret innocent remarks or acts as being sexist. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

5. Women are too easily offended. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

6. People are often truly happy in life without being romantically involved with a member of the

other sex. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

7. Feminists are not seeking for women to have more power than men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

8. Many women have a quality of purity that few men possess. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

9. Women should be cherished and protected by men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

10. Most women fail to appreciate fully all that men do for them. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

11. Women seek to gain power by getting control over men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

12. Every man ought to have a woman whom he adores. *

	0	1	2	3	4	5	
Disagree	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree

Strongly	⤵	⤵	⤵	⤵	⤵	⤵	Strongly
<hr/>							
13. Men are complete without women. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							
14. Women exaggerate problems they have at work. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							
15. Once a woman gets a man to commit to her, she usually tries to put him on a tight leash. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							
16. When women lose to men in a fair competition, they typically complain about being discriminated against. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							
17. A good woman should be set on a pedestal by her man. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							
18. There are actually very few women who get a kick out of teasing men by seeming sexually available and then refusing male advances. *							
	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
<hr/>							

19. Women, compared to men, tend to have a superior moral sensibility. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

20. Men should be willing to sacrifice their own well being in order to provide financially for the women in their lives. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

21. Feminists are making entirely reasonable demands of men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

22. Women, as compared to men, tend to have a more refined sense of culture and good taste. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

Page 3

Below are a series of statements concerning men and women and their relationships in contemporary society. Please indicate the degree to which you agree or disagree with each statement using the scale below: 0 = disagree strongly; 1 = disagree somewhat; 2 = disagree slightly; 3 = agree slightly; 4 = agree somewhat; 5 = agree strongly.

23. Even if both members of a couple work, the woman ought to be more attentive to taking care of her man at home. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

24. A man who is sexually attracted to a woman typically has no morals about doing whatever it

takes to get her in bed. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

25. Men are less likely to fall apart in emergencies than women are. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

26. When men act to "help" women, they are often trying to prove they are better than women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

27. Every woman needs a male partner who will cherish her. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

28. Men would be lost in this world if women weren't there to guide them. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

29. A woman will never be truly fulfilled in life if she doesn't have a committed, long-term relationship with a man. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

30. Men act like babies when they are sick. *

	0	1	2	3	4	5	
--	---	---	---	---	---	---	--

Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly
------------------------------	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------	-----------------------	---------------------------

31. Men will always fight to have greater control in society than women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

32. Men are mainly useful to provide financial security for women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

33. Even men who claim to be sensitive to women's rights really want a traditional relationship at home, with the woman performing most of the housekeeping and child care. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

34. Every woman ought to have a man she adores. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

35. Men are more willing to put themselves in danger to protect others. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

36. Men usually try to dominate conversations when talking to women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

37. Most men pay lip service to equality for women, but can't handle having a woman as an equal. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

38. Women are incomplete without men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

39. When it comes down to it, most men are really like children. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

40. Men are more willing to take risks than women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

41. Most men sexually harass women, even if only in subtle ways, once they are in a position of power over them. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

42. Women ought to take care of their men at home, because men would fall apart if they had to fend for themselves. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

Page 4

Below are a series of statements concerning sexual harassment in a variety of scenarios. Please indicate the degree to which you agree or disagree with each statement using the scale below: 0 = disagree strongly; 1 = disagree somewhat; 2 = disagree slightly; 3 = agree slightly; 4 = agree somewhat; 5 = agree strongly.

43. An attractive woman has to expect sexual advances and should learn how to handle them. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

44. Most men are sexually teased by many of the women with whom they interact on the job or at school. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

45. Most women who are sexually insulted by a man provoke his behavior by the way they talk, act, or dress. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

46. A man must learn to understand that a woman's "no" to his sexual advances really means "no." *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

47. It is only natural for a woman to use her sexuality as a way of getting ahead in school or at work. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

48. An attractive man has to expect sexual advances and should learn how to handle them. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

49. I believe that sexual intimidation is a serious social problem. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

50. It is only natural for a man to make sexual advances to a woman he finds attractive. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

51. Innocent flirtations make the workday or school day interesting. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

52. Encouraging a professor's or a supervisor's sexual interest is frequently used by women to get better grades or to improve their work situations. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

53. One of the problems with sexual harassment is that some women can't take a joke. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

54. The notion that what a professor does in class may be sexual harassment is taking the idea of sexual harassment too far. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

55. Many charges of sexual harassment are frivolous and vindictive. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

56. A lot of what people call sexual harassment is just normal flirtation between men and women. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

57. Sexual assault and sexual harassment are two completely different things. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

58. Sexual harassment refers to those incidents of unwanted sexual attention that aren't too serious. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

59. Sexual harassment has little to do with power. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

60. Sexism and sexual harassment are two completely different things. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

61. All this concern about sexual harassment makes it harder for men and women to have normal relationship. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

Page 5

Below are a series of statements concerning sexual harassment and gender. Please indicate the degree to which you agree or disagree with each statement using the scale below: 0 = disagree strongly; 1 = disagree somewhat; 2 = disagree slightly; 3 = agree slightly; 4 = agree somewhat; 5 = agree strongly.

62. Women deserve higher award amounts in sexual harassment cases than men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

63. Most men who bring sexual harassment cases to court are just looking for money. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

64. Most women who bring sexual harassment cases to court are just looking for money. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

65. Women are more likely to be victims of sexual harassment than men. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

66. Same-sex sexual harassment is as big of a problem as opposite-sex sexual harassment. *

	0	1	2	3	4	5	
Disagree Strongly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	Agree Strongly

Page 6

Please read the following case outline and answer the questions below as if you were a jury member hearing the case. You may assume that all information given to you is factual. There are no wrong answers. Please answer honestly.

Mary has worked as a bank teller at Fullwillow Credit Union for the past 5 years. Mary was very attentive to her work and was rarely late. She was very popular with the other employees and always received exemplary reviews. One day during a shift, Mary's manager Richard requested she meet with him for dinner to discuss a new overtime policy. Mary agreed and met up with Richard for dinner the following evening. During the course of the dinner Richard suggested that they become intimate. Mary refused Richard's advance. The following day, without prompting, Mary succumbed to Richard's request the night prior, for fear of losing her job. Mary had never been told she would suffer any detriment by refusing to have sexual relations with Richard. Mary and Richard continuously engaged in sexual relations over the next six months. After six months Mary began an exclusive relationship with another man, thus ending her relationship with Richard. Immediately after the relationship ended, Richard took no adverse action against Mary. One year later Mary was fired for poor work performance after failing a quarterly review.

Mary has brought suit against Fullwillow Credit Union alleging that she was subjected to a hostile work environment and that her performance was marred by continuous fear of losing her job once she terminated her sexual relationship with her supervisor Richard.

67. Is Mary's claim valid? *

- ☐ Yes
- ☐ No

68. Should Richard be liable for Mary's claim? *

- ☐ Yes
- ☐ No

69. Should Fullwillow Credit Union be liable for Mary's claim? *

- ☐ Yes

☐ No

70. Should Mary be awarded back pay of \$51,600 for wages and benefits lost since her firing? *

☐ Yes

☐ No

71. How much should Mary be compensated for any actual psychological damage or emotional distress she may have suffered? *

☐ \$87,500

☐ \$350,000

☐ \$1,400,000

☐ All of these amounts are too high

☐ All of these amounts are too low

☐ Mary should not be awarded damages for psychological damage or emotional distress

72. How much should Mary be awarded in punitive damages from Richard (award amount used to punish the offender)? *

☐ \$37,500

☐ \$150,000

☐ \$600,000

☐ All of these amounts are too high

☐ All of these amounts are too low

☐ Mary should not be awarded punitive damages from Richard

73. How much should Mary be awarded in punitive damages from the credit union (award amount used to punish the offender)? *

☐ \$581,250

☐ \$2,325,000

☐ \$9,300,000

- ☐ All of these amounts are too high
 - ☐ All of these amounts are too low
 - ☐ Mary should not be awarded punitive damages from the credit union
-

Page 6

Please read the following case outline and answer the questions below as if you were a jury member hearing the case. You may assume that all information given to you is factual. There are no wrong answers. Please answer honestly.

Richard has worked as a bank teller at Fullwillow Credit Union for the past 5 years. Richard was very attentive to his work and was rarely late. He was very popular with the other employees and always received exemplary reviews. One day during a shift, Richard's manager Mary requested he meet with her for dinner to discuss a new overtime policy. Richard agreed and met up with Mary for dinner the following evening. During the course of the dinner Mary suggested that they become intimate. Richard refused Mary's advance. The following day, without prompting, Richard succumbed to Mary's request the night prior, for fear of losing his job. Richard had never been told he would suffer any detriment by refusing to have sexual relations with Mary. Richard and Mary continuously engaged in sexual relations over the next six months. After six months Richard began an exclusive relationship with another woman, thus ending his relationship with Mary. Immediately after the relationship ended, Mary took no adverse action against Richard. One year later Richard was fired for poor work performance after failing a quarterly review.

Richard has brought suit against Fullwillow Credit Union alleging that he was subjected to a hostile work environment and that his performance was marred by continuous fear of losing his job once he terminated his sexual relationship with his supervisor Mary.

74. Is Richard's claim valid? *

- ☐ Yes
 - ☐ No
-

75. Should Mary be liable for Richard's claim? *

- ☐ Yes
 - ☐ No
-

76. Should Fullwillow Credit Union be liable for Richard's claim? *

- ☐ Yes
 - ☐ No
-

77. Should Richard be awarded back pay of \$51,600 for wages and benefits lost since his firing? *

- ☐ Yes
 - ☐ No
-

78. How much should Richard be compensated for any actual psychological damage or emotional distress he may have suffered? *

- ☐ \$87,500
 - ☐ \$350,000
 - ☐ \$1,400,000
 - ☐ All of these amounts are too high
 - ☐ All of these amounts are too low
 - ☐ Richard should not be awarded damages for psychological damage or emotional distress
-

79. How much should Richard be awarded in punitive damages from Mary (award amount used to punish the offender)? *

- ☐ \$37,500
 - ☐ \$150,000
 - ☐ \$600,000
 - ☐ All of these amounts are too high
 - ☐ All of these amounts are too low
 - ☐ Richard should not be awarded punitive damages from Mary
-

80. How much should Richard be awarded in punitive damages from the credit union (award amount used to punish the offender)? *

- ☐ \$581,250
- ☐ \$2,325,000

- ☐ \$9,300,000
 - ☐ All of these amounts are too high
 - ☐ All of these amounts are too low
 - ☐ Richard should not be awarded punitive damages from the credit union
-

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Please answer these demographic questions to the best of your ability. If you are uncomfortable answering any of these questions please feel free to contact the researcher, continue without answering, or discontinue the survey at any time.

81. What is your sex?

- ☐ Male
 - ☐ Female
-

82. What is your date of birth? (MM/DD/YYYY) *

83. What is your race?

- ☐ American Indian or Alaskan Native
 - ☐ Asian
 - ☐ Black or African American
 - ☐ Native Hawaiian or other Pacific Islander
 - ☐ White
 - ☐ Other
-

84. Are you Hispanic or Latino?

- ☐ Yes
 - ☐ No
-

85. Is English your primary language?

- ☐ Yes
 - ☐ No
-

86. Do you speak any other languages other than English?

- ☐ Yes
 - ☐ No
-

87. Were you born in the United States?

- ☐ Yes
 - ☐ No
-

88. Were you born in the state of Florida?

- ☐ Yes
 - ☐ No
-

89. Is your primary residence in the state of Florida?

- ☐ Yes
 - ☐ No
-

90. In what town/city is your primary residence?

91. What is your current living situation?

- ☐ Live alone
- ☐ Live with parent(s)/guardian(s) (excluding parent(s)/guardian(s) that would be listed as dependents)
- ☐ Live with unrelated roommate(s)

- ☐ Live with significant other
 - ☐ Live with significant other and child(ren)
 - ☐ Other
-

92. What is your marital status?

- ☐ Single
 - ☐ Married
 - ☐ Widowed
 - ☐ Divorced/Separated
 - ☐ Remarried
 - ☐ Other
-

93. What is your highest level of education?

- ☐ No Degree
 - ☐ High School Diploma or equivalent (or in progress)
 - ☐ Associates Degree (or in progress)
 - ☐ Bachelors Degree (or in progress)
 - ☐ Masters Degree (or in progress)
 - ☐ Doctorate Degree or equivalent (or in progress)
-

94. If currently enrolled in school, what is your current G.P.A.?

- ☐ 0.0-2.0
 - ☐ 2.1-2.5
 - ☐ 2.6-3.0
 - ☐ 3.1-3.5
 - ☐ 3.6-4.0
-

95. What is your father's highest level of education?

- ☐ No Degree
 - ☐ High School Diploma or equivalent (or in progress)
 - ☐ Associates Degree (or in progress)
 - ☐ Bachelors Degree (or in progress)
 - ☐ Masters Degree (or in progress)
 - ☐ Doctorate Degree or equivalent (or in progress)
-

96. What is your mother's highest level of education?

- ☐ No Degree
 - ☐ High School Diploma or equivalent (or in progress)
 - ☐ Associates Degree (or in progress)
 - ☐ Bachelors Degree (or in progress)
 - ☐ Masters Degree (or in progress)
 - ☐ Doctorate Degree or equivalent (or in progress)
-

97. What is your current employment status?

- ☐ Unemployed
 - ☐ Employed part-time
 - ☐ Employed full-time
 - ☐ Self-employed
 - ☐ Other
-

98. What is your current religious affiliation?

- ☐ Buddhist
- ☐ Catholic
- ☐ Christian Protestant
- ☐ Hindu
- ☐ Jewish

- ☐ Muslim
 - ☐ None
 - ☐ Other
-

99. With what religious affiliation were you raised?

- ☐ Buddhist
 - ☐ Catholic
 - ☐ Christian Protestant
 - ☐ Hindu
 - ☐ Jewish
 - ☐ Muslim
 - ☐ None
 - ☐ Other
-

Thank You!

Thank you for taking our survey. Your response is very important to us.

APPENDIX H: IRB APPROVAL LETTER



University of Central Florida Institutional Review Board
Office of Research & Commercialization
12201 Research Parkway, Suite 501
Orlando, Florida 32826-3246
Telephone: 407-823-2901 or 407-882-2276
www.research.ucf.edu/compliance/irb.html

Approval of Exempt Human Research

From: **UCF Institutional Review Board #1
FWA00000351, IRB00001138**

To: **Christopher Chad Cronon and Co-PIs: Anthony J. Ferraro, Ian E. Waldick**

Date: **April 03, 2012**

Dear Researcher:

On 4/3/2012, the IRB approved the following activity as human participant research that is exempt from regulation:

Type of Review:	Exempt Determination
Project Title:	The Effects of Gender on Jury Award Amounts in Workplace Sexual Harassment Cases
Investigator:	Christopher Chad Cronon
IRB Number:	SBE-12-08333
Funding Agency:	
Grant Title:	
Research ID:	N/A

This determination applies only to the activities described in the IRB submission and does not apply should any changes be made. If changes are made and there are questions about whether these changes affect the exempt status of the human research, please contact the IRB. When you have completed your research, please submit a Study Closure request in iRIS so that IRB records will be accurate.

In the conduct of this research, you are responsible to follow the requirements of the Investigator Manual.

On behalf of Sophia Dziegielewski, Ph.D., L.C.S.W., UCF IRB Chair, this letter is signed by:

Signature applied by Joanne Muratori on 04/03/2012 08:32:49 AM EDT

A handwritten signature in black ink that reads 'Joanne Muratori'.

IRB Coordinator



University of Central Florida Institutional Review Board
Office of Research & Commercialization
12201 Research Parkway, Suite 501
Orlando, Florida 32826-3246
Telephone: 407-823-2901 or 407-882-2276
www.research.ucf.edu/compliance/irb.html

Approval of Exempt Human Research

From: **UCF Institutional Review Board #1
FWA00000351, IRB00001138**

To: **Christopher Chad Cronon and Co-PIs: Anthony J. Ferraro, Ian E. Waldick**

Date: **April 18, 2012**

Dear Researcher:

On 4/18/2012, the IRB approved the following minor modification to human participant research that is exempt from regulation:

Type of Review:	Exempt Determination
Modification Type:	The SONA system will no longer be used. Instead the survey will be distributed through a variety of means electronically – a hyperlink to the survey, hosted by SurveyGizmo, will be sent to individual students through E-Community e-mail lists, social media, and in classes with the permission of instructors.
Project Title:	The Effects of Gender on Jury Award Amounts in Workplace Sexual Harassment Cases
Investigator:	Christopher Chad Cronon
IRB Number:	SBE-12-08333
Funding Agency:	
Grant Title:	
Research ID:	N/A

This determination applies only to the activities described in the IRB submission and does not apply should any changes be made. If changes are made and there are questions about whether these changes affect the exempt status of the human research, please contact the IRB. When you have completed your research, please submit a Study Closure request in iRIS so that IRB records will be accurate.

In the conduct of this research, you are responsible to follow the requirements of the Investigator Manual.

On behalf of Sophia Dziegielewski, Ph.D., L.C.S.W., UCF IRB Chair, this letter is signed by:

Signature applied by Joanne Muratori on 04/18/2012 09:47:53 AM EDT

IRB Coordinator



University of Central Florida Institutional Review Board
Office of Research & Commercialization
12201 Research Parkway, Suite 501
Orlando, Florida 32826-3246
Telephone: 407-823-2901 or 407-882-2276
www.research.ucf.edu/compliance/irb.html

Approval of Exempt Human Research

From: **UCF Institutional Review Board #1
FWA00000351, IRB00001138**

To: **Christopher Chad Cronon and Co-PIs: Anthony J. Ferraro, Ian E. Waldick**

Date: **April 20, 2012**

Dear Researcher:

On 4/20/2012, the IRB approved the following activity as human participant research that is exempt from regulation:

Type of Review:	Exempt Determination
Modification Type:	Revised consent document, that does not imply that only UCF students can participate, has been approved for use.
Project Title:	The Effects of Gender on Jury Award Amounts in Workplace Sexual Harassment Cases
Investigator:	Christopher Chad Cronon
IRB Number:	SBE-12-08333
Funding Agency:	
Grant Title:	
Research ID:	N/A

This determination applies only to the activities described in the IRB submission and does not apply should any changes be made. If changes are made and there are questions about whether these changes affect the exempt status of the human research, please contact the IRB. When you have completed your research, please submit a Study Closure request in iRIS so that IRB records will be accurate.

In the conduct of this research, you are responsible to follow the requirements of the Investigator Manual.

On behalf of Sophia Dziegielewski, Ph.D., L.C.S.W., UCF IRB Chair, this letter is signed by:

Signature applied by Joanne Muratori on 04/20/2012 04:45:21 PM EDT

IRB Coordinator

APPENDIX I: PERMISSIONS GRANTED

Re: Permission to use ASI in undergraduate research

From: **Peter S. Glick** (peter.s.glick@lawrence.edu)
Sent: Sun 2/12/12 10:54 PM
To: ian.waldick@knights.ucf.edu (ian.waldick@knights.ucf.edu); Peter S. Glick (peter.s.glick@lawrence.edu)
Cc: ferraroaj@knights.ucf.edu (ferraroaj@knights.ucf.edu)

Please feel free to use the ASI in your research. Good luck!

PG

Connected by DROID on Verizon Wireless

-----Original message-----

From: "ian.waldick@knights.ucf.edu" <ian.waldick@knights.ucf.edu>
To: "Peter S. Glick" <peter.s.glick@lawrence.edu>
Cc: "ferraroaj@knights.ucf.edu" <ferraroaj@knights.ucf.edu>
Sent: Mon, Feb 13, 2012 03:38:51 GMT+00:00
Subject: Permission to use ASI in undergraduate research

Dr. Glick,

We are requesting permission to use the Ambivalent Sexism Inventory, from your 1995 research, as part of a survey for our undergraduate research project. My research partner, Anthony Ferraro, and I are investigating the role that gender and gender biases play in jury award amounts in federal workplace sexual harassment cases. We will determine, through the analysis of statistical data and survey data, the discrepancies between male and female sexual harassment award amounts. We would like to use the ASI in order to determine if there is a correlation between the way that potential jury members (our participants) would award damages in sexual harassment scenarios and the level of ambivalent sexism present. Please feel free to contact me at (352)229-0202 or ian.waldick@knights.ucf.edu for any more information. Thank you for your time, and we look forward to hearing from you.

Sincerely,

Ian Waldick

P.S. My research partner, Anthony Ferraro, is cc'd on this email.

Re: Permission to use AMI in undergraduate research

From: **Peter S. Glick** (peter.s.glick@lawrence.edu)
Sent: Fri 3/02/12 11:24 AM
To: ian.waldick@knights.ucf.edu (ian.waldick@knights.ucf.edu)

Certainly! Please feel free to use the AMI as well!

Connected by DROID on Verizon Wireless

-----Original message-----

From: "ian.waldick@knights.ucf.edu" <ian.waldick@knights.ucf.edu>
To: "Peter S. Glick" <peter.s.glick@lawrence.edu>
Cc: "ferraroaj@knights.ucf.edu" <ferraroaj@knights.ucf.edu>
Sent: Fri, Mar 2, 2012 14:51:28 GMT+00:00
Subject: Re: Permission to use AMI in undergraduate research

Dr. Glick,

On February 12, 2012, my research partner Anthony Ferraro and I requested permission to use your Ambivalent Sexism Inventory in our research regarding the role that gender plays in jury award amounts in workplace sexual harassment cases. We would also like to request permission to use your Ambivalence toward Men Inventory. We think it would be beneficial to our research to be able to identify the levels of ambivalence toward men, as well as women, and examine how that correlates with participants' views on award amounts. Please feel free to contact me at (352)229-0202 or ian.waldick@knights.ucf.edu for any more information. Thank you for your time, and we look forward to hearing from you.

Sincerely,

Ian Waldick

P.S. My research partner, Anthony Ferraro, is cc'd on this email.

Fw: Re: Current E-mail Address for Dr. Mazer.

From: **Don & Anne Mazer** (mazer@pei.sympatico.ca)
Sent: Fri 3/09/12 10:08 AM
To: ian.waldick@knights.ucf.edu

Dear Ian Waldick;
You have my permission to sue the Sexual Harassment Attitude Scale in your work
Regards,
Don Mazer
----- Original Message -----

From: [Jane McKay](mailto:jane.mckay@pei.sympatico.ca)
To: mazer@pei.sympatico.ca
Sent: Friday, March 09, 2012 10:07 AM
Subject: Fwd: Re: Current E-mail Address for Dr. Mazer.

Nice talking to you. Cheers. Jane

>>> Heather Russell 08/03/2012 3:12 PM >>>
Hi Jane,

Here is the email request per our conversation.

Thanks,
Carla

>>> Carol MacDonald 08/03/2012 1:07 PM >>>
Hi Heather: Can you help this gentleman? Thanks, Carol

>>> <ian.waldick@knights.ucf.edu> 3/8/2012 12:07 PM >>>

To Whom it May Concern,

We are looking for a current email address for Dr. Mazer. My research partner and I would like to request permission to use the Sexual Harassment Attitude Scale, from Dr. Mazer's 1989 article, in our undergraduate research project. We are investigating the role that gender plays in jury award amounts in workplace sexual harassment cases. This scale would be used as part of our survey, so that we could measure the participants' attitudes toward sexual harassment. If you have any questions, please feel free to contact me at ian.waldick@knights.ucf.edu or (352)229-0202. Thank you for your time.

Sincerely,

Ian Waldick

P.S. My research partner, Anthony Ferraro, is cc'd on this email.

APPENDIX J: EEOC LETTERS AND RESPONSES



**U.S. Equal Employment Opportunity Commission
Miami District Office**

2 South Biscayne Blvd
Suite 2700
Miami, FL 33131
(305) 808-1785
(305) 808-1742 TTY
(305) 808-1855 FAX

February 24, 2012

Anthony Ferraro, Undergraduate Researcher
University of Central Florida
P.O. Box 161602
Orlando, FL 32816

Re: FOIA No.: 5102012156112, FOIA request for EEOC Statistics

Dear Mr. Ferraro:

Your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received by the Miami District Office on February 24, 2012 is assigned the above FOIA number. It will be processed by Carine Jean-Marie who can be reached at (305) 808-1785.

[] EEOC will issue a determination on your request on or before . FOIA and EEOC regulations provide 20 working days to issue a determination on a request, not including Saturdays, Sundays and federal holidays. In unusual circumstances, EEOC may extend the 20 working days by 10 additional working days or stop processing your request until you respond to our request for fee or clarifying information. Should EEOC take an extension or stop processing your request, notice will be issued prior to the expiration of the 20 working days.

[X] Your unperfected request under the FOIA was received on February 24, 2012. The request will **not** be assigned for processing until it is perfected by the submission to this office a copy of a "Filed" marked court Complaint on the above charge. Failure to submit a copy of the "Filed" marked Complaint within 30 days of your receipt of this letter may result in the administrative withdrawal of your request. Upon receipt of the "Filed" marked Complaint, your request will be perfected and processing will begin. At that time, EEOC will issue a letter acknowledging receipt of your perfected FOIA request, providing the name of the person who will be processing your request, and the date by which you may expect to receive a response from me. You may contact the Requester Service Center for status updates on your FOIA request or for FOIA information by telephone to (202) 663-4500, by fax to (202) 663-4679, by e-mail to FOIA@eeoc.gov, or by mail to the EEOC, Requester Service Center, 131 M Street NE, Suite 5NW02E, Washington, DC 20507. Additionally, if you submitted your FOIA request on line, you may monitor its status at <https://egov.eeoc.gov/foia/>.

Cordially,

Ozzie L. Black
Deputy Director

Fredricka B. Warren

Fredricka B. Warren
Information Specialist/FOIA

FW/cjm



**U.S. Equal Employment Opportunity Commission
Miami District Office**

2 South Biscayne Blvd
Suite 2700
Miami, FL 33131
(305) 808-1785
(305) 808-1742 TTY
(305) 808-1855 FAX

March 8, 2012

Anthony Ferraro
University of Central Florida
P.O. Box 161802
Orlando, FL 32816

Re: FOIA No.: 5102012156112
FOIA request for EEOC Statistics

Dear Mr. Ferraro:

Your Freedom of Information Act (FOIA) request, received in this office on February 24, 2012 has been processed. Our search began on February 24, 2012. All agency records in creation as of February 24, 2012 are within the scope of the EEOC's search for responsive records. The paragraph(s) checked below apply:

- ☐ A portion of your request is neither granted nor denied because: ☐ Your request does not reasonably describe the records you wish disclosed or ☐ No records fitting the description of the records you seek disclosed exist or could be located after a thorough search. The remainder of your request is:
- ☐ Granted
 - ☐ Denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
 - ☐ Granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☒ Your request is granted.
- ☐ Your request is denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ Your request is granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.
- ☐ You must send a check for \$[] made payable to the United States Treasurer by mail to the above address. Manual search and review time is billed per quarter hour based on the personnel category of the person conducting the search. Fees for search services range from \$5.00 per quarter hour to \$20.00 per quarter hour. Direct costs are billed for computer searches and in certain other circumstances. Photocopying is billed at \$.15 per page. 29 C.F.R. §1610.15. The attached Comments page will further explain any direct costs assessed.

The fee has been computed as follows:

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- ☐ You may appeal this decision by writing within thirty days of receipt of this letter to the Office of Legal Counsel, FOIA Programs, Equal Employment Opportunity Commission, 131 M Street, N.E., Suite 5NW02E, Washington, D.C. 20507. Your appeal will be governed by 29 C.F.R. § 1610.11.
- ☐ See attached Comments page for further information.

Sincerely,

Ozzie L. Black
Deputy Director

Fredricka B. Warren

Fredricka B. Warren
Information Specialist/FOIA

FW/cjm

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

- ☐ (2)
- ☐ (3) (A)(i)
 - ☐ Section 706(b) of Title VII
 - ☐ Section 709(e) of Title VII
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- ☐ (6)
- ☐ (7)(A)
- ☐ (7)(B)
- ☐ (7)(C)
- ☐ (7)(D)
- ☐ Other (see attached)
- ☐ (3)(A)(ii)
 - ☐ 41 U.S.C. §253b(m) of the National Defense Authorization Act
- ☐ (4)
- ☐ (5)

Equal Employment Opportunity Commission and State or Local FEP Agencies
Sexual Harassment Charges Received from 10/01/2004 thru 09/30/2011
Against Respondents in the Middle District of Florida *

	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Total Receipts	382	366	408	513	409	393	376
Sex Female	319	294	347	418	337	316	314
% Sex Female	83.5%	80.3%	85.0%	81.5%	82.4%	80.4%	83.5%
Sex Male	57	68	55	88	63	67	59
% Sex Male	14.9%	18.6%	13.5%	17.2%	15.4%	17.0%	15.7%

* Middle District of Florida is defined as the counties of Baker, Clay, Duval, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Sarasota, Seminole & Saint Johns

Equal Employment Opportunity Commission and State or Local FEP Agencies
Sexual Harassment Charges Resolved from 10/01/2004 thru 06/30/2011
Against Respondents in the Middle District of Florida *

Gender	Disposition	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Female	Total Closures	316	299	261	309	264	288	295
Female	Settlement	19	37	24	30	20	27	28
Female	% Settlement	6.0%	12.4%	9.2%	9.7%	7.6%	9.4%	9.5%
Female	Withdrawal w/ Ben	41	28	30	44	24	26	34
Female	% Withdrawal w/ Ben	13.0%	9.4%	11.5%	14.2%	9.1%	9.0%	11.5%
Female	Admin Closure	54	33	50	52	63	59	60
Female	% Admin Closure	17.1%	11.0%	19.2%	16.8%	23.9%	20.5%	20.3%
Female	No Cause	178	178	123	166	136	156	148
Female	% No Cause	56.3%	59.5%	47.1%	53.7%	51.5%	54.0%	50.2%
Female	Reasonable Cause	24	21	16	17	23	28	18
Female	% Reasonable Cause	7.6%	7.0%	6.1%	5.5%	8.7%	9.4%	6.1%
Female	Conciliation	6	5	2	3	6	6	1
Female	% Conciliation	1.9%	1.7%	0.8%	1.0%	2.3%	2.1%	0.3%
Female	Failed Conciliation	18	16	14	14	18	20	17
Female	% Failed Conciliation	5.7%	5.4%	5.4%	4.5%	6.8%	6.9%	5.7%
Female	Ment Closures	84	86	78	91	75	81	80
Female	% Ment Closures	26.6%	28.8%	29.9%	29.4%	28.4%	27.2%	27.0%
Female	Monetary Benefits	\$1,641,812	\$1,001,105	\$765,390	\$1,233,274	\$738,334	\$804,666	\$1,763,777

Male	Disposition	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Male	Total Closures	89	89	88	89	88	87	89
Male	Settlement	2	6	6	6	6	4	5
Male	% Settlement	2.2%	6.7%	6.8%	6.7%	6.8%	4.6%	5.6%
Male	Withdrawal w/ Ben	1	7	4	6	3	2	3
Male	% Withdrawal w/ Ben	1.1%	7.8%	4.5%	6.7%	3.4%	2.3%	3.4%
Male	Admin Closure	5	7	2	4	9	11	9
Male	% Admin Closure	5.6%	7.9%	2.3%	4.5%	10.2%	12.6%	10.1%
Male	No Cause	66	52	54	51	56	59	48
Male	% No Cause	74.1%	58.3%	61.4%	57.3%	63.6%	67.9%	53.9%
Male	Reasonable Cause	6	1	6	3	1	1	2
Male	% Reasonable Cause	6.7%	1.1%	6.8%	3.4%	1.1%	1.1%	2.2%
Male	Conciliation							
Male	% Conciliation							
Male	Failed Conciliation	6	1	6	3	1		2
Male	% Failed Conciliation	6.7%	1.1%	6.8%	3.4%	1.1%		2.2%
Male	Ment Closures	9	14	17	19	10	7	10
Male	% Ment Closures	10.0%	15.7%	19.3%	21.3%	11.4%	8.0%	11.1%
Male	Monetary Benefits	\$73,000	\$57,213	\$138,660	\$138,727	\$91,089	\$67,500	\$113,000

Unspecified Gender	Disposition	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Unspecified Gender	Total Closures	7	7	9	16	16	15	13
Unspecified Gender	Settlement			1	3	2	1	1
Unspecified Gender	% Settlement			12.5%	18.8%	12.5%	6.7%	7.7%
Unspecified Gender	Withdrawal w/ Ben	1	1	2	2	1	2	2
Unspecified Gender	% Withdrawal w/ Ben	14.3%	14.3%	22.2%	12.5%	6.3%	13.3%	15.4%
Unspecified Gender	Admin Closure	3		1	3	6	1	2
Unspecified Gender	% Admin Closure	42.9%		11.1%	18.8%	37.5%	6.7%	15.4%
Unspecified Gender	No Cause	3	6	4	7	9	9	6
Unspecified Gender	% No Cause	42.9%	66.7%	44.4%	43.8%	56.3%	60.0%	61.5%
Unspecified Gender	Reasonable Cause				1	2	2	
Unspecified Gender	% Reasonable Cause				6.3%	12.5%	13.3%	
Unspecified Gender	Conciliation							
Unspecified Gender	% Conciliation							
Unspecified Gender	Failed Conciliation				1	2	2	
Unspecified Gender	% Failed Conciliation				6.3%	12.5%	13.3%	
Unspecified Gender	Ment Closures	1	1	3	6	5	6	3
Unspecified Gender	% Ment Closures	14.3%	14.3%	33.3%	37.5%	31.3%	40.0%	23.1%
Unspecified Gender	Monetary Benefits	\$33,150	\$37,000	\$78,000	\$118,500	\$37,500	\$12,500	\$41,000

	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
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Total Charges	Disposition	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Total Charges	Total Closures	392	356	322	375	335	370	372
Total Charges	Settlement	21	43	30	36	26	32	34
Total Charges	% Settlement	5.4%	12.0%	9.3%	9.6%	7.8%	8.6%	9.1%
Total Charges	Withdrawal w/ Ben	43	35	44	52	28	31	36
Total Charges	% Withdrawal w/ Ben	11.0%	9.8%	13.7%	13.9%	8.4%	8.4%	9.7%
Total Charges	Admin Closure	62	43	63	59	68	66	75
Total Charges	% Admin Closure	15.8%	12.1%	19.6%	15.7%	20.3%	17.8%	20.2%
Total Charges	No Cause	236	218	163	204	177	208	204
Total Charges	% No Cause	60.2%	61.5%	50.6%	54.4%	52.8%	56.2%	54.8%
Total Charges	Reasonable Cause	30	22	21	21	28	30	20
Total Charges	% Reasonable Cause	7.7%	6.2%	6.5%	5.6%	8.4%	8.1%	5.4%
Total Charges	Conciliation	6	5	2	3	5	8	1
Total Charges	% Conciliation	1.5%	1.4%	0.6%	0.8%	1.5%	2.2%	0.3%
Total Charges	Failed Conciliation	24	17	19	18	21	22	18
Total Charges	% Failed Conciliation	6.1%	4.8%	5.9%	4.8%	6.3%	5.9%	4.8%
Total Charges	Ment Closures	94	101	98	112	80	93	93
Total Charges	% Ment Closures	24.0%	28.1%	30.4%	29.9%	23.9%	25.1%	25.0%
Total Charges	Monetary Benefits	\$1,747,992	\$1,095,318	\$1,002,958	\$1,467,601	\$884,933	\$984,808	\$1,917,777

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U.S. Equal Employment Opportunity Commission
Office of Legal Counsel

131 M Street NE
Washington, DC 20507
(202) 663-4500
(202) 663-7026 TTY
(202) 663-4679 FAX

JUN 6 2012

Anthony Ferraro
University of Central Florida
P.O. Box 161602
Orlando, FL 32816

Re: FOIA No.: 510-2012-160352

Dear Mr. Ferraro:

Your Freedom of Information Act (FOIA) request, received in this office on May 04, 2012 has been processed. Our search began on May 04, 2012. All agency records in creation as of May 04, 2012 are within the scope of the EEOC's search for responsive records. The paragraph(s) checked below apply.

☐ A portion of your request is neither granted nor denied because ☐ Your request does not reasonably describe the records you wish disclosed or ☐ No records fitting the description of the records you seek disclosed exist or could be located after a thorough search. The remainder of your request is:

☐ Granted

☐ Denied pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ Granted in part and denied in part. Portions not released are being withheld pursuant to the subsections of the FOIA indicated at the end of this letter. An attachment to this letter explains the use of these exemptions in more detail.

☐ Your request is granted.

☒ Your request is denied.

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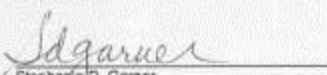
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☒ See attached Comments page for further information.

Sincerely,


Stephanie D. Garner
Assistant Legal Counsel FOIA Programs

Applicable Sections of the Freedom of Information Act, 5 U.S.C. § 552(b):

<input type="checkbox"/> (2)	<input type="checkbox"/> (B)
<input type="checkbox"/> (3) (A)(i)	<input type="checkbox"/> (7)(A)
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<input type="checkbox"/> (3)(A)(ii)	<input type="checkbox"/> Other (see attached)
<input type="checkbox"/> 41 U.S.C. §253b(m) of the National Defense Authorization Act	
<input type="checkbox"/> (4)	
<input type="checkbox"/> (5)	

Re: FOIA No.: 510-2012-160352 (Anthony Ferraro)

Comments

This is in response to your Freedom of Information Act (FOIA) request. You seek statistics in relation to sexual harassment claims. Your request has been denied.

The information you seek has been made available to the public. Visit our website at www.eeoc.gov. Below are the steps to locate the information you seek.

In the third column, under **Employees**, refer to the link **Sexual Harassment**.

At the bottom right, refer to the link **Statistics**.

You may review the chart provided **Sexual Harassment Charges EEOC & FEPAs Combined: FY1997 – FY 2011**.

We hope this information has been helpful to you.



U.S. Equal Employment Opportunity Commission
Office of Legal Counsel

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Anthony Ferraro
University of Central Florida
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JUN 6 2012

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- | | |
|--|---|
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[Return to Search Results](#) [View Comments](#) [Print](#) [Close](#)

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42 U.S.C. §2000e-4 (1995). Equal Employment Opportunity Commission

[Guidelines]

[Other EEOC Stuff]