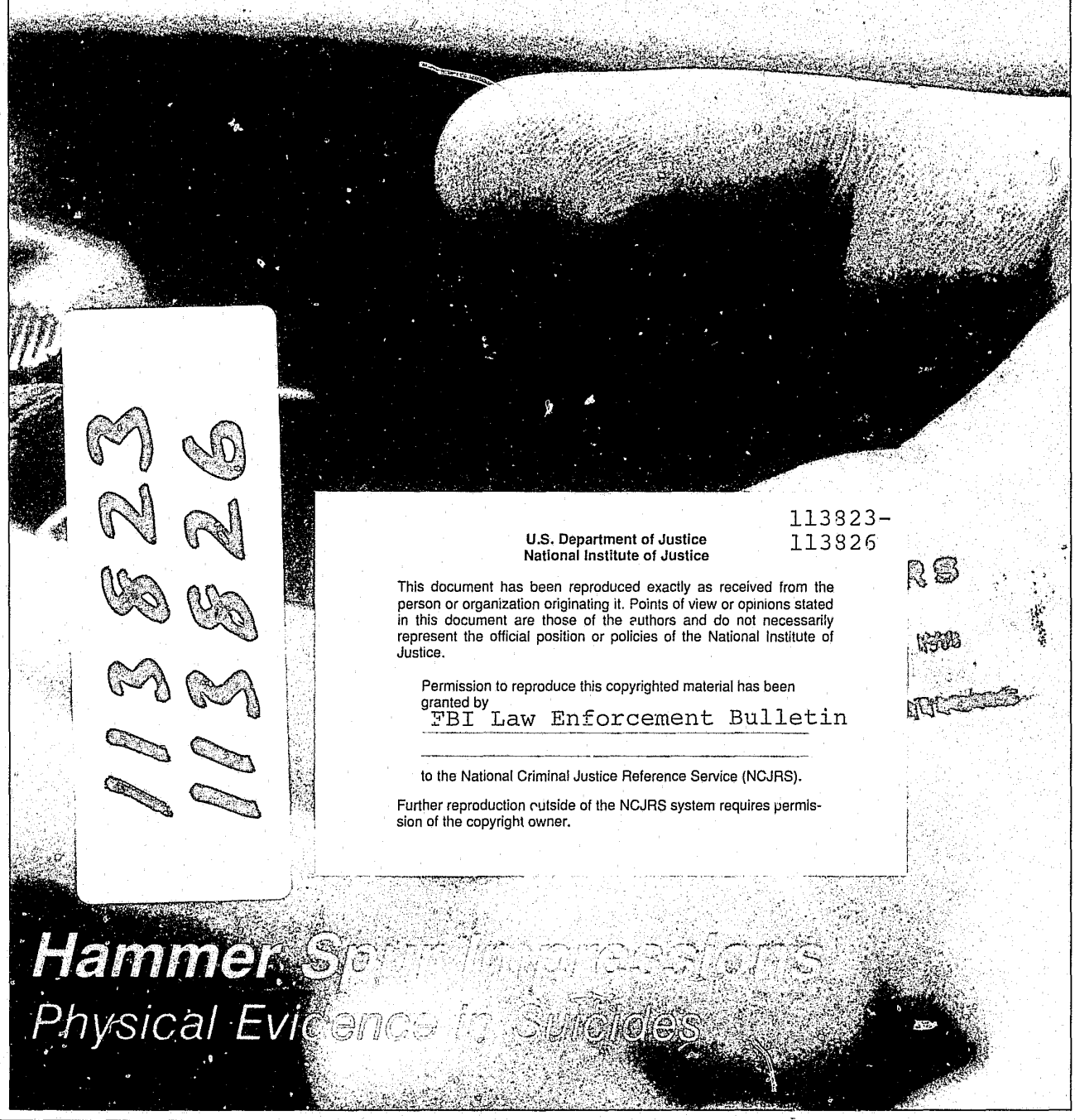
FBI
Law Enforcement Bulletin
September 1988



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Law Enforcement Bulletin

United States Department of Justice
Federal Bureau of Investigation
Washington, DC 20535

William S. Sessions, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

Published by the Office of Congressional and Public Affairs,
Milt Ahlerich, *Assistant Director*

Editor—Thomas J. Deakin
Managing Editor—Kathryn E. Sulewski
Art Director—John E. Ott
Production Manager/Reprints—
David C. Maynard

The Cover:
A hammer spur impression can prove to be an important piece of physical evidence in suicide investigations. See article p. 11.

The FBI Law Enforcement Bulletin (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Ave., N.W., Washington, DC 20535. Second-Class postage paid at Washington, DC. Postmaster: Send address changes to Federal Bureau of Investigation, FBI Law Enforcement Bulletin, Washington, DC 20535.

ISSN 0014-5688 USPS 383-310

113826

Sexual Harassment in the Police Station

"Title VII prohibits discrimination based on sex with respect to 'compensation, terms, conditions, or privileges of employment.'"

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Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The workplace is changing. More women than ever before are establishing careers where but a few years ago they did not. This influx of women into the workplace affects law enforcement as more women seek a career in this once male-dominated profession. This addition of women to the law enforcement profession is welcome. They can perform alongside men and bring special skills and abilities to law enforcement which increase the effectiveness of the profession.

However, the increasing number of women joining law enforcement also poses a challenge to law enforcement managers and executives. As in many other professions, women joining the law enforcement ranks are sometimes stereotyped by those who believe that they are not capable of being good police officers. Moreover, the addition of women to a male-dominated profession, where notions of machismo may prevail, can create a situation where women are singled out and made to feel unwelcome solely because of their gender, regardless of their work performance.

The challenge to law enforcement managers and executives is to break down the inaccurate stereotypes attached to women and eliminate any notion of disparate treatment of employees based on gender. While common sense and good management practice dictate this must be done, the law requires it.[1] Under Title VII of the 1964 Civil Rights Act, commonly referred to simply as Title VII, when an employer causes, condones, or fails to eliminate unfair treatment of women in the workplace, liability may be found.[2]

The purpose of this article is to examine one specific aspect of civil liability suits claiming disparate treatment based on sex. The article will focus on claims of sexual harassment in the workplace. It will examine the definition of sexual harassment, the legal theories underlying sexual harassment liability, the grounds for sexual harassment claims, and civil liability of

Special Agent Higginbotham

employers and co-workers for sexual harassment. The article will conclude with recommended measures for eliminating sexual harassment in the workplace and thus reducing the risk of a successful lawsuit alleging claims of sexual harassment.

Sexual Harassment: A Definition

It is somewhat difficult to provide a precise definition of conduct which constitutes sexual harassment. It is apparently more easily recognized than defined. Sexual harassment falls within the broader, prohibited practice of sex discrimination and may occur when an employee is subjected to unequal and unwelcome treatment based solely on the employee's sex.

Specific guidance on the types of conduct which would constitute sexual harassment is provided in the Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex.[3] These guidelines, though not carrying the force of law, "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance."[4] The guidelines describe sexual harassment as follows:

> "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."[5]

In general, sexual harassment can take two forms. First, sexual harassment exists when an employee is requested or required to engage in or submit to a sexual act as a term or condition of a job benefit or assignment. Second, sexual harassment may arise when the comments, conduct, or actions of the employer, supervisors, or co-workers create an unwelcome and hostile work environment for an employee based on gender. Both denigrate the workplace and must be prevented.

Sexual Harassment: Theories Of Liability

Since by general definition sexual harassment falls into two categories, it is not surprising that courts have imposed liability on employers and co-workers for participating in, condoning, or permitting sexual harassment at work under two parallel theories. These two theories upon which liability may be found have been referred to as *quid pro quo* liability and *hostile environment* liability.[6]

Quid pro quo liability is established when a sexual act is the condition precedent before an individual is hired, promoted, or the recipient of any other job benefit. The converse is also true. *Quid pro quo* liability can be found where the refusal to engage in a sexual act is the reason for the refusal to hire, the firing, denied promotion, or withheld job benefit. Unlike the hostile working environment theory, the plaintiff in a *quid pro*

". . . when an employer causes, condones, or fails to eliminate unfair treatment of women in the workplace, liability may be found."

quo case must show the sexual demand was linked to a tangible, economic aspect of an employee's compensation, term, condition, or privilege of employment.[7]

Much to the credit of law enforcement managers, cases where a plaintiff successfully demonstrated that submission to a sexual act was a condition of employment are rare. This is as it should be. In a profession sworn to uphold the law and defend the civil and constitutional rights of all persons, it would be the ultimate paradox to condition the benefits of employment on the relinquishment of an employee's own civil rights.

The second legal theory upon which sexual harassment can be predicated is the hostile working environment. Individuals who must work in an atmosphere made hostile or abusive by the unequal treatment of the sexes are denied the equal employment opportunities guaranteed to them by law and the Constitution.[8] As the Court of Appeals for the 11th Circuit said:

> "Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets."[9]

The elements of a hostile environment case were most clearly spelled out in *Henson* v. *City of Dundee*.[10] To prevail in such a suit, the court noted that a plaintiff must establish four elements. First, as in all Title VII cases, the employee must belong to a protected group. This requires only "a simple stipulation that the employee is a man or a woman."[11] Second, the employee must show that he/she was subject to unwelcome sexual harassment. Third, the harassment complained of was based upon sex, and but for the employee's gender, the employee would not have been subjected to the hostile or offensive environment. Fourth, the sexual harassment affected a term, condition, or privilege of employment.

It can easily be seen that the greatest attention is focused on factors two, three, and four. If a plaintiff can establish each of those elements, with membership in a protected group being a given, then a claim of sexual harassment has been stated and liability may attach. Because these three factors form the core of the sexual harassment claim, each will be discussed in turn.

Unwelcome Sexual Harassment

In 1986, the Supreme Court had the occasion to address the issue of what constituted unwelcome sexual harassment. In *Meritor Savings Bank* v. *Vinson*,[12] a bank employee alleged that following completion of her probationary period as a teller-trainee, her supervisor invited her to dinner, and during the course of the meal, suggested they go to a motel to have sexual relations. The employee first declined, but eventually agreed because she feared she might lose her job by refusing. Thereafter, over the course of the next several years, the employee alleged her superior made repeated demands of her for sexual favors. She alleged she had sexual intercourse 40-50 times with her superior, was fondled repeatedly by him, was followed into the women's restroom by him, and even forcibly raped on several occasions. In defending the suit, the defendant-bank averred that because the employee had voluntarily consented to sexual relations with her superior, the alleged harassment was not unwelcome and not actionable.

The Supreme Court disagreed. The Court stated that "the fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII."[13] The focus of a sexual harassment claim "is whether [the employee] by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary."[14] Sexually harassing conduct is unwelcome if the "employee did not solicit it or invite it, and the employee regarded the conduct as undesireable or offensive."[15]

The determination of whether specific conduct, even if "voluntary," constitutes unwelcome sexual harassment is a fact-bound inquiry.[16] Each case brings different facts and parties, leading to potentially different results. However, the courts have provided some guidance as to the types of facts which are relevant in determining whether conduct complained of in a sexual harassment suit is unwelcome.

For example, in *Meritor Savings Bank* v. *Vinson*,[17] the Supreme Court noted:

> "While 'voluntariness' in the sense of consent is not a defense to such a claim, it does not follow that a complainant's sexually provocative speech or dress is irrelevant as a matter of law in determining whether he or she found particular sexual advances unwelcome. To the contrary, such evidence is obviously relevant."[18]

Thus, the Supreme Court ruled that to some extent,[19] the employee's own conduct is at issue when he/she files suit alleging sexual harassment. The nature of relevant employee conduct extends to the employee's participation in office vulgarities and sexual references,[20] the employee's nonwork conduct where a moral and religious character particularly sensitive to sexual jokes is claimed,[21] and to prove that the employee actually initiated the sexual advance or innuendo.[22] Also relevant to the issue of "unwelcome" conduct is whether and when the employee complained. At least two courts have ruled that a failure to report instances of alleged sexual harassment, where the opportunity and mechanism to do so existed, was proof that the conduct later complained of was not genuinely offensive or unwelcome.[23]

Whether conduct is "unwelcome" is a "totality of circumstances" analysis. Conduct alleged to be sexual harassment must be judged by a variety of factors, including the nature of the conduct; the background, experience, and actions of the employee; the background, experience, and actions of coworkers and supervisors; the physical environment of the workplace; the lexicon of obscenity used; and an objective analysis of how a reasonable person would react to and respond in a similar work environment.[24] However, rather than risk making an incorrect *ad hoc* determination of whether conduct is or is not unwelcome in each instance of alleged sexual harassment, police managers should be prepared to take appropriate action when conduct directed against employees because of sex first appears to be offensive and unwelcome.

Harassment Based On Sex

As stated earlier, the second major element of a Title VII claim of hostile environment sexual harassment requires that the harassment be directed against an employee based on the employee's gender. Conduct which is offensive to both sexes is not sexual harassment because it does not discriminate against any protected group.[25] "The essence of a disparate treatment claim under Title VII is that an employee . . . is intentionally singled out for adverse treatment on the basis of a prohibited criterion."[26]

The prohibited criterion here is, of course, an employee's gender. In *quid pro quo* cases, this requirement is self-evident. The request or demand for sexual favors is made because of the employee's sex and would not otherwise have been made. However, discrimination based on gender is not always as clear in a hostile environment case. "In proving a claim for a hostile work environment due to sexual harassment, . . . the plaintiff must show that but for the fact of her [or his] sex, [the employee] would not have been the object of harassment."[27]

The term "sexual harassment" usually brings to mind sexual advances or acts and comments and jokes relating to sexual activities. However, while sexual harassment includes all those types of conduct if they are unwelcome, the concept itself is broader. Any unwelcome conduct aimed at an employee which would not have occurred but for the employee's sex is sexual harassment. For example, in *Hall* v. *Gus Construction Co.*,[28] three female employees of a road construction firm filed suit alleging sexual harassment by fellow male employees. The conduct complained of included the use of sexual epithets and nicknames, repeated requests to engage in sexual activities, physical touching and fondling of the women, the exposure of the men's genitals, "mooning," the display to the women of obscene pictures, urinating in the women's water bottles and gas tank of their work truck, refusal to perform necessary repairs on the work truck until a male user complained, and refusal to allow the women restroom breaks in a town near the construction site. The defendant construction company argued that some of the conduct — such as the urinating in water bottles and gas tanks, the refusal to perform needed repairs on the truck, and the denial of restroom breaks — could not be considered as sexual harassment because the conduct, though perhaps inappropriate, was not sexually oriented.

The court disagreed. It concluded that the "incidents of harassment and unequal treatment . . . would not have occurred but for the fact that [the employees] were women. Intimidation and hostility toward women because they are women can obviously result from conduct other than explicit sexual advances."[29] Additionally, there is no requirement that the incidents, sexually

"Any unwelcome conduct aimed at an employee which would not have occurred but for the employee's sex is sexual harassment."

oriented or not, be related to or part of a series of events. Sexual harassment can be based on repeated, though unrelated, events.[30]

Police managers and executives should be aware that any type of unwelcome conduct which is directed at an employee because of that person's gender may constitute sexual harassment. The lesson, as before, is to be alert and stifle any conduct which threatens disparate treatment because of the employee's sex.

Harassment Affecting A Condition Of Employment

Title VII prohibits discrimination based on sex with respect to "compensation, terms, conditions, or privileges of employment."[31] While it can readily be seen how the *quid pro quo* theory of a sexual harassment claim is sex discrimination with regard to compensation, terms, conditions, or privileges of employment, how can a sexually hostile environment affect a condition of employment, if no economic or tangible job detriment is suffered?[32]

The answer is simple. One of the conditions of any employment is the psychological well-being of the employees.[33] Where the psychological well-being of employees is adversely affected by an environment polluted with abusive and offensive harassment based solely on sex, Title VII provides a remedy. "[T]he 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."[34]

However, this is not to say that any conduct, no matter how slight, directed against an employee because of sex constitutes a hostile working environment. "For sexual harassment to be actionable, it must be sufficiently severe or pervasive 'to alter the conditions of the victim's employment and create an abusive working environment.'"[35] Isolated incidents[36] or genuinely trivial ones[37] will not give rise to sexual harassment liability. Not every sexual epithet or comment will affect the conditions of employment to a sufficiently significant degree to create a hostile environment in violation of Title VII. Nonetheless, law enforcement management must realize that Title VII obligates it to provide a workplace where the psychological health of its employees is protected against sexual harassment.

Grounds For Sexual Harassment Claims

Generalizations about the kinds of conduct which translate into a legal finding of sexual harassment are difficult since each case is a fact-oriented determination involving many factors. However, an analysis of the cases indicates that at least three broad categories of conduct can be identified which, if found, generally lead to a legal finding of sexual harassment.

First, invariably when allegations of *quid pro quo* sexual harassment are proved, liability follows.[38] That such is the case is not surprising. Demands for sex acts in exchange for job benefits are the most blatant of all forms of sexual harassment. In addition, where a job benefit is denied because of an employee's refusal to submit to the sexual demand, a tangible or economic loss is readily established. The primary difficulty in a *quid pro quo* case is in carrying the burden of proof and establishing that the event(s) complained of actually occurred. Because such incidents usually occur in private conversations, the cases often involve a one-on-one contest of testimony.[39] However, if the employee sufficiently proves the event(s) happened, courts readily conclude sexual harassment existed.

Second, courts frequently conclude sexual harassment exists where the conduct complained of was intentionally directed at an employee because of the employee's gender, was excessively beyond the bounds of job requirements, and actually detracted from the accomplishment of the job. When the conduct becomes so pervasive that the offending employee's attention is no longer focused on job responsibilities and significant time and effort is diverted from work assignments to engage in the harassing conduct, courts will generally conclude that sexual harassment exists.

This principle can be illustrated by examining two law enforcement-related cases. In *Vermett* v. *Hough,*[40] a female law enforcement officer alleged sexual harassment by her co-workers. One specific act alleged to have been offensive to her was a male officer placing a flashlight between her legs from behind. The court ruled that the conduct was nothing more than "horseplay"[41] and a stress-relief mechanism in a high-pressure job. The "horseplay" was viewed by the court to be more indicative of the female's acceptance as a coworker than sexual harassment. Moreover, "horseplay" was an occasional

visitor in the police station but not on an inordinate basis.

The second case, *Arnold* v. *City of Seminole*,[42] illustrates the other side of the coin — office joking out of control leading to sexual harassment. In *Arnold*, a female officer chronicled a series of events and conduct to which she was subjected because she was female. Among the offensive conduct which created a hostile working environment were the following: 1) A lieutenant told her he did not believe in female police officers; 2) superior officers occasionally refused to acknowledge or speak to her; 3) obscene pictures were posted in public places within the police station with the female officer's name written on them; 4) epithets and derogatory comments were written next to the officer's name on posted work and leave schedules; 5) false misconduct claims were lodged against her; 6) work schedules were manipulated to prevent the female officer from being senior officer on duty, thus denying her command status; 7) she was singled out for public reprimands and not provided the required notice; 8) members of the female officer's family were arrested, threatened, and harassed; 9) other officers interfered with her office mail and squad car; 10) attempts to implicate the female officer in an illegal drug transaction were contemplated; and 11) the female officer was not provided equal access to station house locker facilities. Based on this amalgam of proof, which far exceeded any colorable claim of office camaraderie, the court ruled that the female officer had indeed been subjected to an openly hostile environment based solely on her sex.

A note of caution is in order. The line between innocent joking that contributes to *esprit de corps* and offensive sexual harassment can be a fine one. Police managers should be cognizant of such conduct and be prepared to take immediate and corrective action at the first moment it appears to be in danger of exceeding acceptable bounds.

The third category where sexual harassment will generally be found arises from conduct or statements reflecting a belief that women employees are inferior by reason of their sex or that women have no rightful place in the work force. For example, where a supervisory employee stated, among other things, that he had no respect for the opinions of another employee because she was a woman, sexual harassment was found.[43] Similarly, a supervisor who treated his male employees with respect but treated his women employees with obvious disdain, used the terms "babe" and "woman" in a derogatory fashion, and indicated his belief that women should not be working at all was found to have sexually harassed his female employees.[44]

While the law alone cannot realistically dispossess people of their personal prejudices, it can require that they not exhibit them in the workplace. Police managers have the responsibility to see that they do not.

Liability For Sexual Harassment

One of the primary goals of Title VII is to eliminate sexual harassment from the workplace.[45] However, to the extent it does not, civil liability remedies are available against both the employer and the offending co-workers. Both are matters of concern for law enforcement managers.

The Supreme Court in *Meritor Savings Bank* v. *Vinson*[46] made it clear that an employer would not be held liable simply because sexual harassment occurred in the workplace. Rather, the Court ruled that employer liability would be guided by agency principles, though it declined "to issue a definitive rule on employer liability."[47]

The lower courts have consistently applied agency principles to effect a remedy for sexual harassment. Three such principles can be identified. First, where a supervisory employee engages in *quid pro quo* sexual harassment, i.e., the demand for sex in exchange for a job benefit, the employer is liable. As one court explained:

> "In such a case, the supervisor relies upon his apparent or actual authority to extort sexual consideration from an employee. . . . In that case the supervisor uses the means furnished to him to accomplish the prohibited purpose. . . . Because the supervisor is acting within at least the apparent scope of the authority entrusted to him by the employer when he makes employment decisions, his conduct can fairly be imputed to the source of his authority."[48]

Second, in cases where a plaintiff has successfully proved that sexual harassment by supervisory employees created a hostile working environment, courts will hold the employer liable. The Fourth Circuit Court of Appeals noted this to be the rule:

> "[O]nce the plaintiff in [a sexual harassment] case proves that harassment took place, the most difficult legal question typically will

". . . 'the mere existence of a grievance procedure and a policy against discrimination' will not by itself insulate an employer from liability."

concern the responsibility of the employer for that harassment. *Except in situations where a proprietor, partner or corporate officer participates personally in the harassing behavior,* the plaintiff will have the additional responsibility of demonstrating the propriety of holding the employer liable under some theory of *respondeat superior."*[49]

Third, if the sexually hostile working environment is created at the hands of co-workers, the employer will be liable only if it knew or reasonably should have known of the harassment and took no remedial action. It is the burden of the offended employee to "demonstrate that the employer had actual or constructive knowledge of the existence of a sexually hostile working environment and took no prompt and adequate remedial action."[50] Actual knowledge includes situations where the unwelcome, offensive conduct is observed or discovered by a supervisory or management-level employee[51] and where supervisory employees are personally notified of the alleged sexual harassment.[52] Constructive knowledge arises when the sexually harassing conduct is so widespread or pervasive that knowledge is imputed to the employer.[53] "[A]bsence of [actual] notice to an employer does not necessarily insulate that employer from liability."[54]

These three principles suggest the manner in which sexual harassment liability can be prevented. Law enforcement managers and executives must not engage or participate in any conduct which constitutes sexual harassment. In addition, when such conduct comes to its attention, corrective action must be taken. Further, management has an affirmative obligation to monitor the workplace to ensure sexual harassment does not become a widespread practice.

Though the remedies available under Title VII are directed only against the employer and are limited by statute to primarily equitable relief,[55] not including compensatory damages,[56] other remedies may also be available to impose liability against employers or coworkers for sexual harassment claims. In addition to the relief available under Title VII, a plaintiff may seek monetary damages for a violation of Federal civil and constitutional rights,[57] as well as for State tort violations.[58] The important point to be noted is that liability may not be appropriate where no sexual harassment exists or where the employer takes swift remedial action.[59] The primary goal of law enforcement managers and executives should be to prevent the occurrence of any type of sexual harassment. If it does exist, sexual harassment must quickly be discovered and stopped. If this is done, no liability will attach.

Policy Recommendations

Since the potential for sexual harassment allegations and lawsuits exists in any workplace where men and women are co-workers, law enforcement must be prepared to respond if it occurs at the police station. Perhaps the best way to do so is to establish clear policy and procedure along the ensuing line.

First, the policy must identify that conduct which constitutes sexual harassment. It should include by definition both the request or demand for sexual favors in exchange for job benefits and any unwelcome sexual advances, physical contact, verbal contact, or other conduct directed against an employee by any other employee or supervisor because of the employee's sex which creates a hostile working environment. Consideration should also be given to a training program which emphasizes and reinforces the definition of sexual harassment so that a common understanding of all employees is achieved. Second, the policy and procedure must prohibit the offensive conduct and provide for appropriate remedial and punitive measures which will be taken if the policy is violated.

A mandatory and accessible grievance procedure should also be established so that police management can become aware of any sexual harassment and move quickly to resolve it. Care must be taken, however, not to establish a single-chain grievance procedure. Rather, multiple persons should be authorized to receive sexual harassment complaints so that an employee is not stifled by a requirement to report the harassment to the very person who may be the offender. Consideration should also be given to having persons of both sexes named as grievance counselors so that no unnecessary discomfort is required of an employee who alleges sexual harassment which would be embarrassing to discuss with a member of the opposite sex.

Lastly, the policy and procedure should establish a mechanism for the thorough and timely investigation of

sexual harassment complaints. All employee allegations of sexual harassment should be treated seriously since each complaint constitutes actual knowledge of a potential problem in terms of an employer's civil liability. Finally, law enforcement management must effectively resolve each instance of sexual harassment. The importance of this last requirement cannot be overstated. Besides the self-evident need to do so for sound management principles alone, the Supreme Court has noted that "the mere existence of a grievance procedure and a policy against discrimination"[60] will not by itself insulate an employer from liability. The grievance procedure must effectively resolve problems.

Conclusion

Though persons of either sex are subject to and entitled to protection against sexual harassment, litigated cases indicate that women are more often the victims of sexual harassment than men. Law enforcement may be vulnerable to that trend because of the rising numbers of women choosing this previously male-dominated profession. Law enforcement executives should be alert to the possibility of sexual harassment in their departments and agencies and move swiftly to eliminate it if it exists. To guard against exposure to civil liability, police agencies should have policy and procedure to redress instances of sexual harassment. The policy and procedure should be readily available, designed to encourage victims of harassment to come forward, provide for swift and thorough investigations, and be followed by decisive and appropriate sanction. FBI

Footnotes

[1]42 U.S.C. §2000e-2(a)(1) makes it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex."

[2]*See, e.g.*, 42 U.S.C. §§2000e-5 and 2000e-6.

[3]29 C.F.R. §1604.11 (1987).

[4]*General Electric Co. v. Gilbert*, 429 U.S. 125, 141-142 (1976).

[5]29 C.F.R. §1604.11(a).

[6]*Katz v. Dole*, 709 F.2d 251 (4th Cir. 1983).

[7]*Henson v. City of Dundee*, 682 F.2d 897 (11th Cir. 1982). *See also, Vermett v. Hough*, 627 F.Supp. 587 (W.D. Mich. 1986).

[8]*Supra* note 1. See also, U.S. Constitution, amendment 14.

[9]*Henson v. City of Dundee, supra* note 7, at 902.

[10]682 F.2d 897 (11th Cir. 1982).

[11]*Id.* at 903.

[12]106 S.Ct. 2399 (1986).

[13]*Id.* at 2406.

[14]*Id.*

[15]*Moylan v. Maries County*, 792 F.2d 746 (8th Cir. 1986).

[16]*Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399, 2406 (1986).

[17]*Id.*

[18]*Id.* at 2407.

[19]The Supreme Court noted that a trial court must exercise its discretion to decide whether the relevance of the evidence is outweighed by the danger of unfair prejudice, but may not establish a *per se* rule excluding such evidence. *Id.*

[20]*See, Loftin-Bogys v. City of Meridian*, 633 F.Supp. 1323 (S.D. Miss. 1986), *aff'd*, 824 F.2d 921 (5th Cir. 1987), *cert. denied*, 108 S.Ct. 1021 (1988).

[21]*Laudenslager v. Covert*, 45 F.E.P. Cas. 907 (Mich. Ct. App. 1987).

[22]*Highlander v. K.F.C. National Management Co.*, 805 F.2d 644 (6th Cir. 1986).

[23]*See, Silverstein v. Metroplex Communictions*, 678 F.Supp. 863 (S.D. Fla. 1988); *Neville v. Taft Broadcasting Co.*, 42 F.E.P. Cas. 1314 (W.D.N.Y. 1987). However, in *Meritor Savings Bank v. Vinson, supra* note 12, the Supreme Court refused to hold that the failure of an employee to use an employer's grievance procedure automatically insulated the employer from liability. That issue was "plainly relevant" but not conclusive. 106 S.Ct. at 2409.

[24]*Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986); *see also*, 29 C.F.R. §1604.11(b).

[25]*See, e.g., Henson v. City of Dundee, supra* note 7. See also, *Bohen v. City of East Chicago, Ind.*, 799 F.2d 1180 (7th Cir. 1986) (conduct equally offensive to men and women is not a violation of equal protection).

[26]*Henson v. City of Dundee, supra* note 7, at 903.

[27]*Id.* at 904.

[28]842 F.2d 1010 (8th Cir. 1988).

[29]*Id.* at 1014.

[30]*Vermett v. Hough*, 627 F.Supp. 587 (W.D. Mich. 1986).

[31]42 U.S.C. §2000e-2(a)(1).

[32]*See, Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399, 2404 (1986). The existence of a tangible effect on a condition of employment is inconsequential. No economic or tangible job detriment need be suffered at all.

[33]*Rogers v. EEOC*, 454 F.2d 234 (5th Cir. 1971), *cert. denied*, 406 U.S. 957 (1972); *Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399, 2405 (1986). *See also, Broderick v. Ruder*, _____F. Supp. _____, (No. 86-1834 D.D.C. 5/13/88) (Sexual activities in the workplace between other employees can affect the psychological well-being of an employee and create a hostile environment).

[34]*Meritor Savings Bank v. Vinson*, 106 S.Ct. at 2404 (citations omitted).

[35]*Id.* at 2406.

[36]*See, Fontanez v. Aponte*, 660 F.Supp. 145 (D. Puerto Rico 1987); *Sapp v. City of Warner Robins*, 655 F.Supp. 1043 (M.D. Georgia 1987); *Strickland v. Sears, Roebuck & Co.*, 46 F.E.P. Cas. 1024 (E.D. Va. 1987); *Petrosky v. Washington-Greene County Branch*, 45 F.E.P. Cas. 673 (W.D. Pa. 1987).

[37]*See, Moylan v. Maries County, supra* note 15; *Katz v. Dole, supra* note 6.

[38]*See, e.g., Arnold v. City of Seminole*, 614 F.Supp. 853 (E.D. Oklahoma 1985). *See also*, discussion at footnote 48 and accompanying text, *infra*.

[39]*See, Lake v. Baker*, 662 F.Supp. 392 (D.D.C. 1987).

[40]627 F.Supp. 587 (W.D. Michigan).

[41]*Id.* at 599.

[42]614 F.Supp. 853 (E.D. Oklahoma 1985).

[43]*Porta v. Rollins Environmental Services*, 654 F.Supp. 1275 (D.N.J. 1987), *aff'd*, 845 F.2d 1014 (3d Cir. 1988).

[44]*DelGado v. Lehman*, 665 F.Supp. 460 (E.D. Va. 1987).

[45]See, *Arnold v. City of Seminole*, 614 F.Supp. 853, 872 (E.D. Oklahoma 1985). *See also*, 29 C.F.R. §1604.11(f).

[46]*Supra* note 12.

[47]106 S.Ct. at 2408.

[48]*Henson v. City of Dundee*, 682 F.2d 897, 910 (11th Cir. 1982).

[49]*Katz v. Dole*, 709 F.2d 251, 255 (4th Cir. 1983) (emphasis added).

[50]*Id.* at 255.

[51]*Hall v. Gus Construction Co.*, 842 F.2d 1010, 1016 (8th Cir. 1988).

[52]*Sapp v. City of Warner Robins*, 655 F.Supp. 1043, 1050 (M.D. Ga. 1987). *See also, Hall v. Gus Construction Co., supra* note 51, at 1016.

[53]*See, e.g., Arnold v. City of Seminole, supra* note 42; *Hall, v. Gus Construction Co., supra* note 51; *Henson v. City of Dundee, supra* note 10.

[54]*Meritor Savings Bank v. Vinson, supra* note 12, at 2408.

[55]*See*, 42 U.S.C. §2000e-5(g).

[56]*See. e.g., Arnold v. City of Seminole*, 614 F.Supp. 853, 871 (E.D. Oklahoma 1985).

[57]*See, e.g., Johnson v. Ballard*, 644 F.Supp. 333 (N.D. Ga. 1986); *Bohen v. City of East Chicago, Ind., supra* note 25; *Brown v. Town of Allenstown*, 648 F.Supp. 831 (D.N.H. 1986); *Hunt v. Weatherbee*, 626 F.Supp. 1097 (D. Mass. 1986).

[58]*See, e.g., Brown v. Town of Allenstown, supra* note 57; *Priest v. Rotary*, 634 F.Supp. 571 (N.D. Cal. 1986); *Owens v. Turnage*, 46 F.E.P. Cas. 528 (D.N.J. 1988).

[59]See, e.g., *Sapp v. City of Warner Robins, supra* note 52; *Strickland v. Sears, Roebuck & Co.*, 46 F.E.P. Cas. 1024 (E.D. Va. 1987); *Smemo-Rosenquist v. Meredith Corp.*, 46 F.E.P. Cas. 531 (D. Ariz. 1988).

[60]*Meritor Savings Bank v. Vinson*, 106 S.Ct. 2399, 2408 (1986). *See also, Vermett v. Hough, supra* note 7; *Katz v. Dole, supra* note 6.