

Social Meanings of Sexual Harassment Cases **—“Strategy” and a Dilemma—**

Hiroko Hirose

- I Introduction
- II A Trend of Courts
 - 1 Recognizing the Problems and Changes in Meanings
 - 2 Explanations of the Injustice with the Concept of Sex Discrimination
 - 3 Features of EEOC Guideline
 - 4 Translations of Sex Discrimination
- III Phases of Problems
 - 1 The Concept of Discrimination and It's Phase
 - 2 The Specific Phase of Sexual Harassment Problems
- IV Strategy and Limitation of Courts
 - 1 Logic of “Sex Discrimination” as “Strategy”
 - 2 “Subjectivity” of Judgment — A Dilemma in the Decision of the Vinson Case
- V Afterward

A series of court cases have determined that sexual harassment equals sexual discrimination and stands in violation of Title VII of the Civil Rights Act of 1964. The purpose of my paper is to analyze the sexual harassment judgments from a sociological point of view. Two factors stand out in these kinds of cases: first, a predominant strategy has been to push for recognition of these kinds of cases as class actions rather than as personal assaults; Secondly, the climate of opinion regarding the issue of gender discrimination has changed to such an extent since 1976 that plaintiffs bringing such a case before the courts can be reasonably assured of a fair hearing.

The specific strategy of sexual harassment has been to create a consensus in society that harming a person's social, political, and economic status through unsolicited sexual advances should be regarded as an assault on a significant social class as opposed to being merely a personal affront. Some experts see sexual harassment and sex discrimination as the same thing. I do not agree

with this position. The terms sexual harassment and sexual discrimination, although having certain similarities, are fundamentally different.

Because the courts were intellectually disposed to recognize issues of discrimination, however, it made good sense to raise the issue of sexual harassment as a gender discrimination issue. Whereas most people in society, including jurists and feminists still perceive sexual discrimination and sexual harassment as two-sides of the same coin, I disagree because discrimination is dealing with issues of inequality; this is not so in cases of sexual harassment.

The issue of sexual harassment was further helped when the Equal Employment Opportunity Commission issued its guideline stating sexual harassment as "unwelcome sexual advance, requests for sexual favors, and other verbal or physical conduct of a sexual nature". The effect of the guideline on the court could be seen in the Supreme Court case Meritor Savings Bank, FSB v. Vinson (1986).

Looking at past cases, the courts seem warmly disposed toward plaintiffs bringing sexual discrimination cases. If the courts were to base decisions strictly on the subjective criterion of unwelcome advance, there would be a potential for divided opinion on the bench and off. However the courts have been judicious reaching decisions rooted in both subjective and objective criteria, steering a path of compromise that allows it to approximate the popular will. Yet the court, by its nature, is an objective creature rendering in the case of sexual harassment subjective decisions. This is the courts dilemma.