

Substantiated Answers to Important Questions About Sexual Harassment

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Jill D. Weinberg and Laura Beth Nielson, [*What is Sexual Harassment? An Empirical Study of Perceptions of Ordinary People and Judges*](#), 36 *St. Louis U. Pub. L. Rev.* 39 (2017).

While it is always fun to comb my files of recent scholarship to find things that I “like lots,” it was particularly delightful to come upon *What is Sexual Harassment? An Empirical Study of Perceptions of Ordinary People and Judges* by [Jill D. Weinberg](#) and [Laura Beth Nielson](#). For one thing, it’s all in the title. If the #metoo movement and public discourse surrounding sexual abuse and harassment in and outside of the workplace have indicated anything, it has been that the future of the way that the law and society will handle sexual harassment and abuse lies in how it is perceived, both by ordinary people and by judges. The ways in which laws are written, interpreted, and applied, as well as how mechanisms outside of the legal system will work to combat this problem, will be entirely dependent on how the problem is perceived. Moreover, there is no better way to explore this problem than with an empirical study that can substantiate the observations made and the conclusions reached.

This study was propelled, as its authors recite, “by a series of empirical and normative questions,” like, for example, whether the judiciary and regular people perceive sexual harassment the same way; and whether one’s experiences and background dictate one’s detection of sexual harassment, among others. The study brings us to a better and more refined understanding of the factors that predicate where people locate for themselves the line between lawful and unlawful workplace behavior. The resulting article reports on the results of the survey-based study that aims to coordinate one’s attitudes and perceptions with one’s identity as well as professional and social situations. The article provides more than the results of the study, though. It walks its reader through a literature review on the subject of how people come to discern unlawful sexual harassment, as delineated distinctly from behavior within the parameters of the law. It also lays out, in a fair amount of detail, the research methodology employed by the researchers, as well as the results of the study and their implications. Finally, the authors explore the possibility of broadening the concept and definition of sexual harassment legally, in light of the way in which it seems to be construed and discerned by most people.

I particularly appreciated the authors’ inclusion of a plethora of slants or perspectives into deriving or explaining sexual harassment as a phenomenon. Structural power, formalized policies and procedures, and inter-sex dynamics are explored as causes and predictors of the phenomenon. I also found valuable the positing of various hypotheses as to whether and when factors like one’s personal background and/or identity characteristics impact how people conceptualize social situations like harassment. Ultimately, the authors hypothesized that “an individual’s background will shape how they respond to questions about the presence or absence of sexual harassment.” According to their forecast, “white women and people of color—individuals who are traditionally the most [a]ffected by workplace discrimination and harassment—will identify the workplace vignettes as harassment, whereas white men will not.”

At the end of the day, the study appeared to find, among other things, that lay people or “ordinary” people seem to define sexual harassment more broadly than do judges. It was interesting to see what the numbers revealed, in that the reasoned hypotheses of the researchers did not always find themselves supported by the data. The researchers reported that among their “interesting findings,” was the conclusion that “judges are less likely to classify the very same scenarios as sexual harassment than ordinary people. While this was not a formal hypothesis, these results make sense; judges are trained legal professionals who know the essential elements and the required evidence to prove these claims. However, we did not anticipate to see a nearly 20% difference between ordinary people and

judges.” Interestingly, the data seemed to bolster the researchers’ hypothesis that “gender hierarchy influences both populations,” showing that “[b]oth ordinary people and judges deferred to a sociocultural model of sexual harassment where harassment constitutes the male perpetrator and female victim.

The researchers concluded, among other things, that there are three “definitional approaches” to sexual harassment: 1) the legal approach (making use of statutory language and precedent); 2) the social scientific perspective (employing a broader definition and possibly variables that are “extra-legal”); and 3) the so-called “lived experience” or “empathetic” approach (informed by an individual’s background). They also found that one’s personal background actually “had minimal impact on the determination of sexual harassment,” though women from the ordinary people sample were more likely to view the scenarios as harassment than were men. Interestingly, the researchers found “no relationship between a judge’s identity and the determination of sexual harassment.”

Overall, the exposition of the research methodology and results was fascinating. In an area in which scholars often characterize, describe, and ascribe what they believe to be the attitudes, perceptions, and approaches of both society and the judiciary when it comes to discrimination and harassment cases, and scenarios without actual data to substantiate the claims, it is downright exciting to see empirical explorations and a scientific approach recounted in a law review article. The infusion of science and data collection into this field is always welcome and valued, and the chosen topic of these researchers—the factors that inform and predict the discernment of sexual harassment by lay people and judges—could not possibly be any more relevant and salient to the national discourse on the regulation of the workplace. More legal scholarship should avail itself of available empirical data, and more legal scholars should take an interest in the type of research that these researchers have done.

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