Sandra G. BUNDY, Appellant,

v.

Delbert JACKSON, Director, D.C. Department of Corrections.

No. 79-1693.

United States Court of Appeals, District of Columbia Circuit.

Argued March 26, 1980.

Decided Jan. 12, 1981.

Action was instituted on complaint against federal employer for alleged sexual discrimination in employment. The United States District Court for the District of Columbia refused to grant plaintiff any declaratory or injunctive relief, and appeal was taken. The Court of Appeals, J. Skelly Wright, Circuit Judge, held that: (1) sexual harassment established through claim that conditions of employment included psychological and emotional work environment and that sexually stereotyped insults and demeaning propositions to which plaintiff was indisputably subjected and which caused her anxiety and debilitation constituted sex discrimination with respect to terms, conditions, or privileges of employment regardless of whether plaintiff lost any tangible job benefits as a result thereof, and (2) a final disposition of claims for back pay and promotion could not be made and it was necessary, therefore, to remand the case to the district court to enable it to conduct further evidentiary proceedings, where the district court, whether right or wrong in its factual findings, failed to allocate properly the burden of proof according to principles of the equal employment provision; the findings of fact and conclusions of law in no way indicated that the court properly defined the requirements of the plaintiff's prima facie case or the burden of the employer in rebutting a prima facie case.

Reversed and remanded.

Appeal from the United States District Court for the District of Columbia (D.C. Civil Action No. 77-1359).

Barry H. Gottfried, Washington, D. C., with whom Arthur D. Chotin and Arthur Kahn, New York City, were on the brief, for appellant.

Leo N. Gorman, Asst. Corp. Counsel for the District of Columbia, Washington, D. C., with whom Judith W. Rogers, Corp. Counsel, and Richard W. Barton, Deputy Corporation Counsel, Washington, D. C., were on the brief, for appellee. Margaret L. Hines, Asst. Corp. Counsel, Washington, D. C., also entered an appearance for appellee.

Vella M. Fink, Atty., E. E. O. C., for amicus curiae Equal Employment Opportunity Commission, urging reversal. Beatrice Rosenberg, Asst. General Counsel, and Marilyn S. G. Urwitz, Atty., E. E. O. C., Washington, D. C., were on the brief for amicus curiae Equal Employment Opportunity Commission.

Linda F. Thome, Washington, D. C., was on the brief for amicus curiae Women's Legal Defense Fund, urging reversal.

Before J. SKELLY WRIGHT, Chief Judge, and SWYGERT * and ROBINSON, Circuit Judges.

Opinion for the court filed by Chief Judge J. SKELLY WRIGHT.

J. SKELLY WRIGHT, Chief Judge:

In *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977), we held that an employer who abolished a female employee's job to retaliate against the employee's resistance of his sexual advances violated Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.* (1976 & Supp. III 1979). The appellant in this case asserts some claims encompassed by the *Barnes* decision, arguing that her rejection of unsolicited and offensive sexual advances from several supervisors in her agency caused those supervisors unjustifiably to delay and block promotions to which she was entitled. Equally important, however, appellant asks us to extend *Barnes* by holding that an employer violates Title VII merely by subjecting female employees to sexual harassment, even if the employee's resistance to that harassment does not cause the employ-

* Of the Seventh Circuit, sitting by designation pursuant to 28 U.S.C. § 291(a) (1976).

er to deprive her of any tangible job benefits.

The District Court in this case made an express finding of fact that in appellant's agency "the making of improper sexual advances to female employees [was] standard operating procedure, a fact of life, a normal condition of employment," Finding of Fact No. 38, Appellant's Appendix (App.) 15, and that the director of the agency, to whom she complained of the harassment, failed to investigate her complaints or take them seriously, *id.* No. 44, App. 16. Nevertheless, the District Court refused to grant appellant any declaratory or injunctive relief, concluding that sexual harassment does not in itself represent discrimination "with respect to * * * terms, conditions, or privileges of employment" within the meaning of Title VII, 42 U.S.C. § 2000e-2(a)(1) (1976). Further, the court denied appellant's request for back pay to compensate for the allegedly improper delay in her promotion to GS-9, and for elevation to GS-11 and back pay for the delay in that promotion, holding that the employer had independent, legitimate reasons for delaying and denying the promotions.

Because we believe the District Court wrongly construed Title VII on the claim for declaratory and injunctive relief and failed to apply the proper burden of proof analysis to the promotion claims, we reverse.[1]

I. BACKGROUND

Appellant Sandra Bundy is now, and was at the time she filed her lawsuit, a Vocational Rehabilitation Specialist, level GS-9, with the District of Columbia Department of Corrections (the agency). Bundy began with the agency as a GS-4 Personnel Clerk in 1970, was promoted to GS-5 that same year, and became a GS-6 Staffing Technician in the Personnel Department in 1973. After training as a technician in employment staffing, she became a GS-7 Employment Development Specialist (the predecessor classification to Vocational Rehabilitation Specialist) in 1974, and achieved her current GS-9 level in 1976, one year after she filed her formal complaint of sexual harassment with the agency. In recent years Bundy's chief task has been to find jobs for former criminal offenders.

The District Court's finding that sexual intimidation was a "normal condition of employment" in Bundy's agency finds ample support in the District Court's own chronology of Bundy's experiences there. Those experiences began in 1972 when Bundy, still a GS-5, received and rejected sexual propositions from Delbert Jackson, then a fellow employee at the agency but now its Director and the named defendant in this lawsuit in his official capacity. Findings of Fact Nos. 28-29, App. 11-12. It was two years later, however, that the sexual intimidation Bundy suffered began to intertwine directly with her employment, when she received propositions from two of her supervisors, Arthur Burton and James Gainey.

Burton became Bundy's supervisor when Bundy became an Employment Development Specialist in 1974. Shortly thereafter Gainey became her first-line supervisor and Burton her second-line supervisor, although Burton retained control of Bundy's employ-

1. Bundy's complaint and, originally, her appeal also included a claim that the agency had illegally delayed her promotion to GS-9, for which she was found fully qualified in January 1976, until July of that year, in alleged retaliation against her filing a discrimination complaint. Aquila Gilmore, who was Chief Equal Employment Opportunity Officer for the agency, admitted at trial that he delayed the promotion in response to Bundy's filing of her complaint, Finding of Fact No. 46, Appellant's Appendix (App.) 17, but contended that he had done so in the good faith belief that the delay was authorized under District of Columbia regulations. Defendant's Exh. No. 18, Appellant's Supplemental Appendix (SA) 296. Before oral argument, however, appellee District of Columbia conceded that Gilmore had been wrong in delaying the promotion and offered Bundy back pay for the delay. The District believes, however, that Bundy is entitled only to four, rather than five, months' back pay since, even if Gilmore had not delayed the promotion, normal procedures would have delayed Bundy's formal elevation for one month after she was declared officially qualified. On remand the District Court can determine the proper amount of back pay as a remedy for appellee's error here.

ment status. *Id.* Nos. 32–33, App. 12. Burton began sexually harassing Bundy in June 1974, continually calling her into his office to request that she spend the workday afternoon with him at his apartment and to question her about her sexual proclivities. *Id.* No. 34, App. 12–13.[2] Shortly after becoming her first-line supervisor Gainey also began making sexual advances to Bundy, asking her to join him at a motel and on a trip to the Bahamas. *Id.* No. 35, App. 13–14. Bundy complained about these advances to Lawrence Swain, who supervised both Burton and Gainey. Swain casually dismissed Bundy's complaints, telling her that "any man in his right mind would want to rape you," *id.* No. 37, App. 14, and then proceeding himself to request that she begin a sexual relationship with him in his apartment. *Id.* No. 36, App. 14. Bundy rejected his request.

We add that, although the District Court made no explicit findings as to harassment of other female employees, its finding that harassment was "standard operating procedure" finds ample support in record evidence that Bundy was not the only woman subjected to sexual intimidation by male supervisors.[3]

In denying Bundy any relief, the District Court found that Bundy's supervisors did not take the "game" of sexually propositioning female employees "seriously," and that Bundy's rejection of their advances did not evoke in them any motive to take any action against her. *Id.* No. 38, App. 15. The record, however, contains nothing to support this view, and indeed some evidence directly belies it. For example, after Bundy complained to Swain, Burton began to derogate her for alleged malingering and poor work performance, though she had not previously received any such criticism. App. 30. Burton also arranged a meeting with Bundy and Gainey to discuss Bundy's alleged abuse of leave, though he did not pursue his charges at this meeting. App. 94–95.

Beyond these actions, Bundy's supervisors at least created the impression that they were impeding her promotion because she had offended them, and they certainly did nothing to help her pursue her harassment claims through established channels. Bundy became eligible for promotion to GS–9 in January 1975. App. 178. When she contacted Gainey to inquire about a promotion he referred her to Burton, who then referred her back to Gainey, who then told her that because of a promotion freeze he could not recommend her for a promotion. App. 41–43. One month later, however, Bundy learned that the personnel office had indeed recommended other employees for promotion despite the freeze. App. 44.

2. Burton called Bundy into his office to ask about her weekend activities and, in particular, whether she liked horses. When she responded that she indeed rode horses, he said that he had heard that women rode horses to obtain sexual relief. He told her he had books and pictures at home to support this theory and suggested that she come to his apartment to see them. Burton specifically asked her to come to his apartment to look at the books and pictures during the workday afternoon instead of performing her job-related field activities. Moreover, he repeated his importunings by telephone after obtaining Bundy's unlisted home number.

3. Carolyn Epps, who worked for the agency between 1967 and 1974, testified that after she asked her supervisor, Lawrence Swain, about the possibility of a promotion he began making unsolicited physical and verbal advances toward her, App. 93–96, and that she received verbal sexual advances from supervisor Claude Burgin after she discussed her promotion with him. App. 94. Epps also testified that she heard Swain ask other female employees to come to his apartment for drinks and saw him pressing his body against their bodies in his office. App. 96–97. In 1974 Epps applied to become an administrative aide-stenographer, which would have meant a promotion from GS–6 to GS–7. She testified that, although she was qualified for the job, it went instead to another female employee who had received sexual advances from Swain and who, unlike Epps, did not know stenography. App. 100–101.

Ann Blanchard worked for the agency from 1971 to 1973, supervised by James Gainey and Arthur Burton. Burton made sexual advances toward her and also apparently intimidated her by stating that another employee whom he would not identify had told Burton that Blanchard had been conducting a sexual relationship with one of her agency clients. App. 105–106.

Bundy then informally consulted an Equal Employment Opportunity (EEO) Officer who was working in her office, and then requested a meeting with Claude Burgin, Swain's supervisor. On February 18, 1975 Bundy met with Burton and Burgin and told the latter that Burton and Gainey had sexually harassed her and denied her a promotion because she had resisted their advances. Burgin simply responded that she was denied the promotion because her work was unsatisfactory, and that she was free to pursue the matter further if she cared to. App. 46–48. Bundy then informally complained about the sexual harassment to Aquila Gilmore, the Chief EEO Officer in the agency. Gilmore, however, simply advised that her charges might be difficult to prove, and cautioned her against bringing unwarranted complaints. He never brought the issue to the attention of Delbert Jackson, by then Director of the agency. App. 187–190.

On April 11, 1975 Bundy met with Jackson and showed him the draft of a letter summarizing her complaint. Jackson then arranged an April 14 meeting with Burgin, Burton, and Bundy, Finding of Fact No. 39, App. 14, but Gilmore, who had become Chief of Manpower Management at the agency, and Charles Rogers, Assistant Director of Operations, also attended the meeting. Bundy, purportedly embarrassed at the unexpected presence of the latter two men, did not take the opportunity of discussing her sexual harassment claims at this meeting, nor did Jackson or Gilmore raise the issue. Instead, the meeting focused on Bundy's possible promotion and her alleged work deficiencies. *Id.* No. 40, App. 15–16. On April 23 Gainey and Burton completed a memorandum offering Bundy's inadequate work performance as the reason for denying her a promotion to GS–9. Plaintiff's Exh. 2, Appellant's Supplemental Appendix (SA) 217. Bundy responded to this memorandum, arguing that her supervisors had never presented her with any written criticism of her performance until she raised the harassment issue. *See* App. 145–148.[4]

Bundy proceeded to pursue her complaint beyond her immediate supervisors. She registered an informal complaint with EEO Officer Philip Matthews, App. 64–65,[5] and then filed a formal complaint and supplemental complaints with the agency. Jackson, having learned of the formal complaints, took no steps to investigate them beyond simply asking Burton, Gainey, and Swain whether they had made improper advances to Bundy. Finding of Fact No. 44, App. 16–17; App. 125–127. Bundy was finally promoted to GS–9 in July 1976. Having received "satisfactory" ratings for her work performance, she became eligible for promotion to GS–11 in July 1977, but has not yet received that promotion.

Bundy filed her complaint in the District Court on August 3, 1977.[6]

II. CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

The District Court appeared to find that even Bundy took a casual attitude toward the pattern of unsolicited sexual advances in the agency, Finding of Fact No. 47, App. 17, thereby implying that these advances by

4. The memorandum criticized Bundy for failing to file proper weekly and monthly reports, to serve clients properly, and to make sufficient field visits. Plaintiff's Exh. No. 2, SA 217. Bundy responded that all her co-workers normally had difficulties filing reports because of inefficiencies in the filing system, that it was not possible to give any better service to her excessive number of clients in the 15–30 minutes allotted for consultation with each one, and that her supervisors never provided her with any express requirements or goals for the number of her field visits. App. 61–64.

5. Even after Bundy consulted Matthews, Burton apparently continued to intimidate her, accusing her of failing to honor a duty assignment, App. 149–150, which Bundy testified she had never been given, Plaintiff's Exh. No. 9, SA 250.

6. Since the agency took no final action on her complaint, and since she waited more than 180 days after she filed the complaint with the agency, Bundy fully exhausted her administrative remedies before proceeding in District Court. 42 U.S.C. § 2000e–16(c) (1976); Civil Service Commission Regulations § 713.281, Federal Personnel Manual Supp. 990–1 (1978).

themselves did no harm to female employees. We find little or no basis in the record for the District Court's finding or implication, especially since Bundy's testimony that the sexual harassment she endured did her serious emotional harm, App. 40, was essentially unrefuted. In any event, the essential basis for the District Court's refusal to hold that the sexual harassment was in itself a violation of Title VII, Conclusion of Law No. 5, App. 18, was not this factual finding, but the District Court's construction of Title VII.

[1] The key provision of Title VII states:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's * * * sex * *[.]

42 U.S.C. § 2000e–2(a)(1) (1976). The specific provision of Title VII applying to employment with the District of Columbia, as well as to a federal agency as in *Barnes v. Costle, supra*, states:

> All personnel actions affecting employees * * * in those units of the Government of the District of Columbia having positions in the competitive service * * * shall be made free from any discrimination based on race, color, religion, sex, or national origin.

Id. § 2000e–16(a). Despite the difference in language between these two sections, we have held that Title VII places the same restrictions on federal and District of Columbia agencies as it does on private employers, *Barnes v. Costle, supra*, 561 F.2d at 988, and so we may construe the latter provision in terms of the former. We infer that the District Court in this case did the same, and that it refused Bundy declaratory and injunctive relief because it believed that sexual harassment not leading to loss or denial of tangible employment benefits for the harassed employee fell outside the scope of discrimination with respect to "terms, conditions, or privileges of employment."

Because Paulette Barnes had had her job terminated after she refused her supervisor's sexual importunings, we were not required in *Barnes* to construe the phrase "terms, conditions, or privileges of employment." Instead, our task of statutory construction in *Barnes* was to determine whether the disparate treatment Barnes suffered was "based on * * * sex." *Id.* at 989. We heard arguments there that whatever harm Barnes suffered was not *sex* discrimination, since Barnes' supervisor terminated her job because she had refused sexual advances, not because she was a woman. We rejected those arguments as disingenuous in the extreme. The supervisor in that case made demands of Barnes that he would not have made of male employees. *Id.* "*But for* her womanhood * * [Barnes'] participation in sexual activity would never have been solicited. To say, then, that she was victimized in her employment simply because she declined the invitation is to ignore the asserted fact that she was invited only because she was a woman subordinate to the inviter in the hierarchy of agency personnel." *Id.* at 990 (emphasis added; footnotes omitted).[7]

[2] We thus made clear in *Barnes* that sex discrimination within the meaning of Title VII is not limited to disparate treatment founded solely or categorically on gender. Rather, discrimination is *sex* discrimination whenever sex is for no legitimate reason a substantial factor in the discrimination. *Id.* at 990 & n.50, *citing Phil-*

7. We also rejected the argument that sexual harassment could not be gender discrimination simply because a woman could also harass a man, or because any homosexual supervisor could harass an employee of the same gender. We noted that in each instance the question is one of but-for causation: would the complaining employee have suffered the harassment had he or she been of a different gender? *Barnes v. Costle*, 561 F.2d 983, 990 n.55 (D.C. Cir. 1977). Only by a *reductio ad absurdum* could we imagine a case of harassment that is not sex discrimination—where a bisexual supervisor harasses men and women alike. *Id.*

lips v. Martin Marietta Corp., 400 U.S. 542, 91 S.Ct. 496, 27 L.Ed.2d 613 (1971); *see* 29 C.F.R. § 1604.4(a) (1979) ("so long as sex is a factor in the application of [an employer's decision], such application involves a discrimination based on sex"). Other circuits have agreed. *Tomkins v. Public Service Electric & Gas Co.*, 568 F.2d 1044 (3d Cir. 1977); *Garber v. Saxon Business Products, Inc.*, 552 F.2d 1032 (4th Cir. 1977); *see Miller v. Bank of America*, 600 F.2d 211 (9th Cir. 1979).

[3-5] We thus have no difficulty inferring that Bundy suffered discrimination on the basis of sex. Moreover, applying *Barnes*, we have no difficulty ascribing the harassment—the "standard operating procedure"—to Bundy's employer, the agency. Although Delbert Jackson himself appears not to have used his position as Director to harass Bundy, an employer is liable for discriminatory acts committed by supervisory personnel, *Barnes v. Costle, supra*, 561 F.2d at 993, and there is obviously no dispute that the men who harassed Bundy were her supervisors. *Barnes* did suggest that the employer might be relieved of liability if the supervisor committing the harassment did so in contravention of the employer's policy and without the employer's knowledge, and if the employer moved promptly and effectively to rectify the offense. *Id.; see Croker v. Boeing Co. (Vertol Div.)*, 437 F.Supp. 1138, 1194 (E.D. Pa. 1977). Here, however, Delbert Jackson and other officials in the agency who had some control over employment and promotion decisions had full notice of harassment committed by agency supervisors and did virtually nothing to stop or even investigate the practice.[8] *See id.* at 1191. And though there was ample evidence in this case that at least two other women in the agency suffered from this harassment, *see* note 3 *supra*, *Barnes* makes clear that the employer could be held liable even if Bundy were the only victim, since Congress intended Title VII to protect *individuals* against class-based prejudice. *Barnes v. Costle, supra*, 561 F.2d at 993.[9]

[6] We thus readily conclude that Bundy's employer discriminated against her on the basis of sex. What remains is the novel question whether the sexual harassment of the sort Bundy suffered amounted by itself to sex discrimination with respect to the "*terms, conditions, or privileges of employment.*" Though no court has as yet so held, we believe that an affirmative answer follows ineluctably from numerous cases finding Title VII violations where an employer created or condoned a substantially discriminatory work *environment*, regardless of whether the complaining employees lost

8. This case thus also satisifes the more stringent test of employer *respondeat superior* liability Judge MacKinnon advocated in his concurrence in *Barnes v. Costle, supra* note 7, 561 F.2d at 995-1001: The employer, in full knowledge of the alleged offense and having received a formal complaint, was in the best position to correct the offenses, yet impeded the complaint—and even abetted the offenses.

We note in this context that the District Court's finding that Jackson, among others, did not take the harassment ritual "seriously" is a remarkable *non sequitur*.

> Jackson never took any further steps whatsoever to ascertain whether Bundy's complaints were valid, nor did he take plaintiff's complaint seriously enough to ask for a copy of the written report of the investigation which was conducted. This is a further indication that Jackson, as had others before him, considered sexual advances by males in the office to female employees as a game that was played and not to be taken seriously. Finding of Fact No. 44, App. 16.

To state the all too obvious, Jackson may have avoided all investigation precisely because he realized that proof of a practice of sexual harassment would be a serious matter for his agency indeed. Alternatively, if he in fact did consider the whole matter trivial, he was only compounding Bundy's difficulty in obtaining relief from harassment and thus, in a sense, compounding the Title VII violation.

9. We note that although a pattern or practice of harassment directed at a single employee can violate Title VII, casual or isolated manifestations of a discriminatory environment, such as a few ethnic or racial slurs, may not raise a cause of action. *Cariddi v. Kansas City Chiefs Football Club, Inc.*, 568 F.2d 87, 88 (8th Cir. 1977); *Fekete v. U. S. Steel Corp.*, 353 F.Supp. 1177, 1186 (W.D. Pa. 1973); *see Int'l Brhd of Teamsters v. United States*, 431 U.S. 324, 336 n.16, 97 S.Ct. 1843, 1854 n.16, 52 L.Ed.2d 396 (1977).

any tangible job benefits as a result of the discrimination.

Bundy's claim on this score is essentially that "conditions of employment" include the psychological and emotional work environment—that the sexually stereotyped insults and demeaning propositions to which she was indisputably subjected and which caused her anxiety and debilitation, App. 40, illegally poisoned that environment. This claim invokes the Title VII principle enunciated by Judge Goldberg in *Rogers v. Equal Employment Opportunity Com'n*, 454 F.2d 234 (5th Cir. 1971), *cert. denied*, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed.2d 343 (1972). The plaintiff in *Rogers*, a Hispanic, did not claim that her employer, a firm of opticians, had deprived her of any tangible job benefit. Rather, she claimed that by giving discriminatory service to its Hispanic *clients* the firm created a discriminatory and offensive work environment for its Hispanic *employees.* Granting that the express language of Title VII did not mention this situation, Judge Goldberg stated:

> Congress chose neither to enumerate specific discriminatory practices, nor to elucidate in extenso the parameter of such nefarious activities. Rather, it pursued the path of wisdom by being unconstrictive, knowing that constant change is the order of our day and that the seemingly reasonable practices of the present can easily become the injustices of the morrow. Time was when employment discrimination tended to be viewed as a series of isolated and distinguishable events, manifesting itself, for example, in an employer's practices of hiring, firing, and promoting. But today employment discrimination is a far more complex and pervasive phenomenon, as the nuances and subtleties of discriminatory employment practices are no longer confined to bread and butter issues. As wages and hours of employment take subordinate roles in management-labor relationships, the modern employee makes ever-increasing demands in the nature of intangible fringe benefits. Recognizing the importance of these benefits, we should neither ignore their need for protection, nor blind ourselves to their potential misuse.

454 F.2d at 238. The Fifth Circuit then concluded that the employer had indeed violated Title VII, Judge Goldberg explaining that "terms, conditions, or privileges of employment"

> is an expansive concept which sweeps within its protective ambit the practice of creating a work environment heavily charged with ethnic or racial discrimination. * * * One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers * * *.

Id.; accord, Carroll v. Talman Federal Savings & Loan Ass'n, 604 F.2d 1028, 1032–1033 & n.13 (7th Cir. 1979), *petition for cert. pending* (forcing female bank employees to wear uniforms while allowing males to wear own suits violates Title VII by perpetuating demeaning sexual stereotypes; "terms and conditions of employment" mean more than tangible compensation and benefits); *Cariddi v. Kansas City Chiefs Football Club, Inc.*, 568 F.2d 87 (8th Cir. 1977) (though employee could only prove isolated incidents, a pattern of offensive ethnic slurs would violate his Title VII rights); *Firefighters Institute for Racial Equality v. City of St. Louis*, 549 F.2d 506, 514–515 (8th Cir.), *cert. denied*, 434 U.S. 819, 98 S.Ct. 60, 54 L.Ed.2d 76 (1977) (segregated employee eating clubs condoned—though not organized or regulated—by employer violate Title VII by creating discriminatory work environment); *Gray v. Greyhound Lines, East*, 178 U.S.App.D.C. 91, 545 F.2d 169, 176 (D.C. Cir. 1976) (pattern of racial slurs violates Title VII rights to nondiscriminatory environment); *United States v. City of Buffalo*, 457 F.Supp. 612, 631–635 (W.D. N.Y. 1978) (black employees entitled to work environment free of racial abuse and insult); *Compston v. Borden, Inc.*, 424 F.Supp. 157 (S.D. Ohio 1976) (demeaning religious slurs by supervisor violate Title VII); *Steadman v. Hundley*, 421 F.Supp. 53, 57 (N.D. Ill. 1976) (racial slurs may lead to Title VII violation); *cf. Harrington v. Vandalia-Butler Board of Educ.*, 585 F.2d 192, 194 n.3 (6th Cir. 1978), *cert. denied*, 441 U.S. 932, 99 S.Ct. 2053, 60 L.Ed.2d 660 (1979) (giving female physical education teachers inferior locker and shower facilities is illegal discrimination; Title VII reaches "actual working conditions," not just equal opportunity for employment); *Waters v. Heublein, Inc.*, 547 F.2d 466 (9th Cir.), *cert. denied*, 433 U.S. 915, 97 S.Ct. 2988, 53 L.Ed.2d 1100 (1977) (white plaintiff has standing to sue employer who discriminates against blacks, since she has statutory right to work environment free of racial prejudice); *Swint v. Pullman-Standard*, 539 F.2d 77 (5th Cir. 1976) (discriminatory job assignments violate Title VII even where no discrimination in salary; Title VII claimant need not prove tangible economic harm).[10]

[7, 8] The relevance of these "discriminatory environment" cases to sexual harassment is beyond serious dispute. Racial or ethnic discrimination against a company's minority clients may reflect no intent to discriminate directly against the company's minority employees, but in poisoning the atmosphere of employment it violates Title VII. Sexual stereotyping through discriminatory dress requirements may be benign in intent, and may offend women only in a general, atmospheric manner, yet it violates Title VII. Racial slurs, though intentional and directed at individuals, may still be just verbal insults, yet they too may create Title VII liability. How then can sexual harassment, which injects the most demeaning sexual stereotypes into the general work environment and which always represents an intentional assault on an individual's innermost privacy, not be illegal?

[9] Moreover, an important principle articulated in *Rogers v. Equal Employment Opportunity Com'n, supra*, suggests the special importance of allowing women to sue to prevent sexual harassment without having to prove that they resisted the harassment and that their resistance caused them to lose tangible job benefits. Judge Goldberg noted that even indirect discrimination is illegal because it

> may constitute a subtle scheme designed to create a working environment imbued with discrimination and directed ultimately at minority group employees. As patently discriminatory practices become outlawed, those employers bent on pursuing a general policy declared illegal by Congressional mandate will undoubtedly devise more sophisticated methods to perpetuate discrimination among employees. * * *

454 F.2d at 239. Thus, unless we extend the *Barnes* holding, an employer could sexually harass a female employee with impunity by carefully stopping short of firing the employee or taking any other tangible actions against her in response to her resistance, thereby creating the impression—the one received by the District Court in this case—that the employer did not take the ritual of harassment and resistance "seriously."

Indeed, so long as women remain inferiors in the employment hierarchy, they may have little recourse against harassment beyond the legal recourse Bundy seeks in this case. The law may allow a woman to prove that her resistance to the harassment cost her her job or some economic benefit, but this will do her no good if the employer never takes such tangible actions against her.

> And this, in turn, means that so long as the sexual situation is constructed with enough coerciveness, subtlety, suddenness, or one-sidedness to negate the effectiveness of the woman's refusal, or so long as her refusals are simply ignored while her job is formally undisturbed, she is not considered to have been sexually harassed.

10. The Equal Employment Opportunity Commission (EEOC) itself, to whose interpretation of Title VII we owe considerable deference, *Griggs v. Duke Power Co.*, 401 U.S. 424, 433–434, 91 S.Ct. 849, 854–855, 28 L.Ed.2d 158 (1971), has consistently held that the statute grants an employee a working environment free of discrimination. *E.g.*, EEOC Decision No. 74-84, CCH EEOC Decisions ¶ 6450 (1975); EEOC Decision No. 72-0779, CCH EEOC Decisions ¶ 6321, 4 FEP Cases 317 (1971).

C. MacKinnon, Sexual Harassment of Working Women 46–47 (1979). It may even be pointless to require the employee to prove that she "resisted" the harassment at all. So long as the employer never literally forces sexual relations on the employee, "resistance" may be a meaningless alternative for her. If the employer demands no response to his verbal or physical gestures other than good-natured tolerance, the woman has no means of communicating her rejection. She neither accepts nor rejects the advances; she simply endures them. She might be able to contrive proof of rejection by objecting to the employer's advances in some very visible and dramatic way, but she would do so only at the risk of making her life on the job even more miserable. *Id.* at 43–47. It hardly helps that the remote prospect of legal relief under *Barnes* remains available if she objects so powerfully that she provokes the employer into firing her.

The employer can thus implicitly and effectively make the employee's endurance of sexual intimidation a "condition" of her employment. The woman then faces a "cruel trilemma." She can endure the harassment. She can attempt to oppose it, with little hope of success, either legal or practical, but with every prospect of making the job even less tolerable for her. Or she can leave her job, with little hope of legal relief [11] and the likely prospect of another job where she will face harassment anew.

[10–13] Bundy proved that she was the victim of a practice of sexual harassment and a discriminatory work environment permitted by her employer. Her rights under Title VII were therefore violated. We thus reverse the District Court's holding on this issue and remand it to that court so it can fashion appropriate injunctive relief.[12] And on this novel issue, we think it advisable to offer the District Court guidance in framing its decree.[13]

11. *Compare In re Carmita Wood*, Case No. 75–92437, New York State Dep't of Labor Unemployment Insurance Appeals Board, Decision and Notice of Decision (March 7, 1975) (employee who claimed sexual harassment forced her to leave job was held to have resigned voluntarily and thus was ineligible for compensation), *with* Appeals Board Decision No. P–B–139 (California), *reversing* Decision of the Referee, *In re Nancy J. Fillhouer*, Case No. SJ–5963, William J. Costello, Referee (San Jose Referee Office, April 28, 1975) (granting such claim).

12. Title VII allows the courts to award a victorious plaintiff reinstatement, back pay, or "any other equitable relief as the court deems appropriate." 42 U.S.C. § 2000e–5(g) (1976). Back pay and reinstatement are, of course, irrelevant to the discriminatory environment issue, and we follow the great majority of the federal courts in construing "equitable relief" to preclude any award of damages for emotional harm resulting from a Title VII violation. *E.g.*, *Harrington v. Vandalia-Butler Board of Educ.*, 585 F.2d 192 (6th Cir. 1978), *cert. denied*, 441 U.S. 932, 99 S.Ct. 2053, 60 L.Ed.2d 660 (1979); *Curran v. Portland Superintending School Committee*, 435 F.Supp. 1063, 1077–1078 (D. Me. 1977), *Wright v. St. John's Hospital*, 414 F.Supp. 1202, 1205 (D. Okl. 1976); *see Equal Employment Opportunity Com'n v. Detroit Edison Co.*, 515 F.2d 301, 308–309 (6th Cir. 1975), *vacated and remanded*, 431 U.S. 951, 97 S.Ct. 2668, 53 L.Ed.2d 267 (1976). We add that, since our holding makes Bundy a prevailing party in this suit, the District Court on remand may entertain a request for attorney's fees. 42 U.S.C. § 2000e–5(k) (1976).

13. Appellee has argued that an injunction is improper and unnecessary in this case since Bundy has complained of no instances of sexual harassment since 1975 and there is therefore no reason to think further harassment will occur. Common sense tells us that the men who harassed Bundy may well have ceased their actions solely because of the pendency of her complaint and lawsuit. Moreover, the law tells us that a suit for injunctive relief does not become moot simply because the offending party has ceased the offending conduct, since the offending party might be free otherwise to renew that conduct once the court denied the relief. *Allee v. Medrano*, 416 U.S. 802, 810–811, 94 S.Ct. 2191, 2197–2198, 40 L.Ed.2d 566 (1974). The request for injunctive relief will be moot only where there is no reasonable expectation that the conduct will recur, *United States v. W. T. Grant Co.*, 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed.2d 1303 (1953), or where interim events have "completely and irrevocably eradicated the effects of the alleged violation," *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 1383, 59 L.Ed.2d 642 (1979). We perceive no such certainty here, most obviously because Bundy's agency has taken no affirmative steps to prevent recurrence of the harassment, and because all the harassing employees still work for the agency. The issuance of Mayor's Order No. 79–89 (May 24, 1979), *see*

The Final Guidelines on Sexual Harassment in the Workplace (*Guidelines*) issued by the Equal Employment Opportunity Commission on November 10, 1980, 45 Fed. Reg. 74676–74677 (1980) (to be codified at 29 C.F.R. § 1604.11(a)–(f)), offer a useful basis for injunctive relief in this case. Those Guidelines define sexual harassment broadly:

> 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 work environment.

Guidelines, supra, 45 Fed.Reg. at 74677 (to be codified at 29 C.F.R. § 1604.11(a)). The Guidelines go on to reaffirm that an employer is responsible for discriminatory acts of its agents and supervisory employees with respect to sexual harassment just as with other forms of discrimination, regardless of whether the employer authorized or knew or even should have known of the acts, *id.* (to be codified at 29 C.F.R. § 1604.11(d)), and also remains responsible for sexual harassment committed by nonsupervisory employees if the employer authorized, knew of, or should have known of such harassment, *id.* (to be codified at 29 C.F.R. § 1604.11(d)). The general goal of these Guidelines is *preventive.* An employer may negate liability by taking "immediate and appropriate corrective action" when it learns of any illegal harassment, *id.*, but the employer should fashion rules within its firm or agency to ensure that such corrective action never becomes necessary, *id.* (to be codified at 29 C.F.R. § 1604.11(f)).

[14] Applying these Guidelines to the present case, we believe that the Director of the agency should be ordered to raise affirmatively the subject of sexual harassment with all his employees and inform all employees that sexual harassment violates Title VII of the Civil Rights Act of 1964, the Guidelines of the EEOC, the express orders of the Mayor of the District of Columbia,[14] and the policy of the agency itself. The Director should also establish and publicize a scheme whereby harassed employees may complain to the Director immediately and confidentially. The Director should promptly take all necessary steps to investigate and correct any harassment, including warnings and appropriate discipline directed at the offending party, and should generally develop other means of preventing harassment within the agency.

[15] Perhaps the most important part of the preventive remedy will be a prompt and effective procedure for hearing, adjudicating, and remedying complaints of sexual harassment within the agency. Fortunately, the District Court need not establish an entire new procedural mechanism for harassment complaints. Under regulations promulgated by the Equal Employment Opportunity Commission, 29 C.F.R. §§ 1613.201–1613.283 (1979), the Department of Corrections, like all other federal and District of Columbia agencies, is required to establish procedures for adjudication of complaints of denial of equal employment op-

text and note at note 14 *infra*, does not provide any certainty that the offending conduct will not recur.

14. On October 31, 1975 the Mayor of the District of Columbia issued Mayor's Order No. 75–230, prohibiting employment discrimination on the basis of sex and other improper factors in all District agencies. On May 24, 1979 Mayor Barry amended Order No. 75–230 with Mayor's Order No. 79–89, which construes illegal sexual discrimination to include sexual harassment, requires the District's Office of Human Rights to receive and adjudicate any complaints of sexual harassment of District employees according to the procedures set forth in Mayor's Order No. 75–230, and requires all agency heads to establish and implement intra-agency means of investigating and adjudicating complaints of harassment. These orders are a useful supplement to the EEOC Guidelines and a District Court injunction.

portunity, whether the ground of discrimination is race, color, religion, sex, or national origin. The required procedures guarantee the complainant a prompt and effective investigation, an opportunity for informal adjustment of the discrimination, and, if necessary, a formal evidentiary hearing. Moreover, if the complaint proves meritorious the agency may be required to take disciplinary action against any employee found to have committed discriminatory acts. *Id.* § 1613.221(c). Finally, the agency must inform any employee denied relief within the agency of his or her right to file a civil action in the District Court. *Id.* § 1613.282.

Since we have held that sexual harassment, even if it does not result in loss of tangible job benefits, is illegal sex discrimination, the District Court may simply order the Director of the agency to ensure that complaints of sexual harassment receive thorough and effective treatment within the formal process the agency has already established to comply with the Civil Service Commission regulations. Finally, we believe the District Court should retain jurisdiction of the case so that it may review the Director's plans for complying with the injunction.[15]

III. CLAIMS FOR BACK PAY AND PROMOTION

omitted

15. We offer the following as appropriate language for the injunction:

The court decrees that the defendant Delbert Jackson, Director of the District of Columbia Department of Corrections, along with his supervising employees, agents, and all those subject to his control or acting in concert with him, are enjoined from causing, encouraging, condoning, or permitting the practice of sexual harassment of female employees by male supervisors and employees within the Department: to wit, any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is explicitly or implicitly a requirement of the individual's employment, or used as a basis for any employment decision concerning that individual, or when such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating or hostile or offensive work environment.

Defendant is further required:

1. To notify all employees and supervisors in the Department, through individual letters and permanent posting in prominent locations throughout Department offices, that sexual harassment, as explicitly defined in the previous paragraph, violates Title VII of the Civil Rights Act of 1964, regulatory guidelines of the Equal Employment Opportunity Commission, the express orders of the Mayor of the District of Columbia, and the policy of the Department of Corrections.

2. To ensure that employees complaining of sexual harassment can avail themselves of the full and effective use of the complaint, hearing, adjudication, and appeals procedures for complaints of discrimination established by the Department of Corrections pursuant to Equal Employment Opportunity Commission regulations, 29 C.F.R. §§ 1613.201–1613.283 (1979).

3. To develop appropriate sanctions or disciplinary measures for supervisors or other employees who are found to have sexually harassed female employees, including warnings to the offending person and notations in that person's employment record for reference in the event future complaints are directed against that person.

4. To develop other appropriate means of instructing employees of the Department of the harmful nature of sexual harassment.

Defendant shall return to this court within 60 days to report on the steps he has taken in compliance with this order and to present his plans for the additional measures required by Paragraph 4 above. The court shall retain jurisdiction of this case.

Meritor Savings Bank, FSB v. Vinson

106 S.Ct. 2399 (1986)

Justice REHNQUIST delivered the opinion of the Court.

This case presents important questions concerning claims of workplace "sexual harassment" brought under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.*

I

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

Respondent brought this action against Taylor and the bank, claiming that during her four years at the bank she had "constantly been subjected to sexual harassment" by Taylor in violation of Title VII. She sought injunctive relief, compensatory and punitive damages against Taylor and the bank, and attorney's fees.

At the 11-day bench trial, the parties presented conflicting testimony about Taylor's behavior during respondent's employment.* Respondent testified that during her probationary period as a teller-trainee, Taylor treated her in a fatherly way and made no sexual advances. Shortly thereafter, however, he invited her out to dinner and, during the course of the meal, suggested that they go to a motel to have sexual relations. At first she refused, but out of what she described as fear of losing her job she eventually agreed. According to respondent, Taylor thereafter made repeated demands upon her for sexual favors, usually at the branch, both during and after business hours; she estimated that over the next several years she had intercourse with him some 40 or 50 times. In addition, respondent testified that Taylor fondled her in front of other employees, followed her into the women's restroom when she went there alone, exposed himself to her, and even forcibly raped her on several occasions. These activities ceased after 1977, respondent stated, when she started going with a steady boyfriend.

* Like the Court of Appeals, this Court was not provided a complete transcript of the trial. We therefore rely largely on the District Court's opinion for the summary of the relevant testimony.

Respondent also testified that Taylor touched and fondled other women employees of the bank, and she attempted to call witnesses to support this charge. But while some supporting testimony apparently was admitted without objection, the District Court did not allow her "to present wholesale evidence of a pattern and practice relating to sexual advances to other female employees in her case in chief, but advised her that she might well be able to present such evidence in rebuttal to the defendants' cases." *Vinson v. Taylor*, 22 EPD ¶ 30708, pp. 14688–14689, 23 FEP Cases 37, 38–39, n. 1 (D DC 1980). Respondent did not offer such evidence in rebuttal. Finally, respondent testified that because she was afraid of Taylor she never reported his harassment to any of his supervisors and never attempted to use the bank's complaint procedure.

Taylor denied respondent's allegations of sexual activity, testifying that he never fondled her, never made suggestive remarks to her, never engaged in sexual intercourse with her and never asked her to do so. He contended instead that respondent made her accusations in response to a business-related dispute. The bank also denied respondent's allegations and asserted that any sexual harassment by Taylor was unknown to the bank and engaged in without its consent or approval.

The District Court denied relief, but did not resolve the conflicting testimony about the existence of a sexual relationship between respondent and Taylor. It found instead that

> "If [respondent] and Taylor did engage in an intimate or sexual relationship during the time of [respondent's] employment with [the bank], that relationship was a voluntary one having nothing to do with her continued employment at [the bank] or her advancement or promotions at that institution." *Id.*, at 42 (footnote omitted).

The court ultimately found that respondent "was not the victim of sexual harassment and was not the victim of sexual discrimination" while employed at the bank. *Id.*, 43.

Although it concluded that respondent had not proved a violation of Title VII, the District Court nevertheless went on to address the bank's liability. After noting the bank's express policy against discrimination, and finding that neither respondent nor any other employee had ever lodged a complaint about sexual harassment by Taylor, the court ultimately concluded that "the bank was without notice and cannot be held liable for the alleged actions of Taylor." *Id.*, at 42.

The Court of Appeals for the District of Columbia Circuit reversed. 243 U.S.App. D.C. 323, 753 F.2d 141 (1985). Relying on its earlier holding in *Bundy v. Jackson*, 205 U.S.App.D.C. 444, 641 F.2d 934 (1981), decided after the trial in this case, the court stated that a violation of Title VII may be predicated on either of two types of sexual harassment: harassment that involves the conditioning of concrete employment benefits on sexual favors, and harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. The court drew additional support for this position from the Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex, 29 CFR § 1604.11(a) (1985), which set out these two types of sexual harassment claims. Believing that "Vinson's grievance was clearly of the [hostile environment] type," 243 U.S.App.D.C., at 327, 753 F.2d, at 145, and that the District Court had not considered whether a violation of this type had occurred, the court concluded that a remand was necessary.

The court further concluded that the District Court's finding that any sexual relationship between respondent and Taylor "was a voluntary one" did not obviate the need for a remand. "[U]ncertain as to precisely what the [district] court meant" by this finding, the Court of Appeals held that if the evidence otherwise showed that "Taylor made Vinson's toleration of sexual harassment a condition of her employment," her voluntariness "had no materiality whatsoever." *Id.*, at 328, 753 F.2d, at 146. The court then surmised that the District Court's finding of voluntariness might have been based on "the voluminous testimony regarding respondent's dress and personal fantasies," testimony that the Court of Appeals believed "had no place in this litigation." *Id.*, at 328, 336, 753 F.2d, at 146, n. 36.

As to the bank's liability, the Court of Appeals held that an employer is absolutely liable for sexual harassment practiced by supervisory personnel, whether or not the employer knew or should have known about the misconduct. The court relied chiefly on Title VII's definition of "employer" to include "any agent of such a person," 42 U.S.C. § 2000e(b), as well as on the EEOC guidelines. The court held that a supervisor is an "agent" of his employer for Title VII purposes, even if he lacks authority to hire, fire, or promote, since "the mere existence—or even the appearance—of a significant degree of influence in vital job decisions gives any supervisor the opportunity to impose on employees." 243 U.S.App.D.C., at 332, 753 F.2d, at 150.

In accordance with the foregoing, the Court of Appeals reversed the judgment of the District Court and remanded the case for further proceedings. A subsequent suggestion for rehearing en banc was denied, with three judges dissenting. 245 U.S.App.D.C. 1330, 760 F.2d 1330 (1985). We granted certiorari, 474 U.S. ——, 106 S.Ct. 57, 88 L.Ed.2d 46 (1985), and now affirm but for different reasons.

II

The question remains, however, whether the District Court's ultimate finding that respondent "was not the victim of sexual harassment," 22 EPD ¶ 30708, at 14692–14693, 23 FEP Cases, at 43, effectively disposed of respondent's claim. The Court of Appeals recognized, we think correctly, that this ultimate finding was likely based on one or both of two erroneous views of the law. First, the District Court apparently believed that a claim for sexual harassment will not lie absent an *economic* effect on the complainant's employment. See *ibid.* ("It is without question that sexual harassment of female employees in which they are asked or required to submit to sexual demands as a *condition to obtain employment or to maintain employment or to obtain promotions* falls within protection of Title VII.") (emphasis added). Since it appears that the District Court made its findings without ever considering the "hostile environment" theory of sexual harassment, the Court of Appeals' decision to remand was correct.

Second, the District Court's conclusion that no actionable harassment occurred might have rested on its earlier "finding" that "[i]f [respondent] and Taylor did engage in an intimate or sexual relationship . . ., that relationship was a voluntary one." *Id.*, at 14692, 23 FEP cases, at 42. But 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. The gravamen of any sexual harassment claim is that the alleged sexual advances were "unwelcome." 29 CFR § 1604.11(a) (1985). While the question whether particular conduct was indeed unwelcome presents difficult problems of proof and turns largely on credibility determinations committed to the trier of fact, the District Court in this case erroneously focused on the "voluntariness" of respondent's participation in the claimed sexual episodes. The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.

Petitioner contends that even if this case must be remanded to the District

Court, the Court of Appeals erred in one of the terms of its remand. Specifically, the Court of Appeals stated that testimony about respondent's "dress and personal fantasies," 243 U.S.App.D.C. at 328, n. 36, 753 F.2d, at 146, n. 36, which the District Court apparently admitted into evidence, "had no place in this litigation." *Ibid.* The apparent ground for this conclusion was that respondent's voluntariness *vel non* in submitting to Taylor's advances was immaterial to her sexual harassment claim. 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. The EEOC guidelines emphasize that the trier of fact must determine the existence of sexual harassment in light of "the record as a whole" and "the totality of circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred." 29 CFR § 1604.11(b) (1985). Respondent's claim that any marginal relevance of the evidence in question was outweighed by the potential for unfair prejudice is the sort of argument properly addressed to the District Court. In this case the District Court concluded that the evidence should be admitted, and the Court of Appeals' contrary conclusion was based upon the erroneous, categorical view that testimony about provocative dress and publicly expressed sexual fantasies "had no place in this litigation." 243 U.S.App.D.C., at 328, n. 36, 753 F.2d, at 146, n. 36. While the District Court must carefully weigh the applicable considerations in deciding whether to admit evidence of this kind, there is no *per se* rule against its admissibility.

III

Although the District Court concluded that respondent had not proved a violation of Title VII, it nevertheless went on to consider the question of the bank's liability. Finding that "the bank was without notice" of Taylor's alleged conduct, and that notice to Taylor was not the equivalent of notice to the bank, the court concluded that the bank therefore could not be held liable for Taylor's alleged actions. The Court of Appeals took the opposite view, holding that an employer is strictly liable for a hostile environment created by a supervisor's sexual advances, even though the employer neither knew nor reasonably could have known of the alleged misconduct. The court held that a supervisor, whether or not he possesses the authority to hire, fire, or promote, 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.

The parties and *amici* suggest several different standards for employer liability. Respondent, not surprisingly, defends the position of the Court of Appeals. Noting that Title VII's definition of "employer" includes any "agent" of the employer, she also argues that "so long as the circumstance is work-related, the supervisor is the employer and the employer is the supervisor." Brief for Respondent 27. Notice to Taylor that the advances were unwelcome, therefore, was notice to the bank.

Petitioner argues that respondent's failure to use its established grievance procedure, or to otherwise put it on notice of the alleged misconduct, insulates petitioner from liability for Taylor's wrongdoing. A contrary rule would be unfair, petitioner argues, since in a hostile environment harassment case the employer often will have no reason to know about, or opportunity to cure, the alleged wrongdoing.

The EEOC, in its brief as *amicus curiae*, contends that courts formulating employer liability rules should draw from traditional agency principles. Examination of those principles has led the EEOC to the view that where a supervisor exercises the authority actually delegated to him by his employer, by making or threatening to make decisions affecting the employment status of his subordinates, such actions are properly imputed to the employer whose delegation of authority empowered the supervisor to undertake them. Brief for United States and Equal Employment Opportunity Commission as *Amicus Curiae* 22. Thus, the courts have consistently held employers liable for the discriminatory discharges of employees by supervisory personnel, whether or not the employer knew, should have known, or approved of the supervisor's actions. *E.g., Anderson v. Methodist Evangelical Hospital, Inc.*, 464 F.2d 723, 725 (CA6 1972).

The EEOC suggests that when a sexual harassment claim rests exclusively on a "hostile environment" theory, however, the usual basis for a finding of agency will often disappear. In that case, the EEOC believes, agency principles lead to

> "a rule that asks whether a victim of sexual harassment had reasonably available an avenue of complaint regarding such harassment, and, if available and utilized, whether that procedure was reasonably responsive to the employee's complaint. If the employer has an expressed policy against sexual harassment and has implemented a procedure specifically designed to resolve sexual harassment claims, and if the victim does not take advantage of that procedure, the employer should be shielded from liability absent actual knowledge of the sexually hostile environment (obtained, *e.g.*, by the filing of a charge with the EEOC or a comparable state agency). In all other cases, the employer will be liable if it has actual knowledge of the harassment or if, considering all the facts of the case, the victim in question had no reasonably available avenue for making his or her complaint known to appropriate management officials." Brief for United States and Equal Opportunity Employment Commission as *Amici Curiae*, 26.

As respondent points out, this suggested rule is in some tension with the EEOC guidelines, which hold an employer liable for the acts of its agents without regard to notice. 29 CFR § 1604.11(c) (1985). The guidelines do require, however, an "examin[ation of] the circumstances of the particular employment relationship and the job [f]unctions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity." *Ibid.*

This debate over the appropriate standard for employer liability has a rather abstract quality about it given the state of the record in this case. We do not know at this stage whether Taylor made any sexual advances toward respondent at all, let alone whether those advances were unwelcome, whether they were sufficiently pervasive to constitute a condition of employment, or whether they were "so pervasive and so long continuing . . . that the employer must have become conscious of [them]," *Taylor v. Jones*, 653 F.2d 1193, 1197–1199 (CA8 1981) (holding employer liable for racially hostile working environment based on constructive knowledge).

We therefore decline the parties' invitation to issue a definitive rule on employer liability, but we do agree with the EEOC that Congress wanted courts to look to agency principles for guidance in this area. While such common-law principles may not be transferable in all their particulars to Title VII, Congress' decision to define "employer" to include any "agent" of an employer, 42 U.S.C. § 2000e(b), surely evinces an intent to place some limits on the acts of employees for which employers under Title VII are to be held responsible. For this reason, we hold that the Court of Appeals erred in concluding that employers are always automatically liable for sexual harassment by their supervisors. See generally Restatement (Second) of Agency §§ 219–237 (1958). For the same reason, absence of notice to an employer does not necessarily insulate that employer from liability. *Ibid.*

Finally, we reject petitioner's view that the mere existence of a grievance procedure and a policy against discrimination.

coupled with respondent's failure to invoke that procedure, must insulate petitioner from liability. While those facts are plainly relevant, the situation before us demonstrates why they are not necessarily dispositive. Petitioner's general nondiscrimination policy did not address sexual harassment in particular, and thus did not alert employees to their employer's interest in correcting that form of discrimination. App. 25. Moreover, the bank's grievance procedure apparently required an employee to complain first to her supervisor, in this case Taylor. Since Taylor was the alleged perpetrator, it is not altogether surprising that respondent failed to invoke the procedure and report her grievance to him. Petitioner's contention that respondent's failure should insulate it from liability might be substantially stronger if its procedures were better calculated to encourage victims of harassment to come forward.

IV

In sum, we hold that a claim of "hostile environment" sex discrimination is actionable under Title VII, that the District Court's findings were insufficient to dispose of respondent's hostile environment claim, and that the District Court did not err in admitting testimony about respondent's sexually provocative speech and dress. As to employer liability, we conclude that the Court of Appeals was wrong to entirely disregard agency principles and impose absolute liability on employers for the acts of their supervisors, regardless of the circumstances of a particular case.

Accordingly, the judgment of the Court of Appeals reversing the judgment of the District Court is affirmed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice MARSHALL, with whom Justice BRENNAN, Justice BLACKMUN, and Justice STEVENS join, concurring in the judgment.

I fully agree with the Court's conclusion that workplace sexual harassment is illegal, and violates Title VII. Part III of the Court's opinion, however, leaves open the circumstances in which an employer is responsible under Title VII for such conduct. Because I believe that question to be properly before us, I write separately.

The issue the Court declines to resolve is addressed in the EEOC Guidelines on Discrimination Because of Sex, which are entitled to great deference. See *Griggs v. Duke Power Co.*, 401 U.S. 424, 433–434, 91 S.Ct. 849, 854–55, 28 L.Ed.2d 158 (1971) (EEOC Guidelines on Employment Testing Procedures of 1966); see also *ante*, at 2404. The Guidelines explain:

> "Applying general Title VII principles, an employer ... is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.
>
> "With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action." 29 CFR §§ 1604.11(c), (d) (1985).

The Commission, in issuing the Guidelines, explained that its rule was "in keeping with the general standard of employer liability with respect to agents and supervisory employees.... [T]he Commission and the courts have held for years that an employer is liable if a supervisor or an agent violates the Title VII, regardless of knowledge or any other mitigating factor."

45 Fed.Reg. 74676 (1980). I would adopt the standard set out by the Commission.

An employer can act only through individual supervisors and employees; discrimination is rarely carried out pursuant to a formal vote of a corporation's board of directors. Although an employer may sometimes adopt company-wide discriminatory policies violative of Title VII, acts that may constitute Title VII violations are generally effected through the actions of individuals, and often an individual may take such a step even in defiance of company policy. Nonetheless, Title VII remedies, such as reinstatement and backpay, generally run against the employer as an entity.[1] The question thus arises as to the circumstances under which an employer will be held liable under Title VII for the acts of its employees.

The answer supplied by general Title VII law, like that supplied by federal labor law, is that the act of a supervisory employee or agent is imputed to the employer.[2] Thus, for example, when a supervisor discriminatorily fires or refuses to promote a black employee, that act is, without more, considered the act of the employer. The courts do not stop to consider whether the employer otherwise had "notice" of the action, or even whether the supervisor had actual authority to act as he did. *E.g.*, *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1282 (CA7 1977); *Young v. Southwestern Savings and Loan Assn.*, 509 F.2d 140 (CA5 1975); *Anderson v. Methodist Evangelical Hospital, Inc.*, 464 F.2d 723 (CA6 1972). Following that approach, every Court of Appeals that has considered the issue has held that sexual harassment by supervisory personnel is automatically imputed to the employer when the harassment results in tangible job detriment to the subordinate employee. See *Horn v. Duke Homes, Inc., Div. of Windsor Mobile Homes*, 755 F.2d 599, 604–606 (CA7 1985); *Vinson v. Taylor*, 243 U.S.App.D.C. 323, 329–334, 753 F.2d 141, 147–152 (1985); *Craig v. Y & Y Snacks, Inc.*, 721 F.2d 77, 80–81 (CA3 1983); *Katz v. Dole*, 709 F.2d 251, 255, n. 6 (CA4 1983); *Henson v. City of Dundee*, 682 F.2d 897, 910 (CA11 1982); *Miller v. Bank of America*, 600 F.2d 211, 213 (CA9 1979).

The brief filed by the Solicitor General on behalf of the EEOC in this case suggests that a different rule should apply when a supervisor's harassment "merely" results in a discriminatory work environment. The Solicitor General concedes that sexual harassment that affects tangible job benefits is an exercise of authority delegated to the supervisor by the employer, and thus gives rise to employer liability. But, departing from the EEOC Guidelines, he argues that the case of a supervisor merely creating a discriminatory work environment is different because the supervisor "is not exercising, or threatening to exercise, actual or apparent authority to make personnel decisions affecting the victim." Brief for United States and EEOC as *Amici Curiae* 24. In the latter situation, he concludes, some further notice requirement should therefore be necessary.

The Solicitor General's position is untenable. A supervisor's responsibilities do not begin and end with the power to hire, fire, and discipline employees, or with the power to recommend such actions. Rather, a supervisor is charged with the day-to-day supervision of the work environment and with ensuring a safe, productive, workplace. There is no reason why abuse of the latter authority should have different consequences than abuse of the former. In

1. The remedial provisions of Title VII were largely modeled on those of the National Labor Relations Act (NLRA). See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 419, and n. 11, 95 S.Ct. 2362, 2372, and n. 11 (1975); see also *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 768–770, 96 S.Ct. 1251, 1266–67, 47 L.Ed.2d 444 (1976).

2. For NLRA cases, see, *e.g.*, *Graves Trucking, Inc. v. NLRB*, 692 F.2d 470 (CA7 1982); *NLRB v. Kaiser Agricultural Chemical, Division of Kaiser Aluminum & Chemical Corp.*, 473 F.2d 374, 384 (CA5 1973); *Amalgamated Clothing Workers of America v. NLRB*, 124 U.S.App.D.C. 365, 377, 365 F.2d 898, 909 (1966).

both cases it is the authority vested in the supervisor by the employer that enables him to commit the wrong: it is precisely because the supervisor is understood to be clothed with the employer's authority that he is able to impose unwelcome sexual conduct on subordinates. There is therefore no justification for a special rule, to be applied *only* in "hostile environment" cases, that sexual harassment does not create employer liability until the employee suffering the discrimination notifies other supervisors. No such requirement appears in the statute, and no such requirement can coherently be drawn from the law of agency.

Agency principles and the goals of Title VII law make appropriate some limitation on the liability of employers for the acts of supervisors. Where, for example, a supervisor has no authority over an employee, because the two work in wholly different parts of the employer's business, it may be improper to find strict employer liability. See 29 CFR § 1604.11(c) (1985). Those considerations, however, do not justify the creation of a special "notice" rule in hostile environment cases.

Further, nothing would be gained by crafting such a rule. In the "pure" hostile environment case, where an employee files an EEOC complaint alleging sexual harassment in the workplace, the employee seeks not money damages but injunctive relief. See *Bundy v. Jackson*, 205 U.S.App.D.C. 444, 446, 641 F.2d 934, 936, n. 12 (1981). Under Title VII, the EEOC must notify an employer of charges made against it within 10 days after receipt of the complaint. 42 U.S.C. § 2000e–5(b). If the charges appear to be based on "reasonable cause," the EEOC must attempt to eliminate the offending practice through "informal methods of conference, conciliation, and persuasion." *Ibid.* An employer whose internal procedures assertedly would have redressed the discrimination can avoid injunctive relief by employing these procedures after receiving notice of the complaint or during the conciliation period. Cf. Brief for United States and EEOC as *Amici Curiae* 26. Where a complainant, on the other hand, seeks backpay on the theory that a hostile work environment effected a constructive termination, the existence of an internal complaint procedure may be a factor in determining not the employer's liability but the remedies available against it. Where a complainant without good reason bypassed an internal complaint procedure she knew to be effective, a court may be reluctant to find constructive termination and thus to award reinstatement or backpay.

I therefore reject the Solicitor General's position. I would apply in this case the same rules we apply in all other Title VII cases, and hold that sexual harassment by a supervisor of an employee under his supervision, leading to a discriminatory work environment, should be imputed to the employer for Title VII purposes regardless of whether the employee gave "notice" of the offense.

Justice STEVENS, concurring.

Because I do not see any inconsistency between the two opinions, and because I believe the question of statutory construction that Justice MARSHALL has answered is fairly presented by the record, I join both the Court's opinion and Justice MARSHALL's opinion.

Harris v. Forklift Systems, Inc.

Supreme Court of the United States, 1993.
510 U.S. 17, 114 S.Ct. 367, 126 L.Ed.2d 296.

JUSTICE SANDRA DAY O'CONNOR delivered the opinion of the Court.

In this case we consider the definition of a discriminatorily "abusive work environment" (also known as a "hostile work environment") under Title VII of the Civil Rights Act of 1964....

Teresa Harris worked as a manager at Forklift Systems, Inc., an equipment rental company, from April 1985 until October 1987. Charles Hardy was Forklift's president.

The Magistrate found that, throughout Harris' time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendos. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumb ass woman." Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris'] raise." Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up. He made sexual innuendos about Harris' and other women's clothing.

In mid-August 1987, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. He also promised he would stop, and based on this assurance Harris stayed on the job. But in early September, Hardy began anew: While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy ... some [sex] Saturday night?" On October 1, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct had created an abusive work environment for her because of her gender. The United States District Court for the Middle District of Tennessee, ... held that Hardy's conduct did not create an abusive environment. The court found that some of Hardy's comments "offended [Harris], and would offend the reasonable woman," but that they were not

> "so severe as to be expected to seriously affect [Harris'] psychological wellbeing. A reasonable woman manager under like circumstances would have been offended by Hardy, but his conduct would not have risen to the level of interfering with that person's work performance. Neither do I believe that [Harris] was subjectively so offended that she suffered injury.... Although Hardy may at times have genuinely offended [Harris], I do not believe that he created a working environment so poisoned as to be intimidating or abusive to [Harris]." ...

The United States Court of Appeals for the Sixth Circuit affirmed....

We granted certiorari to resolve a conflict among the Circuits on whether conduct, to be actionable as "abusive work environment" harassment (no quid pro quo harassment issue is present here), must "seriously affect [an employee's] psychological wellbeing" or lead the plaintiff to "suffe[r] injury." ...

Title VII of the Civil Rights Act of 1964 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 race, color, religion, sex, or national origin." As we made clear in Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed.2d 49 (1986), this language "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," which includes requiring people to work in a discriminatorily hostile or abusive environment. When the workplace is permeated with "discriminatory intimidation, ridicule, and insult," that is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment," Title VII is violated.

This standard, which we reaffirm today, takes a middle path between making actionable any conduct that is merely offensive and requiring the conduct to cause a tangible psychological injury. As we pointed out in Meritor, "mere utterance of an ... epithet which engenders offensive feelings in a employee," does not sufficiently affect the conditions of employment to implicate Title VII. Conduct 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.

But Title VII comes into play before the harassing conduct leads to a nervous breakdown. A discriminatorily abusive work environment, even one that does not seriously affect employees' psychological wellbeing, can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers. Moreover, even without regard to these tangible effects, the very fact that the discriminatory conduct was so severe or pervasive that it created a work environment abusive to employees because of their race, gender, religion, or national origin offends Title VII's broad rule of workplace equality. The appalling conduct alleged in Meritor, and the reference in that case to environments " 'so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers,' " merely present some especially egregious examples of harassment. They do not mark the boundary of what is actionable.

We therefore believe the District Court erred in relying on whether the conduct "seriously affect[ed] plaintiff's psychological well-being" or led her to "suffe[r] injury." Such an inquiry may needlessly focus the factfinder's attention on concrete psychological harm, an element Title VII does not require. Certainly Title VII bars conduct that would seriously affect a reasonable person's psychological well-being, but the statute is not limited to such conduct. So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, there is no need for it also to be psychologically injurious.

This is not, and by its nature cannot be, a mathematically precise test. We need not answer today all the potential questions it raises.... But we can say that whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required....

Forklift, while conceding that a requirement that the conduct seriously affect psychological well-being is unfounded, argues that the District Court nonetheless correctly applied the Meritor standard. We disagree. Though the District Court did conclude that the work environment was not "intimidating or abusive to [Harris]," it did so only after finding that the conduct was not "so severe as to be expected to seriously affect plaintiff's psychological wellbeing," and that Harris was not "subjectively so offended that she suffered injury." The District Court's application of these incorrect standards may well have influenced its ultimate conclusion, especially given that the court found this to be a "close case."

We therefore reverse the judgment of the Court of Appeals, and remand the case for further proceedings consistent with this opinion.

So ordered.

JUSTICE ANTONIN SCALIA, concurring.

Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986), held that Title VII prohibits sexual harassment that takes the form of a hostile work environment. The Court stated that sexual harassment is actionable if it is "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'" Today's opinion elaborates that the challenged conduct must be severe or pervasive enough "to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive."

"Abusive" (or "hostile," which in this context I take to mean the same thing) does not seem to me a very clear standard—and I do not think clarity is at all increased by adding the adverb "objectively" or by appealing to a "reasonable person['s]" notion of what the vague word means. Today's opinion does list a number of factors that contribute to abusiveness, but since it neither says how much of each is necessary (an impossible task) nor identifies any single factor as determinative, it thereby adds little certitude. As a practical matter, today's holding lets virtually unguided juries decide whether sex-related conduct engaged in (or permitted by) an employer is egregious enough to warrant an award of damages. One might say that what constitutes "negligence" (a traditional jury question) is not much more clear and certain than what constitutes "abusiveness." Perhaps so. But the class of plaintiffs seeking to recover for negligence is limited to those who have suffered harm, whereas under this statute "abusiveness" is to be the test of whether legal harm has been suffered, opening more expansive vistas of litigation.

Be that as it may, I know of no alternative to the course the Court today has taken. One of the factors mentioned in the Court's nonexhaustive list—whether the conduct unreasonably interferes with an employee's work performance—would, if it were made an absolute test, provide greater guidance to juries and employers. But I see no basis for such a limitation in the language of the statute. Accepting Meritor's interpretation of the term "conditions of employment" as the law, the test is not whether work has been impaired, but whether working conditions have been discriminatorily altered. I know of no test more faithful to the inherently vague statutory language than the one the Court today adopts. For these reasons, I join the opinion of the Court.

JUSTICE RUTH BADER GINSBURG, concurring.

Today the Court reaffirms the holding of Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986): "[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment." The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. As the Equal Employment Opportunity Commission emphasized, the adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment." It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to "ma[k]e it more difficult to do the job." Davis concerned race-based discrimination, but that difference does not alter the analysis; except in the rare case in which a bona fide occupational qualification is shown, Title VII declares discriminatory practices based on race, gender, religion, or national origin equally unlawful.*

The Court's opinion, which I join, seems to me in harmony with the view expressed in this concurring statement.

PL 102-166, 1991 S 1745
PL 102-166, November 21, 1991, 105 Stat 1071
(Cite as: 105 Stat 1071)

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Additions and Deletions are not identified in this document.

For Legislative History of Act, see LH database or Report for this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 102-166 (S 1745)
November 21, 1991
CIVIL RIGHTS ACT OF 1991

An Act to amend the Civil Rights Act of 1964 to strengthen and improve Federal civil rights laws, to provide for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

<< 42 USCA § 1981 NOTE >>

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Rights Act of 1991".

<< 42 USCA § 1981 NOTE >>

SEC. 2. FINDINGS.

The Congress finds that--

(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

(3) legislation is necessary to provide additional protections against unlawful discrimination in employment.

<< 42 USCA § 1981 NOTE >>

SEC. 3. PURPOSES.

The purposes of this Act are--

(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

(2) to codify the concepts of "business necessity" and "job related" enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination.

TITLE I--FEDERAL CIVIL RIGHTS REMEDIES

SEC. 102. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION.

The Revised Statutes are amended by inserting after section 1977 (42 U.S.C.1981) the following new section:

"SEC. 1977A. DAMAGES IN CASES OF INTENTIONAL DISCRIMINATION IN EMPLOYMENT.

"(a) RIGHT OF RECOVERY.--

"(1) CIVIL RIGHTS.--In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5) against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act (42 U.S.C. 2000e-2 or 2000e-3), and provided that the complaining party cannot recover under section 1977 of the Revised Statutes (42 U.S.C.1981), the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent.

"(b) COMPENSATORY AND PUNITIVE DAMAGES.--

"(1) DETERMINATION OF PUNITIVE DAMAGES.--A complaining party may recover punitive damages under this section against a respondent (other than a government, government agency or political subdivision) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual.

"(2) EXCLUSIONS FROM COMPENSATORY DAMAGES.--Compensatory damages awarded under this section shall not include backpay, interest on backpay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.

"(3) LIMITATIONS.--The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party--

"(A) in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000;

"(B) in the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000; and

"(C) in the case of a respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000; and

"(D) in the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.

"(4) CONSTRUCTION.--Nothing in this section shall be construed to limit the scope of, or the relief available under, section 1977 of the Revised Statutes (42 U.S.C. 1981).

"(c) JURY TRIAL.--If a complaining party seeks compensatory or punitive damages under this section--

"(1) any party may demand a trial by jury; and

"(2) the court shall not inform the jury of the limitations described in subsection (b)(3).