



School of Law  
University of Missouri

**Legal Studies Research Paper Series  
Research Paper No. 2018-12**

**SEXUAL HARASSMENT OF LOW-INCOME WOMEN IN HOUSING:  
PILOT STUDY RESULTS**

**Rigel C. Oliveri**

This paper can be downloaded without charge from the Social Sciences Research  
Network Electronic Paper Collection at:  
<http://ssrn.com/abstract=3118665>

SEXUAL HARASSMENT OF LOW-INCOME WOMEN IN HOUSING:  
PILOT STUDY RESULTS*Rigel C. Oliveri\**

## INTRODUCTION

This is a watershed moment for public awareness of sexual harassment. Recent months have seen high-profile and influential figures in media, government, and entertainment brought down by credible allegations that they have engaged in sexual misconduct. These revelations have sparked an important national discussion about the prevalence of sexual harassment in American society and the ways in which powerful people can use their positions, both to exploit their vulnerable targets and to escape the consequences of their actions.

This conversation is a necessary starting point, but it's focus on high-status workplaces overlooks other contexts in which sexual harassment occurs. This Article focuses on one such area: the sexual harassment and exploitation of low-income women by their landlords. This is a significant national problem. There are a number of published cases dealing with the phenomenon and the Department of Justice has filed many complaints against alleged harassers. There have been some very good academic articles in the legal and social science literature, which discuss the subject from a largely theoretical perspective. But something crucial is missing: Data. Unlike sexual harassment in the workplace, which has been exhaustively studied by academics of every stripe, there have been no reliable empirical studies about the nature and prevalence of sexual harassment in housing.

The lack of information causes problems. Policymakers and legislators will have difficulty addressing the problem if they do not know basic facts about it, such as how common it is, who is likely to experience and perpetrate it, and what form it takes. The law, much of which is borrowed from the employment harassment context, remains underdeveloped and unresponsive to the unique challenges presented by housing harassment.

This Article and the Pilot Study upon which it is based represent a first attempt at remedying this situation, revealing empirical data that challenge and improve upon the assumptions made by more theoretical scholarship. The Pilot Study involved detailed interviews of one hundred low-income women, randomly selected from the pool of clients of the Columbia, Missouri Housing Authority. These interviews revealed a clear picture of who is most at risk for housing harassment, the characteristics of the landlords who are likely to engage in harassment, the form the harassment is likely to take, and how women respond when experiencing the harassment.

---

\* Professor of Law, University of Missouri. B.A. University of Virginia, J.D. Stanford Law School. The author was formerly a Trial Attorney for the United States Department of Justice's Civil Rights Division, in the Housing & Civil Enforcement Section. Dr. Louise Fitzgerald and Dr. Linda Collinsworth were instrumental in helping to draft the survey script that formed the basis for this study. I am grateful for comments and suggestions from Florence Roisman, Jennifer Drobac, Robert Schwemm, and Paul Litton. I would like to thank the research assistant, Melissa Hamilton, who helped conduct the interviews in this study, as well as Phil Steinhaus and the Columbia Housing Authority for allowing us to conduct the interviews on-site. Finally, my eternal gratitude goes to Michael J.F. Byrne for his unwavering support and assistance on this project, though he did not live to see it come to fruition.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Part I discusses the background of this issue, beginning with the law of sexual harassment as it was originally developed in the context of the workplace and later grafted onto the housing context. Next, it canvasses the state of our knowledge of sexual harassment in housing, including the gaps in that knowledge which research is needed to fill and the problems that this lack of knowledge has created.

Part II presents the Pilot Study, including its methodology and results, which both add to and challenge some of the prevailing assumptions about housing sexual harassment. In particular, a surprisingly high percentage of study participants – 10% of the sample – had experienced actionable sexual harassment by their landlords. All of the women were living in private rental housing at the time they were harassed, which is to say none lived in public housing, shelters, or other institutional facilities. Whether or not they were receiving a housing subsidy did not appear to make them more likely to be harassed, although it did correlate to whether they remained in the housing after the harassment. The landlords who perpetrated the harassment were all owner-operators of their rental properties, meaning that they did not work for or employ a rental management company. The harassment itself took two forms: Almost all of the women described being explicitly asked to provide sex in lieu of rent; half also reported experiencing serious (likely criminal) conduct such as home invasion, indecent exposure, and unwanted touching.

Part III analyzes the results and draws implications for law, policy, and further research. From a legal standpoint, the Pilot Study results underscore the argument for treating sexual harassment in housing as a phenomenon that is entirely different from employment harassment. We need a new framework for analyzing these cases that looks to the economic reality of low-income housing. From a policy perspective, the Pilot Study results reveal the consequences of the lack of regulation of the landlord-tenant relationship, which leads to a regime in which private landlords can harass their tenants with virtual impunity. Greater oversight of landlords and greater targeted resources for the most vulnerable group of female renters is necessary to addressing this problem.

### I. BACKGROUND

#### A. *Development of Sexual Harassment Doctrine*

##### 1. Sexual Harassment Under Title VII

##### a. Establishing a Binary Framework

The legal doctrine of sexual harassment originated in the employment context. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of a number of protected classes, including sex. Cases recognizing that racial and ethnic harassment in the employment setting can violate Title VII date back at least to 1971.<sup>1</sup>

---

<sup>1</sup> Rogers v. E.E.O.C., 454 F.2d 234, 238 (5<sup>th</sup> Cir. 1971).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

In 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines identifying sexual harassment as a form of sex discrimination prohibited by Title VII. The guidelines provide that “(u)nwelcoming sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”<sup>2</sup>

Two years later, the Eleventh Circuit issued an influential sexual harassment opinion in favor of the plaintiff in *Henson v. Dundee*.<sup>3</sup> *Henson* set forth a binary classification of sexual harassment claims: (1) “quid pro quo” claims where a defendant conditions job benefits on compliance with sexual demands, or causes the plaintiff tangible harms if she refuses to comply with such demands; and (2) “hostile environment” claims where unwelcome sexual advances occurred but did not lead to lost employment or other economic injuries.

The Supreme Court first addressed the issue in 1986, in *Meritor Savings Bank v. Vinson*, and upheld the framework set forth in *Henson*.<sup>4</sup> A bank employee brought a Title VII claim against her employer, alleging that her branch manager made unwelcome sexual advances toward her and that she engaged in a lengthy sexual relationship with him out of fear of losing her job. The Court agreed with the bank that quid pro harassment theory did not apply because the plaintiff had suffered no economic or tangible job-related harms as a result of the manager's conduct. The bank then argued that harassment which “only” affected the employee's working conditions or environment could never be actionable. The Court disagreed, concluding that “a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.”<sup>5</sup>

The hostile environment theory is rooted in the Title VII provision which bans discrimination in the “terms, conditions, or privileges of employment.”<sup>6</sup> The Court held that this provision is violated by harassment that is shown to be “sufficiently severe or pervasive ‘to alter the conditions of [the victim's] employment and create an abusive working environment.’”<sup>7</sup> Subsequent Supreme Court guidance instructed courts to determine whether an environment is sufficiently hostile or abusive by “looking at all the circumstances,” including 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.”<sup>8</sup>

---

<sup>2</sup> 29 C.F.R. § 1604.11(a) (1981)

<sup>3</sup> 682 F.2d 897 (11<sup>th</sup> Cir. 1982).

<sup>4</sup> *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986)

<sup>5</sup> *Id.* at 66.

<sup>6</sup> 42 U.S.C. 2000e-2(a)(1).

<sup>7</sup> *Id.* at 67 (quoting *Henson v. Dundee*).

<sup>8</sup> *Harris v. Forklift Systems*, 510 U.S. 17 (1993).

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

b. Modifying the Framework

Of course, real life can defy easy compartmentalization, and the Court’s framework soon began to show some wear in practice. One particularly thorny question arose: what to do when a man threatens a woman with reprisals if she refuses to have sex with him, but then does not follow through on the threats? *Burlington Industries v. Ellerth* involved such a case.<sup>9</sup> The plaintiff’s manager told her on multiple occasions that he could make her life “very hard or very easy” at work, that things would be “easier” for her if she would wear shorter skirts, and that she might not get a promotion because she was not “loose enough”.<sup>10</sup> The manager had engaged in other offensive conduct, such as rubbing the woman’s knee and making comments about her breasts. Although the plaintiff rebuffed these advances, the manager never carried through on any of his implied threats and she did receive the promotion.

Thus, as the District Court observed, the claim seemed to be one of hostile environment, but with a quid pro quo “component” that came from the manager’s unfulfilled threats. The Seventh Circuit, sitting en banc, also had a difficult time categorizing the claim, with at least two judges arguing that it should be considered a quid pro quo claim despite the absence of any tangible detriment to the plaintiff’s employment status. The Supreme Court resolved the issue by determining that “[b]ecause Ellerth’s claim involves only unfulfilled threats, it should be categorized as a hostile work environment claim”.<sup>11</sup>

The Court went on to clarify that the terms “quid pro quo” and “hostile environment” were useful from a descriptive standpoint but not talismanic:

We do not suggest the terms quid pro quo and hostile work environment are irrelevant to Title VII litigation. To the extent they illustrate the distinction between cases involving a threat which is carried out and offensive conduct in general, the terms are relevant when there is a threshold question whether a plaintiff can prove discrimination in violation of Title VII. When a plaintiff proves that a tangible employment action resulted from a refusal to submit to a supervisor’s sexual demands, he or she establishes that the employment decision itself constitutes a change in the terms and conditions of employment that is actionable under Title VII. For any sexual harassment [other than an] employment decision to be actionable, however, the conduct must be severe or pervasive.<sup>12</sup>

The key inquiry, then, became whether a tangible employment action such as firing or demotion had been taken against the plaintiff. If one had, liability would be established because the terms and conditions of employment would have been directly affected. If not – if there were “just” sexual demands/threats that were not acted upon – then liability would

---

<sup>9</sup> 424 U.S. 742 (1998).

<sup>10</sup> *Id.* at 748.

<sup>11</sup> *Id.* at 754.

<sup>12</sup> *Id.*

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

hinge on whether the conduct at issue rose to the level of being severe or pervasive such that it affected a term or condition of employment.

On the facts of the case, the District Court had found that the multiple unfulfilled threats plus the other offensive conduct by the manager amounted to a hostile environment, a finding that the Supreme Court did not disturb. The Court was clear, however, that it was leaving open the question of “whether a single unfulfilled threat is sufficient to constitute discrimination in the terms or conditions of employment.”<sup>13</sup>

### 2. Sexual Harassment and the Fair Housing Act

#### a. Legal Framework

The first reported decision involving sexual harassment in the home was in the 1983 case of *Shellhammer v. Lewallen*.<sup>14</sup> The plaintiffs in *Shellhammer* were a married couple who were evicted from their apartment allegedly because Mrs. Shellhammer refused her landlord's requests to pose for nude photographs and to have sex with him. The magistrate who heard the case noted the lack of any housing precedents for sexual harassment claims, and the similarity between Title VII's ban on discrimination in the “terms, conditions, or privileges of employment” and the Fair Housing Act's (FHA) prohibition on discrimination in the “terms, conditions, or privileges of sale or rental of a dwelling.”<sup>15</sup> Thus, he turned to employment decisions under Title VII for guidance and ruled that both quid pro quo and hostile environment claims were also actionable under the FHA.

Subsequent courts agreed with *Shellhammer* that it is appropriate to rely on Title VII precedents in establishing the contours of sexual harassment law under the FHA and that § 3604(b)'s prohibition of discriminatory “terms and conditions” is the analogous provision in the FHA. And all of these courts agreed that if the plaintiff's complaint involved not the loss of a tangible housing benefit but rather only a “hostile environment” claim, then liability requires that the defendant's behavior be “severe or pervasive” enough to alter the terms and conditions of the plaintiff's residency.

Housing sexual harassment claims can be brought under other parts of the FHA as well, although typically these claims are brought in addition to a claim under §3604(b), and they may not add much independent value.<sup>16</sup> For example, §3604(a) prohibits discriminatory practices which prevent a person from obtaining housing or “otherwise make [housing] unavailable.”<sup>17</sup> Thus, to the extent that a landlord's sexual harassment either prevents a woman from renting an apartment in the first place or forces her out of her existing housing, this part of the statute would apply. It would stand to reason that conduct severe enough to deprive a woman of housing would almost certainly meet the “severe or pervasive” standard for violations of § 3604(b) under a hostile environment theory.

---

<sup>13</sup> *Id.*

<sup>14</sup> 1 Fair Hous.-Fair Lending (Prentice Hall) P 15,472

<sup>15</sup> 42 U.S.C. 3604(b)

<sup>16</sup> Robert G. Schwemm and Rigel C. Oliveri, *A New Look at Sexual Harassment Under the Fair Housing Act: The Forgotten Role of s. 3604(c)*, 2002 WIS. L. REV. 771, (2002).

<sup>17</sup> 42 U.S.C. 3604(a)

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Section 3617 makes it illegal “to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . any right granted or protected” by the FHA.<sup>18</sup> Certainly, sexual harassment could be characterized as a form of “interference” with a female tenant's right to nondiscriminatory treatment, and some litigants have cited §3617 along with other FHA provisions in their housing harassment complaints.<sup>19</sup> Some courts, however, have held that the term “interfere” – coming as it does after the words “coerce, intimidate, [and] threaten” – should be interpreted to require a certain level of force which might mean that the type of offensive and unwelcome, albeit non-threatening, comments that often form the basis for hostile environment claims would not be actionable under § 3617.<sup>20</sup> Moreover, because §3617 applies only to interference with a person’s exercise or enjoyment of a right “granted or protected by” the FHA, a victim of harassment would have to assert a right covered by another substantive provision of the statute.<sup>21</sup> Whatever the reason, § 3617 has not proved to be an independently useful source of law in this field.<sup>22</sup>

Finally, §3604(c) makes it unlawful “[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on [protected characteristics], or an intention to make any such preference, limitation, or discrimination.”<sup>23</sup> To the extent that sexual harassment contains a verbal component – inappropriate sexual remarks or threats for failure to comply with sexual requests – it is possible to include a §3604(c) claim for the offending statements, although these claims have been underutilized in the sexual harassment context.<sup>24</sup>

### b. Difficulties With Establishing Hostile Environment Claims and the Reliance on Title VII

There are relatively few published opinions from the federal courts involving residential sexual harassment, at least when compared with employment harassment cases. Many of them address the issue of whether the conduct alleged meets the severe or

---

<sup>18</sup> 42 U.S.C. 3617.

<sup>19</sup> Cases in which harassment plaintiffs proceeded under both provisions include: *Krueger v. Cuomo*, 115 F.3d 487 (7th Cir. 1997); *DiCenso v. Cisneros*, 96 F.3d 104 (7th Cir. 1996); *Richards v. Bono*, 2005 WL 1065141 (M.D.Fla. 2005); *United States v. Koch*, 352 F.Supp.2d 970 (D.Neb. 2004); *New York ex rel. Abrams v. Merlino*, 694 F.Supp. 1101 (S.D.N.Y. 1988), and *Grieger v. Sheets*, 689 F. Supp. 835, 840-41 (N.D. Ill. 1988).

<sup>20</sup> See, e.g., *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 208 F. Supp. 2d 896, 903-05 (N.D. Ill. 2002) (holding that various non-violent actions directed against plaintiffs by officials of their homeowners' association are not sufficiently severe “to implicate[] concerns expressed by Congress in” § 3617); *Egan v. Schmock*, 93 F. Supp. 2d 1090, 1092-93 (N.D. Cal. 2000) (holding that § 3617 claim based on defendants' interference with plaintiffs' enjoyment of their home can succeed only if defendants' conduct was intended to drive plaintiffs out of their home); *Hous. Investors, Inc. v. City of Clanton*, 68 F. Supp. 2d 1287, 1301 (M.D. Ala. 1999) (holding that impermissible interference under § 3617 “must be more than peaceable opposition through legal channels”); *Salisbury House, Inc. v. McDermott*, No. CIV.A. 96-CV-6486, 1998 WL 195693, at \*12 (E.D. Pa. March 24, 1998) (holding that “some type of force or compulsion” is required for a violation of § 3617); see also *Maki v. Laakko*, 88 F.3d 361, 365 (6th Cir. 1996) (holding that incidents amounting to “no more than minimal friction between a landlord and tenants” are insufficient to make out a harassment claim under the FHA); *Mich. Prot. and Advocacy Serv., Inc. v. Babin*, 18 F.3d 337, 347 (6th Cir. 1994) (rejecting the view that “any action whatsoever that in any way hinders a member of a protected class” in exercising fair housing rights constitutes a violation of § 3617).

<sup>21</sup> While this does not mean that a § 3617 claim always requires an outright violation of one of these provisions, there must at least be some sort of connection between the interference and a protected right.

<sup>22</sup> See *Schwemm & Oliveri* at 795 (“Practically every housing harassment case in which a § 3617 claim has been raised has also included claims under § 3604(a) and/or § 3604(b), and every court that has considered such a case has employed the exact same Title VII standards that would have been appropriate even in the absence of the § 3617 claim.”).

<sup>23</sup> 42 U.S.C. s. 3604(c).

<sup>24</sup> See *Schwemm & Oliveri* at 773-74.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

pervasive standard for hostile environment harassment claims, using guidance from employment harassment cases when precedent is lacking under Title VIII. Unfortunately, the lack of precision in the “severe or pervasive” standard, which has proved problematic in the employment context,<sup>25</sup> has created difficulty in housing cases as well.

Moreover, wholesale and unthinking reliance on employment law doctrines and precedents in the housing context fails to recognize the fact that conduct which may appear harmless or less offensive in a workplace setting can become much more threatening and frightening when it is done inside a woman’s home, by a person who literally holds the keys.<sup>26</sup> Unfortunately, because many courts have only employment law cases and data to inform their decision-making, they tend to use assumptions from this context to arrive at results in housing cases that many in the legal and academic world view as incorrect.<sup>27</sup>

The first such case is *Shellhammer* itself. Despite recognizing the availability of the hostile environment theory in housing cases generally, the court found that the plaintiff failed to state a claim under that theory. According to the judge, the landlord’s multiple requests that she have sex with him and pose for nude photos were not sufficiently severe or pervasive in light of employment law precedents to constitute a hostile environment.<sup>28</sup>

One of the only housing harassment cases to reach the Court of Appeals, *DiCenso v. Cisneros*, came down in favor of a landlord on similarly egregious set of facts.<sup>29</sup> The landlord in *DiCenso* had come to the door of his young female tenant to collect the rent. He caressed her arm and back and told her that, if she could not pay the rent, she could “take care of it in other ways.” When she slammed the door in his face he stood outside her apartment calling her names, including “bitch” and “whore.” The woman refused to pay her rent the next time he came to collect it in person and was subsequently evicted. A HUD administrative law judge initially ruled for the landlord, holding that his conduct was not severe enough to be actionable under the hostile environment theory and finding that the facts did not support a quid pro quo claim because the tenant’s eviction was prompted not by her rejection of the landlord’s sexual advances but by her refusal to pay the rent. An appeal was taken to the HUD Secretary, who reversed as to the hostile environment claim, holding that the single incident here was “sufficiently severe as to constitute invidious sexual harassment.”

---

<sup>25</sup> See Theresa M. Beiner, *The Misuse of Summary Judgment in Hostile Environment Cases*, 34 Wake Forest L. Rev. 71 (1999); Judith Johnson, *License to Harass Women: Requiring Hostile Environment Sexual Harassment to Be Severe or Pervasive Discriminates Among “Terms and Conditions” of Employment*, 62 Md.L.Rev. 85 (2003). See also *Mendoza v. Borden*, 195 F.3d 1238, 1246-47 (11<sup>th</sup> Cir. 1999) (detailing numerous cases from multiple federal courts of appeals in which plaintiff’s Title VII claims were dismissed under the “severe or pervasive” standard, despite containing instances of unwanted touching of breasts and buttocks, sexually explicit comments, simulated masturbation, and other egregious conduct).

<sup>26</sup> Nicole A. Forkenbrock Lindemyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW & INEQ. 351 (2000); Alyssa George, *The Blind Spots of Law and Culture: How the Workplace Paradigm of Sexual Harassment Marginalizes Sexual Harassment in the Home*, 17 GEO.J. GENDER & L. 645 (2016); Michelle Adams, *Knowing Your Place: Theorizing Sexual Harassment at Home*, 40 ARIZ. L. REV. 17, 21-28, 44-48 (1998); Deborah Zalesne, *The Intersection of Socioeconomic Class and Gender in Hostile Housing Environment Claims Under Title VIII: Who Is the Reasonable Person?*, 38 B.C. L. REV. 861, 885-88 (1997); Carlotta J. Roos, *DiCenso v. Cisneros: An Argument For Recognizing the Sanctity of the Home in Housing Sexual Harassment Cases*, 52 U. MIAMI L. REV. 1131, 1139-46 (1998).

<sup>27</sup> See, e.g. Lindemyer *Sexual Harassment on the Second Shift*. See also Schwemm & Oliveri at ; Roos at 1139-1146; George at --; Adams at 43-58.

<sup>28</sup> 1 Fair Hous.-Fair Lending (Prentice Hall) P 15,472 at 137. The court did find that the plaintiff was able to establish a quid pro quo claim based on her eviction after she refused the landlord’s requests.

<sup>29</sup> 96 F.3d 1004 (1996).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

The landlord appealed to the Seventh Circuit, which held in a 2-1 decision that, based on Title VII law, his behavior was not “sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.” According to the majority opinion, “the problem with [the female tenant's] complaint is that although DiCenso may have harassed her, he did so only once. Moreover, DiCenso's conduct, while clearly unwelcome, was much less offensive than other incidents *which have not violated Title VII.*”<sup>30</sup>

The DiCenso majority recognized that a single incident of harassment, if severe enough, could be sufficient to support a hostile environment claim and conceded that the landlord's behavior here included a comment that “vaguely invited [the tenant] to exchange sex for rent.” Nevertheless, it concluded, based on “the totality of circumstances,” that DiCenso's conduct was not sufficiently egregious to create an objectively hostile housing environment because “he did not touch an intimate body part, and did not threaten [the tenant] with any physical harm.”<sup>31</sup>

In another case, *Tagliaferri v. Winter Park Housing Authority*, the plaintiffs alleged that the maintenance man at their apartment complex set up a video camera at their bedroom window, photographed them while they were outside, and made obscene gestures at them.<sup>32</sup> The 11<sup>th</sup> Circuit was asked to review the lower court's dismissal of the case under Rule 12(b)(6) for failure to state a claim under the Fair Housing Act. In conducting its review, the panel relied on a Title VII sexual harassment case, *Mendoza v. Borden*,<sup>33</sup> in which the plaintiff had alleged a hostile work environment based, in part, on the allegation that her supervisor was constantly watching, following, and staring at her. The *Mendoza* court had found that this did not constitute severe or pervasive conduct because “the everyday observation of fellow employees in the workplace is also a natural and unavoidable occurrence when people work together in close quarters or when a supervisor keeps an eye on employees.”<sup>34</sup> Despite the fact that there are profound contextual differences between a woman being watched by her supervisor at work, and having the maintenance man of her apartment building set up a video camera in her bedroom, the *Tagliaferri* court failed to note this distinction and upheld the lower court's dismissal in a per curiam opinion.

A number of commentators have argued that the social, psychological, and legal significance of the home should lead courts hearing sexual harassment in housing cases to apply a more nuanced and particularized analysis than they do at present.<sup>35</sup> These arguments often look to the importance of privacy rights within the home.<sup>36</sup> In the first major law review article on housing harassment in 1987, Regina Cahan drew on the concept of the home as a place of refuge from the world:

---

<sup>30</sup> *Id.* at 1008-09.

<sup>31</sup> *Id.* at 1009.

<sup>32</sup> 486 Fed.Appx. 771 (11<sup>th</sup> Cir. Aug. 10, 2012).

<sup>33</sup> 195 F.3d 1238 (11<sup>th</sup> Cir. 1999).

<sup>34</sup> 195 F.3d at 1248.

<sup>35</sup> Beverly Balos, *A Man's Home is His Castle: How the law Shelters Domestic Violence and Sexual Harassment*, 23 ST. LOUIS U. PUB. L. REV. 77 (2004); Adams at 62 (advocating that a housing provider's harassing activities should be evaluated based on “the nature and importance of home in the American cultural imagination.”)

<sup>36</sup> See Lindemeyer, at 368 (“The expectation of both safety and privacy in one's home is justifiably greater than that in the workplace, and thus a higher standard of conduct is warranted.”). See generally Roos.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

When sexual harassment occurs at work, at that moment or at the end of the workday, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion in her life. Ideally, home is the haven from the troubles of the day. When home is not a safe place, a woman may feel distressed and, often, immobile.

Some courts have begun to recognize the differences in context between workplace and home that might affect the manner in which the severe or pervasive analysis is conducted. *Beliveau v. Caras*<sup>37</sup> was the first, and remains one of the few, cases in which the context of the home was specifically articulated and referenced. The Court ruled that the resident manager's offensive touching of the plaintiff in her bathroom stated a claim for sexual harassment, noting that the defendant's alleged conduct constituted sexual harassment because it "was committed (1) in plaintiff's own home, where she should feel (and be) less vulnerable, and (2) by one whose very role was to provide that safe environment."<sup>38</sup>

A few other courts have incorporated the context of the home into their analysis of residential sexual harassment claims.<sup>39</sup> Still, it is clear that more needs to be done to move the judiciary's understanding of this issue and overcome the lingering effects of the bad precedents set by Shelhammer, DiCenso, and the like.

### *B. What We "Know" About Sexual Harassment in Housing*

#### 1. Official Statistics and Early Studies

As noted previously, there is little reliable data about the incidence of sexual harassment in housing. The National Fair Housing Alliance (NFHA) provides most comprehensive statistical picture of fair housing complaints in the United States. Its annual report contains data on housing discrimination complaints filed with government agencies such as HUD, Fair Housing Assistance FHAP agencies,<sup>40</sup> and the DOJ, as well as the private fair housing organizations who process the vast majority of housing discrimination complaints.<sup>41</sup> Even so, this compilation has a number of limitations. NFHA recognizes that, due to the extremely high rate of underreporting, the figures it reports represent only a small fraction of the incidence of discrimination that actually occurs in the housing market.<sup>42</sup> In 2016, NFHA reported 1,788 complaints in which "sex" was listed as a possible basis for discrimination.<sup>43</sup> These complaints, however, are not further broken down by the

---

<sup>37</sup> 873 F.Supp. 1393 (1995).

<sup>38</sup> *Id.* at 1397

<sup>39</sup> *Williams v. Poretsky Management* 955 F.Supp. 490 (1996); *Reeves v. Carrollsburg Condominium Unit Owners Association*, 1997 WL 1877201 (D.D.C., Dec. 18, 1997); *Salisbury v. Hickman*, 974 F.Supp.2d 1282 (E.D.Ca. 2013).

<sup>40</sup> These are state and local agencies that receive fair housing assistance funding through HUD.

<sup>41</sup> NFHA Fair Housing Trends Report (2016), p. 76. NFHA does not track housing discrimination lawsuits filed by private lawyers who do not work for fair housing organizations.

<sup>42</sup> Thus, while NFHA reported a total of 28,181 housing discrimination complaints in 2016, it estimates that 4 million acts of housing discrimination occur each year in the rental housing market alone. *Id.* at 77.

<sup>43</sup> *Id.* at 79.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

type of discrimination, i.e., sex-based differential treatment (as when a landlord refuses to rent to someone because of sex) versus sexual harassment.

There is a similar dearth of academic studies. Just four scholarly papers analyze the problem of sexual harassment in housing in an empirical manner. Only two of these attempt to discern prevalence data; both rely on returned surveys, and each is more than twenty years old.

The only known attempt to determine how frequently residential sexual harassment occurs in the United States was conducted almost thirty years ago. In 1987 Regina Cahan surveyed 150 public and private fair housing organizations across the country to see whether they had received complaints of sexual harassment.<sup>44</sup> Of the 87 centers that provided usable responses, 57 (65%) reported receiving a total of 288 complaints of sexual harassment.<sup>45</sup> Citing the 1981 Merit Systems Protection Bureau Survey which found that only 2-3% of workplace sexual harassment victims took formal institutional remedies, Cahan extrapolated that between 6,818 and 15,000 cases of sexual harassment in housing may have occurred between 1981 and 1986.<sup>46</sup>

A smaller number of centers provided Cahan with specific information about the income of the victims and the harassment complained of.<sup>47</sup> The victims were overwhelmingly poor, with 75% earning less than \$10,000 per year and 23% earning between \$10,000 and \$20,000.<sup>48</sup> More than two-thirds (67.7%) of the complaints involved landlord requests for sexual activity, almost 39% involved abusive remarks and 34% involved unwanted touching.<sup>49</sup> She did not elicit additional information about the women such as race or age, nor did she elicit any information about the perpetrators. Cahan asked about the size (number of units) and type of housing the women were living in, but her questions were limited and she did not report some of the data.<sup>50</sup>

While her article was pathbreaking, Cahan's reliance on reported complaints to fair housing centers – and even then, only centers which responded to her survey – rather than a population sample means that her study is of limited use in determining true prevalence. Sexual harassment is notoriously underreported in other settings. This is even more likely to be the case with housing harassment, given the fact that it has received less popular attention than employment harassment and it is less clear where to make a report.

The only other prevalence study of residential sexual harassment was conducted more than twenty years ago in Canada. In 1991, doctoral student Sylvia I. Novac mailed surveys to 1,000 rental households in Ontario.<sup>51</sup> Of the 352 useable surveys returned, 25% of survey respondents reported experiencing residential sexual harassment.<sup>52</sup>

---

<sup>44</sup> Regina Cahan, *Home is No Haven: An Analysis of Sexual Harassment in Housing*, 1987 WIS.L.REV. 1061 (1987).

<sup>45</sup> *Id.* at --.

<sup>46</sup> *Id.* at ---.

<sup>47</sup> Forty-six provided victim characteristics and 48 provided information about the harassing conduct.

<sup>48</sup> Cahan at 1067. In 1986 the federal poverty level for a family of four was \$11,000. Although Cahan's survey asked about the type of housing the women were living in, she did not report this information.

<sup>49</sup> Cahan at 1070.

<sup>50</sup> For example, Cahan asked whether the women lived in apartment complexes with 100+ units, 50-100 units, 20-50 units, 2-20 units, duplexes, or rented rooms in private homes. She did not ask about women who rented single-family homes, which is more common in rural areas and smaller cities without significant multi-family housing.

Cahan also asked only whether the women were "private housing tenant(s)" or "section 8 tenant(s)", and not about whether the women lived in public housing, project-based Section 8, or shelters. She did not report these findings.

<sup>51</sup> Sylvia I. Novac, *Boundary Disputes: Sexual Harassment and the Gendered Relations of Residential Tenancy* (1994).

<sup>52</sup> *Id.* at

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Again, this methodology – which relied upon returned surveys – fails to measure true prevalence. Moreover, the survey questions were based on a typology of workplace sexual harassment and may not have adequately sampled the universe of sexually harassing behaviors experienced by tenants. In particular, in open-ended responses, 29% respondents reported that their landlord had entered their home without notice.<sup>53</sup> Although unauthorized entry into the home is not necessarily indicative of harassment, it may constitute part of a pattern of harassment and intimidation. Similarly, behaviors such as refusing to allow women to have male visitors, peeping/looking through windows, or being abusive toward household members are types of harassment that are unique to the housing context, and that will not be captured in a typology based upon employment harassment.

### 2. More Recent Studies

Two more recent studies did not seek prevalence data, but instead examined existing cases to determine common characteristics of harassment, victims, and perpetrators. In 2005, Drs. Louise Fitzgerald, Linda Collinsworth, and Maggie Reed reviewed deposition testimony given by 39 victim-witnesses in three cases that were being prosecuted by the U.S. Department of Justice.<sup>54</sup> They then analyzed all published housing sexual harassment cases heard in federal court to date which contained details about the sexually harassing conduct (a total of 18 cases). They compared the conduct described in those cases to the conduct they found in their deposition sample, finding a significant overlap between the types of conduct described in the cases and the conduct described in the depositions.

Between the reported cases and the depositions the researchers identified 389 separate instances of misconduct. These instances were then grouped generally into three categories: Gender Harassment (sexist hostility), Unwanted Sexual Attention (sexual behavior and imposition/assault), and Sexual Coercion (sexual threats and bribery). They found that the majority of the instances were classified as Unwanted Sexual Attention (60%), followed by Sexual Coercion (18%) and Gender Hostility (13.9%).<sup>55</sup> This was in dramatic contrast with similar research done in the employment context. There, the majority of harassing behavior (59.5%) fell into the Gender Hostility category. Unwanted Sexual Attention (36.9%) was the second most frequent type of conduct in the workplace sample, while Sexual Coercion (3.6%) barely registered.<sup>56</sup> Thus, they concluded that sexual harassment in housing was much more likely to consist of unwanted sexual attention and sexual coercion, compared with sexual harassment in the workplace which was much more likely to consist of gender hostility, with very little sexual coercion. This study did not focus on victim or perpetrator characteristics, and did not analyze the type of housing the victims were living in at the time.

---

<sup>53</sup> *Id.* at

<sup>54</sup> Maggie E. Reed, Linda L. Collinsworth, Louise F. Fitzgerald, *There's No Place Like Home: Sexual Harassment of Low-Income Women in Housing*, PSYCH. PUBLIC POL'Y AND LAW, Vol.11, No.3, p. 439-462 (2005).

<sup>55</sup> *Id.* at 456.

<sup>56</sup> *Id.* at 457

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

In 2008 Dr. Griff Tester analyzed 137 housing sexual harassment complaints made to the Ohio Civil Rights Commission between 1990 and 2003.<sup>57</sup> He was the first to obtain data on the race of the victims and perpetrators, finding that 68% of the reported victims were black or “other women of color,” while virtually all of the perpetrators were white men.<sup>58</sup> The housing in which most of the harassment occurred was private rentals as opposed to public housing, although the OCRC files were not clear whether the victims were using Section 8 Vouchers at the time.<sup>59</sup> The landlords tended to represent small, privately-owned housing as opposed to large rental companies with structured management and procedures.<sup>60</sup> The OCR did not collect specific data about the complainants’ socioeconomic status, although information in the files indicated that many women were poor and in need of housing assistance.<sup>61</sup>

Both of these studies contributed valuable insights into what claims of sexual harassment in housing look like. The 2005 study was significant in that it was the first to rigorously analyze the harassing behavior, and to compare housing harassment claims to employment harassment claims. The 2008 study was valuable in that it was the first to focus on perpetrators and type of housing, and the first to analyze intersectional factors like race. Both studies, however, also had methodological limitations because they relied not on a random sample but on a particular subset of reported and/or litigated claims.<sup>62</sup>

In sum, solid information about sexual harassment in housing, particularly prevalence data, remains elusive. Given the methodological limitations of the early studies, which relied on reported claims, filed cases, and survey returns, we still lack the basis for a reliable estimate of how often housing harassment occurs in the population of low-income women. While an analysis of a small set of reported or prosecuted claims gives us a sense of what housing harassment can look like, we do not know how representative these claims are of the “typical” housing harassment victim’s experiences. Significantly, we do not know anything about the population of women who experience sexual harassment by a housing provider but do not report it: What form does their harassment take? What effect does it have on their lives? Why don’t they report it? The answer to this latter question, in particular, is crucial to developing reforms and interventions.

## II. THE PILOT STUDY

### A. *Purpose and Methodology*

The purposes of the Pilot Study were: (1) to estimate how prevalent sexual harassment in housing is among the population of low-income women, (2) to observe the form(s) that the harassment takes, (3) to get a sense of the characteristics of the women

---

<sup>57</sup> Griff Tester, *An Intersectional Analysis of Sexual Harassment in Housing*, GENDER & SOCIETY, Vol.22 No.3, p.349-366 (2008).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* Housing Choice (commonly-known as “Section 8”) Vouchers are housing subsidies which assist tenants in renting on the private market.

<sup>60</sup> *Id.* at 355

<sup>61</sup> *Id.*

<sup>62</sup> For example, the 2005 study looked at depositions from only three cases, each of which had been prosecuted by the Department of Justice. While each case had multiple victims, each only involved a single perpetrator, thus the actions of only three landlords were being examined in detail. This was mitigated by the comparison to allegations in the published cases from federal courts.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

who experience the harassment, the housing providers who perpetuate it, and the housing in which it occurs, and (4) to understand women's responses to the harassment, including why they may not report it and the effect that it has on their housing.

A survey instrument in the form of an interview script was devised with these objectives in mind.<sup>63</sup> One hundred women were individually interviewed over a period of three months in Columbia, MO. The interview subjects were solicited in the office of the Columbia Housing Authority, meaning that all of them were either clients of the Housing Authority (living in public housing or participating in the Housing Choice Voucher Program) or applying to be a client. Thus, by definition all of the interviewees were low-income and in need of housing assistance at the time of the interview.<sup>64</sup> The subjects were randomly selected in the sense that every woman who came to the reception desk was asked if she wished to participate in a survey about "their experiences with housing"<sup>65</sup> and then interested subjects were referred to the interview room.

The interview subjects were asked if they had *ever* experienced "sexually inappropriate" behavior from a landlord,<sup>66</sup> including specific conduct which would likely constitute sexual harassment such as inappropriate touching, sexual comments, and requests for sexual activity. There was an additional category for "other inappropriate behavior", which allowed the subjects to describe other behaviors that made them uncomfortable but were not contained in the list. The interview subjects were also asked if they had ever experienced "annoying or disturbing" behavior from a landlord, including specific conduct which might be part of a pattern of sexual harassment, such as the landlord prohibiting male visitors, looking through the windows, or entering the unit unannounced. Any woman who answered affirmatively was then asked whether she believed these behaviors were "sexual in nature" and/or done "because you are a woman."<sup>67</sup>

Women who responded affirmatively to any of the above questions indicating sexual harassment were then asked a number of follow-up questions in which they were prompted to describe:

- the conduct in detail, including frequency;
- themselves at the time, including how old were they, who lived in their household, and what was their source of income;
- the type of housing they were living in at the time the conduct occurred: public housing, private rental housing, or some other type of housing such as project-based

---

<sup>63</sup> The script had a lengthy introductory section with many questions seeking background information and information about other housing-related topics. The relevant pages containing questions about sexual harassment in housing are included in Appendix A.

<sup>64</sup> A decision was made to focus specifically on low-income women, rather than the population of female tenants as a whole. This was done primarily because, as described above, both logic and the existing evidence indicate that sexual harassment in housing is experienced primarily by poor women whose housing options are limited. Determining the prevalence of housing harassment among the population of all female renters, or all women, might be the subject of future research.

<sup>65</sup> Participants were not told ahead of time that sexual harassment would be a topic of questioning, and interviewees were asked a number of questions about other housing-related topics first, in order not to signal too strongly that sexual harassment was the core focus of the interviews. This was done both to gather background data for future research and also to make it less likely that subjects would try to give answers they thought the interviewers wanted to hear.

<sup>66</sup> It is important to underscore the fact that survey participants were asked about their lifetime experiences. This is significant because, while virtually all of the women interviewed were clients of the CHA at the time of the interview, the majority of them who reported harassing conduct experienced it prior to becoming clients of the CHA.

<sup>67</sup> These questions were asked in order to distinguish ordinary disputes between landlords and tenants from situations that potentially involved sexual harassment.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Section 8, a homeless or domestic violence shelter or another institutional setting; If the woman was living in private rental housing, she was asked whether she received a Section 8 Voucher;

- the characteristics of the perpetrator, including estimated race, age, and role in the housing (i.e., was he the owner, a manager, a maintenance man?);<sup>68</sup>
- their responses to the conduct, including whether and to whom they reported it, reasons for not reporting it, and any lasting emotional or psychological effects the experience had on them.

### *B. Results*

#### 1. Prevalence, Severity, and Type of Conduct

Of the 100 women interviewed, 16 gave responses that indicated they had experienced some type of sexually harassing or otherwise problematic conduct. These surveys were then sorted according to whether the conduct described would likely constitute actionable sexual harassment, meaning that the woman could state a legal claim that would survive a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted.<sup>69</sup>

Ten women described conduct that was serious enough that it would almost certainly meet the legal standard for sexual harassment or at least support a legally actionable claim. The other six interview subjects described conduct that they believed was sex-based and that annoyed or upset them but almost certainly would not meet the legal standard for sexual harassment, at least as it exists today.

This Article will focus primarily on the ten subjects with actionable claims. The following are brief summaries of the conduct they described:

- #20 The woman's landlord said that her rental situation could be "cheaper and easier" if she would give him sexual favors. Her sole source of income was SSI-Disability, and she was caring for her granddaughter. The landlord watched her home and told her that she could not have male visitors. She did not comply with his requests. She eventually moved out of the house and in with friends, and at the time of the interview was applying for public housing.
- #21 The landlord would ask the woman, who was 18 and in college at the time, for sex in lieu of rent and as a way to expedite repairs. He made comments about the woman's body and kept track of her comings and goings. The woman eventually told him to stop and nothing else happened.

---

<sup>68</sup> Race and age had to be approximated by the respondents, based upon their observations of the perpetrator.

<sup>69</sup> This determination was complicated by the fact that, as described *infra*, for hostile environment sexual harassment there is no bright line rule but rather a standard – "severe or pervasive" – which may be applied differently by different courts. The author relied on existing caselaw and precedent in making this determination. While a few cases classified as "actionable" were borderline – the women could have stated claims but might not have prevailed on the merits – most were quite clearly violations of the law.

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

- #29 The woman was 21 and unemployed. Her landlord made multiple demands that she have “oral and regular sex” with him because she was behind on her rent, threatening her with eviction if she did not comply. He would use his key to enter her apartment, without warning, while she was home, including multiple times while she was in the shower. He touched her in ways she thought were inappropriate. She never acquiesced to his demands, and ultimately moved out before he could evict her.
- #37 The woman, who was 21 and a single mother of two at the time, was attempting to rent an apartment. After showing her the unit, the landlord locked the door and asked for oral sex, saying that she could do that instead of paying the security deposit. She was employed as an aide at a facility for the disabled at the time. The woman refused and chose not to rent from the landlord.
- #39 The woman, a 27 year-old divorced mother of six, was paying for part of her rent using a Section 8 voucher. The landlord told the woman she could avoid paying her portion of the rent sex with him. She refused, and continued to rent the apartment.
- #41 The woman moved into her apartment after spending three months in a domestic violence shelter. She was working part-time doing housekeeping. Her landlord requested that the woman have sex with him to help pay the rent and watch him masturbate. He threatened to evict her if she refused. She never complied with his demands, however on more than one occasion she woke up at night to find him in her house (sometimes her bedroom), masturbating. The woman eventually moved out and went to live with her sister.
- #75 The landlord made frequent requests for sex in lieu of rent. He made these requests of her roommate, too. He would come into their house uninvited and he prohibited them from having male visitors. She called the police to make a report about the landlord’s repeated unauthorized entry into her apartment. An officer came by to take her statement but did nothing further. The woman, who was 23 and employed part-time as a hotel housekeeper, eventually moved out and went to live with her mother.
- #93 The woman was 24 years old, married with three children, and worked as a hotel housekeeper until she lost her job. Her husband lost his job, too and both were struggling with addiction to crack. The landlord said he would reduce the rent if the woman had sex with him. The landlord watched her unit, made unannounced visits, and came into her apartment when she was not home and removed items from her underwear drawer. The woman

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

refused the offers of sex for rent and eventually she and her family moved out and into a hotel.

- #95 The woman, who unemployed and receiving SSI-Disability, also had a Section 8 voucher. She was looking at an apartment with her 10-year old daughter when the landlord made sexual comments and talked about “sexy” he thought both of them were. He tried to grope the daughter and make her sit on his lap, but the woman pushed him away and the two ran out. She did not rent the apartment.
- #99 The woman was a single mother of four, who had been living in a homeless shelter until she received a Section 8 voucher. Her new landlord frequently made sexual comments to the woman, and asked to watch the woman engage in “girl on girl” sexual activity with another tenant. The woman said no, the landlord eventually stopped making advances, and the woman continued living in the apartment.

### 2. Characteristics of the women

The women who reported experiencing harassment by their landlords were disproportionately likely to be racial minorities: Nine of the ten women identified as black or multiracial and one identified as white, meaning that 90% of the women with positive responses were minority group members. This is consistent with previous studies and anecdotal evidence, which indicate that housing harassment victims are disproportionately likely to be minority group members. It is important to note, however, that the racial composition of the Pilot Study participants was skewed: 84% of the survey participants identified as black or multiracial, 15% as white, and none as any other racial or ethnic group. This is not consistent with statistics regarding the population of poor, housing-insecure women as a whole. While African Americans are disproportionately likely to be poor, in absolute numbers whites make up a majority of the poor in the United States.<sup>70</sup>

The Pilot Study identified another factor, one which was not addressed by any of the previous studies: the age of the women at the time they experienced the harassment or problematic conduct. Most of the women were extremely young. The median age at the time of the harassment was 25.5, and the average age was 27.6. The average is skewed by an outlier (#20) who was 48 at the time she was harassed; if she is removed, the average age drops to **22.8**. Three of the women were 21 or younger when they experienced the harassment.

---

<sup>70</sup> In 2014 there were roughly 46,657,000 Americans living below the poverty line, including 31,089,000 (66%) whites and 10,755,000 (23%) blacks, although this represented 12.7% of the white population and 26.2% of the black population. Carmen DeNavas-Walt and Bernadette D. Proctor, U.S. Census Bureau, *Income and Poverty in the United States: 2014* (Sept. 2015) at p.13. And while African Americans make up the majority of clients served by HUD programs, their participation rates are in closer parity to whites. See U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009-2012: Who Gets Assistance?* (showing that 42% of recipients of housing assistance are black, compared to 35% for whites).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Five of the women were caring for children and were the only adults in the household at the time they were harassed. Four of the women did not have children and were living with roommates or boyfriends. Only one household contained both children and another adult (#93 reported living with her husband and three children, but also reported that she and her husband were dealing with drug addiction at the time).

All of the women were low-income or had no source of income at all at the time they experienced the harassment: one was unemployed, one was in college and living off of student loans and help from her family, two received Social Security Disability Insurance payments, and the remaining six were employed in low-wage jobs (three worked as hotel housekeepers, two worked as nurse's aides, and one was a school bus driver). Despite this level of income insecurity, only three of the ten were receiving rental assistance in the form of Housing Choice (Section 8) vouchers – an SSDI recipient, a nurse's aide, and the bus driver. Of the seven who did not have vouchers, three relied on their wage earnings, one relied on monthly SSDI checks, and three (who were unemployed) relied on assistance from family and friends to pay their rent.

The fact only three of the ten were receiving housing subsidies at the time of their harassment might seem surprising in light of the fact that *all* of the interview subjects were receiving housing assistance *at the time of the interview*, either using Section 8 vouchers or living in public housing.<sup>71</sup> The fact that so few were receiving it at the time of their harassment, however, is consistent with the rates at which low income women in general receive housing assistance. Due to resource limitations, only one in four low-income people who qualify for rental assistance actually receive it,<sup>72</sup> a ration that roughly corresponds with that in the group of ten. The Pilot Study findings run contrary to assumptions that other commentators have made about the population of women at risk for housing sexual harassment, many of whom assert (without evidence) that women are more likely to be harassed if they are using vouchers or living in public housing.<sup>73</sup> In fact, it appears that receiving housing subsidies makes a poor woman no more likely to be harassed, and, as discussed later in this Article, may improve her outcomes if she is harassed.<sup>74</sup>

### 3. Perpetrator and Housing Characteristics

The perpetrators of the harassment were much different, demographically, than the women who were its targets. They were more evenly distributed by race – with five who

---

<sup>71</sup> Indeed, one of the concerns about the project design was that it was likely to oversample women in public or Section 8 housing because the interview subjects were recruited from the Housing Authority.

<sup>72</sup> Will Fischer and Barbara Sard, Center on Budget and Policy Priorities, *Chart Book: Federal Housing Spending is Poorly Matched to Need* (March 8, 2017), p. 10.

<sup>73</sup> See, e.g., Alyssa George, *The Blind Spots of Law and Culture: How the Workplace Paradigm of Sexual Harassment Marginalizes Sexual Harassment in the Home*, 17 GEO. J. GENDER & L. 645, 647 (2016) (“[T]he tenants who are most at risk of being harassed by their landlords are low-income women of color who depend on government assistance for the continuity of their housing situation.”); Maxwell, at 230 (“[A] woman’s Section 8 status indicates economic vulnerability and ‘may act as a green light to perpetrators’ who target the most vulnerable segments of the population.”); Reed, Collinsworth & Fitzgerald at 446 (“Women receiving HUD subsidies are particularly vulnerable[.]”).

<sup>74</sup> It is true that a landlord may try to use the fact that a woman is using a Section 8 voucher as leverage in his attempts to extort sex from her. There is often a long waiting list for vouchers and it stands to reason that recipients would be fearful of jeopardizing their voucher status. See, e.g., Jessica Lussenhop, *A Woman’s Choice – Sexual Favours or Lose Her Home*, BBC News (Jan. 11, 2018).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

appeared white and five who appeared black.<sup>75</sup> Perhaps the most dramatic difference was with respect to age. The perpetrators were almost all between the ages of 40 and 70, with an average estimated age of 50.<sup>76</sup> In all but one case there was an age difference between the woman and perpetrator of at least ten years.

As noted above, all of the cases involved private rental housing, which is to say none of the women were living in public housing, project-based Section 8 housing, or a group setting such as a shelter at the time they experienced the harassment. These findings are also consistent with the results of Professor Tester's study, which found that most of the reported complaints in his pool were in private rentals as opposed to public housing, although he could not determine whether the rentals were participating in the Section 8 program.

All of the women believed that the person who harassed them was the owner of the property and also served as its manager, meaning that the landlord did not employ a property manager or management company and was thus their sole point of contact with respect to their housing.

### 4. Responses and Consequences

Only one woman (# 75) attempted to report her situation to someone in a position of authority. After her landlord repeatedly asked her for sex in lieu of rent and came into her apartment uninvited, she called the police. They came to her apartment and interviewed her, but nothing more came of it. The remaining women did not report the behavior they were experiencing to anyone. This is consistent with research findings about sexual harassment in other contexts such as the workplace and academia. The most common reasons given for this failure to report were that the woman did not know where or to whom to make a report (five women), did not want to jeopardize her housing situation (four women), or wanted to handle the situation on her own (three women).<sup>77</sup>

The emotional and, in some cases, physiological consequences for the women could be quite serious. All of them reported feeling negative emotions at the time of the harassment, ranging from anger, shock, depression, shame, and disgust. Five also experienced physical symptoms such as sleeplessness, headaches, and anxiety. Four have experienced ongoing and serious emotional problems as a result.

## III. ANALYSIS AND IMPLICATIONS

### A. *An Analysis of the Findings*

#### 1. The Conduct

Eight of the ten cases involved explicit requests or demands to trade sex for rent (#20, 21, 29, 37, 41, 75, and 93). A ninth woman (#99) described being subject to repeated

---

<sup>75</sup> These were based on the characterization of race by the women, who were asked to state what race the person appeared to be.

<sup>76</sup> These were necessarily based on estimates from the women, who in most cases did not know the exact age of the perpetrator.

<sup>77</sup> These numbers add up to more than ten because some women listed more than one reason for not reporting the conduct.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

sexual comments and sexual requests by her landlord, although not being specifically propositioned to trade sex for rent. Five women described behaviors that also fall into the hostile environment category, and are likely criminal in nature, including home invasion (#29, 41, 75, 93), indecent exposure (#41), and sexual battery of a child (#95).

### a. Sexual Requests: The Disconnect With Employment and the Reality of Low-Income Housing

All ten of the women identified in the Pilot Study were subjected to sexual overtures by their landlords. Most were explicit about trading rent for sex, and the others took the form of aggressive or repeated advances. All of the women rejected these overtures. None of them reported any direct, tangible negative actions taken *by the landlords* as a result of their refusals, which is to say that in no case did a landlord evict a woman or fail to rent to a woman because she refused his advances.

This is not to say that the sexual harassment had no effect on their housing situations. On the contrary: two women (#39 and #95) refused to rent the apartments they had been considering after their prospective landlords crudely propositioned or groped them, and five women (#20, 29, 41, 75, and 93) ultimately moved out of their housing after being propositioned by their landlords.

The lack of negative actions by the landlords is important for several reasons. Because the landlords took no tangible negative action against the women, their cases would be classified, per *Ellereth*, as alleging hostile environment harassment. Thus, the legal question for a court analyzing the issue will be whether the behavior described rises to the level of severe or pervasive conduct. For the women who also alleged serious and/or criminal behavior such as indecent exposure, home invasion, and sexual battery, the showing should be easily met. For fully half of the women, however, the sexual requests were the only form of harassment they experienced.

*Ellereth* left open the question of whether unfulfilled sexual requests, standing alone, could be severe or pervasive enough to constitute hostile environment sexual harassment in the workplace. Case law suggests that courts do not always view requests for sex in the employment context as necessarily constituting sexual harassment. Voluntary romantic relationships in the workplace are not uncommon, which is not surprising given the amount of time people typically spend at work and the fact that we often work with others who are similar to us in terms of backgrounds and interests.<sup>78</sup> One study reported that 71% of respondents in the combined samples of prior studies had observed at least one romantic relationship at work, and 31% of persons surveyed had themselves been involved in a romantic relationship with someone at work.<sup>79</sup> While recognizing that sexual advances can be a serious problem in the workplace, particularly when there is a power imbalance

---

<sup>78</sup> Gary N. Powell and Sharon Foley, *Something to Talk About: Romantic Relationships in Organizational Settings*, JOURNAL OF MANAGEMENT, vol. 24, No. 3, 421-448 (1998); Gary N. Powell, *Dealing With Sexuality in the Workplace*, WOMEN, MEN & MANAGEMENT (2d ed. 1997).

<sup>79</sup> J.P. Dillard and K.I. Miller, *Intimate Relationships in Task Environments*, Handbook of Personal Relationships (S.W. Duck ed. 1988). More recent papers describe the phenomenon as pervasive throughout organizations. See, e.g., Charles A. Pierce and Herman Aguinin, *Bridging the Gap Between Romantic Relationships and Sexual Harassment in Organizations*, JOURNAL OF ORGANIZATIONAL BEHAVIOR, Vol. 18, 197-200 (1997).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

between the parties that might lead to a real or perceived threat of negative consequences,<sup>80</sup> the prevalence of *voluntary* romantic relationships means that judges might not want to automatically make each romantic or sexual overture in the workplace into a federal case.<sup>81</sup>

The situation in housing is much different. There is no corresponding societal norm about romantic relationships between landlords and their tenants. While coworkers may spend significant time together, landlords and tenants typically have little interaction beyond the payment of rent. And while coworkers may have common characteristics – similar ages, backgrounds, and socioeconomic status – poor women have little in common with their landlords. Moreover, it is clear in the Pilot Study that what was contemplated was not a “romantic relationship” in any sense of the word but a surprisingly straightforward commercial transaction – bartering sex for housing if the woman was unable to pay the rent.

These data also reveal another difference between the workplace and housing settings. While almost every case of harassment in the Pilot Study involved explicit sex-for-rent requests, employment harassment is less likely to involve such explicit requests, and more likely to involve degrading sexual comments and gender-based hostility.<sup>82</sup> In workplace cases, some legal theorists have framed the problem as one in which men use harassment to deny women access to the benefits of a male-dominated workplace or to punish them for encroaching on it. For example, in her influential article, Vicki Schultz argues that:

[M]en's desire to exploit or dominate women sexually may not be the exclusive, or even the primary, motivation for harassing women at work. Instead, a drive to maintain the most highly rewarded forms of work as domains of masculine competence underlies many, if not most, forms of sex-based harassment on the job. Harassment has the form and function of denigrating women's competence for the purpose of keeping them away from male-dominated jobs or incorporating them as inferior, less capable workers.<sup>83</sup>

In the housing setting there is no male-dominated realm from which the women are being excluded. There is no comparable group of low-income male renters that is gaining access to housing on more favorable terms. Rather, the sex-for-rent proposition is a landlord's way of taking advantage of the low-income woman's structurally vulnerable position in an attempt to extort sex. In this way, sexual harassment in housing is also different from other forms of housing discrimination. As Aric Short points out,

A neighbor who burns a cross in the lone African-American family's yard is presumably intending to force that family out of its home. The same result is likely intended when insults and religious epithets are scrawled outside a

---

<sup>80</sup> For an argument that courts have done a better job of recognizing this, see *infra* notes – and accompanying text.

<sup>81</sup> For example, in *Oncale v. Sundowner Offshore Services*, the Court was careful to point out that “ordinary socializing in the workplace—such as male on male horseplay or intersexual flirtation” should be excluded from the definition of sexual harassment. 523 U.S. 75, 81 (1998).

<sup>82</sup> Fitzgerald, et. al. at 444-45.

<sup>83</sup> Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1755 (1998).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Jewish family's house. But the landlord who sexually harasses his tenant is not intending to drive her out; instead, he is attempting to draw her in. . .to satisfy his own desire to control and exploit.<sup>84</sup>

The recent wave of high-profile harassment allegations against influential men suggests that there are plenty of workplace situations in which men do use their positions of power to take advantage of women (and, in some cases, men) who are subordinate to them. It may be that scholars need to rethink the binary distinction between “exclusion harassment” and “exploitation harassment” in the employment setting. In any event, what seems clear is that housing harassment cases only involve this latter sort, and the structural vulnerability of the women at issue is far more profound.

The women were all selected to participate in the interviews because they were low-income at the time the Study was conducted. At the time of their harassment, all of the women were in tenuous financial positions. Although they were all low-income, only one of the ten was receiving Food Stamps and none were receiving Temporary Aid for Needy Families (TANF) benefits. Four women had help paying their rent: Three had a portion of their rent paid through the Section 8 Voucher Program. (Two of these three were also working, one as a school bus driver and the other as a nurse's aide. The third received Social Security Disability payments. The fourth was a college student who was receiving student loans and help from family. The remaining six women had no rental assistance, from either government or family, at the time they were harassed: Two were unemployed and had no source of income; One received Social Security Disability payments; Three were working (one was a hotel housekeeper, one worked in housekeeping for a temp. service, and one worked as an aide in a care facility for the disabled).

All of the women who worked had low-wage and/or part time jobs that were almost certainly were not sufficient to pay for market rate housing on the private rental market. For example, in Columbia, a person earning minimum wage would have to work 76 hours per week, 52 weeks per year, to afford the rent on a two-bedroom apartment.<sup>85</sup> In fact, as the National Low-Income Housing Coalition has exhaustively documented, there is no place in the United States where a low-wage employee, working full-time, can rent a two-bedroom apartment without spending more than 30% of her income on rent.<sup>86</sup>

The point is that the six women in the Pilot Study who were not receiving Section 8 vouchers or other rental assistance had difficulty consistently paying the rent for their apartments – a fact that their landlords surely knew at the time they rented to them. And whether or not a women received assistance appeared to have a direct bearing on whether she remained in their housing after the harassment occurred.

Five of the six women who had no assistance (#20, 29, 41, 75, and 93) moved out of their apartments after the harassment. The sixth, #39, never rented the apartment because

---

<sup>84</sup> Eric K. Short, *Slaves for Rent: Sexual Harassment in Housing As Involuntary Servitude*, 86 NEB. L.REV. 838, 842 (2008).

<sup>85</sup> National Low-Income Housing Coalition, *Out of Reach 2017: The High Cost of Housing*. In St. Louis a person would have to work 88 hours per week to afford a two-bedroom apartment, and in Chicago that number rises to 116 hours per week. “Afford” in this context means spending no more than 30% of one's gross income on housing. Exceeding this spending amount causes a household to become cost-burdened by rent, meaning that they will not have enough money for other necessities like food, transportation, and medical treatment. Families that spend more than 50% of their income on housing are considered severely cost-burdened.

<sup>86</sup> *Id.*

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

the harassment occurred while she was viewing the unit. The circumstances described in the interviews make clear that all were having difficulty making their rent payments. After declining the “option” of sex in lieu of rent all five moved out, in every case to a less desirable housing situation.<sup>87</sup> So while it would be accurate to say that their landlords did not directly evict these five women for their refusals, it is also misleading to conclude that their refusals had no effect on their housing status. Although the landlords would have had legitimate grounds for evicting them due to failure to pay rent, had they acceded to the landlord’s requests they presumably would have been able to remain in their homes.

Now consider the women who were receiving vouchers or other assistance when they were propositioned. The two women who were renting with Section 8 vouchers<sup>88</sup> (#39 and 99) and the college student who had student loans and family support (#21) also declined the sexual requests from their landlords but did not move out of their housing. It is safe to assume that they were not having problems making their rent payments and the landlords lacked legitimate grounds to evict them.

Thus, the women who had resources to help them pay rent were able to turn down their landlords’ requests without it affecting their housing situation. The women who did *not* have such resources faced a much harder choice, because for them saying “no” meant having to move.

This raises the question of whether it is even logical to look at these situations through the Supreme Court’s employment-centric sexual harassment framework, which requires that plaintiffs meet basic levels of qualifications in order to state a claim. Indeed, the classic *McDonnell-Douglas* burden-shifting analysis includes a requirement that the plaintiff be “otherwise qualified” for the position in order to state a prima facie cause of action.<sup>89</sup> For low-income women who are not receiving rental assistance, that simply is not the case when it comes to housing. No one who is unemployed, on disability, or working in a low-wage and/or part-time job can consistently afford to pay market rate rent without a housing subsidy or some other form of assistance.<sup>90</sup> This group will never be “qualified” in the manner in which the employment cases contemplate. They will always be short, always be in need of a break. Too often, this “break” comes in the form of an exploitative offer by the landlord to trade sex for rent.

The women in the Pilot Study have much in common with the subjects featured in Matthew Desmond’s powerful ethnography, *Evicted: Poverty and Profit in the American City*, which chronicles the inability of poor families to maintain stable housing, and the terrible toll that the cycle of eviction and forced moves takes on their relationships,

---

<sup>87</sup> All five women had to either move in with family, “crash” on friends’ couches, or stay in a hotel.

<sup>88</sup> A third woman, #95, also had a voucher, but she and her daughter were harassed while looking at the apartment and as a result they never actually rented from the landlord. She was also not explicitly propositioned by the landlord.

<sup>89</sup> *McDonnell-Douglas v. Green*, 411 U.S. 792, 802 (1973) (step two of plaintiff’s prima facie case requirements is that he “was qualified for [the] job”).

<sup>90</sup> According to the National Low-Income Housing Coalition, “In no state, metropolitan area, or county can a full-time minimum wage worker afford a modest two-bedroom rental home.” Affordability in this context means that no more than 30% of the household’s gross income should be spent on housing. Any more than this results in a cost-burden that is unsustainable over time. More than 11.2 renter households in the United States are severely cost-burdened, meaning they spend more than 50% of their gross income on housing, leaving insufficient resources for other basic needs like food, transportation, and medical care.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

children, employment prospects, and mental health.<sup>91</sup> Desmond observes that many low-income landlords rent to this population knowing full-well that their tenants will never be able to stay current on rent. While they may view themselves as providing a necessary service (or even being charitable), in reality many of these landlords have devised ways to profit from the situation – by charging the tenants high rent, keeping their security deposits, making no improvements or repairs to the properties, taking tenants to court and collecting fees, and flipping the properties frequently as poor families cycle in and out.<sup>92</sup> “Exploitation,” Desmond observes, “thrives when it comes to the essentials, like housing[.]”<sup>93</sup> While the exploitation that Desmond chronicles is economic,<sup>94</sup> the Pilot Study makes clear that there is a significant subset of landlords who also seek to exploit this population of renters sexually as well.

### b. Other Conduct

Five of the women described additional harassing conduct, including – home invasion (#29, 41, 75, and 93), indecent exposure (#41), and unwanted touching (#29 and 95, the latter involving the woman’s ten-year old daughter). Much of this behavior is likely criminal in nature, which makes it different, both in kind and in degree, than most workplace harassment, which is more likely to involve sexual comments and degrading behavior.<sup>95</sup> The home invasions are particularly disturbing: one woman (#29) came out of the shower to find the landlord inside her apartment multiple times. Another (#41) woke up at night to find her landlord in her apartment, masturbating. Even apart from these dramatic episodes, simply having a landlord who would let himself into their apartments without warning was extremely unsettling to these women. This was particularly so in light of the fact that the women had been sexually propositioned by these same landlords. This combination – unauthorized entry coupled with sexual propositions – was terrifying to all of the interview subjects who experienced it.

This is another area in which reliance on precedent developed in the area of employment fails. It is nearly impossible to translate home invasion into a workplace context – indeed, the whole concept of “home invasion” rests on the predicate that it occurs in the victim’s home. Harassment at home can also affect children and other family members in a way that would be unlikely in the workplace, as it did for #95, whose 10-year old daughter was groped by her prospective landlord.

## 2. Lack of Oversight

---

<sup>91</sup> MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (Crown Publishers, 2016). Significantly, Desmond also notes that most forced moves are not the result of formal evictions at all, but, like the women in the Pilot Study, involve people moving out before they can be evicted. 330-331

<sup>92</sup> *EVICTED* at 305-308. Desmonds rightly refers to low-income housing as “an extractive market.” *Id.* at 305.

<sup>93</sup> *EVICTED* at 306

<sup>94</sup> It is noteworthy that none of the subjects in Desmond’s study had experienced sexual harassment by their landlords. This may be because one of the main landlords who he followed was female. It may be that landlords refrained from making such propositions because he was there observing them.

<sup>95</sup> *See infra* note --.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

All of the harassment took place within private rentals, not in public housing, homeless shelters, or other institutionalized settings. Three of the ten women were using Section 8 vouchers to help pay their rent at the time they were harassed, so there was at least a Housing Authority involved in overseeing the rental. In the remaining seven cases there was no governmental, administrative, or charitable entity involved in the rental relationship.

It appears that the perpetrators are likely to be independent owner-operators, that is, landlords who both own the properties and manage the properties themselves, without using a rental manager or management company. All ten of the women reported that this was the case. This is also consistent with Professor Tester's study, which observed that most of the offenders were landlords who both owned and managed their properties themselves, as opposed to working for large rental management companies with structured management and procedures.

This makes sense if we assume that a larger, more formal management apparatus – of the sort that one would find either with public housing or with a private rental management company – is more likely to contain some oversight and accountability mechanisms. The tenants might have multiple points of contact with different employees, the employees would have supervisors, and decision-making power about various aspects of the tenancy (rent payments, repairs, lease status, etc...) is less likely to rest with a single person. In the owner-operator scenario, particularly where the tenant is not using a Section 8 voucher (and thus there is no Housing Authority oversight), none of these mechanisms are in place.

This is not to suggest that harassment does not occur in public housing or other institutional settings – anecdotal evidence and case law show us that it does.<sup>96</sup> The same goes for harassment committed by employees of rental management companies.<sup>97</sup> But on the whole it would seem that housing sexual harassment is most likely to occur in a specific setting – private rentals – and to be carried out by a specific type of perpetrator – a man who both owns and manages his properties, and therefore can operate without any oversight or accountability.

### 3. Lack of Response

It is striking that essentially nothing happened to the landlords who committed the harassment. The only woman to make any sort of complaint called the police, who did not take action. This is not surprising. Police are trained to investigate criminal activity. They are likely to view a complaint from a woman about her landlord – even one that alleges criminal conduct – as a landlord-tenant dispute and not a law-enforcement matter. This is particularly so when the conduct involves home invasion. Law enforcement may view the property as belonging to the landlord, and therefore be less willing to take these complaints seriously. This effect may be magnified by the fact that the complaints are likely to be

---

<sup>96</sup> See, e.g., *Woods v. Foster*, 884 F.Supp. 1169 (N.D. Ill. 1995) (female residents of homeless shelter sexually harassed by shelter director); *Banks v. Housing Auth. of Bossier City, LA*, 2011 WL 4591899 (W.D. La. 2011) (female public housing tenant alleged sexual harassment by maintenance technician).

<sup>97</sup> See e.g., *West v. DJ Mortgage, LLC*, 164 F.Supp.3d 1393 (N.D.Ga. 2016) (female tenant alleged harassment by landlord's property manager).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

young, low-income women of color. Unless police are specifically trained on this issue they may well not be equipped to take appropriate action.

Fair housing organizations and lawyers who specialize in fair housing have the expertise to handle complaints of this nature. The Department of Housing & Urban Development (HUD) also processes housing sexual harassment complaints, as do state civil rights agencies. None of the women interviewed were aware of this.

Even if they had been aware of available complaint mechanisms, it is unlikely that the women in the study would have used them. Of the nine women who made no formal complaint, all stated that one reason for their failure to complain was their reluctance to jeopardize their housing situation. Unfortunately, this was likely a valid concern. As discussed previously, the women who were not receiving rental assistance were having difficulty paying their rent. Their landlords may have had legitimate reasons to evict them, but may have held off doing so in an effort to extort sex from them. A complaint from a fair housing center or a HUD investigation could very well have triggered an eviction. Women who had housing vouchers might not have felt the danger of eviction in the same way, but were still concerned about jeopardizing their vouchers.

Of course, if a landlord evicts a woman or causes her to lose her housing subsidy because she filed a fair housing complaint against him, this can itself constitute a separate violation of the Fair Housing Act's anti-retaliation provision.<sup>98</sup> If the record contains legitimate reasons for an eviction as well, this creates a question of causation for the fact-finder, who will need to decide the true reason for the eviction. Unfortunately, this may come too late for the woman if she has already been evicted.

A private lawyer might file for a TRO, in order to prevent a complainant from being evicted while her claim is pending. Similarly, it is possible for HUD to authorize the Attorney General to go to court to seek temporary or preliminary relief, which is referred to in the FHA's regulations as "prompt judicial action."<sup>99</sup> However if the complainant is in arrears the court may be unwilling to grant such a remedy. Moreover, a woman's difficulty paying rent may provide fodder for a landlord to argue that she is fabricating her complaints in order to get out of not paying.

### *B. Ramifications for Law and Policy*

These findings have significant ramifications for law and policy. The numbers alone should give policy-makers pause: If one in ten low-income women have experienced sexual harassment by their landlord, this means that there are likely hundreds of thousands of women who have experienced this conduct. Census figures show nearly 26 million women living in poverty in 2015.<sup>100</sup> Over 1 in five of *all* renting families in the U.S. are extremely housing insecure, meaning that they spend more than 50% of their income on housing.<sup>101</sup>

---

<sup>98</sup> 42 U.S.C. 3617.

<sup>99</sup> 24 CFR 103.500 - Prompt judicial action.

<sup>100</sup> <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>

<sup>101</sup> National Low-Income Housing Coalition, *Out of Reach 2017: The High Cost of Housing*.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

### 1. Law

As discussed above, commentators and a few forward-thinking courts have argued persuasively that courts should take the differences in context between the housing and employment settings into consideration when they determine whether behavior rises to the level of actionable harassment. While this is important if courts are to retain their employment-centric framework, it seems clear that the housing harassment scenario bears so little resemblance to the typical employment harassment scenario that it constitutes its own, distinctive phenomenon and thus requires an entirely different legal framework.

In particular, we need to address the fact that so much of this harassment takes the form of a landlord's seeking to exploit poor women's housing vulnerability by requesting sex in lieu of rent. While most people would recognize this as conduct that should be both punished and deterred, the current state of the law creates a number of barriers to this. As the Pilot Study demonstrates, if a woman is in arrears on her rent she may be reluctant to report her landlord's sexual advances, afraid of provoking an eviction that would otherwise be justified by her failure to pay. Similarly, a woman whose "only" harassment consists of being sexually propositioned by her landlord may understandably have little incentive to pursue a lawsuit in which her fitness as a tenant may be an issue, the conduct may not be considered serious enough to constitute harassment, and even if she succeeds she may get little in the way of damages. Meanwhile, low-income landlords have an almost unlimited supply of poor women who can they attempt to exploit, with few repercussions.

Some commentators have argued that the solution is to escalate the legal response, by treating sexual requests as a crime.<sup>102</sup> For example, Carrie Baker argues that states should adopt specific statutes to criminalize such sexual extortion.<sup>103</sup>

The coercion and exploitation of sexual harassment cause sufficient harm to justify criminalization. Criminal law would forcefully address this serious problem that affects large numbers of women in American society. Punishment would not only serve an educational purpose by teaching that harassment is unacceptable behavior, but also would deter sexual harassment.<sup>104</sup>

While this approach is satisfying to those who want society to take a stronger stance against landlords who perpetrate this sort of harassment, criminalization has flaws which make it unworkable on its own. To begin, there is the burden of proof, which is much higher in a criminal case (beyond a reasonable doubt) than in a civil case (by a preponderance of the evidence). If women have difficulty getting their claims through the civil court system, it is difficult to imagine them faring any better in the criminal justice system. In addition, as in any criminal case, the state is the aggrieved party. These cases may rank low on a prosecutor's priority list, and the victim may receive little or no benefit from a prosecution.

---

<sup>102</sup> In Missouri, such requests might technically be prohibited as soliciting prostitution (*see* Mo.Rev.S 567.020, "A person commits the offense of prostitution if he or she . . . offers . . . to engage in sexual conduct with another person in return for something of value) although it is not clear how this would apply outside of the context of prostitution.

<sup>103</sup> Carrie N. Baker, *Sexual Extortion: Criminalizing Quid Pro Quo Sexual Harassment*, 13 LAW & INEQ. 213 (1994).

<sup>104</sup> *Id.* at 238.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Some commentators have proposed revisiting common law approaches. For example, in *Discrimination and Outrage: The Migration from Civil Rights to Tort Law*<sup>105</sup>. Martha Chamallas makes a persuasive case for applying common law tort framework to hostile environment claims. She begins by discussing why activists originally felt the need to move employment sexual harassment cases away from common law and into the scope of Title VII – too many courts failed to recognize the types of harassing conduct that women experienced in the workplace as sufficiently “extreme and outrageous” to qualify as intentional infliction of emotional distress under the Restatement.<sup>106</sup> Shifting the claim to a statutory framework allowed the law of sexual harassment to develop, with a concomitant shifting of norms. As a result, sexualized conduct in the workplace is now viewed differently than it was in the 1960s:

Simply put, the emergence of sexual harassment law [under Title VII] has challenged the belief that there is no harm in asking. The entire body of sexual harassment law is premised on the view that solicitations for sex and other sexualized conduct in the workplace can produce harm, most notably in instances when they are backed by economic coercion or pressure or serve to reinforce the subordinate status of a group of workers.<sup>107</sup>

While this discussion – and the commentary on the most recent draft of the Third Restatement of Torts – is focused on the workplace context, there is no reason why it cannot be applied, in theory, to the housing context. However, as Professor Chamallas describes the “migration process” of bringing civil rights principles into torts, it entails asking courts to selectively borrow concepts from the civil rights cases and apply them in tort cases.<sup>108</sup> Thus, the fact that conduct has been found to constitute sexual harassment in violation of Title VII can be used to support the contention that it is outrageous enough to satisfy the requirements for the intentional infliction of emotional distress tort. This may be workable in the field of employment sexual harassment where this is a large existing body of caselaw, but applying it to the relatively sparse field of housing harassment simply reinforces the same problem that has always dogged housing harassment cases: the fact that courts improperly rely on employment cases and fail to consider the unique context of housing.

Other commentators have avoided this pitfall by looking to the common law of contracts and property. Deborah Dubroff suggests that women who have been harassed might pursue an action for breach of quiet enjoyment.<sup>109</sup> Theresa Keeley argues in favor of an implied warranty of habitability that includes an implied warranty of freedom from sexual harassment.<sup>110</sup> Both of these approaches have drawbacks. A breach of quiet enjoyment typically requires a finding of actual or constructive eviction, which is likely to be found only in the more serious harassment cases (which will then likely satisfy the terms

---

<sup>105</sup> 48 WM. & MARY L.REV. 2115 (2007)

<sup>106</sup> *Id.* at 2124-32.

<sup>107</sup> *Id.* at 2172.

<sup>108</sup> *Id.* at 2183-85.

<sup>109</sup> Deborah Dubroff, *Sexual Harassment, Fair Housing, and Remedies: Expanding Statutory Remedies Into A Common Law Framework*, 19 T. Jefferson L. Rev. 215 (1997).

<sup>110</sup> Theresa Keeley, *An Implied Warranty of Freedom From Sexual Harassment: The Solution for Harassed Tenants Where the Fair Housing Act has Failed*, 38 U. Mich. J.L. Reform 397 (2005).

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

and conditions requirement of Title VIII). Similarly, an implied warranty of habitability will only be breached if the conduct renders the dwelling unfit for occupancy. Again, any conduct that rises to this level will almost certainly violate Title VIII. Finally, the remedies under these approaches are lacking. Both would likely require the landlord to compensate the victim for any rent she paid during the time that the implied warranty or covenant was breached.<sup>111</sup>

I propose a different approach: There should be a set statutory penalty for any landlord who propositions his tenant to trade sex for rent. (This is not to be confused with the statutory penalty that the Fair Housing Act allows the Department of Justice to collect in actions that it prosecutes on behalf of aggrieved persons.<sup>112</sup>) This penalty should be somewhere around \$500 or \$1,000 – less than a significant damages award for emotion distress, but enough to send a message and deter the behavior. It would be applicable in cases brought by private litigants and would be paid directly to the aggrieved person. In order to be entitled to recover, the woman need only prove that the proposition was made. She should not have to prove that the proposition altered the terms and conditions of her tenancy, nor that she suffered emotional distress, nor that she was a qualified tenant. Indeed, information about her payment status should be irrelevant except as it may explain why the landlord was making the offer in the first place. The amount should be set and should increase with each subsequent offense. This is similar to the quasi-regulatory approach used in other contexts when there is a business practice that we wish to deter, difficulty proving damages, and a lack of vigorous government enforcement of claims.<sup>113</sup>

There are a number of advantages to this approach. It provides victims with a straightforward mechanism for obtaining compensation for a wrong done to them, allowing them to bypass the increasingly complex and ill-fitting framework that the Supreme Court has cobbled together for employment discrimination cases. It allows society to express its disapproval of this conduct and holds landlords accountable for it.

This framework is not perfect. Some amount of false reporting could result because the possibility of a monetary pay-out might lead some women to make spurious claims, although there is no reason to think this would be more so than for any other type of tort. The woman would still need to prove that the landlord made the proposition, which should weed out unwarranted claims.<sup>114</sup> A more serious problem with this approach is that even the threat of such penalties may dissuade landlords from renting to low-income women, which would further compound the affordable housing crisis and harm the very people it is meant to help. Finally, some might argue that this approach downplays the severity of the offense, treating a reprehensible abuse of power like a quasi-administrative offense. There is truth to this critique, but the hope is that by lowering the stakes and making it easier to address, this approach will actually help ferret out and deter more of this behavior than the current legal framework does.

---

<sup>111</sup> *Id.* at 426-27; Dubroff at 242-43.

<sup>112</sup> 42 U.S.C. 3614

<sup>113</sup> For example, consumer protection laws, disclosure requirements, and laws specifying the handling of sensitive financial or medical information.

<sup>114</sup> Indeed, this may prove difficult if there are no witnesses to the conduct and it is simply one person's word against another's.

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

### 2. Policy

#### a. The need for more oversight of the rental relationship

Owner-operators of private rental housing, who are the most likely perpetrators of housing harassment exist in the shadows. In many jurisdictions there is little oversight of the landlord-tenant relationship. Regulation of rental housing is conducted by local zoning and authorities and typically focuses on the physical condition of the properties. Landlord-tenant laws vary from state to state. They usually focus heavily on the particulars of rent and security deposit collection, duties to repair, and eviction procedures, and they are almost always enforced through litigation (which is typically initiated by landlords against tenants). The federal Fair Housing Act and its state law equivalents prohibit discrimination in housing, including housing harassment. HUD and the state civil rights agencies that enforce these laws operate on a complaint-driven model, and do not affirmatively regulate private rental housing.

At the same time, the Pilot Study offers a glimpse as to who the most vulnerable women are: They are likely to very young, low-income minority women who are not receiving housing subsidies. These women are among the most marginalized in society, with few social, economic, or institutional supports. Reaching and serving this population remains one of the biggest challenges

For women who are receiving housing assistance, there is an obvious agency that could provide oversight of landlords and offer resources to tenants who are harassed: the Housing Authorities that implement the Section 8 program. Unfortunately, while some Housing Authorities may have effective methods for receiving and acting on complaints, others may be unresponsive to, or even perpetrators of, such harassment.<sup>115</sup> As Jill Maxwell argues, Housing Authorities should develop standard procedures for training landlords about their obligations under the Fair Housing Act, educating tenants about sexual harassment, and providing effective methods to receive, investigate, and act on tenants complaints of harassment.<sup>116</sup> HUD can and should monitor how the Housing Authorities perform on this basis through its Section 8 Management Assessment Program (SEMAP).<sup>117</sup>

These sensible measures, however, will only reach the 25% of poor women who actually receive housing assistance. For the rest, we must consider avenues for tenant education, regulation and oversight of the landlord tenant relationship, and complaint mechanisms that can occur at a variety of points, in particular at the local level. As a beginning point, states could require landlords to make mandatory disclosures to their tenants that clearly spell out their right to be free from sexual overtures by their landlords. Local governments can conduct public awareness campaigns designed to reach the low-income population generally to inform them of their rights. Local code enforcement authorities can operate a hotline to receive complaints from women (which they should be

---

<sup>115</sup> BBC article; Cases

<sup>116</sup> Maxwell, *infra* note – at 246-48. In addition, HUD could implement national program changes to eliminate policies that provide opportunities for landlord harassment – for example, requirements that women who receive vouchers lease-up within a limited amount of time or risk losing their voucher, and allowing evictions by the landlord to automatically terminate Section 8 benefits without a hearing. *Id.* at 237-240.

<sup>117</sup> *Id.*

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

informed about through mandatory disclosures and public education). This would allow them to refer the women to appropriate resources and also to investigate the landlords who are the subjects of the complaints. Problem landlords could be identified and have their rental licenses suspended just as they would for repeated citations about maintenance or habitability.

Similarly, police departments should be trained in how to deal with tenants who allege criminal harassing behavior by their landlords. Specifically, they should not automatically view such disputes as landlord-tenant problems. In particular, they should take seriously allegations that the landlord is invading the woman's home. To the extent that police believe this is the landlord's prerogative as the owner of the property, this misconception must be dispelled.

In October 2017 the Department of Justice announced an initiative to combat sexual harassment in housing. The initiative will involve "working with legal service providers and local law enforcement to raise awareness about this issue."<sup>118</sup> The Pilot of this initiative will be launched in two jurisdictions, Washington, D.C., and western Virginia. At the time of this writing, there were no additional details about the program itself or the timeline for its implementation.

The measures described herein are small, and they would require the concerted actions of thousands of local governments with varying amounts of resources. And perhaps even with all of this effort, reporting rates would remain low, as they are for most forms of sexual victimization. But this approach is at least an initial attempt to recognize and address the problem of sexual harassment in housing that begins with actual data about what it looks like, who it affects, and who perpetrates it, instead of using unfounded assumptions and trying to shoehorn the problem into an ill-fitting pre-existing framework.

### b. The need for more affordable housing

There has long been a consensus among experts, advocates, and commentators that the United States is in desperate need for more affordable housing and more housing assistance for low-income people. We live in a nation where no individual earning minimum wage can afford a two-bedroom apartment, and where 75% of people who qualify for housing assistance do not receive it because of resource constraints.<sup>119</sup> Waiting lists for public housing and Section 8 vouchers are years long in many places, and frequently are closed, so that new families cannot even sign up for long periods of time.<sup>120</sup>

---

<sup>118</sup> *Justice Department Announces Initiative to Combat Sexual Harassment in Housing*, U.S. Department of Justice, Office of Public Affairs (Oct. 3, 2017).

<sup>119</sup> Center for Budget and Policy Priorities.

<sup>120</sup> A recent survey conducted by the National Low-Income Housing Coalition found that:

- Fifty-three percent of HCV waiting lists were closed to new applicants for housing assistance. Sixty-five percent of these had been closed for at least one year.
- Eleven percent of public housing waiting lists were closed to new applicants. Thirty-seven percent of these had been closed for at least one year.
- The median HCV waiting list had a wait time of 1.5 years. Twenty-five percent of HCV waiting lists had a wait time of 3 years or longer.
- The median public housing waiting list had a wait time of 9 months. Twenty-five percent of public housing waiting lists had a wait time of 1.5 years or longer.

National Low Income Housing Coalition, *The Long Wait For A Home*, Housing Spotlight (vol. 6, issue 1) (Fall 2016)

## DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

While the human costs of this deprivation should already be clear, perhaps the results of the Pilot Study can add fuel to the argument for increased affordable housing and housing subsidies. It is shameful that the lack of affordable housing in this country causes millions of rent-burdened families to go without food and other necessities. It is *even more* shameful that the lack of affordable housing in this country has created a situation in which a sizable number of landlords are exploiting this situation for sexual purposes.

### *C. Study Limitations and Areas for Future Research*

This project was a pilot study, and therefore its size and scope are not large enough to allow for broad generalization, particularly across different populations and geographic areas. Columbia, Missouri is a Midwestern college town with an exceptionally well-run Housing Authority and a relatively low cost of living.<sup>121</sup> This may have thrown off some aspects of the survey responses, although it is difficult to know to what extent this happened: one of the flaws in the survey instrument was that it failed to ask *where* geographically the harassment occurred. During the narrative portion of the housing history, some of the interview subjects stated that they had been living elsewhere when they were harassed – usually Chicago or St. Louis – and that they had later moved to Columbia.<sup>122</sup> It seems likely that areas in which there is a shortage of rental housing, particularly affordable housing, would have higher rates of sexual harassment.

In addition, as noted, the population sampled in the Pilot Study was not reflective of poor women as a whole in the United States. It contained a much higher percentage of African Americans, and no Latinas, Asians, or other ethnic groups

Future research should include a much larger group of women, including different demographic groups such as recent immigrants and Native American women living on reservations. It should also focus on a variety of different geographic locations with different vacancy rates, housing costs, and affordable housing options, in order to determine whether these factors play a role.

In addition, by focusing solely on low-income women, the study does not address the prevalence of sexual harassment of all women in rental housing. There may be other groups who are vulnerable to housing harassment for reasons other than income (for example, students, military spouses, or non-citizens). Future research into this area is necessary to determine whether other vulnerability factors come into play.

## CONCLUSION

It is time for sexual harassment in housing to be dealt with in an effective and systematic way by courts and policymakers. Doing so will require taking a hard look at

---

HUD recommends that Housing Authorities close their waiting lists once the wait for assistance is between 12 and 24 months. Housing Choice Voucher Program Guidebook, p. 4-4 (available at [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11748.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11748.pdf)). New families cannot even place their names on the list until it opens back up again.

<sup>121</sup> The median monthly gross residential rent in the Columbia metro area was \$769 in 2015 according to the Census ACS survey. In comparison, the median gross rent for the United States was \$959.

<sup>122</sup> Indeed, a few of the subjects stated that they had moved to Columbia specifically in order to find better housing.

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

gaps in both the current legal framework for sexual harassment and regulatory oversight of the landlord-tenant relationship. Indeed, the economic realities of low-income housing require an approach that is sui generis. The starting point for all of these interventions is data about the problem. The Pilot Study offers a picture of its size and nature. Further research and attention will hopefully be forthcoming.

APPENDIX A (INTERVIEW SCRIPT)

**PROBLEMS WITH HOUSING/LANDLORD**

*I am going to ask you some questions now about whether you have had particular problems with landlords and sexual harassment. Some of these questions involve subjects that can be personal. Please remember that we will keep your responses confidential. If you need to take a break at any time just let me know.*

1. Have you or a member of your household ever experienced behavior by a landlord, property manager, or someone else connected with your housing that you thought was sexually inappropriate, such as:

- |    |                              |   |   |
|----|------------------------------|---|---|
| a. | Sexual comments              | Y | N |
| b. | Unwanted touching            | Y | N |
| c. | Requests for sexual activity | Y | N |

What was it that he wanted?

---

d. Threats if you do not engage in sexual activity (for example, “I will evict you” or “I will hurt your family”)

Y N

e. Forced sexual activity Y N

What did he do? \_\_\_\_\_

---

f. Other Y N

---

---

2. Who was the target of this behavior (circle all that apply)?:

- You.....1  
Your son/daughter (circle).....2  
Another member of your household.....3



DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

- i. Do you feel that he engaged in this behavior because you are a woman?  
Y      N

**IF “NO” TO ALL OF THE ABOVE, THANK THE RESPONDENT AND END THE INTERVIEW.**

**BACKGROUND, RESOURCES AND VULNERABILITIES**

*Now I am going to ask you some background questions about yourself and other things that were happening at the time you had the problems with your landlord. Again, these questions may involve some sensitive topics, and you should feel free to take a break if you need one.*

**A. Interviewer note: Some of this information may be obtained from the detailed housing history.**

- 1. How old were you when you had these problems?
- 2. Who lived or stayed with you at that time? (age, gender, and relationship)

---

---

---

---

- 3. Did you or any of these individuals have a disability?

Y      N

- a. If \_\_\_\_\_ yes, \_\_\_\_\_ who?

---

- b. What type of disability? \_\_\_\_\_

- c. What limitations did this disability create?

---

---

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

**Interviewer Note: It would be best to first use the housing history to identify which housing situation the harassment occurred in. You can then use that information to answer many of the following questions.**

4. What type of housing was this?

- Private housing (you or people you lived with paid the rent) ..... 1
- Section 8 housing ..... 2
- Public housing ..... 3
- Other ..... 4

a. If Section 8 or public housing, how long had you been on the waiting list?

---

5. Where had you lived immediately before this housing?

- Private housing (where you paid rent).....1
- I stayed with a friend or family member.....2
- Public housing.....3
- I had an apartment with a Section 8 voucher.....4
- Homeless shelter.....5
- Other.....6

---

6. What was your employment status at that time?

- Employed full-time ..... 1
- Employed part-time ..... 2
- In a paid training program ..... 3
- In a workfare program ..... 4
- Unemployed ..... 5

IF EMPLOYED: a. Where did you work?

b. What did you do?

IF PART-TIME, c. How many hours did you work per week?

IF UNEMPLOYED, d. How long had you been unemployed for?

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

7. Income

Where did you get your money at that time (circle all that apply)?

- Working in a job ..... 1
- TANF/Welfare ..... 2
- Food Stamps ..... 3
- SSI ..... 4
- Social Security/Retirement ..... 5
- Social Security/Disability ..... 6
- Child Support ..... 7
- Other ..... 8

8. Education

a. What was your level of education at that time?

- Less than high school ..... 1
- GED ..... 2
- High school graduate ..... 3
- Some college ..... 4
- Associate's degree ..... 5
- Bachelor's degree ..... 6
- Vocational training ..... 7

b. When this happened were you enrolled in:

- A GED program ..... 1
- College ..... 2
- Vocational school ..... 3

9. Domestic violence history at the time of harassment

**Interviewer note: If the subject answered affirmatively to any of the domestic violence questions in the previous section, find out when those incidents occurred relative to the harassment:**

Did the incidents of domestic violence we discussed earlier occur

- Before.....1
- During.....2
- After.....3

the problems with your landlord?

If more than one, indicate:

10. Crime history at the time of harassment

**Interviewer note: If the subject answered affirmatively that they had either been a victim of or convicted of crime, find out when that occurred relative to the harassment. If more than one crime, indicate for each.**

- a. Did the crime victimization we talked about earlier occur
- Before.....1
  - During.....2
  - After.....3
- the problems with your landlord?

If more than one, indicate:

---

- b. Did the criminal convictions that we talked about earlier occur
- Before.....1
  - During.....2
  - After.....3
- the problems with your landlord?

If more than one, indicate:

---

11. Support at the time of harassment

- a. At that time did you have any of the following sources of outside support, either emotional, financial, or for practical things like rides or day care: (CIRCLE ALL THAT APPLY)

- Family ..... 1
  - Friends ..... 2
  - Religious organization ..... 3
  - Community organization ..... 4
  - Other ..... 5
-

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

---

b. Did you or anyone in your household have regular access to a car?

Y N

c. If in Section 8 or Public Housing, did you have a case manager?

Y N

d. IF YES: How often did you meet with this person?

---

e. Did you find this person to be helpful?

Y N

f. Did you feel comfortable talking to this person?

Y N

g. Did you work with any agencies besides the Housing Authority?

Y N

**If YES continue. If NO skip to 12:**

h. What agency(ies)?

---

i. Did you have a case manager?

Y N

j. How often did you meet with this person?

---

k. Did you find this person to be helpful?

Y N

l. Did you feel comfortable talking to this person?

Y N

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

12. Housing Instability at the time of harassment. **Interviewer Note: These questions may be answered with information from the detailed housing history. It would be best to indicate which housing situations ended in eviction on the housing history form itself.**

a. At the time this happened, had you ever been evicted from any housing situation?

Y N

**IF YES, answer the next five questions. If NO, skip to 13**

b. How many times?

**(Provide for each time)**

c. When?

d. Why?

e. Where did you go?

f. Were your children with you?

13. Homelessness

a. At the time this happened, had you ever stayed in a homeless shelter?

Y N

**If YES answer the next three questions, if NO skip to e**

b. When?

c. For how long?

d. Were your children with you?

Y N

e. At the time this happened, had you ever spent the night somewhere not usually meant for sleeping, like a car, a park, or under a bridge?

Y N

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

**If YES answer the next three questions, if NO skip to i**

f. When?

g. For how long?

h. Were your children with you?

Y      N

i. Had you ever had a period of time as an adult where you stayed with friends or family because you did not have a place of your own?

Y      N

**If YES, answer next three questions, if NO skip to 14**

j.      When?

k.      For how long?

l.      Were your children with you?

Y      N

14.      Drugs and alcohol

*Now I would like to ask you about your use of alcohol and illegal drugs at the time this was happening to you. Please remember that your answers are confidential. Also, please know that this is purely background information. Your answers do not in any way imply that you were to blame for what happened.*

**Interviewer Note: If the subject answered affirmatively to the previous questions about drugs and alcohol, find out when the drug and alcohol use was in relation to the harassment. You can use some of the information to supply these answers.**

a.      At the time did you use any illegal drugs?

Y      N

**If YES, ask next four questions, if NO skip to f**

b.      Which ones? (CIRCLE ALL THAT APPLY)

- Marijuana ..... 1
- Cocaine ..... 2
- Crack cocaine ..... 3
- Methamphetamines ..... 4
- Heroin ..... 5
- Other ..... 6

---

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

- c. How often?
  - Every day ..... 1
  - Once every few days ..... 2
  - About once a week ..... 3
  - A few times a month..... 4
  - Once a month..... 5
  - Less often than once a month..... 6
  
- d. Had you recently been arrested for crimes related to drugs (in the previous year)?
  - Y N
  
- e. Did you feel that your use of drugs caused you problems in your life?
  - Y N
  
- f. At the time did you drink alcohol?
  - Y N

**IF YES,**

- g. Did you feel that your use of alcohol caused you problems in your life?
  - Y N

**B. Landlord/Property Manager characteristics**

- 1. How was the property where you had these problems managed?
  - The owner (landlord) managed the property him/herself ..... 1
  - The landlord had a person who helped manage the property ..... 2
  - There was a property management company ..... 3
  - The property was managed by the Housing Authority ..... 4
  - Don't know ..... 5

- 1. What was the position of the person who did these things to you?
  - Landlord/owner.....1
  - Property manager.....2
  - Other employee of management.....3
  - Not sure.....4
  - Other.....5

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

---

2. How old would you estimate the landlord/property manager was? \_\_\_\_\_
4. What gender was the landlord/property manager?            M     F
5. What was the landlord/property manager's race?    C AA Asian Latino Other
6. To your knowledge, was the landlord/property manager married?   Y   N

**C. Responses and Outcomes**

1. Knowledge
    - a. Did you know that what he was doing was against the law? Y     N
    - b. Did you know how to report it?     Y     N
    - c. Did you know what protections there were against retaliation? Y   N
    - d. If you answered yes to any of the questions above, how did you know?
- 
- 

*Let me begin this next question by saying that many women who find themselves in this situation decide that the best course of action is to do nothing, and to hope that the problem stops. This may actually be a rational choice, because of the risk that the landlord could retaliate against the woman and her family if she tries to take action. Failure to take action does not mean that a woman liked what was happening or was "at fault" if the treatment continued.*

2. What happened as a result of the problem? (Circle all that apply)
  - a. I or someone in my household talked to the landlord/property manager
    - i. What was the result?  
\_\_\_\_\_
  - b. I contacted another person or organization for help with the problem

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

i. Who or which organization did you contact?

---

ii. What action(s) did the person or organization take?

---

iii. What happened as a result of the action(s)?

---

---

c. I moved out

d. I did not take any action

3. If you did not try to address the situation with the landlord/property manager, why not?

- I didn't think it would do any good. .... 1
- I was afraid of him. .... 2
- I did not want to jeopardize my housing situation ..... 3
- Other ..... 4

---

4. If you did not seek help from another person or organization, why not?

- I didn't know who to contact ..... 1
- I didn't think they would want to help me ..... 2
- I was afraid of jeopardizing my housing situation ..... 3
- Other ..... 4

---

*The next question I have is a sensitive one. Let me start by saying that when women are put into difficult situations where they are told to go along with a sexual demand or else risk losing housing for themselves and their family, many women will do what they believe they need to do in order to keep a roof over their heads. This does not change the*

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

*fact that what the landlord has done is both wrong and illegal, and it does not mean that woman liked what was happening or is in any to blame.*

5. If your landlord asked you to do something sexual for him, was there ever a time when you decided to go along with it?

Y N

a. What did you do?

b. If N, what happened as a result of your saying no?

---

6. If you moved out or were forced to move out,

a. where did you go?

I stayed at a friend's house.....1

I moved in with family members.....2

I was able to find private housing.....3

I was able to move to a(nother) Section 8 unit.....4

I went to a homeless shelter.....5

b. How did the place you moved to compare to the place you left?

Quality:      Worse          Same          Better

Size:          Smaller       Same         Bigger

Location:     Worse          Similar       Better

Price:         More \$         Same \$       Less \$

c. How long did it take for you to find your new housing? \_\_\_\_\_

d. Did everyone in your household move with you?    Y      N

i. If not, who did not move with you?

ii. Where did he/she/they go?

7. Do you feel that you were retaliated against or experienced a negative consequence because of your attempts to deal with the problem?

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Y N

a. IF YES, Describe how:

---

8. After this happened to you, how would you describe your feelings:

- Sad/depressed.....1
- Angry.....2
- Ashamed.....3
- Frightened.....4
- Mistrustful.....5
- Other.....6

---

9. Did any of the following happen as a result of your experience?

- The way I interacted with my children was negatively affected.....1
- My relationship with a boyfriend or spouse was negatively affected.....2
- My performance at work or school suffered.....3
- I withdrew from friends and family.....4
- I started using or increased my use of alcohol and/or drugs .....5
- I experienced physical symptoms.....6
  - Sleeplessness.....7
  - Headaches.....8
  - Difficulty concentrating.....9
  - Anxiety (pulse racing, rapid breathing).....10
  - Loss of appetite.....11

Other symptoms or problems: \_\_\_\_\_

---

10. If your child was a direct victim of this harassment, what happened to him/her as a result?

- Depression.....1
- Performance suffered in school.....2
- Acting out/discipline problems.....3
- Physical symptoms.....4
  - Sleeplessness.....5
  - Headaches.....6

DRAFT\* *SEXUAL HARASSMENT IN HOUSING* \*DRAFT

Difficulty concentrating.....7  
Anxiety (pulse racing, rapid breathing).....8  
Loss of appetite.....9

Other symptoms or problems:\_\_\_\_\_

---

11. Do you feel that your experience has caused you to experience emotional distress or suffering that lasts to this day?

Y N

a. **IF YES,** IN what ways?

---

---

12. Do you feel that your experience has caused your child/ren to experience emotional distress or suffering that lasts to this day?

Y N

a. **IF YES,** IN what ways?

---