

Mock Trial

Elyse Roberts v. the District of Columbia

A woman sues her employer, the District of Columbia, for sexual harassment and intentional infliction of emotional distress.

**Developed by the D.C. Street Law Clinic
at Georgetown University Law Center**

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IN THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA

Elyse Roberts

-v-

MT-89

District of Columbia

STIPULATED FACTS

Elyse Roberts graduated from law school in May, 1987 and began her employment as an Assistant District Attorney (ADA) with the Office of the District Attorney of the District of Columbia¹ on August 1, 1987. The Office of the District Attorney is a large urban office with eight bureaus, 120 attorneys, and a support staff of 175. She was first assigned to the Intake and Misdemeanor Bureau, where most new attorneys start. After her first six months, on February 1, 1988, she received a "good" rating on her periodic six-month review.

On February 1, 1988, Roberts was transferred to the Felony Trial Bureau. The Felony Trial Bureau has 20 attorneys, eight of whom are women. This bureau is responsible for all prosecution of felonies with the exception of homicides. Roberts was assigned to share an office with Kevin Murphy, a senior attorney with four years' experience. Both were supervised by Fran Troy, the Bureau Chief of the Felony Trial Bureau.

Soon after arriving at the Felony Trial Bureau, Roberts complained to her supervisor, Troy, that her co-worker Murphy frequently made obnoxious comments, some with sexual overtones, to her. She also claimed this was upsetting to her and affected her work. Troy met with Murphy in response. Roberts and Murphy continued to share the same office. On August 1, 1988, Roberts received a "fair" rating on her periodic six-month review. On January 10, 1989, Roberts again complained to Troy about Murphy's behavior towards her. She specifically mentioned that she was offended because Murphy hung pictures from the Sports U.S.A swimsuit issue on the walls of their office. Roberts requested that Troy reprimand Murphy. As a result Troy spoke with Murphy about Roberts' complaint.

On January 15, 1989, Roberts met with the personnel director of the Office of the District

The Prosecutors in the District of Columbia are in reality referred to as "Assistant U.S. Attorneys" or "Assistant Corporation Counsels." The titles have been changed here as no negative reference on the Prosecutor's office of the District of Columbia is intended. Similarities to real persons or actions is purely coincidental.

Attorney. Roberts discussed her complaints about the Bureau. On January 23, 1989 Roberts filed a complaint with Equal Employment Opportunity Commission claiming sexual harassment by the Bureau. This complaint was investigated by the EEOC, which found Roberts's claims of harassment inconclusive.

On February 1, 1989, Roberts received a "poor" rating on her periodic six-month review. On February 15, Troy informed Roberts that she was being transferred to the Family Offense and Complaint Bureau as of March 1. Roberts' salary was unchanged. The Family Offense and Complaint Bureau has seven attorneys, two of whom, including Roberts, are women.

Roberts requested and received a "right to sue" letter from the EEOC on March 3, and brought this suit on March 15, 1989, claiming sexual harassment and intentional infliction of emotional distress.

CLAIMS AND DEFENSES

Roberts claims that Murphy's conduct created an unwelcome, hostile environment constituting sexual harassment. This harassment adversely affected her ability to work and her health, resulting in a number of absences and her lower rating and effective demotion to the Family Offense and Complaint Bureau. She further claims that her employer, through her supervisor, Troy, either knew or should have known of the harassment and did not remedy it. Therefore her employer, the District of Columbia, should be found liable for sexual harassment. Roberts also claims that her employer, by condoning the conduct of Murphy towards her, committed the tort of intentional infliction of emotional distress.

The District of Columbia defends on the grounds that no sexual harassment took place, that Roberts was overly sensitive to innocent comments and joking, and that any problems Roberts encountered were due to her own personal problems and not Murphy's conduct. The District of Columbia also defends on the grounds that even if Murphy's conduct did constitute sexual harassment, it was remedied by the transfer of Ms. Roberts to the Family Offense and Complaint Bureau. Her transfer to the Family Bureau was not a demotion and was due to her own performance as a lawyer.

PLAINTIFF, Elyse Roberts claims medical expenses for psychotherapy -- past, present, and future -- in the amount of \$260,000, general damages for emotional distress in the amount of \$150,000 and attorney's fees. She also requests that the court order the defendant to apologize to her in writing and to cease and desist from future harassment. Finally, Roberts requests a letter to all the judges from the supervisor explaining that any unsatisfactory performance on Roberts' part was a result of the harassment.

STIPULATIONS. Both parties agree to the following:

1. Witness statements are sworn and notarized. They may be used for impeachment, and may not be admitted into evidence.
2. For purposes of this case the EEOC records of this matter are unavailable to the parties.
3. Sections 19103 and 19104 of the handbook of the District Attorney's Office are admissible. For the purposes of this trial, these sections are the only relevant sections of the handbook.
4. The "Attendance Record Summary" and "Evaluation Ratings" for Elyse Roberts are admissible.
5. Evaluation comments of Elyse Roberts by employers are unavailable to the parties.
6. Plaintiff's records of psychotherapy are unavailable.
7. Therapist expenses of \$260,000 have been and will be incurred by Elyse Roberts. This stipulation should not be construed as an admission by the defendant that the defendant is liable for these expenses.
8. Dr. Pat Isaacs is qualified as an expert with respect to sexual harassment in the workplace.
9. The photographs labeled 1, and 2 are authenticated photocopies of the photographs that Kevin Murphy hung on the office wall, and are admissible.
10. For the purposes of this case, the actual 180 day waiting period for the EEOC "right to sue" letter has been revised.

WITNESSES

The following witnesses are available to the parties:

FOR THE PLAINTIFF

**Elyse Roberts, ADA,
Plaintiff**

**Kenneth Puma, Detective,
Metropolitan Police Dept.**

**Dr. Pat Isaacs, Expert,
Sexual Harassment in the
Workplace**

FOR THE DEFENDANT

Kevin Murphy, ADA

**Frances Troy, Bureau Chief,
Felony Trial Division**

**Sandy Yu, Personnel
Director, District Attorney's
Office**

APPLICABLE LAW

Title VII of the U.S. Civil Rights Act of 1964 (42 U.S.C. ss. 2000e-2(a)(1))

It shall be an unlawful discriminatory employment practice to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

U.S. Equal Employment Opportunity Commission Regulation No. 802

"Sexual harassment" means "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ... 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."

Henson v. Capital Equipment and Supply Company

To establish and prove a case of sexual harassment, a plaintiff must demonstrate that 1) she is a member of a protected class, 2) she has been subjected to unwelcome sexual harassment, 3) the harassment complained of was based on sex, 4) the harassment complained of affected a term, condition, or privilege of employment, including promotion or demotion and 5) the employer knew or should have known of the harassment and did not remedy it.

Fisher v. Washington Theaters, Inc.

In order for a plaintiff to prove sexual harassment, more than a few isolated incidents must have occurred. The question is whether the work area has been poisoned by sexual insults and demeaning comments or acts. Employers are liable for sexual harassment directed against an employee by a nonsupervisory co-employee if the employer knew or should have known of the

harassment, unless the employer can demonstrate that it took immediate and appropriate corrective action. An employer that fails to remedy harassment is considered to condone, support, or contribute to the harassment.

Northeast Auto Dealers v. O'Brien

In a sexual harassment case, the plaintiff carries the burden of proof of the elements of the claim by a preponderance of the evidence. If the defendant shows some legitimate non-discriminatory reason for its actions, the plaintiff must prove by a preponderance of the evidence that the stated reasons for the defendant's actions were a pretext for the alleged discrimination.

Newman v. City of New York

Intentional infliction of emotional distress consists of "(1) 'extreme and outrageous' conduct on the part of the defendant which (2) intentionally or recklessly (3) cause the plaintiff 'severe emotional distress.'" Intent or recklessness can be inferred from the outrageousness of the acts. It is a defense that the plaintiff is overly sensitive or that a reasonable person would not have experienced severe distress as a result of the conduct in question.

Gillman v. Lehman

Intentional infliction of emotional distress by an employer was found and damages awarded where a woman suffered emotional distress because of a co-worker's actions. The co-worker had repeatedly asked the victim to go out with him. After repeated rejections, the co-worker asked her to have sex with him. After the victim rejected him again, he began to show her indecent pictures.

Merrick, A New View In Sexual Harassment Cases - "The Reasonable Victim Standard", 93 CUNY Labor L.J. 271 (1988)

The recent trend in deciding sexual harassment cases has been to adopt a "reasonable victim" standard. In the past, sexual harassment was viewed in terms of a "reasonable man" standard. This standard is unfair to victims in sexual harassment cases because it was developed before women were prevalent in the workplace and does not take into account their point of view.

DISTRICT ATTORNEY'S OFFICE, DISTRICT OF COLUMBIA

Section 19103: Assignment, Evaluation and Change in Status

Assignments

It is the District Attorney's policy that all Assistant District Attorneys be assigned in such manner that in the opinion of the District Attorney their contribution to office efficiency is greatest. Personal preferences of individuals as to placement in specific bureaus will be considered by the District Attorney in the assignment of personnel, but the needs of the office and the ability of the Assistant District Attorney to make a meaningful contribution to the overall work product of the office shall be paramount.

Evaluations

Bureau Chiefs are asked to evaluate the Assistant District Attorneys in their respective bureaus twice each year. All of these evaluations include the completion by the Bureau Chief of an evaluation sheet, the contents of which should be discussed with each Assistant on an individual basis. Assistants are free to agree or disagree, wither orally or in writing, with the contents of their evaluation sheets. Any written comments will be kept with the evaluation. Salary increases and promotions are at the discretion of the District Attorney and are based upon merit and the evaluations of supervisors.

Transfers

All bureaus are deemed by the District Attorney to be of equal importance, and a transfer from one bureau to any other bureau is a transfer only and not a promotion or demotion.

Section 19104: Complaints of Harassment

Policy of the District Attorney's Office

It is the District Attorney's policy that racial or sexual harassment by employees of the Attorney's Office of the District of Columbia shall not be tolerated. All employees of the District Attorney's Office shall be free from harassment in any form.

Witness Statement of Elyse Roberts

My name is Elyse Roberts. I live at 1621 R Street, N.W. and have lived in the Washington area my whole life. I am 26 years old and single. After graduating from Bethesda-Chevy Chase High School, I attended the University of Maryland, where I received a Bachelor of Arts degree in English Literature in 1984. I began law school in the fall of 1984 at Georgetown University. I graduated from law school in 1987. In July of that year, I sat for the Bar Exam, which I passed, and started working at the District Attorney's Office in August 1, 1987 as an assistant district attorney.

I was first assigned to the Intake and Misdemeanor Bureau. Most people start there. Every six months our work is reviewed. I received a "good rating" at my first review. I was transferred to the Felony Trial Bureau. I was very excited because I had always wanted to prosecute felony criminal cases. I was placed in an office with Kevin Murphy.

My friends are mostly women, but a few of them are men. I do not have a boyfriend at this time. I dated one guy "seriously" in law school. Otherwise I haven't been in a relationship since that time, although I date periodically.

When I interviewed with the District Attorney's Office, I realized that there were not a lot of women in the office. I knew that being a trial attorney would be a lot of pressure, but I was not counting on pressure from the people at the office.

The problems with Kevin Murphy started immediately. I think he resented my being placed in the same office with him. When I first came into the office, he looked me over and said, "Well, you aren't what I had in mind, but you'll have to do." I think he either wanted to remain in the office by himself, or he wanted a guy, a "buddy" to be placed there with him. Kevin tried to "pal" around with me. He would make obnoxious comments, often ones with sexual overtones. I told him I didn't appreciate his humor, and to cut it out. That just made him do it more. For instance, once when I was sorting out witness statements on a major case I was working on, he said, "Hey baby, I'd really like to get into your files." When I came to work in the morning, Kevin would greet me with a comment like, "Elyse, you fox, how you doing?" When I was leaving at the end of the day, he would make comments like, "Why are you leaving so soon, have a hot date tonight?"

Kevin would sometimes touch me when he talked to me. He would put his hand on my shoulder, or on my back. He really made me feel uncomfortable. The first few times I didn't know what to do or say. He stopped after I finally said, "Would you please keep your hands off me?" Kevin acted so surprised, as if he didn't realize what he was doing. What an actor he is! All this was really annoying me at work. I began to find it hard to concentrate. I was afraid of being alone with him, because I knew he would start to say crude things to me.

I went to our supervisor, Fran Troy, and complained about Kevin. Troy said s/he would speak with him about it. I didn't feel like supervisor Troy thought that what Kevin was doing was that big a deal. I didn't feel like I was getting support on the matter, and I didn't feel like Troy really wanted to hear my complaints. Kevin's comments subsided for a few days. Then he was back to his old self, and badgering me again. I never joined in, or made comments back to him.

Kevin kept trying to get me to attend office social functions or join in office activities. I wasn't interested in socializing with Kevin or his obnoxious friends to begin with and with Kevin harassing me, I felt too uncomfortable to go anyway.

I went to lunch with the other ADAs once. They wanted me to chip in for their beers and huge lunches. I paid for what I ordered. I didn't think they should drink on their lunch hour. I never went again. A few months after I had started working in the Felony Trial Bureau, Kevin told me he had been invited to a great party and he asked me to go to the party with him. I couldn't believe he was asking me out on a date, especially after the way he was treating me at work. I wouldn't date anyone from work anyway. I told him, "No thank you." He kept badgering me the rest of the week, telling me what a great opportunity it would be, what an amazing time I would be missing, and that I should loosen up. He said he wanted to see what I looked like "without my suit on."

Kevin would change into his running clothes in the office. He would never lock the door, or put a sign up on the door. Once I walked in on him. He was only wearing his underwear. I was very embarrassed. He didn't mind at all. He said, "Elyse, I've been trying to get you to look over my briefs for months. We can arrange a private showing, if you'd like." I was really upset that I had to worry about going into my own office, or having to leave my office so he could change into his running clothes. I wondered why was I putting up with all this.

I didn't want to come to work the following morning. I felt really ill. I was afraid to stay out though, because when I would return from being out of work, Kevin would let me know how displeased he was that I had been out of the office, and that he had to cover my cases for me.

When I had to prepare for a trial I got really uptight. I would avoid going into the courtroom, because I was uneasy about running into Kevin. I felt really anxious and on edge a lot of the time. I did not attend office social functions. I stopped wearing makeup and doing my hair. I thought I might be doing something to make Kevin come on to me, although I couldn't imagine what. I no longer had any confidence in myself.

I had an upset stomach a lot of the time. I had started to lose weight. I couldn't fall asleep at night. I was so tired in the morning, I never felt like going to work. I had nothing to look forward to. I would go into the office at the last possible moment, and leave as soon as I could. I would try to avoid Kevin and started to do a lot of my work at home. There were a number of days that I was so stressed out from work that I needed a break, so I called in sick.

I decided that I should go for counseling. I had never gone before, but a few of my women friends are in therapy and seem to really be doing well. There were a few things from my childhood that were bothering me as well. My parents are really strict and overly protective of my socializing with men. I have three older brothers who are always picking on me. I felt like I had no place to go. I went to work and someone was picking on me; I went home and there was always someone picking on me. I began going to therapy twice a week.

When the Sports U.S.A. swimsuit issue came out on January 3rd of this year, Kevin really got out of control. I walked into the office and found Kevin and most of the ADAs and Detective Puma discussing the pictures. Kevin turned to me and said, "What do you think of these, Elyse? Will we get to see you in a suit like this, this summer?" He then said to Detective Puma, "Elyse wears nice suits to work everyday. How do you think she would look in this suit?" I said I had work to do and told them to get out of the office. I was really offended and tried to explain to Kevin why, but it was no use. The next day, he cut out some of the pictures from the magazine and hung them up on the wall in the office. Kevin wrote my name with a question mark across one of the photographs he hung on the wall. Whenever people came into the office, he made a point of making

sure they notice the pictures on the wall and my name across the photograph.

I went to Fran Troy for the second time on January 10th and complained about Kevin teasing me, harassing me, talking about me and about the Sports U.S.A. magazine in the office. Troy said s/he would investigate the situation and speak with Kevin. I didn't think it did much good the last time, and I was nervous about complaining because I knew that Kevin was well liked in the office, but I was more assertive and said I wanted to file a complaint of sexual harassment. Kevin took the pictures down, the next day, before Troy came into the office to speak to him.

I spoke to the personnel director, Sandy Yu, on January 13, and said I wanted to file a complaint of sexual harassment. S/he explained the procedure to me. S/he said that the office encouraged informal handling of complaints regarding co-workers, which meant that you just spoke to the supervisor and the supervisor spoke to the other person, but no written complaint was filed unless the problem persisted. I told her again that I wanted to file a written complaint. S/he gave me a form to fill out. Sandy Yu also advised me that I could pursue my complaint with the EEOC. After the lack of cooperation I had gotten from my supervisor, Fran Troy, I didn't want to depend on the office to remedy the situation, so on January 23, 1989, I contacted the EEOC and arranged to file my complaint with them. The EEOC investigated the situation. Besides speaking with Kevin and our supervisor, they spoke to other women who worked in the office. The EEOC investigators told me that they were unconvinced that the assertions in my complaint amounted to sexual harassment, and that a report would be filed.

About that same time, I had my third evaluation, and it wasn't very good. I guess the whole situation was affecting my work. I may have only tried three cases while in the Felony Trial Bureau, but I disposed of 75 cases through plea bargains and guilty pleas during the same period of time. I was going to me therapist three times a week at this point.

After the complaint was filed, and Fran Troy had spoken with Kevin again, and the EEOC investigators spoke with Kevin, he wouldn't say a word to me. He wouldn't cooperate with me on work matters. He would talk around me; there was no acknowledgement that I was even in the office or in the courtroom.

It had become even more difficult to work in the office, the air was so hostile. After about a month of this, and after the last evaluation, Supervisor Troy called me into the office and told me I was being transferred to the Family Offense and Complaint Bureau. I asked her/him why. S/he said that this decision was based on the last evaluation that I received. I asked him/her if it was because I had filed the complaint against Kevin. Troy was vague, but answered that it was unfortunate that I had found it difficult to work with Kevin, and that it was best for myself and the office if I were to work in the Family Offense and Complaint Bureau. I was really upset and angry. I felt I was being punished when it should have been Kevin who was being punished. I asked why I was being demoted. Nobody wants to go to that bureau. It's where they put you to try to get you to quit. It's a dead end. You have to handle people's complaints. They come in and complain about their neighbors, or about their ex-husbands, or their brothers, or their husbands, and they want us to solve all their problems and throw whomever they are complaining about in jail immediately. We explain to the complainants that they can file a complaint and then we will investigate it and decide whether to pursue the matter and charge the party with a criminal offense.

Troy said that the move to the Family Offense and Complaint Bureau was not a demotion,

only a transfer. Troy said, "...all bureaus are equal," and that it was a smaller bureau, and that I had a better chance of gaining seniority in the Family Offense and Complaint Bureau. S/he said that s/he in fact had worked in that bureau before s/he had come to work in the Felony Trial Bureau. Troy said, "I..needed a rest from trial work." All I really needed was a rest from Kevin.

Kenneth Puma, Detective, Metropolitan Police Department

My name is Kenneth Puma. I am 36 years old. I am a detective with the Police Department of the District of Columbia. I have been a detective for seven years, and was a police officer for seven years prior to that. I hold a bachelor's degree in criminology from American University. I am married. I have three children. I investigate drug and other felony related crimes. I work closely with the District of Columbia District Attorney's Office.

I have appeared in court for hundreds of cases. I know many of the attorneys in the District Attorney's Office. I have worked with Kevin Murphy on numerous cases. We have always gotten along well, at least until this incident.

I have also worked with Elyse Roberts. She is a very serious attorney who wants everything done by the book. It took Elyse a long time to warm up to me, and I am not sure she really ever did. I know I didn't want to get on her bad side. I have heard her argue with defense attorneys and she could be mean. She appeared to be both organized and disorganized at the same time. She was very organized with her files and her procedures for cases, but was often running late and appeared to be on edge.

For instance, when I was going to be a witness for Elyse in an upcoming trial, she set up times to interview me, but she was out sick a lot and several times missed these appointments. We would reschedule our appointments. Once I got a message that she had to cancel, but the other times I didn't find out that she wasn't in the office that day until I got there. Sometimes I didn't have an interview with her before I had to appear in court. She didn't appear relaxed or calm, and often seemed preoccupied with something else when you spoke with her. I tried a few times to give her suggestions about a few things. I mean, I know she was the attorney and all, but I certainly had done hundreds of these cases before, and I thought maybe I could make things a little easier for her. She made mistakes in the courtroom that could have been avoided.

Anyway, I guess I'm here because over the course of the year that Elyse was in the office with Kevin, I saw and heard Kevin say and do things that embarrassed and offended me. At first I thought that some of the things Kevin would say were funny. He is a funny guy. Elyse was unresponsive to anything Kevin said. The more she wouldn't respond to him, the more it seemed to me he would joke with Elyse. It's one thing to kid around with her when no one else is in the office, but it is another thing when there are other people around. She is an attorney and a co-worker, and he should show some respect for her.

Kevin often made comments about people's sexual preference, especially when Elyse was around. He often made fun of gays. For instance, there was a time when Elyse, Kevin, and I were leaving the courtroom and we passed a female court officer. Kevin said to Elyse, "Hey, Elyse, I think she likes you, she's been eyeing you all morning." Kevin would often tease Elyse by making comments like that, because for some reason it seemed to bother Kevin that Elyse never wanted to go to any parties with him or the others from the office. One day, while Elyse and I were having lunch in the office cafeteria, Kevin walked by and said to me, "Getting enough, Ken?" These kinds of comments always made Elyse uncomfortable. Frankly, I resented the comments myself.

Then there was the Sports U.S.A. swimsuit issue episode. A few of us were in the office and we were looking at the issue. We were having a few chuckles. Elyse came into the office and Kevin

asked Elyse what she thought of a few of the pictures. Elyse got really angry and said, "some people need to get some work done around here." That broke up the discussion, and we got up and left. I wasn't really sure why she got so upset; I think she may have overreacted. I thought it was harmless fun. When I went back to the office, there were pictures from the magazine hanging up on Kevin's bulletin board. I figured he was making a point to Elyse. Kevin made a point of asking me to look at the pictures closely. It was then I noticed that one of the pictures had Elyse's name, with a question mark after it, written across it. Kevin asked me whether I thought we could ever get Elyse to wear a suit like that. I told him he was looking for a fight, that he knew Elyse was already really angry with him. I told him that he shouldn't treat his co-workers that way. He responded that I was using the term "co-worker" loosely since she hardly did any work.

It was soon after that, that I came into their office and something struck me as being so odd about the office. It took me a few minutes to figure out what it was. Then it occurred to me that neither one of them would talk to the other or have anything to do with the other. If Elyse had to ask Kevin a question, he would act as if Elyse wasn't even there. I don't know how long that was going on or how long it lasted but I tell you I couldn't work in an office like that. I felt so uncomfortable.

Statement of Dr. Pat Isaacs, Ph.D.

My name is Dr. Pat Isaacs. I am Executive Director of the Working Women's Research Center in Washington, D.C. I have an M.B.A. in Industrial Psychology and a Ph.D. in Psychology from Georgetown University, where I teach courses in industrial psychology, about men and women working together, in both the undergraduate and graduate divisions of the university. I am a specialist on this subject, having studied and written extensively in this area. I have written one book, entitled *Sexuality in Employment: Romantic and Coercive Behaviors in the Office*, published in 1983. My most recent articles are: "Sexual Harassment, the Secret Oppression," published in 1985 and, "It's No Joke - How Good Old Boys Keep Women In Their Place," published in 1987. I speak at conferences, consult, and direct the research center. I have served as an expert witness on the topic of sexual harassment in the workplace in over 50 trials. I charge a fee of \$1700 for testifying at trial. I have been hired by the plaintiff to testify here today at this trial.

My responsibilities at the Working Women's Research Center include supervising and training our staff of 3 psychologists and 10 graduate psychology students, and overseeing and advising the graduate students and staff on research projects. I manage the administrative matters of the center, including our support staff of 4 people.

My research involves those who have business-related stress problems, many of which include sexual harassment and discrimination toward women in the workplace. I have extensively studied women who have been harassed in their workplace, many of whom suffer emotional distress as a result. I have also studied men who engage in harassment of women and who have difficulty controlling their emotional and sexual feelings in the workplace.

Harassment takes many forms, from mild verbal banter to threat of or even violence itself. There are two general types of sexual harassment. The most obvious is known as "quid pro quo" harassment, where the victim is requested or required to do a sexual favor as a condition of employment or in exchange for an employment benefit. If the victim does not comply, she may suffer tangible adverse employment consequences, such as not getting a job, losing her job, or decrease in pay. The second type of sexual harassment, known as the "hostile environment," is a situation where the victim is subjected to constant unwelcome sexual conduct in one or more forms. The harassment may be verbal or nonverbal, such as touching. In order for the unwanted conduct to rise to the level of sexual harassment, it must be so severe as to create an abusive work environment. Intermittent comments of a sexual nature which offend a person are not sexual harassment.

Studies of government offices here in D.C. during both 1981 and 1988 came up with the same statistics, that 42% of the female government employees polled said they had been victims of sexual harassment in their workplace. My own studies have shown that sexual harassment in the workplace takes place in over 83% of all of the offices I studied.

Women who are victims of sexual harassment in the workplace suffer from a number of both emotional and physical stress-related symptoms. Emotionally, these can include low self-esteem, a feeling of powerlessness, fear, anger, nervousness, anxiety, decreased job satisfaction, diminished ambition, and depression. Physically, these stress-related symptoms can appear as headaches, nausea, weight change and backaches. Often the victim's sleep habits are disrupted.

Men often see their comments to women in the workplace as being friendly or funny, but

most women do not view it the same way. This case brings out the problem that women face in the workplace, where the "good ol' boy" environment prevails.

In my opinion, sexual harassment should be viewed from the "reasonable victim's" point of view as opposed to the "reasonable person's or man's" point of view. The "reasonable man's" point of view is linked too closely with a workplace insensitive to women to be able to identify subtle forms of sexual harassment. For too long, women have suffered from the behavior accepted for the workplace, which is based on the male's notion of what it should be (i.e., "the reasonable man's" perspective). "The reasonable victim's" standard can better address the significant impediment women face in the workplace. When harassment is viewed from the "reasonable victim's" perspective, the emotional weaknesses and sensitivities of the victim are considered. This point of view takes into account the wide divergence of what women view as acceptable behavior, and asks the judge and jury to imagine themselves as the victim. This concept has been gaining recognition in legal circles. Several law review articles have been written supporting it.

I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29th and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor, and her resulting feelings. In my opinion, Elyse Roberts is the victim of what is referred to as "hostile environment" sexual harassment. She has suffered severe emotional distress as a result of this sexual harassment in her workplace. Her low productivity and poor performance on the job was a result of the hostile environment she was expected to work in at the District Attorney's Office. The emotional distress she has suffered was caused by the actions of her former co-worker, Kevin Murphy. Her condition worsened when neither her supervisor nor her personnel director took any action to remedy the situation.

Elyse Roberts was constantly confronted in her workplace with conduct constituting "hostile environment" sexual harassment. In my view, an excellent example was the displaying of pictures from the Sports U.S.A. swimsuit issue in the office. This deeply offended Elyse and resulted in extreme emotional distress of the plaintiff. You might say this was "the straw that broke the camel's back," the result of the constant and continuous harassment Elyse was exposed to from Kevin Murphy, and its tolerance by her supervisor. This exemplifies the need for the "reasonable victim's standard" to be recognized in sexual harassment cases. Men anxiously await the publication of the Sports U.S.A. swimsuit issue each season. Certainly, they are not rushing to purchase the issue to see what style of suit is in fashion this season. They are looking to see how the suit is presented in the magazine. The scarcely clad models are posed in seductive positions. Using the "reasonable man's" standard it is possible that the swimsuit issue would be seen as a traditional event that all would enjoy viewing, and that the display of such an issue is acceptable in the workplace. Women, however, usually do find these pictures extremely offensive and inappropriate for office display. They portray women as sensuous, sexual objects, not as professionals in a workplace. Elyse was confronted with men making comparisons of her to the models in the pictures, and was humiliated and emotionally distressed by this. The display of pinups or centerfold pictures and calendars in the workplace is demeaning and contributes to the uphill struggle women face everyday. In order for women to be taken seriously in the workplace, these pictures should be strictly forbidden in the workplace and the prohibition should be stated in company guidelines.

Statement by Kevin Murphy

My name is Kevin Murphy. I live at 3211 O Street, N.W., in Georgetown. I have lived here my whole life, except for a few years that I spent in New York. I am 32 years old and single. I am an assistant district attorney for the Felony Trial Bureau in the D.C. Attorney's Office. I prosecute felony trial cases and have worked in the office for over five years. I have been assigned to special felony investigations and have tried over 50 cases.

I started in the District Attorney's Office when I graduated from law school. Prior to law school I did some graduate work in drama at New York University, and worked as an actor and a waiter for about three years after college in New York City. I still do some acting with small groups at local colleges. I find my dramatic training has really helped my trial work.

I am not "seeing" anyone in particular at this time. I have dated women from the office in the past; they were not necessarily attorneys. I have been involved in one "relationship" with a women attorney from the office. That ended about two years ago.

Elyse Roberts has been a burden to me almost from the day she was placed in my office. She has no sense of humor or office camaraderie. She never worked with me or any of the other attorneys the way we all work together. We have a buddy system. We cover for each other. For example, if we have to be in the grand jury room, and a judge calls a case of ours in another courtroom, either our partner or another available ADA will go to court for us. We also have an informal mentor program that pairs experienced attorneys with newer attorneys. Of course, Elyse wasn't interested in taking part in any of this type of teamwork.

Elyse was a poor trial attorney. In the last year I tried 7 cases, and worked on a special investigation that was assigned to me, handling 128 new cases from a drug bust we were working on, and disposed of 20 more cases through plea bargains as well. Elyse tried only 3 cases during the year she was with the Felony Trial Bureau. She never offered to help me with my work load, and if I would ever ask her for help, she would find some excuse not to do so or would complain because I was asking her to cover some of the cases. I rarely ever leave the office before 7 p.m. Elyse leaves with the support staff at 4:45 p.m. every day. Once, when I offered to help her on the weekend, an offer I have made to other attorneys, Elyse responded that she didn't work overtime.

Elyse would not come into the office periodically. When she was absent, I would have to handle my cases and her cases. Now that she is out of the office, I'm there until about 9 or 10 at night, because I have both our calendars to handle.

Elyse spoke on the phone during the day to her friends. This was distracting while I was trying to interview witnesses or get other work done. If I said anything to her about it, she would tell me to mind my own business or to shut up.

The job is high pressured and most of us work pretty hard. We kid around with each other a lot to release some energy. We socialize after work once or twice a week. We often go to a local pub for happy hour. We have a co-ed softball team. We play the court reporters' team, the detectives' team, groups like that. Elyse never wanted to take part in any of this.

A lot of the ADAs go out to lunch on Fridays in a large group. We always go to the same restaurant. Elyse went to lunch with us once. We split the bill evenly among us based on how many people are there. Elyse didn't like that, because she said some people had more expensive items or

had ordered a drink. She paid the exact cost of her sandwich, and I made up the difference. She said she wouldn't be a party to attorneys having a drink during lunch hour, because that would be condoning it, and she certainly did not approve. Anyway, she never went with us again.

Early on, when she first joined the office, and before I really knew what she was like, I asked her if she wanted to go to a party I had been invited to attend. A few of us from the office were going, and I thought she might enjoy it. I thought it would be good to be out of the office setting. She got bent out of shape about me asking her to go, and of course didn't join us. Elyse has a warped perception of the way things are; I was just being nice. She thought I was asking her to go as a date. It wasn't a date or anything like that.

I run a couple of miles near the court complex with two other guys from the office, usually after work. We change into our running clothes in our offices. We do this because the bathroom is all they way at the end of the hall, and there isn't anywhere to put my suit. Also, there are complainants, witnesses, and jurors in the bathrooms, and I don't think it is appropriate for the prosecutor to be changing in front of them. One time when I was changing into my suit in the office, Elyse walked into the office. I had my underwear on. I guess I surprised her. She made a big deal about it. I tried to let her know it wasn't a big deal, and that neither of us was to blame. I tried to play it down so she wouldn't feel guilty, but she was upset.

Elyse has no sense of humor and is overly sensitive. Some of the guys and I teased her a bit. I guess because she was such an uptight person. We were trying to get her to lighten up a bit. I never harassed her, though. She was always so stressed out. It wasn't any fun to be in the office with her. When I come out of the courtroom, I need some release from the seriousness and the pressure. I think the pressure of the courtroom got to her. I tried to talk to Elyse about it but she wouldn't hear any part of it. Fran Troy came downstairs a few times to watch Elyse in the courtroom. Elyse seemed to get even more nervous when Troy would watch her.

Elyse was really annoyed that I had brought the Sports U.S.A. swimsuit issue into the office. She gave me lecture on all this feminist stuff. I reminded her of my rights. I hung a couple of the pictures from the issue up on my bulletin board. As a joke, I wrote Elyse's name with a question mark across the top of one of the photographs. The girls in the pictures had swimsuits on, so I don't know what she was getting all bent out of shape about, but she did. They were only up for about a week. Elyse was always there to spoil a good time. She went to our supervisor, Fran Troy, and complained. Troy came to talk to me, but I had already taken the pictures down. She could have just complained to me. As for the other comments she said I made, I can't remember. I make a lot of jokes, and that's all they are. I joke with all the attorneys and detectives.

I think Elyse has brought the complaint against me to court, and has pursued this, because she is jealous of me. She has this gripe against me because I am an experienced trial attorney with a good track record for getting convictions, and she is not. I think she really wanted to be a good trial attorney, even though she never appeared to try to be one at work. She couldn't handle it. She never took advantage of the opportunities to improve her performance as a trial attorney. She wouldn't cooperate or listen to anyone. Even Detective Puma tried to help her. I think she's probably very disappointed. Elyse is trying to displace all these feelings on me. Elyse, for some reason, has this notion that I was interested in her romantically, or sexually. This is not, nor ever was, the case. Like I said before, her perceptions of the way things are, are warped. Elyse never understood the friendly,

joking atmosphere of the bureau. She never joined in.

Statement of Fran Troy, Bureau Chief, Supervisor

My name is Fran Troy. I am the bureau chief of the Felony Trial Bureau of the District's Attorney's Office of the District of Columbia. I live in the District at 403 C Street, N.E. I am married and have two children. I have been with the office for 14 years and have been bureau chief for five years. Prior to working in the Felony Trial Bureau, I had been assigned to the Sexual Offense Bureau and Family Offense and Complaint Bureau.

My responsibilities as bureau chief include supervising the 20 assistant district attorneys (ADAs) in the Felony Trial Bureau. I review case folders as they come up to this Bureau and assign them to attorneys in the bureau. I meet with the attorneys to discuss whether we should dismiss a case, offer a plea, or proceed to trial. The attorneys come to me regarding tactics of handling cases, their witnesses, and the police. I confer with them on these matters and make recommendations. I observe them in the courtroom and I evaluate them every six months.

The attorneys in the bureau, for the most part, get along very well with each other, help each other out, and seem to socialize with each other. There are not that many women attorneys in the bureau. The ADAs sometimes date court reporters and others who work in the courthouse.

Elyse Roberts came to me twice and stated she had some concerns about being able to work with her office mate, Kevin Murphy. The first time Elyse spoke with me about her concerns, I suggested to her that she give the situation a chance. I told her she had to share an office, so it might as well be the one she was in. I spoke to Kevin after Elyse came to me. I wanted to try to see if I could get a better picture of what might be going on between the two of them. The office they share is located two doors down from my office. I have to pass by their office to get to my office. I never noticed any real problems.

I told Kevin that Elyse was very upset, and asked him if he might know why. He said he thought she was not comfortable with the idea of being a felony trial attorney yet. Kevin said that Elyse appeared to be uptight about going into the courtroom. Kevin said that every time he tried to be friendly to Elyse, she would snap at him. He said, "She was real hard to break in." I told him to take it easy on her, and to give her a chance to adjust. After all, not everyone was as outgoing and self-confident as he.

Elyse was a new trial attorney, and I imagine that a seasoned trial attorney like Kevin might be a little intimidating, but I thought it was good for Elyse to see some of Kevin's trial technique and finesse in the courtroom. I thought she might learn something from him. Kevin happens to be one of the best trial attorneys in the District Attorney's Office. Many new ADAs would benefit from the opportunity of being able to work closely with Kevin Murphy. As I stated earlier, there are not a lot of women in the Felony Trial Bureau. She should be very glad she made it up here.

Kevin Murphy worked on a special investigation for the office, which had to do with quite a large drug bust. It was a very confidential matter, and Kevin undertook the assignment and handled it marvelously. He is very successful when he goes to trial, and is very efficient about disposing of cases when possible. Perhaps he may get away with being a little silly around the office on occasion, but Kevin does such a fine job for the office. Kevin wins almost all of his trials. He needs to release some of the tension that comes with being a trial attorney, so we tolerate his sometimes crass sense of humor. Elyse and Kevin are two very different people.

Kevin has a great sense of humor. He and a few of the other guys are frustrated actors and are known to do impressions of ADAs and bureau chiefs, perform comedy routines during the lunch hour, and even write little songs or skits for people in the office whenever someone retires or leaves the office. They do some acting with local theatre groups. I have gone to see some of the productions.

Elyse came back to me in early January, I think it was the 10th and said that now Kevin had hung pages from the Sports U.S.A. swimsuit issue on a wall in their office. She was very upset, and said she was "fed up," and would not tolerate such "behavior" from Kevin any longer. She said she wanted to file a complaint. Frankly, I thought they were both being childish. I really didn't want to spend my time breaking up schoolyard brawls. I told her I would speak to Kevin again. She said it wouldn't do any good, that she was going to file a complaint. I told her to speak with the personnel director, Sandy Yu, who handles complaints.

I spoke to Kevin that same day. I didn't see any of the pictures Elyse was talking about. I told him that this situation was getting out of hand and that he was heading for trouble if he didn't watch his step. Elyse came back to me on the 24th of January and informed me she had bypassed the office procedure for filing complaints of harassment and had filed with the EEOC.

I supervised Elyse for a year after she came from the Intake and Misdemeanor Bureau, where she had received a "good" evaluation. I evaluated her twice during the time she was assigned to the Felony Trial Bureau. She received a "fair" rating the first time I reviewed her work. I give most attorneys a "fair" rating the first review because they are adjusting to the Felony Trial Bureau and even if they are "poor," I don't want to discourage them. The bureau is a very hectic and high-pressure place to work. Elyse didn't take to the work as quickly as we would have hoped. I had several complaints from Judge Wilson about her coming into the courtroom late, being overly argumentative with the defense attorneys, and doing sloppy research. Elyse wasn't ready to go to trial during her first six months, and she had three trials during the second six months. She lost one case. We should not have lost. She really choked during her cross examinations and closing argument.

Elyse had quite a number of absences. This placed a burden on Kevin, who would have to cover both his own and Elyse's cases when she was not in the office. However, Kevin never complained to me.

I had to give Elyse a "poor" evaluation the second time I evaluated her. Her performance didn't develop or improve as I had hoped. As a matter of fact, it deteriorated. Most of the other attorneys, those who started with the office at the same time that she did were trying more cases, disposing of more cases, and putting in a lot more time in the office than Elyse. The average ADA tries six cases per year and plea bargains about 60 cases. I observed her a few times, hoping to see a glimmer of hope, but it wasn't there. I don't think that Elyse was cut out to be a trial attorney.

In light of all this, I decided it would best serve the office to transfer Elyse to another bureau, where she would not be required to do trial work. This was in compliance with the handbook, §19103. This was not a demotion; it was a transfer. All our bureaus are equal. Her pay was not affected. The transfer was not a result of Elyse's problem with Kevin. It was a result of her own poor performance and low productivity in the bureau. I exercised my prerogative as bureau chief in ordering the transfer.

The Family Offense and Complaint Bureau is a smaller bureau with only seven people. When citizens want to bring a complaint against another person or persons, and they want to handle it as a criminal matter, they file a complaint with the Family Offense and Complaint Bureau, and the district attorney has the discretion to decide whether to pursue the matter or not. The bureau handles citizen complaints of family offense matters and other criminal-related matters. I was assigned to the Family Offense and Complaint Bureau a number of years ago. Elyse probably had a better chance for promotion in this bureau, even an opportunity to become a deputy chief or even bureau chief, than she would have in the Felony Trial Bureau. I know I don't plan to leave my position for a very long time! There is a lot of turnover in the Family Offense and Complaint Bureau. I guess, if a transfer were to be considered a promotion, some would consider this move to be a promotion for Elyse. In light of her performance in the Felony Trial Bureau, she is very fortunate.

Statement of Sandy Yu, Personnel Director

My name is Sandy Yu. I am the personnel director for the District Attorney's Office. I live at 402 Spruce Street, S.E. in Washington, D.C. I have worked as personnel director in the office for three years. I am responsible for personnel matters regarding the attorneys in all the bureaus of the District Attorney's Office. My office keeps the records of attendance, sick days, and vacation days and the applications for employment, insurance forms, and other official documents for the district attorney.

The office procedure for handling complaints of sexual harassment is that we first try to handle these matters informally. If the situation is not settled in this matter, the complainant has other options. A written complaint can be filed with our office and we inform the complainant that s/he may contact the Equal Employment Opportunity Commission (EEOC) or the District of Columbia's Office of Human Rights in order to pursue a complaint.

If a written complaint is filed with our office, I investigate the situation, interviewing both the complainant and the respondent. I also interview other people in the office. I then prepare a report determining whether probable cause exists or not. If a positive determination is made, then an internal hearing is scheduled. A number of remedies could result for the party bringing the complaint. The person or persons causing the harassment may be reprimanded either verbally or by written warnings. They may be placed on probation for a period of time. They may be suspended for a period of time. They may be required to write letters of apology to the complainant or other concerned parties. They may be transferred to another bureau. They may be asked to resign, or their employment with the office may be terminated. This is what our office is prepared to do, but Elyse Roberts did not follow this procedure. Ms. Roberts filed her complaint directly with the EEOC.

The EEOC's procedure is very similar to ours. When the EEOC is notified, it immediately investigates the situation. It send a notice of summons and complaint to the respondent, and a request for data with about 15-20 questions to the employer involved. Sometimes it schedules an on-site interview of the situation. If its finding is a positive determination, it lists recommendations for remedies and attempts to get the parties to settle the situation. If after the EEOC makes a finding, the parties cannot settle the situation, the EEOC will issue a right-to-sue letter should the complainant request one.

I had met Elyse Roberts a few times. There are a lot of attorneys in the office, and I really know all of them. I guess that is because I work with their records, and I am the first person they see when they join the office and the last person they see when they leave the office. I first met Elyse Roberts when she came into my office to fill out her employment and insurance forms. She seemed like a nice enough girl, very businesslike, serious, like a lot of the brand new attorneys we have coming into the office. She came again when she was transferred to the Felony Trial Bureau to let me know that she was in the bureau, and what her new phone extension was going to be. A few months after that, I guess it was in May of 1988, she came into the office and asked me whether her insurance covered her for counseling or therapy. I told her yes, up to 35 visits per year.

Elyse was frequently absent. Sometimes she was out only for a day, but sometimes for a few days at a time. I would say she was out more often than most of the attorneys in the bureau.

Ms. Robert's attendance record reflects that she was out sick quite a bit. If she was out for

another reason, it isn't reflected in her file. She could have gone on short-term disability if she had a doctor's note saying she had physical ailments resulting from stress and needed to rest. Elyse did not utilize this option. Attorneys are allowed 10 sick days a year and five personal or religious observance days, and they get all government holidays plus two weeks vacation to start. The vacation time increases depending on how long you are with the office. Your unused vacation and sick days can accumulate and translate into money when you leave the office. A lot of attorneys like that benefit and they try not to use their sick and vacation days.

A lot of attorneys come into the office even when they don't feel well, because they have too much to do to stay out of work. They don't want to burden their co-workers with having to handle their caseloads for them if they were not to come into the office.

Elyse came into my office again on January 15, 1989 and said she wanted to fill out a sexual harassment complaint form. I tried to dissuade Elyse, because I was hoping whatever was going on could be settled by a discussion. I suggested she sleep on it. Elyse came back a few days later, probably the 17th, and said she had filed a complaint with the EEOC and they would be in touch with me. I was surprised to find that it was Kevin Murphy who was named on the form I received from the EEOC. He's such a nice guy and so funny, too. Everybody in the office knows and likes Kevin. Why, he is practically the mayor of the bureau! He's got a great reputation as a trial attorney. I don't think Kevin has taken a sick day the entire time he has been with the office.

The EEOC sent Elena Guzman to our office to investigate the complaint. She interviewed Elyse Roberts, Kevin Murphy, Fran Troy, me, and the seven women in the bureau. The women in the bureau told the investigator that while Kevin made funny comments and joked a lot, they never felt sexually harassed by him. Ms. Guzman wrote up a report and determined that a prima facie case of sexual harassment could not be made.

Elyse came into my office on February 27, 1989. She appeared to be very upset and distraught. She told me she was being transferred to the Family Offense and Complaint Bureau. She was a little cold to me. I guess she was unhappy with me because the EEOC report did not find in her favor.

The Family Offense and Complaint Bureau does have a reputation around the office for being the bureau where attorneys are sent who aren't very good trial attorneys or when the office wants them to quit. I don't think that is true. The handbook for the District Attorney's office, §19103, states that all bureaus are equal. Elyse was not demoted or promoted; she was transferred. Her salary did not change. She has a better chance of making bureau chief in that office than in the Felony Trial Bureau. There are only seven attorneys in the Family Offense and Complaint Bureau. The bureau chief of that division has been there for 20 years and the deputy bureau chief has been there for 12 years. They haven't quit. They have had a large turnover recently of other personnel in that bureau. That is probably why Elyse was sent there. There is no trial work involved in that bureau, but plenty to do. It is a very busy bureau.

-----ATTENDANCE RECORD SUMMARY-----

Employee Name: Elyse Roberts **Social Security Number:** 093-64-8592

Present Department or Bureau: Family Offense and Complaint

START DATE: AUGUST 1, 1987
TERMINATION DATE: _____

Periods: AUGUST 1, 1987 - JANUARY 31, 1988

Bureau: Misdemeanor/Intake

Total # Absences	S	V	P	STD	UPL	Other
11	8/31 10/13 10/29 10/30 11/13 1/13	12/28/31			1/25	

Periods: FEBRUARY 1 - JULY 31, 1988

Bureau: Felony Trial

Total # Absences	S	V	P	STD	UPL	Other
17	2/22-24 4/13	3/14-18	6/20 7/14		7/20-21 5/13 5/16-18	

Periods: AUGUST 1 - JANUARY 31, 1989

Bureau: Felony Trial

Total # Absences	S	V	P	STD	UPL	Other
24	8/15 9/1 9/13 10/13-14 10/31- 11/1	8/8-12 12/21-23	11/14 12/13		12/19 12/20 12/26-30	

Periods: FEBRUARY 1 - JULY 31, 1989

Bureau: Felony Trial\ From March 1, 1989: Family Offense and Complaint

Total # Absences	S	V	P	STD	UPL	Other
4	1/23		2/13		3/8 3/17	

Key Codes

S= SICK STD= SHORT TERM DISABILITY V= VACATION

P=PERSONAL UPL= UNPAID LEAVE

OTHER= D= DEATH R=RELIGION

EVALUATION RATINGS

Employee Name: Elyse Roberts **Social Security Number:** 093-64-8592
Present Department of Bureau: Felony Trial Bureau

January 1 - July 31, 1987 **NOT EMPLOYED**
Bureau:

August 1 - December 31, 1987 **GOOD**
Bureau: MISDEMEANOR/INTAKE

January 1 - July 31, 1988 **FAIR**
Bureau: FELONY TRIAL

August 1 - December 31, 1988 **POOR**
Bureau: FELONY TRIAL

January 1 - July 31, 1989 *reflects up through March 17, 1989* NOT RATED
Bureau: FELONY TRIAL; 3/1 FAMILY OFFENSE/COMPLAINT

RATINGS: OUTSTANDING; EXCELLENT; GOOD; FAIR; POOR

KEY CODES:

OUTSTANDING = Superior Work Products;

EXCELLENT= high quality work products, needs little supervision;

GOOD= work product is standard, average;

FAIR= needs improvement and supervision;

POOR= work product below average, needs constant supervision