

The Employment Litigation Section's Sexual Harassment in the Workplace Initiative and How to Get Involved

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Through its enforcement of Title VII of the Civil Rights Act of 1964, the Employment Litigation Section (ELS) of the Department of Justice's (Department) Civil Rights Division has long made it a priority to redress sexual harassment in state and local government workplaces. In late 2017, a national spotlight was placed on sexual harassment through several high-profile cases and grassroots movements. In 2018, seeing a need to put even greater emphasis on combating harassment at work, ELS redoubled its efforts through the creation of its Sexual Harassment in the Workplace Initiative (SHWI), which uses both time-tested and newer approaches to more effectively address and prevent sexual harassment in these environments.¹

¹ Several other sections of the Civil Rights Division also address sexual misconduct within their jurisdictions. ELS coordinates with these sections when appropriate, which include:

- The Criminal Section, which may bring criminal charges under 18 U.S.C. § 242 when an alleged harasser deprives victims of constitutional rights while acting under color of law, that is, while acting in the official capacity as a government actor. *See Fara Gold, 2022 Update: Prosecuting Sexual Misconduct by Government Actors*, DOJ J. FED. L. & PRAC., no. 2 (forthcoming Mar. 2022); Fara Gold,

This article intends to introduce the reader to SHWI and to encourage U.S. Attorney's Offices (USAOs) to get involved. To provide context for SHWI's work, the article begins with an overview of ELS and its enforcement authority under Title VII.

As described in more detail below, SHWI is aimed at preventing workplace sexual harassment on multiple fronts. Since 2018, ELS has successfully resolved several sexual harassment cases, obtaining over \$2.7 million in monetary damages and injunctive relief aimed at lasting systemic change in several state and local government workplaces. To ensure the success of ELS's injunctive relief efforts, a goal of SHWI is to identify best practices to prevent and correct sexual harassment in state and local government workplaces. Through SHWI, ELS also has engaged in outreach efforts, participating in several events intended primarily to educate state and local

Investigating and Prosecuting Law Enforcement Sexual Misconduct Cases, 66 U.S. ATT'YS BULL., no. 1, 2018, at 77.

- The Educational Opportunities Section and the Federal Coordination and Compliance Section, which can enforce Title IX of the Education Amendments of 1972 when sexual harassment occurs at a school, college, or university receiving federal funding from the Department, or in coordination with other federal agencies that fund the institution (a discussion of Title IX is available elsewhere in this issue).
- The Educational Opportunities Section, which can also protect students from sex discrimination under Title IV of the Civil Rights Act of 1964 when sexual harassment occurs at a public school.
- The Special Litigation Section, which has authority under the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, as well as 34 U.S.C. § 12601, to protect inmates or residents of jails, prisons, juvenile facilities, mental health facilities, nursing homes, and facilities for people with intellectual or developmental disabilities, as well as those who encounter the police.
- The Housing and Civil Enforcement Section, which targets sexual harassment that violates the Fair Housing Act through its Sexual Harassment in Housing Initiative (a discussion of that Initiative is available elsewhere in this issue).

These collaborative efforts allow the Civil Rights Division to combat sexual misconduct through multiple avenues, buttressing ELS's work enforcing Title VII.

government employers about their obligations under Title VII. Importantly, ELS often partners with USAOs in its litigation and outreach efforts, and this article concludes with ways that Assistant U.S. Attorneys (AUSAs) can get more involved in SHWI.

I. Introduction to the Employment Litigation Section

ELS is part of the Department's Civil Rights Division. Initially, ELS's primary purpose was to exercise the Attorney General's enforcement authority under Title VII of the Civil Rights Act of 1964, as delegated to the Assistant Attorney General for Civil Rights. Later, ELS's docket expanded to include other areas, including the enforcement of Executive Order 11,246, which prohibits employment discrimination by federal contractors, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which prohibits employers from discriminating based on military status or obligation.² ELS is based in Washington, DC, but it maintains a nationwide practice that relies heavily on its partnerships with USAOs throughout the country.

II. ELS's enforcement authority under Title VII

ELS enforces Title VII of the Civil Rights Act of 1964,³ as amended, against state and local government employers. Title VII bars employment discrimination based on race, color, sex (including pregnancy, sexual orientation, and gender identity), national origin, and religion.⁴ It proscribes many forms of differential treatment based on those protected categories, including hiring, termination, non-promotion, and disparate terms and conditions of employment, as well as retaliation for opposing a practice made unlawful under the Act.⁵ In the 1980s and 1990s, the Supreme Court clarified that Title VII

² An overview of USERRA is available elsewhere in this issue.

³ Civil Rights Act of 1964 tit. VII, 42 U.S.C. §§ 2000e to 2000e-17.

⁴ *See* Civil Rights Act of 1964 § 703, 42 U.S.C. § 2000e-2.

⁵ *See id.*

outlaws sexual harassment in the workplace, as discussed in section III, *infra*.⁶

ELS and the U.S. Equal Employment Opportunity Commission (EEOC) share responsibility for the enforcement of Title VII. ELS is authorized to seek remedies for employment discrimination by state and local governments, as well as their agencies and political subdivisions, while the EEOC has enforcement authority with respect to private employers and the federal government. ELS's enforcement authority has considerable reach given the large number of public sector employees in the United States: The most recent census data suggests that over 15 million people in the United States work for state or local government employers in education, law enforcement, public health and safety, transportation, and other critical fields.⁷

ELS has authority to enforce Title VII through two frameworks: section 706 and section 707.⁸ Section 706 provides that, when an individual files a charge of discrimination with the EEOC, and the EEOC finds reasonable cause to believe Title VII was violated but is unable to conciliate the charge, the EEOC refers the charge to the Attorney General.⁹ ELS receives those charges and reviews them for possible litigation. While these section 706 cases are filed in the name of the United States, charging parties have an absolute right to intervene and often do. ELS can recover monetary damages, though not punitive damages, and wide-ranging injunctive relief in section 706 cases. When ELS declines to litigate a charge on behalf of the United States, it issues a notice of right to sue letter, which gives the charging party the ability to file a lawsuit in federal court based on the charge.

Section 707 provides ELS with a different type of authority under Title VII. Specifically, it gives the Attorney General self-starting authority to initiate a full investigation into suspected discrimination,

⁶ See, e.g., *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

⁷ See *2020 ASPEP Datasets & Tables*, CENSUS BUREAU, <https://www.census.gov/data/datasets/2020/econ/apes/annual-apes.html> (last visited Dec. 17, 2021).

⁸ Civil Rights Act of 1964 § 706, 42 U.S.C. § 2000e-5; Civil Rights Act of 1964 § 707, 42 U.S.C. § 2000e-6.

⁹ A Commissioner's Charge may also be initiated by an EEOC Commissioner and would follow the same process. Most charges are filed by private individuals.

and where the Attorney General finds a pattern or practice of discrimination in violation of the statute, the Department can file a lawsuit without any underlying EEOC charge. Many of ELS's section 707 cases challenge employment practices that have disparate impacts on protected groups, but others focus on systemic disparate treatment.

Often, ELS brings section 707 disparate treatment cases under the framework set forth in *International Brotherhood of Teamsters v. United States*,¹⁰ with bifurcated liability and damages phases. If ELS can establish a standard operating procedure of discrimination in the first phase, the United States is immediately entitled to prospective injunctive relief, as well as a rebuttable presumption that all members of a protected group were victims of the systemic discrimination.¹¹ Thus, section 707 is a powerful tool for addressing discrimination that impacts large groups of applicants or employees and can be used to redress a wide range of harms, including systemic sexual harassment.¹²

III. Prohibited sexual harassment under Title VII

Although Title VII does not expressly prohibit harassment, the Supreme Court has interpreted the statute's prohibition on discrimination to encompass several types of harassment, including

¹⁰ 431 U.S. 324 (1977).

¹¹ *Id.* at 361 (1977).

¹² Some courts approach the *Teamsters* framework differently in sexual harassment pattern-or-practice cases, so it is important to check the case law before proceeding under this theory. *See, e.g.,* *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847, 876 (D. Minn. 1993) (failing to apply the rebuttable presumption of liability during the damages phase and instead maintaining plaintiff's burden of persuasion to establish that each individual victim subjectively perceived the workplace as hostile); *Equal Emp. Opportunity Comm'n v. Pitre, Inc.*, 908 F. Supp. 2d 1165, 1177–78 (D.N.M. 2012) (applying *Jenson's* Phase II approach); *Equal Emp. Opportunity Comm'n v. CRST Van Expedited, Inc.*, 611 F. Supp. 2d 918, 937–38 (N.D. Iowa 2009) (same), *Equal Emp. Opportunity Comm'n v. Int'l Profit Assocs., Inc.*, No. 01 C 4427, 2007 WL 3120069, at *17 (N.D. Ill. Oct. 23, 2007) (requiring, during the damages phase, that the plaintiff establish that the harassment each victim experienced was both objectively and subjectively hostile).

sexual harassment.¹³ Since first recognizing the viability of a Title VII sexual harassment claim in its unanimous decision in *Meritor Savings Bank v. Vinson*,¹⁴ the Court has fleshed out the legal standards for determining when offensive conduct amounts to a Title VII violation and when employers may be held liable for such actionable harassment. The Court also has created an affirmative defense available to employers under certain circumstances.

Unlawful sexual harassment is unwelcome workplace conduct that is motivated by the victim's sex and that either results in a tangible employment action being taken against the victim (*quid pro quo* sexual harassment) or is severe or pervasive enough to alter the terms and conditions of the victim's employment (*hostile work environment* sexual harassment).¹⁵

Anyone can perpetrate or experience sexual harassment. The harasser can be of the same or a different sex or sexual orientation than the victim. A harasser can be a supervisor, co-worker, or even a third party, such as a customer of the employer.

IV. ELS's sexual harassment in the workplace initiative

Although ELS has always enforced Title VII's prohibitions on sexual harassment, its 2018 founding of SHWI represents a new effort to address workplace sexual harassment on multiple fronts while using new strategies.

One major reason SHWI is so important is that the state and local government employers ELS has authority to sue under Title VII present risk factors for sexually hostile work environments and workplace harassment that are different from those usually seen in the private sector. Research conducted by industrial/organizational psychologists and other scientists have identified several major risk factors for high rates of sexual harassment in the workplace. Three of these are commonly found in state and local government workplaces: (1) a high male-to-female ratio; (2) non-formal environments or

¹³ 42 U.S.C. § 2000e-2; *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66–67, 73 (1986).

¹⁴ 477 U.S. 57 (1986).

¹⁵ *Quid pro quo* sexual harassment is when an employee's submission to, or rejection of, unwelcome sexual conduct by an individual is used as a basis for employment decisions affecting that individual. *See* 29 C.F.R. § 1604.11(a).

environments where employees embrace a casual or non-professional attitude; and (3) workplaces where there is a lack of formal procedures for reporting sexual harassment or a lack of a human resources department.

These risk factors are common among ELS's typical defendants, including fire and rescue agencies, corrections departments, and law enforcement agencies. For example, in many fire departments, firefighters sleep, eat, and live together in the firehouse while they are on shifts of 24 hours or more. And police officers may spend much of their time in patrol vehicles or walking a beat together. These non-traditional work environments can produce the type of atmosphere where uncivil behavior and harassment can flourish if employers do not take measures to prevent it.

These risk factors are borne out by surveys of women in fire and rescue agencies and law enforcement agencies in particular. When women enter a profession where they need to be included as "one of the boys," and being "one of the boys" translates into unprofessional behavior, it can create a problematic situation. Some women put up with a great deal of incivility and even illegal behavior to fit in. Indeed, a recent survey of female firefighters found that nearly 40% have experienced verbal harassment and sexual advances, almost 17% have experienced hazing, and over 5% have been sexually assaulted on the job.¹⁶

Not only is harassment in public sector workplaces prevalent, but women are also hesitant to report it. As this quote from a recent study of female police officers illustrates, women may avoid reporting based on these workplaces' particular dynamics, where working with partners or in teams is the norm: "When asked why Patricia did not report [her sexual assault,] she explained she felt like she couldn't because he was her superior and she feared that she would quickly get a negative reputation as either a 'slut' or a 'bitch,' look like a victim, and would be ostracized in the department."¹⁷ Police officers also may experience a workplace culture in which the chain of command is

¹⁶ Sara A. Jahnke, et al., *The Prevalence and Health Impacts of Frequent Work Discrimination and Harassment among Women Firefighters in the US Fire Service*, 2019 BIOMED RSCH. INT'L 1, 6 (2019).

¹⁷ Timothy C. Brown, et al., *Playing the Game: A Qualitative Exploration of the Female Experience in a Hypermasculine Policing Environment*, 23 POLICE QUARTERLY no. 2, 2020, at 161.

prioritized above all else, and if a supervisor is the harasser, that can completely foreclose avenues for complaints.

A. SHWI's components

SHWI has three distinct components aimed at combating sexual harassment at state and local government employers: (1) a focus on litigation opportunities; (2) the identification of best practices and tools to prevent and correct sexual harassment; and (3) an outreach effort to educate public employers and the public about their obligations and rights.

1. Litigation

Litigation is a key aspect of ELS's efforts to prevent and correct workplace sexual harassment. Through litigation, ELS demonstrates that it is ready and willing to bring employers into court when there is evidence of workplace sexual harassment that could have been stopped. This should put employers on notice that attention to sexual harassment prevention is crucial.

Since its inception, the SHWI has yielded eight significant pieces of litigation specifically aimed at combating workplace sexual harassment. ELS also has opened many other investigations over the years and will continue to do so wherever they arise. In many of these matters, ELS partnered with USAOs, working together from investigation to case resolution. The following examples are a few publicly reported highlights of this imperative work.

United States v. Cumberland County, Tennessee

In March 2021, ELS and the USAO for the Middle District of Tennessee brought suit against Cumberland County, Tennessee.¹⁸ In its complaint, the United States alleged that Michael Harvel, the Director of Cumberland County's Solid Waste Department, sexually harassed 10 women he supervised, including both employees and community service workers assigned to perform community service through the court system or as a condition of probation.¹⁹ This case was based on charges of discrimination referred by the EEOC in

¹⁸ Complaint, *United States v. Cumberland Cnty., Tenn.*, No. 21-cv-00012 (M.D. Tenn. Mar. 8, 2021), ECF No. 1.

¹⁹ *Id.* at 1, 3–9.

which the charging parties alleged that they and other women at the Solid Waste Department were discriminated against based on sex.²⁰

The United States alleged that Harvel's harassment constituted quid pro quo sexual harassment and created a hostile work environment.²¹ Specifically, Harvel subjected two women to quid pro quo sexual harassment when he made submission to his unwelcome sexual advances and requests for sexual favors a condition for receiving employment benefits.²² Harvel further subjected all 10 women to a hostile work environment based on sex.²³ He regularly touched them sexually without their consent, including kissing them and groping their breasts, thighs, buttocks, and vaginas.²⁴ He also made unwelcome sexual advances toward many of the women, propositioning several for oral or penetrative sex, forcing one woman to view or touch his penis, and threatening to rape another woman.²⁵ Harvel also regularly made offensive sexual remarks, commenting on their bodies and talking about what he wanted to do to them sexually.²⁶

Moreover, Cumberland County's sexual harassment policy and reporting procedures during the time of Harvel's conduct were woefully ineffective. Not only did the policy fail to require supervisors to report harassment, but the majority of the women harassed did not even know how to report their harassment.²⁷ Cumberland County disseminated its sexual harassment policy and reporting procedures only to full-time employees;²⁸ 9 of the 10 women who Harvel harassed never saw these materials because they were only part-time employees or community service workers.²⁹ Further, Cumberland County provided no training on sexual harassment whatsoever until after the women filed EEOC charges.³⁰ Following the EEOC's cause finding, Cumberland County began efforts to improve its sexual

²⁰ *Id.* at 2–3.

²¹ *Id.* at 10–11.

²² *Id.* at 11.

²³ *Id.* at 10.

²⁴ *Id.* at 6.

²⁵ *Id.* at 6–7.

²⁶ *Id.* at 7.

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ *Id.* at 4–6.

³⁰ *Id.* at 8.

harassment policy and reporting procedures and to train its employees.

The USAO actively partnered with ELS to investigate and resolve the matter. An AUSA from the Middle District of Tennessee worked with ELS attorneys during the investigation and settlement discussions. She participated in interviews and negotiations and collaborated on all court filings.

Shortly after the United States filed its complaint, the parties entered into a consent decree providing for monetary and injunctive relief.³¹ Under the decree, Cumberland County paid the 10 women approximately \$1.1 million in compensatory damages.³² As part of the settlement, Cumberland County agreed to further reforms to continue improving its sexual harassment policy, reporting procedures, and anti-harassment training.³³ Cumberland County will be under the consent decree until September 2022.³⁴

United States v. Mobile County Sheriff's Office and Mobile County Sheriff

In March 2021, ELS filed a complaint in the U.S. District Court for the Southern District of Alabama, alleging that female corrections officers working for the Mobile County Sheriff's Office were regularly subjected to severe and pervasive sexual harassment by male inmates.³⁵ The complaint arose from EEOC charges filed by 12 female correctional officers.³⁶ It alleges that male inmates at the Mobile Metro Jail frequently engage in exhibitionist masturbation, known as

³¹ Consent Decree, *United States v. Cumberland Cnty., Tenn.*, No. 21-cv-00012 (M.D. Tenn. Mar. 24, 2021), ECF No. 15.

³² *Id.* at 5.

³³ *Id.* at 4–7.

³⁴ *Id.* at 9. In July 2021, the Criminal Section and the USAO for the Middle District of Tennessee announced the unsealing of a nine-count indictment charging Harvel with civil rights violations relating to his sexual harassment of women at the Solid Waste Department. If convicted, Harvel faces a maximum sentence of up to life in prison. *See* Press Release, Department of Justice, Former Tennessee County Official Indicted for Kidnapping and Sexual Assault (July 16, 2021).

³⁵ Complaint, *United States v. Mobile Cnty. Sheriff's Off.*, No. 21-CV-00114 (S.D. Ala. Mar. 10, 2021), ECF No. 1; *see also* First Amended Complaint, *Mobile Cnty. Sheriff's Off.*, No. 21-CV-00114, ECF No. 58.

³⁶ First Amended Complaint at 2, *Mobile Cnty. Sheriff's Off.*, No. 21-CV-00114, ECF No. 58.

“gunning,” and verbally harass female officers with sexual slurs and propositions.³⁷ In its complaint, the United States also contends that inmates threaten sexual violence against, and use sexually degrading language towards, female correctional officers, and that male employees are “rarely, if ever,” subjected to any of these harassing behaviors.³⁸ The complaint alleges that, despite the employees’ hundreds of reports objecting to the harassment, the Sheriff’s Office did not take the complaints seriously, instead, dismissing their complaints and making comments such as: “You shouldn’t be looking so cute,” “If I was an inmate, I’d gun you too,” and “Put on your big girl pants.”³⁹ ELS’s complaint states that the charging parties and similarly situated female Sheriff’s Office employees suffered physical distress, emotional distress, and loss of sick leave when they were compelled to take leave to avoid or escape the incessant sexual harassment.⁴⁰ The case is currently in active litigation.

United States v. Orlando Fire Department

In March 2021, ELS and the USAO for the Middle District of Florida brought a case against Orlando, Florida.⁴¹ Charging party Dawn Sumter served as an assistant chief in the Orlando Fire Department (OFD).⁴² She was the youngest assistant chief in the history of OFD,⁴³ and it was widely expected that she would one day be OFD’s first female fire chief. Sumter contended that, after being hired by OFD, she was subjected to sexual harassment by former OFD Fire Chief Roderick Williams from at least 2015 to 2017.⁴⁴ At first, Williams and Sumter did not see each other on a regular basis, and the harassing incidents occurred three to five times per year.⁴⁵ They consisted of long hugs that Williams would give Sumter whenever they met.⁴⁶ During the hugs, Williams “would . . . whisper comments into Sumter’s ear such as ‘you look beautiful’ or ‘I wish I wasn’t

³⁷ *Id.* at 6.

³⁸ *Id.* at 8.

³⁹ *Id.* at 17.

⁴⁰ *Id.* at 7.

⁴¹ Complaint, *United States v. City of Orlando*, No. 21-CV-00565 (M.D. Fla. Mar. 29, 2021), ECF No. 1.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

married.”⁴⁷ This behavior increased once Williams promoted Sumter to assistant chief in 2017.⁴⁸ The hugs became more frequent and persistent.⁴⁹ On two occasions shortly after her promotion, Sumter could feel Williams’s erect penis when he hugged her.⁵⁰

Sumter filed a charge of discrimination with the EEOC.⁵¹ Following the filing of her charge, Williams and other senior OFD leadership subjected Sumter to a retaliatory hostile work environment, including moving her to a less prestigious position and cutting her duties in half.⁵² The cumulative effect of the hostile work environment effectively “froze” her from decision making and eliminated her chances of future promotion, including promotion to fire chief.⁵³

Following the EEOC’s determination of reasonable cause to believe OFD violated Title VII, the United States conducted a supplemental investigation and received authorization to file a complaint against the city. Once again, the USAO was an active partner with ELS. In particular, an AUSA from the Middle District of Florida took a leading role in negotiations, including a lengthy mediation.

On March 29, 2021, the United States filed a complaint and a motion to enter a consent decree in the U.S. District Court for the Middle District of Florida⁵⁴ that resolved the United States’ complaint and a separate complaint that Sumter filed.⁵⁵ Two days later, the court entered the consent decree.⁵⁶ The consent decree provided for \$251,500 in compensatory damages to Sumter, as well as attorney’s fees to Sumter’s counsel.⁵⁷

In terms of non-monetary relief, the consent decree also provided broad-based injunctive relief that included: (1) The United States’ review of OFD’s anti-discrimination, anti-harassment, and anti-retaliation policies; (2) the United States’ review of OFD’s

⁴⁷ *Id.*

⁴⁸ *Id.* at 6.

⁴⁹ *Id.*

⁵⁰ *Id.* at 6–7.

⁵¹ *Id.* at 8.

⁵² *Id.* at 9–13.

⁵³ *Id.* at 14.

⁵⁴ Consent Decree, *City of Orlando*, No. 21-CV-00565, ECF No. 3-1.

⁵⁵ Complaint, *Sumter v. City of Orlando et al.*, No. 20-CV-02347 (M.D. Fla. Dec. 22, 2020), ECF No. 1.

⁵⁶ Order Granting 3 Motion for Entry of Consent Decree, *City of Orlando*, No. 21-CV-00565, ECF No. 4.

⁵⁷ *Id.* at 4.

complaint investigation procedures for complaints of sexual harassment and retaliation; and (3) the United States' review of OFD's anti-discrimination, anti-harassment, and anti-retaliation training materials.⁵⁸ The United States retained an expert in EEO complaint and investigation policies and procedures to assist with this review and to make recommended changes for implementation of the policies, complaint investigation procedures, and training materials where necessary. The city must also submit quarterly reports to the United States regarding complaints of sexual harassment and retaliation.⁵⁹ The consent decree is scheduled to expire in October 2022.⁶⁰

United States v. Houston

In February 2018, ELS and the USAO for the Southern District of Texas filed suit against the City of Houston.⁶¹ Two female charging parties alleged that they were subjected to a hostile work environment based on sex when they were employed as firefighters with the Houston Fire Department (HFD) at Station 54.⁶² The women experienced incidents such as men urinating on the walls, floors, and sinks of the women's bathroom and dormitory; someone disconnecting the cold water to scald the women while they were showering; and someone deactivating the female dormitory's announcement speakers so the women could not respond to emergency calls.⁶³ The charging parties further alleged that the conduct culminated in death threats and vulgar slurs written on the walls of their work and living spaces at Station 54 and on their personal possessions.⁶⁴ This conduct continued despite at least nine complaints to management. In addition, other female firefighters who previously worked at Station 54 made similar complaints to HFD about sex-based discrimination even before the charging parties worked there.⁶⁵ Unfortunately, HFD did not take meaningful steps to stop the harassment.⁶⁶

⁵⁸ *Id.* at 7–8, 14.

⁵⁹ *Id.* at 19.

⁶⁰ *Id.* at 23.

⁶¹ Complaint, *United States v. City of Houston*, No. 18-cv-00644 (S.D. Tex. Feb. 28, 2018), ECF No. 1.

⁶² *Id.* at 1.

⁶³ *Id.* at 7–8.

⁶⁴ *Id.* at 9–10, 16.

⁶⁵ *Id.* at 4–5.

⁶⁶ *Id.*

The USAO was a full partner in the litigation of this case. Two AUSAs from the Southern District of Texas served as key collaborators at every turn. They took depositions, engaged in strategy discussions, collaborated on filings, participated in settlement negotiations, and provided other invaluable assistance on the case.

In late October 2020, shortly before trial was scheduled to begin, the case settled.⁶⁷ The consent decree ordered by the court requires the city to provide training to certain supervisory staff and provide proof of compliance for up to 12 months.⁶⁸ The city also agreed to pay one charging party \$275,000 to resolve the claims of sex-based harassment and retaliation stemming from her employment with HFD.⁶⁹ In a separate settlement agreement executed in April 2020, the city agreed to pay \$67,500 to the other charging party to resolve similar claims alleged by the United States in its complaint via a separate settlement agreement.⁷⁰ The consent decree expired on December 5, 2021.⁷¹

2. Efforts to improve remedies

In addition to a renewed emphasis on bringing cases, a goal of SHWI is to improve the remedial measures that ELS uses to resolve its cases. ELS's regular practice involves implementing injunctive relief, often under a court's supervision, as a key part of any case or settlement—even when a case is brought on behalf of a single individual under section 706 of Title VII. To that end, an important part of SHWI's work is to ensure that such relief includes the most efficient and successful approaches to preventing sexual harassment in state and local government workplaces.

Members of SHWI are currently working to identify best practices to prevent and correct sexual harassment at state and local government employers. These efforts include synthesizing academic research in fields such as industrial/organizational psychology, general psychology, and human resources; using resources produced by the

⁶⁷ Consent Decree, *City of Houston*, No. 18-cv-00644, ECF No. 191.

⁶⁸ *Id.* at 4–6, 9.

⁶⁹ *Id.* at 7.

⁷⁰ Joint Motion for Dismissal with Prejudice, *City of Houston*, No. 18-cv-00644, ECF No. 192; *see also* Houston City Council Meeting Notes, Agenda Item #19 (Apr. 21, 2020), <https://houston.novusagenda.com/agendapublic/CoverSheet.aspx?ItemID=19524&MeetingID=427> (last visited Dec. 16, 2021).

⁷¹ Order, *City of Houston*, No. 18-cv-00644, ECF No. 195.

EEOC Select Task Force on the Study of Harassment in the Workplace; and applying the recommendations of experts and practitioners. In addition to working to improve employers' existing anti-harassment policies, procedures, and trainings, ELS is considering less traditional remedial measures to include in its consent decrees. These include, for example, communication strategies that demonstrate management's prioritization of anti-harassment efforts. ELS is also studying enhanced accountability measures that ensure proportionate responses to substantiated harassment allegations and that require managers and supervisors to play a role in preventing and correcting harassment. ELS is also working to identify data collection tools, such as climate surveys, to assess the effectiveness of the injunctive relief agreed on in any settlement. The end result will allow ELS to work more effectively with state and local government employers to ensure systemic change.

3. SHWI outreach efforts

Finally, ELS has engaged in concerted outreach efforts to further the goals of SHWI. Given the pervasive and widespread nature of workplace sexual harassment and ELS's dedication to preventing it, ELS has sought out opportunities to speak with groups of all kinds. In the past 3 years, ELS has conducted outreach on behalf of SHWI at 10 different events.

Because ELS understands well that USAOs, the EEOC, and professional associations have on-the-ground connections that can maximize outreach efforts, ELS has prioritized partnerships with many such entities in initiating and pursuing outreach. For example, ELS attorneys presented at the Louisville EEOC Office's Technical Assistance Program in August 2020, collaborated with the Phoenix EEOC office to hold two different events in December 2020, and joined an event in Puerto Rico hosted by the Miami EEOC office. Other audiences have included local chapters of the National Employment Lawyers' Association.

The SHWI Roundtable in Houston, Texas, in 2019 is an example of an outreach event where the USAO, EEOC, and ELS coordinated closely from inception to presentation. The USAO brought its thorough understanding of the Houston legal community and interested stakeholders, making sure potential attendees from a variety of perspectives were included. During the event, AUSAs, along with EEOC officials and staff, discussed their own work in the community to combat workplace sexual harassment. AUSAs also

described their own roles in *United States v. City of Houston*. ELS attorneys presented on the goals of SHWI, as well as the substance of Title VII's prohibitions on sexual harassment and current awareness about prevention and correction of harassment.

B. Get involved!

USAOs are valuable partners in SHWI's endeavors to tackle sexual harassment in state and local government employers, and ELS welcomes the participation of AUSAs in its cases and outreach efforts.

AUSAs are the eyes and ears of the Department within their Districts and, as such, can play an important role regarding the Attorney General's pattern or practice authority under section 707. If AUSAs are aware of a state or local government employer that may be engaging in a pattern or practice of discrimination under Title VII, ELS encourages them to identify matters for potential investigation.

Upon identification of a matter to ELS, depending on the USAOs' level of interest, their role in the matter can run the gamut. They can simply refer the matter to ELS to investigate alone. They can let ELS know of the matter and provide advice, as local counsel, as ELS conducts the investigation. Alternatively, if USAOs are interested in working closely with ELS, ELS welcomes their partnership in the investigation and any resulting litigation. Even if a matter or case is not initiated by a USAO, whenever ELS has an investigation or case in the district, ELS will reach out to the USAO and offer to work together. ELS values the input and advice of AUSAs as local counsel.

In addition, ELS particularly welcomes the participation of AUSAs in its SHWI outreach efforts. If AUSAs already engage in outreach efforts in their communities, ELS would be interested in supporting these efforts. Members of SHWI could join outreach events to help publicize SHWI, or AUSAs could discuss SHWI's work during their outreach efforts. If AUSAs do not regularly conduct outreach in their communities but are interested in doing so, ELS can work with the office to develop an outreach plan, contributing subject matter expertise to the AUSAs' familiarity with the key stakeholders in the District.

To get more involved, please contact SHWI: SH.Initiative@usdoj.gov.

About the Authors

Shayna Bloom, Jen Swedish, and Julia Quinn are trial attorneys in the Employment Litigation Section. Ms. Bloom and Ms. Swedish were original members of SHWI; Ms. Swedish and Ms. Quinn are current SHWI members. ELS Deputy Chief Clare Geller manages SHWI.