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INTRODUCTION

This is a watershed moment for public awareness of sexual harassment. In recent months, high-profile and influential figures in media, government, and entertainment have been brought down by credible allegations that they have engaged in sexual misconduct.[1] These revelations have sparked an important national discussion about the prevalence of sexual harassment in American society and the ways in which powerful people can use their positions both to exploit their vulnerable targets and to escape the consequences of their actions.

The conversation is a necessary starting point, but the focus on high-status workplaces overlooks other contexts in which sexual harassment occurs. This Article focuses on one overlooked, significant national problem: the sexual harassment and exploitation of low-income women by their landlords. Many published cases have dealt with the phenomenon,[2] and the Department of Justice ("DOJ") has filed many complaints against alleged harassers.[3] Good academic articles in legal and social science literature also exist that discuss the subject from a largely theoretical perspective.[4] But something crucial is missing: data. Unlike sexual harassment in the workplace, which has been exhaustively studied by academics of every stripe, there have been no reliable empirical studies about the nature and prevalence of sexual harassment in housing.

Lack of information leads to a number of problems. Policymakers and legislators have difficulty addressing sexual harassment in housing because they do not know basic facts about it, such as how common it is, who is likely to experience or perpetrate it, and what form(s) it takes. The law that does

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1. Sarah Almukhtar et al., *After Weinstein: 71 Men Accused of Sexual Misconduct and Their Fall from Power*, N.Y. TIMES, https://www.nytimes.com/interactive/2017/11/10/us/men-accused-sexual-misconduct-weinstein.html (last updated Feb. 8, 2018).

2. *See* cases discussed *infra* Section I.A.2.

3. The Housing and Civil Enforcement Section for the Civil Rights Division's website lists several dozen cases filed along with negotiated consent decrees. *See Housing and Civil Enforcement Section Cases*, U.S. DEP'T JUSTICE, http://www.justice.gov/crt/about/hce/caselist.php#sex (last visited Sept. 3, 2018).

4. *See, e.g.*, Michelle Adams, *Knowing Your Place: Theorizing Sexual Harassment at Home*, 40 ARIZ. L. REV. 17 (1998); Nicole A. Forkenbrock Lindemyer, *Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases*, 18 LAW & INEQ. 351 (2000); Maggie E. Reed et al., *There's No Place Like Home*, 11 PSYCHOL. PUB. POL'Y & L. 439 (2005); Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, 27 YALE J.L. & FEMINISM 227 (2016); Deborah Zalesne, *The Intersection of Socioeconomic Class and Gender in Hostile Housing Environment Claims Under Title VIII: Who Is the Reasonable Person?*, 38 B.C. L. REV. 861 (1997); Alyssa George, Note, *The Blind Spots of Law and Culture: How the Workplace Paradigm of Sexual Harassment Marginalizes Sexual Harassment in the Home*, 17 GEO. J. GENDER & L. 645 (2016); Carlotta J. Roos, Note, *DiCenso v. Cisneros: An Argument for Recognizing the Sanctity of the Home in Housing Sexual Harassment Cases*, 52 U. MIAMI L. REV. 1131 (1998).

exist, largely borrowed from the employment context, remains underdeveloped and unresponsive to the unique challenges presented by sexual harassment in housing.

This Article and the underlying Pilot Study represent a first attempt at remedying the information gap by revealing empirical data that challenges and improves upon the assumptions in theoretical scholarship. The Pilot Study involved detailed interviews of one hundred low-income women, randomly selected from a pool of clients of the Columbia, Missouri Housing Authority. These interviews revealed a clear picture of the tenants most at risk for sexual harassment in housing, the characteristics of landlords most likely to engage in harassment, the form(s) harassment is likely to take, and how women respond when experiencing harassment.

Part I discusses the background of this issue and begins with the law of sexual harassment as originally developed for the workplace and later grafted onto the housing context. Next, it canvasses the state of our knowledge of sexual harassment in housing, including the gaps in that knowledge that require further research and the problems created by those gaps.

Part II presents the methodology and results of the Pilot Study, which both add to and challenge some of the prevailing assumptions about sexual harassment in housing. A surprisingly high percentage of study participants – 10% of the sample – had experienced actionable sexual harassment by their landlords. All of these women were living in private rental housing at the time they were harassed; none lived in public housing, shelters, or other institutional facilities. Whether or not they were receiving a housing subsidy did not appear to increase the likelihood of harassment, although it did correlate to whether they remained in the housing after experiencing harassment. The landlords who perpetrated the harassment were all owner-operators of their rental properties; they did not work for or employ a rental management company. The harassment itself took two forms: (1) almost all of the women described being explicitly asked to provide sex in lieu of rent and (2) half of the women also reported experiencing serious (likely criminal) conduct such as home invasion, indecent exposure, and unwanted touching.

Part III analyzes the results of the Pilot Study and draws implications for law, policy, and further research. From a legal standpoint, the results underscore the argument for treating sexual harassment in housing as an entirely different phenomenon from employment harassment. We need a new framework for analyzing these cases that recognizes the economic reality of low-income housing. From a policy perspective, the Pilot Study results reveal the consequences of the lack of regulation of the landlord-tenant relationship: a regime allowing private landlords to harass their tenants with virtual impunity. Greater oversight of landlords and more targeted resources for the most vulnerable group of female renters is necessary to address this problem. Ultimately, policy-makers must address the root cause of this problem – the serious lack of affordable housing and housing support programs in this country.

I. BACKGROUND

Sexual harassment in housing is situated in a peculiar place both in the law and in our understanding of the phenomenon. The law of sexual harassment is relatively new, exceedingly complex, and tailored to the employment context. To the extent that sexual harassment is a topic of public discourse, it is usually the sort that occurs in the workplace. As this Part discusses, the law of sexual harassment in housing was largely borrowed from the law as developed in the employment context. This has led to an inadequate legal approach to sexual harassment in housing cases and a lack of scholarly and public attention to the problem.

A. Development of Sexual Harassment Doctrine

Given the sparse treatment of "sex" in the major civil rights statutes and legislative histories, courts have had to develop a framework for analyzing sexual harassment cases that relies heavily on Equal Employment Opportunity Commission ("EEOC") guidance and the facts of particular cases. This has led to confusion, complexity, and multiple doctrinal shifts.

1. Sexual Harassment Under Title VII

a. Establishing a Binary Framework

The legal doctrine of sexual harassment originated in the employment context.[5] Title VII of the Civil Rights Act of 1964 ("Title VII") prohibits employment discrimination on the basis of protected classes, including sex.[6] Cases recognizing that racial and ethnic harassment in the employment setting can violate Title VII date back at least to 1971.[7]

In 1980, EEOC issued guidelines identifying sexual harassment as a form of sex discrimination prohibited by Title VII.[8] The guidelines provide that

> [u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct

5. *See* George, *supra* note 4, at 647–48.

6. 42 U.S.C. § 2000e-2(b) (2012).

7. *See* Rogers v. EEOC, 454 F.2d 234, 238 (5th Cir. 1971).

8. 29 C.F.R. § 1604.11 (1981) (amended 1999); *see also Enforcement Efforts in the 1980s*, EEOC, https://www.eeoc.gov/eeoc/history/35th/1980s/enforcement.html (last visited Sept. 3, 2018).

> has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.[9]

Two years later, the Eleventh Circuit issued an influential sexual harassment opinion in favor of the plaintiff in *Henson v. City of Dundee*.[10] *Henson* set forth a binary classification of sexual harassment claims (1) "quid pro quo" claims, where a defendant conditions job benefits on compliance with sexual demands or causes the plaintiff tangible harms if she refuses to comply with such demands and (2) "hostile environment" claims, where unwelcome sexual advances occurred but did not lead to lost employment or other economic injuries.[11]

In 1986, the United States Supreme Court adopted the *Henson* framework when it addressed workplace harassment for the first time in *Meritor Savings Bank v. Vinson*.[12] A bank employee brought a Title VII claim against her employer, alleging that her branch manager made unwelcome sexual advances toward her and that she engaged in a lengthy sexual relationship with him out of fear of losing her job.[13] The bank argued that sexual harassment was only actionable if it affected tangible, economic aspects of the employment relationship and that harassment that "only" affected the work environment could not support a claim.[14] The Court disagreed, concluding that "a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment."[15]

The hostile environment theory is rooted in the Title VII provision that bans discrimination in the "terms, conditions, or privileges of employment."[16] The Court held that harassment violates this provision when it is shown to be "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'"[17] Subsequent United States Supreme Court guidance instructed courts to determine whether an environment is sufficiently hostile or abusive by "looking at all the circumstances . . . includ[ing] the frequency of the discriminatory conduct; its severity;

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9. 29 C.F.R. § 1604.11(a) (2012).

10. 682 F.2d 897, 912–13 (11th Cir. 1982), *superseded by statute* 42 U.S.C. 2000e–5(g), *as recognized by* Schonauer v. DCR Ent., Inc. 905 P.2d 392 (Wash. Ct. App. 1995).

11. *Id.* at 908–10.

12. 477 U.S. 57, 66–67 (1986).

13. *Id.* at 60.

14. *Id.* at 64.

15. *Id.* at 66.

16. 42 U.S.C. 2000e-2(a)(1) (2012); *Meritor*, 477 U.S. at 67.

17. *Meritor*, 477 U.S. at 67 (alternation in original) (quoting Henson v. City of Dundee, 682 F.2d 897, 904 (11th Cir. 1982)), *superseded by statute* 42 U.S.C. 2000e–5(g), *as recognized by* Schonauer v. DCR Ent., Inc., 905 P.2d 392 (Wash. Ct. App. 1995).

whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance."[18]

b. Modifying the Framework

Of course, circumstances often defy legal compartmentalization, and the Court's framework encountered difficulties in practice. One particularly thorny question arose: what should be done when a man threatens a woman with reprisals if she refuses to have sex with him but then does not follow through on the threats? *Burlington Industries v. Ellerth* answered this question.[19] The plaintiff's manager told her on multiple occasions that he could make her life "very hard or very easy" at work, that things would be "easier" for her if she would wear shorter skirts, and that she might not get a promotion because she was not "loose enough."[20] The manager had also engaged in other offensive conduct, such as rubbing the plaintiff's knee and making comments about her breasts.[21] Although the plaintiff rebuffed these advances, the manager never carried through with any of his implied threats, and she later received a promotion.[22]

The district court observed that the claim appeared to involve a hostile environment with an embedded "quid pro quo proposition" that came from the manager's unfulfilled threats.[23] The U.S. Court of Appeals for the Seventh Circuit, sitting en banc, also had a difficult time categorizing the claim, with at least four judges arguing that it should be considered a quid pro quo claim despite the absence of any tangible detriment to the plaintiff's employment status.[24] The United States Supreme Court resolved the issue by determining that "[b]ecause Ellerth's claim involve[d] only unfulfilled threats, it should be categorized as a hostile work environment claim . . . ."[25]

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

> We do not suggest the terms quid pro quo and hostile work environment are irrelevant to Title VII litigation. To the extent they illustrate the distinction between cases involving a threat which is carried out and

18. Harris v. Forklift Systems, 510 U.S. 17, 23 (1993).

19. 524 U.S. 742 (1998).

20. *Id.* at 748.

21. *Id.*

22. *Id.*

23. Ellerth v. Burlington Indus., Inc., 912 F. Supp. 1101, 1114 (N.D. Ill. 1996), *aff'd in part, rev'd in part sub nom*. Jansen v. Packaging Corp. of Am., 123 F.3d 490 (7th Cir. 1997), *aff'd*, Burlington Indus., Inc., v. Ellerth, 524 U.S. 742 (1998).

24. Jansen v. Packaging Corp. of Am., 123 F.3d 490, 493–94 (7th Cir. 1997), *aff'd*, Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998).

25. *Burlington Indus., Inc.*, 524 U.S. at 754.

> offensive conduct in general, the terms are relevant when there is a threshold question whether a plaintiff can prove discrimination in violation of Title VII. When a plaintiff proves that a tangible employment action resulted from a refusal to submit to a supervisor's sexual demands, he or she establishes that the employment decision itself constitutes a change in the terms and conditions of employment that is actionable under Title VII. For any sexual harassment [other than an] employment decision to be actionable, however, the conduct must be severe or pervasive.[26]

Thus, the key inquiry became whether a tangible employment action – such as firing or demotion – had been taken against the plaintiff.[27] If one had, liability would be established because the terms and conditions of employment would have been directly affected.[28] If one had not, and there were "just" sexual demands or threats that were not acted upon, liability would hinge on whether the conduct at issue rose to the level of being severe or pervasive enough to affect a term or condition of employment.[29]

On the facts of the case, the district court found that the manager's multiple unfulfilled threats together with his other offensive conduct amounted to a hostile environment[30] – which was a finding that the Supreme Court did not disturb.[31] The Court was clear, however, that it was leaving open the question of "whether a single unfulfilled threat is sufficient to constitute discrimination in the terms or conditions of employment."[32]

2. Sexual Harassment and the Fair Housing Act

The law of sexual harassment in housing developed later and largely in-step with Title VII. The reliance on Title VII, however, has created many problems for cases in the housing context.

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26. *Id.* at 753–54 (alteration in original).

27. *See id.* "A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Id.* at 761.

28. *Id*. at 753–54, 761.

29. *Id*. at 754.

30. Ellerth v. Burlington Indus., Inc., 912 F. Supp. 1101, 1115 (N.D. Ill. 1996), *aff'd in part, rev'd in part sub nom.* Jansen v. Packaging Corp. of Am., 123 F.3d 490 (7th Cir. 1997), *aff'd*, Burlington Indus., Inc., v. Ellerth, 524 U.S. 742 (1998).

31. *Burlington Indus., Inc*., 524 U.S. at 754.

32. *Id.*

a. Legal Framework

The first reported decision involving sexual harassment in housing was *Shellhammer v. Lewallen* in 1985.[33] The plaintiffs in *Shellhammer* were a married couple who were evicted from their apartment allegedly because Mrs. Shellhammer refused her landlord's requests to pose for nude photographs and to have sex with him.[34] The magistrate judge who heard the case noted the lack of any housing precedents for sexual harassment claims and the similarity between the Title VII ban on discrimination in the "terms, conditions, or privileges of employment" and the Fair Housing Act's ("FHA") prohibition on discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling."[35] Thus, the judge turned to employment decisions under Title VII for guidance and ruled that both quid pro quo and hostile environment claims were also actionable under the FHA.[36]

Subsequent courts followed *Shellhammer*'s approach.[37] They found it appropriate to rely on Title VII precedents to establish the contours of sexual harassment law under the FHA.[38] They also agreed that § 3604(b)'s prohibition of discriminatory "terms and conditions" is the analogous provision in the FHA.[39] Additionally, all of these courts agreed that if the plaintiff's complaint involved only a "hostile environment" claim (and not the loss of a tangible housing benefit), then the defendant would only be liable if his behavior was "severe or pervasive" enough to alter the terms and conditions of the plaintiff's residency.[40]

In 2016, the Department of Housing and Urban Development ("HUD") issued a final rule formalizing the definitions of, and standards for, quid pro quo and hostile environment sexual harassment in housing.[41] The definitions and standards largely conform to existing court precedent. The purpose of the

33. 770 F.2d 167 (6th Cir. 1985); PRENTICE HALL, INC. ET AL., 1 FAIR HOUSING – FAIR LENDING 15, 472 (1994).

34. *Shellhammer*, 770 F.2d at 167.

35. *See id. Compare* 42 U.S.C. § 3604(b) (2012) (fair housing), *with* 42 U.S.C. 2000e-2(a)(1) (2012) (employment discrimination). Other portions of the FHA may also be used to bring sexual harassment claims, but for various reasons § 3604(b) is the most common avenue. *See generally* Robert G. Schwemm & Rigel C. Oliveri, *A New Look at Sexual Harassment Under the Fair Housing Act: The Forgotten Role of § 3604(c)*, 2002 WIS. L. REV. 771 (2002).

36. *See Shellhammer*, 770 F.2d at 167; PRENTICE HALL, INC. ET AL., *supra* note 33, at 136.

37. *See* Schwemm & Oliveri, *supra* note 35, at 782 nn.63–65 (citing a number of cases that have agreed with Shellhammer).

38. *Id.*

39. *Id.*

40. *Id.*

41. 24 C.F.R. § 100.600 (2017).

rule was to provide consistency and clarity to investigators, housing providers, and victims.[42]

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

There are relatively few published opinions from the federal courts involving sexual harassment in housing – at least when compared with employment harassment cases.[43] Many of the existing cases involve hostile environment claims.[44] The courts tend to focus on whether the landlord's alleged conduct meets the severe or pervasive standard and use guidance from employment harassment cases when precedent is lacking under the FHA.[45] Unfortunately, the lack of precision in the "severe or pervasive" standard, which has proved problematic in the employment context,[46] has created difficulty in the housing context as well.

Moreover, blind reliance on employment law doctrines and precedents in the housing context fails to recognize that conduct that may appear harmless or less offensive in the workplace can become much more threatening when committed inside a woman's home by someone who literally holds the keys.[47] Unfortunately, because many courts have only employment law cases informing their decision-making, they tend to use assumptions from the employment

42. *See* Schwemm & Oliveri, *supra* note 35, at 783.

43. Forkenbrock Lindemyer, *supra* note 4, at 357.

44. *See* Schwemm & Oliveri, *supra* note 35, at 782.

45. *See* Schwemm & Oliveri, *supra* note 35, at 782 nn.63–65 (citing a number of cases that have agreed with *Shellhammer*).

46. *See* Judith J. Johnson, *License to Harass Women: Requiring Hostile Environment Sexual Harassment to Be "Severe or Pervasive" Discriminates Among "Terms and Conditions" of Employment*, 62 MD. L. REV. 85 (2003) ("[M]any lower courts have used this language to excuse harassment against women."); *see also* Mendoza v. Borden, Inc., 195 F.3d 1238, 1246–47 (11th Cir. 1999) (detailing numerous cases from multiple federal courts of appeals in which plaintiff's Title VII claims were dismissed under the "severe or pervasive" standard despite containing instances of unwanted touching of breasts and buttocks, sexually explicit comments, simulated masturbation, and other egregious conduct); Theresa M. Beiner, *The Misuse of Summary Judgment in Hostile Environment Cases*, 34 WAKE FOREST L. REV. 71, 75 (1999) (discussing the "severity or pervasiveness" factors in the context of summary judgment).

47. Forkenbrock Lindemyer, *supra* note 4, at 352–53; *see also* Adams, *supra* note 4, at 21–28, 44–48 ("[S]exual harassment at home differs in context; a context that is reflected in the richness and complexity of our notions of home and women's roles within that home."); Zalesne, *supra* note 4, at 885–88 ("Because of fundamental differences . . . serious problems can arise if courts too closely equate the effects of workplace sexual harassment with the effects of rental housing sexual harassment."); George, *supra* note 4, at 647 ("Precise statistics about the prevalence of sexual harassment in the home are difficult to determine, both because there have been few studies of harassment in this context and because the phenomenon is believed to be vastly underreported."); Roos, *supra* note 4, at 1139–46 ("[H]ome is arguably the most private sphere.").

context to arrive at results in housing cases that many in the legal and academic world view as incorrect.[48]

The first such case is *Shellhammer* itself. Despite recognizing the availability of the hostile environment theory in sexual harassment in housing cases generally, the court found that the plaintiff failed to state a claim under that theory.[49] According to the court, the landlord's multiple requests that the plaintiff pose for nude photos and have sex with him were not sufficiently severe or pervasive to constitute a hostile environment in light of employment law precedents.[50]

One of the only sexual harassment in housing cases to reach the court of appeals, *DiCenso v. Cisneros*, came down in favor of a landlord on a similarly egregious set of facts.[51] The landlord in *DiCenso* had come to the door of his young female tenant to collect rent.[52] He caressed her arm and back, and he told her that if she could not pay the rent she could "take care of it in other ways."[53] When she slammed the door in his face, he stood outside her apartment calling her names, including "bitch" and "whore."[54] The woman refused to pay her rent the next time the landlord came to collect it in person, and she was subsequently evicted.[55] A HUD administrative judge initially ruled for the landlord, holding that his conduct was not severe enough to be actionable under the hostile environment theory.[56] Further, she found that the facts did not support a quid pro quo claim because the tenant's eviction was not prompted by her rejection of the landlord's sexual advances but instead by her failure to pay the rent.[57] The HUD Secretary reversed the hostile environment claim on appeal and found the landlord liable.[58]

The landlord appealed to the Seventh Circuit.[59] The court surveyed a series of employment harassment cases and determined that, based on Title VII precedents, his behavior was not "sufficiently egregious to create an objectively hostile housing environment."[60] According to the majority opinion, "the problem with [the female tenant's] complaint is that although DiCenso may have harassed her, he did so only once. Moreover, DiCenso's conduct, while

48. *E.g.*, Zalesne, *supra* note 4, at 885–88.

49. PRENTICE HALL, INC. ET AL., *supra* note 33, at 137.

50. *Id.* The court did find that the plaintiff was able to establish a quid pro quo claim based on her eviction after she refused the landlord's requests. *Id.* at 139.

51. 96 F.3d 1004 (1996).

52. *Id.* at 1006.

53. *Id.*

54. *Id.*

55. *Id.*

56. Brown, HUDALJ 05-91-0495-1, 1995 WL 134043, at *11 (March 20, 1995).

57. *Id.* at *11, *13.

58. *DiCenso*, 96 F.3d at 1007.

59. *Id.*

60. *Id.* at 1007–09.

clearly unwelcome, was much less offensive than other incidents which have not violated Title VII."[61]

The *DiCenso* majority recognized that a single incident of harassment, if severe enough, could be sufficient to support a hostile environment claim and conceded that the landlord's behavior here included a comment that "vaguely invited [the tenant] to exchange sex for rent."[62] Nevertheless, the court concluded, based on "the totality of circumstances," that DiCenso's conduct was not sufficiently egregious to create an objectively hostile housing environment because "he did not touch an intimate body part, and did not threaten [the tenant] with any physical harm."[63]

In another case, *Tagliaferri v. Winter Park Housing Authority*, the plaintiffs alleged that the maintenance man at their apartment complex set up a video camera at their bedroom window, photographed them while they were outside, and made obscene gestures at them.[64] A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit was asked to review the district court's dismissal of the case for failure to state a claim under the FHA.[65] The panel relied heavily on a Title VII sexual harassment case, *Mendoza v. Borden*,[66] in which the plaintiff alleged a hostile work environment based, in part, on the allegation that her supervisor was constantly watching, following, and staring at her.[67] The *Mendoza* court found that this behavior did not constitute severe or pervasive conduct because "the everyday observation of fellow employees in the workplace is also a natural and unavoidable occurrence when people work together in close quarters or when a supervisor keeps an eye on employees."[68] Despite the fact that there are profound contextual differences between a woman being watched by her supervisor at work and having the maintenance man of her apartment building set up a video camera facing her bedroom window, the *Tagliaferri* court failed to note this distinction and upheld the lower court's dismissal in a per curiam opinion.[69]

A number of commentators have argued that the social, psychological, and legal significance of the home should encourage courts hearing sexual harassment in housing cases to apply a more nuanced and particularized analysis than they do currently.[70] Their arguments often emphasize the importance of

61. *Id.* at 1008–09 (emphasis added).
62. *Id.* at 1009.
63. *Id.*
64. 486 Fed. App'x 771, 774 (11th Cir. 2012).
65. *Id.* at 772.
66. 195 F.3d 1238 (11th Cir. 1999).
67. *Id*. at 1242; *accord Tagliaferri*, 486 Fed. App'x at 774.
68. *Mendoza*, 195 F.3d at 1248.
69. *Tagliaferri*, 486 Fed. App'x at 775.
70. Adams, *supra* note 4, at 62 (advocating that a housing provider's harassing activities should be evaluated based on "the nature and importance of home in the American cultural imagination."); *see* Beverly Balos, *A Man's Home is His Castle: How the Law Shelters Domestic Violence and Sexual Harassment*, 23 ST. LOUIS U. PUB. L. REV. 77, 80 (2004).

privacy rights within the home.[71] In 1987, Regina Cahan wrote the first major law review article on housing harassment.[72] She drew on the concept of the home as a place of refuge from the world, noting,

> When sexual harassment occurs at work, at that moment or at the end of the workday, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion in her life. Ideally, home is the haven from the troubles of the day. When home is not a safe place, a woman may feel distressed and, often, immobile.[73]

Some courts have begun to recognize the differences in context between the workplace and the home that might affect the way courts conduct the severe or pervasive analysis. *Beliveau v. Caras* was the first, and remains one of the few, cases in which the context of the home was specifically articulated and referenced.[74] The court ruled that the plaintiff stated a claim for sexual harassment when she alleged that the resident manager had touched her in an offensive way in her bathroom.[75] The court explained that the defendant's alleged conduct constituted sexual harassment because it "was committed (1) in plaintiff's own home, where she should feel (and be) less vulnerable, and (2) by one whose very role was to provide that safe environment."[76]

A few other courts have incorporated the context of the home into their analysis of residential sexual harassment claims.[77] Still, it is clear that more needs to be done to shift the judiciary's understanding of this issue and overcome the lingering effects of bad precedents set by *Shelhammer*, *DiCenso*, and other cases.

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

There is little reliable data about the incidence of sexual harassment in housing, although there is plenty of anecdotal evidence from cases, and scholars have written theoretical articles about the phenomenon based largely on

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71. *See* Forkenbrock Lindemyer, *supra* note 4, at 368 ("The expectation of both safety and privacy in one's home is justifiably greater than that in the workplace, and thus a higher standard of conduct is warranted."). *See generally* Roos, *supra* note 4.

72. *See generally* Regina Cahan, Home is No Haven: An Analysis of Sexual Harassment in Housing, 1987 WIS. L. REV. 1061 (1987).

73. *Id.* at 1073.

74. 873 F. Supp. 1393, 1397–98 (C.D. Cal. 1995).

75. *Id.* at 1398.

76. *Id.*

77. *See, e.g.*, Williams v. Poretsky Mgt., Inc., 955 F. Supp. 490 (D. Md. 1996); Reeves v. Carrollsburg Condo. Unit Owners Ass'n, No. CIV.A. 96–2495RMU, 1997 WL 1877201 (D.D.C. Dec. 18, 1997); Salisbury v. Hickman, 974 F. Supp.2d 1282 (E.D. Cal. 2013).

assumptions from the cases. This Section summarizes the little research that exists on the topic of sexual harassment in housing.

1. Official Statistics and Early Studies

The National Fair Housing Alliance ("NFHA") provides the most comprehensive statistical picture of fair housing complaints in the United States. Its annual report contains data on housing discrimination complaints filed with government agencies such as the HUD, the Fair Housing Assistance Program ("FHAP") agencies,[78] the DOJ, as well as private fair housing organizations that process the vast majority of housing discrimination complaints.[79] Even so, the NFHA's report has a number of limitations. The NFHA recognizes that, due to the extremely high rate of underreporting, their figures represent only a small fraction of the actual discrimination that occurs in the housing market.[80] In 2016, the NFHA reported 1788 complaints in which "sex" was listed as a possible basis for discrimination.[81] These complaints, however, are not broken down by the type of discrimination – for example, sex-based differential treatment (such as when a landlord refuses to rent to someone because of sex) versus sexual harassment.[82]

There is a similar dearth of academic studies on the topic. Just four scholarly articles analyze the problem of sexual harassment in housing in an empirical manner.[83] Only two of them attempt to discern prevalence data: both rely on returned surveys and each is more than twenty years old.[84]

The only known attempt to determine the frequency of sexual harassment in housing in the United States was conducted almost thirty years ago. In 1987, Regina Cahan surveyed 150 public and private fair housing organizations

78. These are state and local agencies that receive fair housing assistance funding through the HUD. *See* NAT'L FAIR HOUSING ALLIANCE, A LANDMARK YEAR: 2016 FAIR HOUSING TRENDS REPORT 7 (2016), http://nationalfairhousing.org/wp-content/uploads/2017/04/2016_NFHA_Fair_Housing_Trends_Report.pdf.

79. *Id.* at 7–8. The NFHA does not track housing discrimination lawsuits filed by private lawyers who do not work for fair housing organizations. *See id.* at 8.

80. *Id.* at 7–8. Thus, while the NFHA reported a total of 28,181 housing discrimination complaints in 2016, it estimates that four million acts of housing discrimination occur each year in the rental housing market alone. *See* NAT'L FAIR HOUSING ALLIANCE, MAKING EVERY NEIGHBORHOOD A PLACE OF OPPORTUNITY: 2018 FAIR HOUSING TRENDS REPORT 11, 13 (2018), http://nationalfairhousing.org/wp-content/uploads/2018/04/NFHA-2018-Fair-Housing-Trends-Report.pdf.

81. NAT'L FAIR HOUSING ALLIANCE, THE CASE FOR FAIR HOUSING: 2017 FAIR HOUSING TRENDS REPORT 79 (2017), http://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf.

82. *See id.*

83. SYLVIA I. NOVAC, BOUNDARY DISPUTES: SEXUAL HARASSMENT AND THE GENDERED RELATIONS OF RESIDENTIAL TENANCY (1994); Cahan, *supra* note 72; Reed, *supra* note 4; Griff Tester, *An Intersectional Analysis of Sexual Harassment in Housing*, 22 GENDER & SOC'Y 349 (2008).

84. *See* Reed, *supra* note 4, at 44.

across the country to see whether they had received complaints of sexual harassment.[85] Of the eighty-seven centers that provided usable responses, fifty-seven (65%) reported receiving a collective total of 288 complaints of sexual harassment.[86] Citing a recent survey which found that fewer than 3% of victims of workplace sexual harassment sought help through formal institutional processes, Cahan estimated that between 6818 and 15,000 cases of sexual harassment in housing may have occurred between 1981 and 1985 (the period of time that the survey results covered).[87]

A smaller number of centers provided Cahan with specific information about the income of the victims and the nature of the harassing conduct.[88] The victims were overwhelmingly poor, with 75% earning less than $10,000 per year and 23% earning between $10,000 and $20,000 per year.[89] More than two-thirds (67.7%) of the complaints involved landlord requests for sexual activity, almost 39% involved abusive remarks, and 34% involved unwanted touching.[90] Cahan did not elicit additional information about the women – such as race or age – nor did she elicit any information about the perpetrators.[91] Cahan asked about the size (number of units) and type of housing the women were living in, but her questions were limited.[92]

While her article was groundbreaking, Cahan's study is of limited use in determining true prevalence due to her reliance on reported complaints to fair housing centers – and even then, only centers that responded to her survey rather than a population sample. Sexual harassment is notoriously underreported

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85. Cahan, *supra* note 72, at 1066. Thus, the survey answers were not provided by the victims themselves but by the organization based on the material contained in their files.

86. *Id.* Thirty centers (35%) reported that no sexual harassment in the housing context had been received. *Id.*

87. *Id.* at 1069; *see id.* at 1094.

88. *Id.* at 1067 n.18. Forty-six provided victim characteristics and forty-eight provided information about the harassing conduct. *Id.*

89. *Id.* at 1067. In 1985, the federal poverty level for a family of four in the continental United States was $10,650. *National Longitude Survey*, U.S. BUREAU OF LABOR STATISTICS, https://www.nlsinfo.org/content/cohorts/nlsy79/other-documentation/codebook-supplement/nlsy79-appendix-2-total-net-family-3 (last visited Sept. 3, 2018). Although Cahan's survey asked about the type of housing the women were living in, she did not report this information. *See* Cahan, *supra* note 72, at 1066–73, 1094.

90. *Id.* at 1070 tbl.1.

91. *See id.* at 1066–73.

92. For example, Cahan asked whether the women lived in apartment complexes with 100 or more units, 50–100 units, 20–50 units, 2–20 units, duplexes, or rented rooms in private homes. *Id.* at 1094. She did not ask about women who rented single-family homes, which is more common in rural areas and smaller cities without significant multi-family housing. *See id.* Cahan also asked only whether the women were "private housing tenant(s)" or "[S]ection 8 tenant(s)" and not about whether the women lived in public housing, project-based Section 8 housing, or shelters. *Id*. She did not report these findings. *See id.* at 1066–73.

in other settings.[93] Underreporting is even more likely with sexual harassment in housing given the fact that it has received less attention than employment harassment and it is less clear where to make a report.

The only other prevalence study of sexual harassment in housing was conducted more than twenty years ago in Canada. In 1991, a doctoral student in sociology named Sylvia I. Novac mailed surveys to 1000 rental households in Ontario.[94] She received 352 useable surveys back.[95] Of these, 25% of the respondents reported experiencing sexual harassment in housing.[96]

Again, this methodology, which relied upon returned surveys, failed to measure true prevalence. Moreover, the survey questions were based on workplace sexual harassment and may not have adequately sampled the type of sexually harassing behaviors experienced by tenants.[97] For example, in an open-ended portion of the survey, 29% of respondents reported that their landlord had entered their home without notice.[98] Although unauthorized entry into the home is not necessarily indicative of harassment, it may constitute part of a pattern of harassment and intimidation. Similarly, behaviors such as refusing to allow women to have male visitors, looking through windows, or being abusive toward household members are types of harassment unique to the housing context that will not be captured in a typology based upon employment harassment.

2. Recent Studies

Two more recent studies did not seek prevalence data but instead examined existing cases to determine common characteristics of harassment, victims, and perpetrators.[99] In 2005, Drs. Louise Fitzgerald, Linda Collinsworth, and Maggie Reed reviewed deposition testimony given by thirty-nine victim-witnesses in three cases prosecuted by the DOJ.[100] The authors then analyzed

93. *See, e.g.*, Stefanie K. Johnson et al., *Why We Fail to Report Sexual Harassment*, HARV. BUS. REV. (Oct. 4, 2016), https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment; Sandy Welsh & James E. Gruber, *Not Taking It Any More: Women Who Report or File Complaints of Sexual Harassment*, 36 CANADIAN REV. OF SOC. & ANTHROPOLOGY 559, 559-60 (1999) ("Research from the early 1980s to the present has found consistently that women who have experienced sexual harassment . . . infrequently confront the harasser or report the behavior to someone in a position of authority. The number of women who file a grievance or complaint is even smaller."); J. Richard Chema, *Arresting "Tailhook": The Prosecution of Sexual Harassment in the Military*, 140 MIL. L. REV. 1, 13 (1993) (listing multiple surveys showing high levels of sexual harassment in the armed forces, and extremely low reporting rates).

94. Reed, *supra* note 4, at 444; NOVAC, *supra* note 83.

95. Reed, *supra* note 4, at 444; NOVAC, *supra* note 83.

96. Reed, *supra* note 4; NOVAC, *supra* note 83.

97. Reed, *supra* note 4; NOVAC, *supra* note 83.

98. Reed, *supra* note 4; NOVAC, *supra* note 83.

99. Reed, *supra* note 4; Tester, *supra* note 83.

100. Reed, *supra* note 4, at 447.

all published federal sexual harassment in housing cases that contained details about the sexually harassing conduct (a total of eighteen cases).[101] They compared the conduct described in those cases to the conduct found in their deposition sample and noted a significant overlap.[102]

Between the reported cases and the depositions, the researchers identified 389 separate instances of misconduct.[103] These instances were then grouped generally into three categories: (1) Gender Harassment (sexist hostility), (2) Unwanted Sexual Attention (sexual behavior and imposition/assault), and (3) Sexual Coercion (sexual threats and bribery). The authors found that the majority of the instances were classified as Unwanted Sexual Attention (60%), followed by Sexual Coercion (18%) and Gender Hostility (13.9%).[104] This was in dramatic contrast with similar research done in the employment context where the majority of harassing behavior (59.5%) fell into the Gender Hostility category.[105] Unwanted Sexual Attention (36.9%) was the second most frequent type of conduct in the workplace sample, while Sexual Coercion (3.6%) barely registered.[106] The researchers concluded that sexual harassment in housing was much more likely to consist of Unwanted Sexual Attention and Sexual Coercion when compared with sexual harassment in the workplace, which was much more likely to consist of Gender Hostility with very little sexual coercion.[107] This study did not focus on victim or perpetrator characteristics and did not analyze the type of housing the victims were living in at the time.[108]

In 2008, Dr. Griff Tester analyzed 137 housing sexual harassment complaints made to the Ohio Civil Rights Commission ("OCRC") between 1990 and 2003.[109] He was the first to obtain data on the race of the victims and perpetrators and found that 68% of the reported victims were black or "other women of color" while virtually all of the perpetrators were white men.[110] The type of housing in which most of the harassment occurred were private rentals as opposed to public housing, although OCRC files were not clear whether the victims were using Section 8 Vouchers at the time.[111] The landlords tended to represent small, privately-owned housing as opposed to large rental companies with structured management and procedures.[112] OCRC did not collect specific data about the complainants' socioeconomic status, although information in the

101. *Id.* at 447–48.
102. *Id.* at 448.
103. *Id*.
104. *Id.*
105. *Id.* at 456–57.
106. *Id.* at 457.
107. *Id.*
108. *See generally id.*
109. Tester, *supra* note 83.
110. *Id.*
111. *Id*. Housing Choice – commonly-known as "Section 8" – Vouchers are housing subsidies that assist tenants in renting on the private market.
112. *Id.*

files indicated that many women were poor and in need of housing assistance.[113]

Both studies contributed valuable insights into the nature of sexual harassment in housing claims. The 2005 study was significant because it was the first to rigorously analyze the harassing behavior and to compare sexual harassment in housing claims to sexual harassment in employment claims. The 2008 study was valuable because it was the first to analyze the perpetrators, the type of housing, and the victim's characteristics, such as intersectional factors like race. Both studies, however, had methodological limitations because they relied not on a random sample but on a particular subset of reported and/or litigated claims.[114]

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

II. THE PILOT STUDY

This Pilot Study attempts to fill this research gap and its results are intended to support more wide-ranging research on this topic in the future. This Pilot Study refines the nature of the inquiries, formulates an initial hypothesis (discussed in Part III), and develops some preliminary data.

A. Purpose and Methodology

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

113. *Id.* at 352–55.

114. *Id.* at 352. For example, the 2005 study looked at depositions from only three cases, each of which had been prosecuted by the DOJ. *See* Reed, *supra* note 4, at 444. While each case had multiple victims, each only involved a single perpetrator, thus the actions of only three landlords were being examined in detail. *See id.* at 444. This was mitigated by the comparison to allegations in the published cases from federal courts. *See id.*

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

A survey instrument in the form of an interview script was devised with these objectives in mind.[115] One hundred women were individually interviewed over a period of three months in Columbia, Missouri. Interview subjects were solicited in the office of the Columbia Housing Authority; all of them were either clients of the Housing Authority (living in public housing or participating in the Section 8 Voucher Program) or applying to be a client. Thus, by definition, all of the interviewees were low-income and in need of housing assistance at the time of the interview.[116] The subjects were randomly selected in the sense that every woman who came to the reception desk was asked if she wished to participate in a survey about "[he]r experiences with housing,"[117] and interested subjects were then referred to the interview room.

The interview subjects were asked if they had ever experienced "sexually inappropriate" behavior from a landlord,[118] including specific conduct that would likely constitute sexual harassment – such as inappropriate touching, sexual comments, and requests for sexual activity. There was an additional category for "other inappropriate behavior" that allowed the subjects to describe other behaviors that made them uncomfortable but were not included in the list. The interview subjects were also asked if they had ever experienced "annoying or disturbing" behavior from a landlord, including specific conduct that might be part of a pattern of sexual harassment – such as the landlord prohibiting male visitors, looking through the windows, or entering the unit unannounced. Any woman who answered affirmatively was then asked whether she believed these behaviors were "sexual in nature" and/or done "because [she is] a woman."[119]

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115. The completed surveys are on file with the author.

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

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

118. It is important to underscore the fact that survey participants were asked about their *lifetime* experiences. This is significant because, while virtually all of the women interviewed were clients of the Columbia Housing Authority at the time of the interview, all of those who reported harassing conduct experienced it prior to becoming clients of the Columbia Housing Authority.

119. These questions were asked in order to distinguish ordinary disputes between landlords and tenants from situations that potentially involved sexual harassment.

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

- the conduct in detail, including frequency;
- their own characteristics, including how old they were, other occupants in the household, and their source of income at the time the conduct occurred;
- the type of housing they were living in at the time the conduct occurred, whether it was public housing, private rental housing, or some other type of housing (such as project-based Section 8 housing, a homeless or domestic violence shelter, or another institutional setting); if the woman was living in private rental housing, she was asked whether she received a Section 8 Voucher;
- the characteristics of the perpetrator, including estimated race, age, and role in the housing (i.e., whether he was he the owner, a manager, or a maintenance worker) at the time the conduct occurred;[120]
- their responses to the conduct, including whether and to whom they reported it, reasons for not reporting it, and any lasting emotional or psychological effects the experience had on them.

B. Results

The Pilot Study's results were at times consistent with prevailing assumptions about sexual harassment in housing. In other ways, they challenged the accepted knowledge. They provide insight into the way harassment in housing "typically" manifests itself, who it involves, and what happens as a result.

1. Prevalence, Severity, and Type of Conduct

Of the 100 women interviewed, sixteen gave responses indicating that they had experienced some type of sexually harassing or otherwise problematic conduct. These surveys were then sorted according to whether the conduct described would likely constitute actionable sexual harassment. Actionable claims were those likely to survive a motion to dismiss for failure to state a claim.[121]

120. Race and age had to be approximated by the respondents based upon their observations of the perpetrator.

121. This determination was complicated by the fact that, for hostile environment sexual harassment, there is no bright line rule but rather a standard – "severe or pervasive" – which may be applied differently by different courts. *See* discussion *supra* Section I.A.1.a. The author relied on existing caselaw and precedent in making this determination. While a few cases classified as "actionable" were borderline – that is, the women could have stated claims but might not have prevailed on the merits – most were quite clearly violations of the law.

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

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

> #20 The woman was forty-eight years old and caring for her granddaughter. Her sole source of income was Social Security Disability Insurance ("SSDI"). Her landlord said that her rental situation could be "cheaper and easier" if she would give him sexual favors. The landlord watched her home and told her that she could not have male visitors. She did not comply with his requests. She eventually moved out of the house and in with friends. At the time of the interview, she was applying for public housing.
>
> #21 The woman was eighteen and in college. She did not have any children, and she lived with a roommate. The landlord asked for sex in lieu of rent and as a way to expedite repairs. He made comments about the woman's body and kept track of her comings and goings. The woman eventually told him to stop, and nothing else happened.
>
> #29 The woman was twenty-one and unemployed, although occasionally she worked as an exotic dancer. She did not have any children and lived with a much-older boyfriend. Her landlord made multiple demands that she have "oral and regular sex" with him because she was behind on her rent and threatened her with eviction if she did not comply. He would use his key to enter her apartment, without warning, while she was home, including multiple times while she was in the shower. He touched her in ways she thought were inappropriate. She never acquiesced to his demands and ultimately moved out before he could evict her.
>
> #37 The woman was twenty-one and a single mother of two. She was employed as an aide in a facility for the disabled. She was attempting to rent an apartment. After showing her the unit, the landlord locked the door and asked for oral sex, saying that she could do that instead of paying the security deposit. The woman refused and chose not to rent from the landlord.
>
> #39 The woman was twenty-seven and a divorced mother of six. She was paying for part of her rent using a Section 8 Voucher. The landlord told the woman she could avoid paying her portion of the rent if she had sex with him. She refused and continued to rent the apartment.
>
> #41 The woman was twenty-seven and worked part-time as a housekeeper. She moved into an apartment with her fiancée after spending

three months in a domestic violence shelter. The woman's landlord requested that she have sex with him and watch him masturbate to help pay the rent. He threatened to evict her if she refused. She never complied with his demands, however, on more than one occasion she woke up at night to find him in her house (sometimes her bedroom) masturbating. The woman eventually moved out and went to live with her sister.

#75 The woman was twenty-three and employed part-time as a hotel housekeeper. Her landlord would ask for sex in lieu of rent. He made these requests of her roommate, too. He would come into their house uninvited, and he prohibited them from having male visitors. She called the police to make a report about the landlord's repeated unauthorized entry into her apartment. An officer came by to take her statement but did nothing further. The woman eventually moved out and went to live with her mother.

#93 The woman was twenty-four, married with three children, and she worked as a hotel housekeeper until she lost her job. Her husband also lost his job, and both were struggling with drug addiction. The landlord said he would reduce the rent if the woman had sex with him. The landlord watched her unit, made unannounced visits, and came into her apartment when she was not home and removed items from her underwear drawer. The woman refused the offers of sex for rent, and eventually, she and her family moved out and into a hotel.

#95 The woman was thirty-five years old, unemployed, and receiving SSDI payments. She also had a Section 8 Voucher. She was looking at an apartment with her ten-year-old daughter when the landlord made sexual comments and talked about how "sexy" he thought both of them were. He tried to grope the daughter and make the woman sit on his lap, but the woman pushed him away, and the two ran out. She did not rent the apartment.

#99 The woman was thirty years old and a single mother of four who worked as a school bus driver. She had been living in a homeless shelter until she received a Section 8 Voucher. Her new landlord frequently directed sexual comments towards her and asked to watch her engage in "girl on girl" sexual activity with another tenant. She said no, the landlord eventually stopped making advances, and she continued living in the apartment.

2. Characteristics of the Women

The women who reported experiencing harassment by their landlords were disproportionately likely to be racial minorities. Nine of the ten women identified as black or multiracial, and one identified as white; thus, 90% of the women with positive responses were members of a minority group. This is

consistent with the previous studies and cases, discussed below, which indicate that housing harassment victims are disproportionately likely to be minorities.[122] It is important to note, however, that the racial composition of the Pilot Study participants was skewed: eighty-four percent (84%) of the survey participants identified as black or multiracial, 15% as white, and none as any other racial or ethnic group. This is not consistent with statistics regarding the population of poor, housing-insecure women as a whole. While African Americans are disproportionately likely to be poor, whites make up a majority of the poor in the United States in absolute numbers.[123]

The Pilot Study identified another factor that was not addressed by any of the previous studies – the age of the women at the time they experienced the harassment. Most of the women were young. The median age at the time of the harassment was 25.5, and the average age was 27.6. The average was skewed by an outlier (#20) who was forty-eight at the time she was harassed; if she is removed, the average age drops to 22.8. Three of the women were twenty-one or younger when they experienced the harassment.

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

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

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122. *See* discussion *infra* at Section III.A.1.a.

123. In 2014 there were roughly 46,657,000 Americans living below the poverty line, including 31,089,000 (66%) whites and 10,755,000 (23%) African Americans. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2014 13 tbl.3 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf. At this time, whites made up 61.8% of the population, while African Americans made up 26.2% of the population. *Id.* African Americans are the majority racial group to receive the HUD benefits with an average participation rate of 41.6%, while whites participate at 17.26%. *See* SHELLEY K. IRVING & TRACY A. LOVELESS, U.S. CENSUS BUREAU, DYNAMICS OF ECONOMIC WELL-BEING: PARTICIPATION IN GOVERNMENT PROGRAMS, 2009-2012: WHO GETS ASSISTANCE? 16 tbl.1 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.

The fact only three of the ten were receiving Section 8 Vouchers at the time of their harassment might seem surprising considering all of the interview subjects were receiving housing assistance at the time of the interview – either using Section 8 Vouchers or living in public housing.[124] The fact that so few were receiving assistance at the time of their harassment, however, is consistent with the rates at which low-income women in general receive housing assistance. Due to resource limitations, only one in four low-income people who qualify for rental assistance (in the form of Section 8 Vouchers or public housing) actually receive it[125] – a ratio that roughly corresponds with that in the group of ten. These Pilot Study findings run contrary to assumptions made by other commentators about the population of women at risk for sexual harassment in housing. Many scholars assert – without evidence – that women are more likely to be harassed if they use vouchers or live in public housing.[126] In reality, it appears that receiving housing subsidies makes a poor woman no more likely to be harassed and, as discussed below, may improve her outcomes if she is harassed.[127]

3. Perpetrator and Housing Characteristics

The perpetrators of the harassment were much different, demographically, than the women who were targeted. They were more evenly distributed by race – with five who appeared white and five who appeared black.[128] Perhaps the most dramatic difference was age. The perpetrators were almost all

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

125. WILL FISCHER & BARBARA SARD, CTR. ON BUDGET & POL'Y PRIORITIES, CHART BOOK: FEDERAL HOUSING SPENDING IS POORLY MATCHED TO NEED 10 (2017), https://www.cbpp.org/sites/default/files/atoms/files/12-18-13hous.pdf.

126. *See, e.g.*, George, *supra* note 4, at 647 ("[T]he tenants who are most at risk of being harassed by their landlords are low-income women of color who depend on government assistance for the continuity of their housing situation."); Jill Maxwell, *Sexual Harassment at Home: Altering the Terms, Conditions and Privileges of Rental Housing for Section 8 Recipients*, 21 WIS. WOMEN'S L.J. 223, 230 (2006) (quoting Reed, *supra* note 4, at 458) ("[A] woman's Section 8 status indicates economic vulnerability and 'may act as a "green light" to perpetrators' who target the most vulnerable segments of the population."); Reed, *supra* note 4, at 446 ("Women receiving HUD subsidies are particularly vulnerable[.]").

127. *See infra* Section III.A.1.a. It is true that a landlord may try to use the fact that a woman is using a Section 8 voucher as leverage in his attempts to extort sex from her. *See, e.g.*, Jessica Lussenhop, *A Woman's Choice – Sexual Favors or Lose Her Home*, BBC NEWS (Jan. 11, 2018), https://www.bbc.com/news/world-us-canada-42404270. There is often a long waiting list for vouchers and it stands to reason that recipients would be fearful of jeopardizing their voucher status. *See id.*

128. These were based on the characterization of the landlord's race by the women, who were asked to state what race the person appeared to be.

between the ages of forty and seventy, with an average estimated age of fifty.[129] In all but one case there was at least a ten-year age difference between the woman and perpetrator.

As noted above, all of the cases involved private rental housing; none of the women were living in public housing, project-based Section 8 housing, or group setting housing, such as a shelter, at the time they experienced the harassment. These findings are also consistent with the results of Professor Tester's study; most of the reported complaints he found were in private rentals, although he could not determine whether the rentals were participating in the Section 8 Voucher Program.[130]

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

4. Responses and Consequences

Only one woman (#75) attempted to report her situation to someone in a position of authority. After her landlord repeatedly asked her for sex in lieu of rent and came into her apartment uninvited, she called the police. The police came to her apartment and interviewed her, but no further action was pursued. The remaining women did not report the inappropriate behavior to anyone. This is consistent with research findings about sexual harassment in other contexts, such as the workplace and academia. In the Pilot Study, the most common reasons given for failure to report were that the woman did not know where, or to whom, to make a report (five women); did not want to jeopardize her housing situation (four women); or did not want to involve others in the situation (three women).[131]

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

III. ANALYSIS AND IMPLICATIONS

The findings, although based on a small number, reveal some important insights about sexual harassment in housing. In particular, virtually all of the women reported being asked by their landlords to exchange rent for sex. This

129. These were necessarily based on estimates from the women, who in most cases did not know the exact age of the perpetrator.

130. Tester, *supra* note 83, at 355.

131. These numbers add up to more than ten because some women listed more than one reason for not reporting the conduct.

took place against a backdrop in which several of the women were having difficulty paying their rent; thus, an eviction for cause was a credible threat. Whether or not a woman was able to rebuff the landlord's advances and also remain in her housing appeared to come down to whether she had assistance – usually through a HUD voucher – to pay her rent.

It also became clear that the most likely culprits, by far, are landlords who own and operate their properties themselves without the sort of oversight one might find in a large rental management company or more institutionalized setting.

A. An Analysis of the Findings

1. The Conduct

Eight of the ten cases involved explicit requests or demands by their landlords to trade sex for rent (#20, #21, #29, #37, #41, #75, and #93). A ninth woman (#99) described being subjected to repeated sexual comments and requests by her landlord, although she was never specifically propositioned to trade sex for rent. Five women described landlord behaviors that also fall into the hostile environment category and are likely criminal in nature, including: home invasion (#29, #41, #75, and #93), indecent exposure (#41), and sexual battery of a child (#95).

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

All ten women identified in the Pilot Study were subjected to sexual overtures by their landlords. Most landlords were explicit about trading rent for sex, and some made aggressive or repeated advances. All of the women rejected these overtures. None of them reported any direct, tangible negative actions taken by the landlords because of their refusals. Put another way, in no case did a landlord evict or fail to rent to a woman because she refused his advances.

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

The fact that the landlords never took negative action is important for several reasons. Because the landlords took no tangible, negative action against the women, their cases would be classified, per *Ellereth*, as alleging hostile environment harassment.[132] Thus, the legal question for a court analyzing the issue would be whether the described behavior rises to the level of severe or pervasive conduct. This showing should easily be met by the women

132. *See supra* Section I.A.1.b.

who also alleged serious and/or criminal behavior such as indecent exposure, home invasion, and sexual battery. For half of the women, however, the sexual requests were the only form of harassment they experienced.

Ellereth left open the question of whether unfulfilled sexual requests, standing alone, could be severe or pervasive enough to constitute hostile environment sexual harassment in the workplace.[133] Case law suggests that courts do not always view requests for sex in the employment context as constituting sexual harassment.[134] Voluntary romantic relationships in the workplace are relatively common, which is not surprising given the amount of time people typically spend at work and the fact that we often work with others with similar backgrounds and interests.[135] One study reported that 71% of respondents in the combined samples of prior studies had observed at least one romantic relationship at work, and 31% of respondents reported having been involved in a romantic relationship with someone at work.[136] Courts recognize that sexual advances can be a serious problem in the workplace, particularly when there is a power imbalance between the parties that might lead to a real or perceived threat of negative consequences.[137] The prevalence of voluntary romantic relationships in the workplace, however, means that judges might be hesitant to treat each romantic or sexual overture in the workplace as the basis for a sexual harassment claim.[138]

The situation in housing is much different. There is no corresponding societal norm about romantic relationships between landlords and their tenants. While coworkers may spend significant time together, landlords and tenants

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133. *See supra* text accompanying note 26.

134. *See e.g.*, Arthur F. Silbergeld & Stephanie Joiner, *Comments That Create Hostile Environment May Be Unlawful Discrimination*, 25 EMP. REL. TODAY 113, 114–16 (1999). This is likely to change in the wake of the #metoo movement, which has already prompted many high-profile employers to reconsider their policies and practices. *See, e.g.*, Rafia Zakaria, *The Legal System Needs to Catch Up With the #MeToo Movement*, THE NATION (Apr. 18, 2018), https://www.thenation.com/article/the-legal-system-needs-to-catch-up-with-the-metoo-movement/; Samantha Bomkamp, *#MeToo In 2018: Will the Movement Create Real Change in the Workplace?*, CHI. TRIB. (Dec. 27, 2017), http://www.chicagotribune.com/business/ct-biz-metoo-sexual-harassment-future-20171214-story.html.

135. GARY N. POWELL, WOMEN AND MEN IN MANAGEMENT 151 –80 (2d ed. 1997); Gary N. Powell & Sharon Foley, *Something to Talk About: Romantic Relationships in Organizational Settings*, 24 J. MGMT. 421 (1998).

136. J.P. Dillard & K.I. Miller, *Intimate Relationships in Task Environments*, Handbook of Personal Relationships 449–65 (S.W. Duck ed. 1988). More recent articles describe the phenomenon as pervasive throughout organizations. *See, e.g.*, Charles A. Pierce & Herman Agunis, *Bridging the Gap Between Romantic Relationships and Sexual Harassment in Organizations*, 18 J. ORGANIZATIONAL BEHAV. 197 (1997).

137. *See supra* Section I.A.1.a.

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

typically have little interaction beyond the payment of rent. While coworkers may have common characteristics – similar ages, backgrounds, and socioeconomic status – poor women often have little in common with their landlords. Moreover, the Pilot Study makes clear that what was contemplated by the landlords was not a "romantic relationship" in any sense but a surprisingly straightforward commercial transaction – bartering sex for housing. Nonetheless, decades of employment precedents may lead courts in housing harassment cases to take requests for sex less seriously and be less willing to find that they constitute severe or pervasive conduct.

The data also reveal another difference between the workplace and housing settings. Harassment in the workplace is unlikely to involve explicit requests for sex and is more likely to involve degrading sexual comments and gender-based hostility.[139] To the contrary, almost every case of harassment in the Pilot Study involved explicit sex-for-rent requests. In workplace cases, some legal theorists have framed the problem as one in which men use harassment to deny women access to the benefits of a male-dominated workplace or to punish them for encroaching on it. For example, in her influential article, Vicki Schultz argues that

> men's desire to exploit or dominate women sexually may not be the exclusive, or even the primary, motivation for harassing women at work. Instead, a drive to maintain the most highly rewarded forms of work as domains of masculine competence underlies many, if not most, forms of sex-based harassment on the job. Harassment has the form and function of denigrating women's competence for the purpose of keeping them away from male-dominated jobs or incorporating them as inferior, less capable workers.[140]

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

> A neighbor who burns a cross in the lone African [] American family's yard is presumably intending to force that family out of its home. The same result is likely intended when insults and religious epithets are scrawled outside a Jewish family's house. But the landlord who sexually harasses his tenant is not intending to drive her out; instead, he is

139. *See supra* text accompanying notes 105–07.

140. Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1755 (1998).

> attempting to draw her in . . . to satisfy his own desire to control and exploit.[141]

The recent wave of high-profile harassment allegations against influential men suggests that there are plenty of workplace situations in which men use their positions of power to take advantage of women (and, in some cases, men) who are subordinate to them. Scholars may need to rethink the binary distinction between "exclusion harassment" and "exploitation harassment" in the employment setting.[142] In any event, it seems clear that harassment in housing cases only involve this latter sort, and the vulnerability of the women at issue is far more profound.

Indeed, all of the women in the Pilot Study were in tenuous financial positions at the time they were harassed. Although they were all low-income, only one of the ten was receiving Food Stamps and none were receiving Temporary Aid for Needy Families ("TANF") benefits. Four women had help paying their rent. Three had a portion of their rent paid through the Section 8 Voucher Program. Two of those three were also working, and the third received SSDI payments. The fourth was a college student who was receiving student loans and help from family. The remaining six women had no rental assistance, from neither government nor family, at the time they were harassed. Two were unemployed and had no source of income; one received SSDI payments; three were working.

All of the women who worked had low-wage and/or part-time jobs that were not sufficient to pay for market rate housing on the private rental market. For example, in Columbia, Missouri, a person earning minimum wage would have to work seventy-six hours per week, fifty-two weeks per year, to afford the rent on a two-bedroom apartment.[143] In fact, as the National Low-Income Housing Coalition has exhaustively documented, there is no place in the United States where a low-wage employee, working full-time, can rent a two-bedroom apartment without spending more than 30% of her income on rent.[144]

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141. Aric K. Short, *Slaves for Rent: Sexual Harassment in Housing as Involuntary Servitude*, 86 NEB. L. REV. 838, 841–42 (2008).

142. *See* Doug Criss, *The (Incomplete) List of Powerful Men Accused of Sexual Harassment After Harvey Weinstein*, CNN, https://www.cnn.com/2017/10/25/us/list-of-accused-after-weinstein-scandal-trnd/index.html (last updated Nov. 1, 2017, 2:05 PM) (discussing the sexual harassment allegations brought against Harvey Weinstein, Kevin Spacey, James Toback, Ben Affleck, George H.W. Bush, Chris Savino, Roy Price, John Besh, Mark Halperin, Michael Oreskes, and Lockhart Steele).

143. *See* NAT'L LOW-INCOME HOUS. COAL, OUT OF REACH 2017: THE HIGH COST OF HOUSING 139 (2017) [hereinafter *Out of Reach 2017 Report*], http://nlihc.org/sites/default/files/oor/OOR_2017.pdf. The minimum wage in Missouri in 2018 was $7.85. *Minimum Wage*, MO. DEP'T OF LABOR, https://labor.mo.gov/DLS/MinimumWage (last visited Sept. 3, 2018). In St. Louis in 2018, a person would have to work eighty-eight hours per week to afford a two-bedroom apartment, and in Chicago that number is eighty-six hours per week. *See id.* at 73, 139, 269.

144. *Out of Reach 2017 Report*, *supra* note 143, at 13.

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

Five of the six women who had no assistance (#20, #29, #41, #75, and #93) moved out of their apartments after the harassment. The sixth, #39, never rented the apartment because the harassment occurred while she was viewing the unit. The circumstances described in the interviews make clear that all were having difficulty making their rent payments. After declining the "option" of sex in lieu of rent, all five moved out, each to a less desirable housing situation.[145] So, while it is accurate to say that the landlords did not directly evict these women for their refusals, it is also misleading to conclude that their refusals had no effect on their housing status. Although the landlords would have had legitimate grounds for eviction due to failure to pay rent, if the women had acceded to the landlord's requests, then they presumably would have been able to remain in their homes.

Now, consider the women who were receiving vouchers or other assistance when they were propositioned. The two women who were renting with Section 8 Vouchers[146] (#39 and #99) and the woman who was renting with student loans and family support (#21) also declined sexual requests from their landlords but did not move out of their housing. None of them indicated having difficulty paying the rent. If this was the case, then their landlords lacked legitimate grounds to evict them.

Thus, it seems likely that the women who had resources to help them pay rent were able to turn down their landlords' requests without it affecting their housing situation. The women who did not have such resources faced a much harder choice because, for them, saying "no" meant having to move or be evicted.

This raises the question of whether it is logical to look at these situations through the United States Supreme Court's employment-centric sexual harassment framework, which usually requires that plaintiffs meet basic levels of qualifications to state a claim. Indeed, the classic *McDonnell-Douglas* burden-shifting analysis[147] includes a requirement that the plaintiff be otherwise qual-

145. All five women had to either move in with family, "crash" on friends' couches, or stay in a hotel.

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

147. In *McDonnell Douglas Corp. v. Green*, the United States Supreme Court set forth the analytical framework for employment discrimination cases. 411 U.S. 792 (1973). Plaintiffs would need to establish a prima facie case (1) that they were members of a protected class; (2) "that [they] applied and [were] qualified for a job for which the employer was seeking applicants; [(3)] that, despite [their] qualifications, [they were]

ified for the position in order to state a prima facie cause of action for discrimination.[148] Sexual harassment claims are, in theory, different. In a quid pro quo case, the employee should only have to prove that the negative tangible action was taken against her because she rejected her supervisor's advances.[149] However, this proof problem may be much more difficult if she was already performing deficiently. For example, in *Dockter v. Rudolf Wolff Futures, Inc.*,[150] the court confronted a situation in which a manager at a brokerage firm hired as his assistant a woman who worked as a bartender at a bar he frequented, apparently because he hoped to pursue a sexual relationship with her.[151] She was unqualified for her position and was quickly terminated.[152] The court had no difficulty in determining that the plaintiff's firing was justified under the *McDonnell-Douglas* test due to her lack of qualifications.[153]

In a hostile environment case, the court need not use the *McDonnell-Douglas* test at all because the central issue is not why the plaintiff suffered a negative job action but whether the plaintiff was subjected to unwelcome severe or pervasive sexual conduct because of her sex.[154] In theory, her performance as an employee should have little bearing on her ability to state a claim. But an unqualified employee who is perceived to have obtained or remained in her job because a superior is hoping to have sex with her may have difficulty eliciting the sympathy of the court – particularly if it appears that she was aware of her lack of qualifications. For example, the *Dockter* court found the plaintiff's claims of hostile environment harassment – including that her supervisor patted her, kissed her, and fondled her breasts without her consent – did not rise to the level of severe or pervasive treatment.[155] The court appeared to have been operating under the assumption that the plaintiff was complicit in taking a job she was unqualified for and that it was therefore understandable for her supervisor to assume that she was available for sexual activity.

The *Dockter* plaintiff is probably an outlier in the employment context. We can assume that unqualified women are not commonly hired in American workplaces just so they can be treated as sexual objects. However, many – if not most – poor women who are not receiving rental assistance are in that situation when it comes to housing. No one who is unemployed, on disability, or

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rejected]; and [(4)] that, after [their] rejection, the position remained open and the employer continued to seek applicants from persons of [their] characteristics. *Id.* at 802.

148. *Id.* (step two of plaintiff's prima facie case requirements is that he "was qualified for [the] job").

149. *See, e.g.*, Meritor Savings Bank v. Vinson, 477 U.S. 57, 67 (1986).

150. 684 F. Supp. 532 (N.D. Ill. 1988).

151. *Id.* at 534.

152. *Id.*

153. *Id.* at 535.

154. *See Meritor*, 477 U.S. at 67.

155. *Dockter*, 684 F. Supp. at 535.

working in a low-wage and/or part-time job can consistently afford to pay market rate rent without a housing subsidy or some other form of assistance.[156] This group will never be "qualified" in the manner contemplated by the employment cases, and without access to affordable housing, they will always be in need of a break. Too often, this "break" comes in the form of an exploitative offer from the landlord to trade sex for rent. Unfortunately, this may be viewed by a court – or a jury – less as a hostile gesture by the landlord and more akin to a business proposal in which the woman is complicit in keeping open the possibility of gaining something of value that she could otherwise not afford. Another way to describe such a situation is that it amounts to solicitation of prostitution.[157] This is not to say that the victims are prostitutes but rather that the landlords clearly view them as needy enough to consider using sex as currency.

The women in the Pilot Study have much in common with the subjects featured in Matthew Desmond's powerful ethnography, *Evicted: Poverty and Profit in the American City*, which chronicles the inability of poor families to maintain stable housing and the terrible toll that the cycle of eviction and forced moves takes on their relationships, children, employment prospects, and mental health.[158] Desmond observes that many landlords rent to low-income populations knowing full-well that their tenants will never be able to stay current on rent.[159] While the landlords may view themselves as providing a necessary service (or even being charitable), in reality, many of these landlords have devised ways to profit from the situation – for example, by charging the tenants

156. *NLIHC Releases Out of Reach 2017: National Housing Wage is $21.21 Per Hour*, NAT'L LOW-INCOME HOUSING COALITION (June 12, 2017), http://nlihc.org/article/nlihc-releases-out-reach-2017-national-housing-wage-2121-hour. According to the National Low-Income Housing Coalition, "[I]n no state, metropolitan area, or county can a full-time minimum-wage worker afford a modest two-bedroom rental home." *Id.* "Afford" in this context means spending no more than 30% of one's gross income on housing. *Id.* at 13. Exceeding this spending amount causes a household to become cost-burdened by rent, meaning that they will not have enough money for other necessities like food, transportation, and medical treatment. *Affordable Housing*, U.S. DEP'T OF HOUSING & URBAN DEV., https://www.hud.gov/program_offices/comm_planning/affordablehousing (last visited Sept. 3, 2018). Families that spend more than 30% of their income on housing are considered severely cost-burdened. *Id*. More than 73% of severely burdened renter households spend more than 50% of their gross income on housing. *NLICH Releases Out of Reach 2017: National Housing Wage is $21.21 Per Hour*, *supra*.

157. *See, e.g.*, Catharine MacKinnon, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION 53 (1979) ("[G]reat many instances of sexual harassment in essence amount to solicitation for prostitution.").

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

159. *See id.* at 306 ("We have overlooked a fact that landlords never have: there is a lot of money to be made off the poor.").

high rent, keeping their security deposits, making no improvements or repairs to the properties, taking tenants to court and collecting fees, and flipping the properties frequently as poor families cycle in and out.[160] "Exploitation," Desmond observes, "thrives when it comes to the essentials, like housing[.]"[161] While the exploitation that Desmond chronicles is economic,[162] the Pilot Study makes clear that there is a significant subset of landlords who seek to exploit this population of renters sexually as well.

b. Other Conduct

Five of the women described additional harassing conduct, including home invasion (#29, #41, #75, and #93), indecent exposure (#41), and unwanted touching (#29 and #95, the latter involving the woman's ten-year old daughter). Much of this behavior is likely criminal in nature, which makes it different, in kind and in degree, from most workplace harassment, which is more likely to involve sexual comments and degrading behavior.[163] The home invasions are particularly disturbing. One woman (#29) came out of the shower to find the landlord inside her apartment multiple times. Another (#41) woke up at night to find her landlord in her apartment masturbating. Even apart from these dramatic episodes, simply having a landlord who would let himself into their apartments without warning was extremely unsettling to these women. This was particularly disturbing because these women had been sexually propositioned by these same landlords. This combination – unauthorized entry coupled with sexual propositions – was terrifying to all of the women who experienced it.

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

2. Lack of Oversight

All of the harassment took place within private rentals, not in public housing, homeless shelters, or other institutionalized settings. Three of the ten women were using Section 8 Vouchers to help pay for rent at the time they

160. *Id.* at 305–08. Desmond rightly refers to low-income housing as "an extractive market." *Id.* at 305.

161. *Id.* at 306.

162. It is noteworthy that none of the subjects in Desmond's study had experienced sexual harassment by their landlords. *See generally id.* This may be because one of the main landlords who he followed was female. *Id.* It may be that landlords refrained from making such propositions because he was there observing them.

163. *See supra* notes 105–07 and accompanying text.

were harassed, so there was at least a Housing Authority involved in overseeing the rental. In the remaining seven cases there was no governmental, administrative, or charitable entity involved in the rental relationship.

It appears that the perpetrators are likely to be independent owner-operators – that is, landlords who both own and manage the properties themselves without using a rental manager or management company. All ten of the women reported that this was the case. This is also consistent with Professor Tester's study, which observed that most of the offenders were landlords who both owned and managed their properties themselves.[164]

This makes sense if we assume that a larger, more formal management apparatus – of the sort that one would find either with public housing or with a private rental management company – is more likely to contain some oversight and accountability mechanisms. The tenants might have multiple points of contact with different employees, the employees would have supervisors, and decision-making power about various aspects of the tenancy (rent payments, repairs, lease status, etc.) would be less likely to rest with a single person. In the owner-operator scenario, particularly where the tenant is not using a Section 8 Voucher, no mechanisms are in place.

This is not to suggest that harassment does not occur in public housing or other institutional settings – anecdotal evidence and case law show us that it does.[165] The same goes for harassment committed by employees of rental management companies.[166] But on the whole it seems that sexual harassment in housing is most likely to occur in a specific setting – private rentals – and that it is carried out by a specific type of perpetrator – a man who both owns and manages his properties and who is operating without oversight or accountability.

3. Lack of Response

It is striking that essentially nothing happened to the landlords who committed the harassment. The only woman to make any sort of complaint called the police – who did not act. This is not surprising. Police are trained to investigate criminal activity. They may well view a complaint from a woman about her landlord as a landlord-tenant dispute and not a law-enforcement matter. Police officers may view the property as belonging to the landlord and therefore may be less willing to take complaints of home invasion by landlords

164. Tester, *supra* note 83, at 355.

165. *See, e.g.*, Banks v. Hous. Auth. of Bossier City, No. 11–0551, 2011 WL 4591899, at *1 (W.D. La. Sept. 30, 2011) (female public housing tenant alleged sexual harassment by maintenance technician); Woods v. Foster, 884 F. Supp. 1169, 1171 (N.D. Ill. 1995) (female residents of homeless shelter sexually harassed by shelter directors).

166. *See, e.g.*, West v. DJ Mortg., LLC, 164 F. Supp. 3d 1393, 1395–96 (N.D. Ga. 2016) (female tenant alleged harassment by landlord's property manager).

seriously.[167] This effect may be magnified by the fact that the complainants are likely to be young, low-income women of color. Unless police are specifically trained on this issue, they may not be equipped to take appropriate action.

Fair housing organizations and lawyers who specialize in fair housing have the expertise to handle complaints of this nature.[168] The HUD also processes sexual harassment in housing complaints, as do state civil rights agencies.[169] None of the women interviewed were aware of these resources.

Even if they had been aware of available complaint mechanisms, it is unlikely that the women in the Pilot Study would have used them. Of the nine women who made no formal complaint, all stated that one reason was their reluctance to jeopardize their housing situation. This was likely a valid concern. As discussed previously, the women who were not receiving rental assistance were having difficulty paying their rent. Their landlords may have had legitimate reasons to evict them but may have held off in an effort to extort sex. A complaint from a fair housing center or a HUD investigation could have potentially triggered an eviction. Women with Section 8 Vouchers might not have felt the same danger of eviction but were still likely concerned about jeopardizing their vouchers.

If a landlord evicts a woman because she filed a fair housing complaint against him, it can constitute a separate violation of the FHA's anti-retaliation provision.[170] If the record contains legitimate reasons for an eviction, it creates a question of causation for the fact-finder, who will decide the true reason for the eviction. Unfortunately, this may come too late for the woman if she has already been evicted.

A private lawyer might file for a temporary restraining order to prevent a complainant from being evicted while her claim is pending. Similarly, it is possible for the HUD to authorize the attorney general to go to court to seek temporary or preliminary relief, which is referred to in the FHA's regulations

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167. Much of the law review literature about police involvement with landlords and tenants involves the situation in which police are summoned to help evict a tenant. An admittedly nonscientific review of law enforcement policy materials posted on-line conducted by the author reveals much the same focus. A welcome exception is that of the Elk Grove, CA Police Department, which outlines the circumstances under which a landlord's entry into a tenant's unit constitutes unlawful trespass. *See Landlord/Tenant Issues*, ELK GROVE POLICE DEP'T, http://www.elkgrovepd.org/community/crime_prevention/crime_prevention_tips/landlord_tenant_issues/ (last visited Sept. 3, 2018).

168. *See* Clifford C. Schrupp & Michael Olshan, *An Assessment of How Local, Private, Non-Profit, Fair Housing Organizations and Private Attorneys Can Successfully Cooperate for the Enforcement of Fair Housing Laws*, 51 WAYNE L. REV. 1541, 1550–51 (2005).

169. *See* 42 U.S.C. § 3604 (2012); MO. REV. STAT. § 213.040.1(2) (2016).

170. 42 U.S.C. § 3617 (2012) ("It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected.").

as "prompt judicial action."[171] However if the complainant is in arrears, the court may be unwilling to grant such a remedy. Moreover, a woman's difficulty paying rent may provide fodder for a landlord to argue that she is fabricating her complaints to avoid paying.

B. Ramifications for Law and Policy

These findings have significant ramifications for law and policy. The numbers alone should give policy-makers pause. Census figures showed nearly twenty-six million women living in poverty in 2015.[172] If one in ten low-income women have experienced sexual harassment by their landlord, this means that there are likely hundreds of thousands of women who have experienced similar conduct.

1. Law

As discussed above, commentators and a few forward-thinking judges have argued that courts should take the differences in context between the housing and employment settings into consideration when determining whether behavior rises to the level of actionable harassment.[173] This housing-centered perspective will be important if courts retain their employment-centric framework for housing claims. It seems clear, however, that the harassment in housing scenario bears so little resemblance to the typical employment harassment scenario that it requires a different legal framework altogether.

Courts need to address the fact that much of sexual harassment in housing takes the form of a landlord seeking to exploit a poor woman's housing vulnerability by requesting sex in lieu of rent. While most people would recognize this as conduct that should be both punished and deterred, the current state of the law makes it difficult to accomplish these goals. A woman whose "only" harassment consists of being sexually propositioned by her landlord may understandably have little incentive to pursue a lawsuit in which her fitness as a tenant may be an issue. As one court noted, in denying a sexual harassment plaintiff's claim, the "FHA does not create a right to live in another person's house rent-free and simply attempting to evict a tenant for not paying rent does not rise to the level of an FHA violation."[174] Poor women obviously lack the resources to pay lawyers. Fee-shifting can solve this problem in many cases, but victims may not realize this is an option. Moreover, a lawyer may be less willing to take the case of a tenant who was not current on her rent. Additionally, the landlord's conduct may not be considered serious enough by a court to constitute harassment and, even if she succeeds, she may get little in the way

171. 24 C.F.R. § 103.500(a) (2016).

172. DENAVAS-WALT & PROCTOR, *supra* note 123, at 13.

173. *See* discussion *supra* Section I.A.2.b.

174. Kubiak v. Meltzer, No. 12 CV 6849, 2014 WL 258707, at *2 (N.D. Ill. Jan. 23, 2014).

of damages. Meanwhile, landlords have an almost unlimited supply of poor women who they can attempt to exploit with few repercussions.

Some commentators have argued that the solution is to escalate the legal response by treating sexual requests as a crime.[175] For example, one commentator argues that states should adopt specific statutes to criminalize such sexual extortion.[176] She asserts that

> [t]he coercion and exploitation of sexual harassment cause sufficient harm to justify criminalization. Criminal law would forcefully address this serious problem that affects large numbers of women in American society. Punishment would not only serve an educational purpose by teaching that harassment is unacceptable behavior [] but also would deter sexual harassment.[177]

While this approach is satisfying to those who want society to take a stronger stance against landlords who perpetrate this sort of harassment, criminalization has flaws that make it unworkable on its own. To begin, there is the burden of proof, which is higher in a criminal case (beyond a reasonable doubt) than in a civil case (by a preponderance of the evidence). If women struggle to succeed with their claims in the civil court system, it is difficult to imagine them faring any better in the criminal justice system. In addition, as in any criminal case, the state is the aggrieved party. Sexual harassment in housing cases may rank low on a prosecutor's priority list, and the victim may receive little immediate benefit from a prosecution.

Some commentators have proposed revisiting common law approaches. For example, in *Discrimination and Outrage: The Migration from Civil Rights to Tort Law*, Martha Chamallas makes a persuasive case for applying the common law tort framework to hostile environment claims.[178] She begins by discussing why activists originally felt the need to move employment sexual harassment cases away from the common law and into the scope of Title VII.[179] According to Professor Chamallas, too many courts failed to recognize the types of harassing conduct that women experienced in the workplace as sufficiently "extreme and outrageous" to qualify as intentional infliction of emotional distress under the Restatement of Torts.[180] Shifting these claims to a

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175. *E.g.*, Carrie N. Baker, *Sexual Extortion: Criminalizing Quid Pro Quo Sexual Harassment*, 13 LAW & INEQ. 213 (1994). In Missouri, such requests might technically be prohibited as soliciting prostitution. *See* MO. REV. STAT. 567.020.1 (2016) ("A person commits the offense of prostitution if he or she . . . offers . . . to engage in sexual conduct with another person in return for something of value."), *amended by* S.B. 793, 99th Leg. Sess., Reg. Sess. (Mo. 2018).

176. Baker, *supra* note 175, at 244–51.

177. *Id.* at 238 (footnotes omitted).

178. Martha Chamallas, *Discrimination and Outrage: The Migration from Civil Rights to Tort Law*, 48 WM. & MARY L. REV. 2115 (2007).

179. *Id.* at 2140–44.

180. *Id.* at 2127.

statutory civil rights framework allowed the law of sexual harassment to develop with an attendant shifting of norms.[181] As a result, sexualized conduct in the workplace is now viewed differently than it was in the 1960s:

> Simply put, the emergence of sexual harassment law [under Title VII] has challenged the belief that there is no harm in asking. The entire body of sexual harassment law is premised on the view that solicitations for sex and other sexualized conduct in the workplace can produce harm, most notably in instances when they are backed by economic coercion or pressure or serve to reinforce the subordinate status of a group of workers.[182]

Professor Chamallas argues that the law of torts is under developed and civil rights doctrines have become increasingly convoluted.[183] It is therefore time to "migrate" civil rights principles back into torts. While this discussion – and the commentary on the most recent draft of the Third Restatement of Torts – is focused on the workplace context, there is no reason why the migration theory cannot be applied to the housing context. Professor Chamallas explains that the "migration process" involves asking courts to selectively borrow concepts from the civil rights cases and apply them in tort cases.[184] For example, the fact that conduct has been found to constitute sexual harassment in violation of Title VII can be used to support the contention that it is outrageous enough to satisfy the requirements for intentional infliction of emotional distress. This may be workable in the field of sexual harassment in employment because of the large body of existing caselaw. Applying it to the relatively sparse field of sexual harassment in housing, however, risks reinforcing the same problem that has always dogged housing cases – courts improperly relying on employment cases and failing to consider the unique context of housing.

Other commentators have avoided this pitfall by looking to the common law of contracts and property. One, for example, suggests that women who have been harassed might pursue an action for breach of quiet enjoyment.[185] Another argues in favor of an implied warranty of habitability that includes an implied warranty of freedom from sexual harassment.[186] Both of these approaches have drawbacks. A breach of quiet enjoyment typically requires a finding of actual or constructive eviction, which is likely to be found only in

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181. *See id.* at 2168–80.

182. *Id.* at 2172.

183. *Id.* at 2124–27, 2176–77.

184. *Id.* at 2180–83.

185. Deborah Dubroff, *Sexual Harassment, Fair Housing, and Remedies: Expanding Statutory Remedies into a Common Law Framework*, 19 T. JEFFERSON L. REV. 215, 232–39 (1997).

186. Theresa Keeley, *An Implied Warranty of Freedom from Sexual Harassment: The Solution for Harassed Tenants Where the Fair Housing Act Has Failed*, 38 U. MICH. J.L. REFORM 397, 424–435 (2005).

the more serious harassment cases.[187] Similarly, an implied warranty of habitability will only be breached if the conduct renders the dwelling unfit for occupancy.[188] In both of these situations, any conduct that rises to such a level will almost certainly satisfy the severe or pervasive requirement of the FHA. Finally, the remedies under these approaches are lacking. Both would likely require the landlord to compensate the victim only for any rent she paid during the time that the implied warranty or covenant was breached.[189] If the woman remained in the housing for any length of time, this would undercut her argument that the landlord's conduct effectively made the dwelling uninhabitable or constituted a constructive eviction. If the woman was already having a hard time paying the rent, she may not have paid much to begin with and may have little to recover as damages.

Thus, while the existing employment-centric framework is complex and ill-fitting, many of the solutions proposed by commentators – shifting harassment into the criminal, basic tort, or property law frameworks – also have drawbacks. The fact remains that the law of sexual harassment in housing is inadequate to address the problem as it exists according to the Pilot Study. It is difficult to imagine our legal system tolerating any other setting in which purveyors of a commercial good or service – medical care or food, for example – routinely try to barter for sex. Yet this is the reality for a significant number of poor women when they attempt to rent apartments.

Perhaps the best solution is a simple one: courts hearing cases in which a landlord has propositioned his tenants to exchange sex for rent should jettison the "severe or pervasive" requirement that the United States Supreme Court developed for hostile work environment cases. The Court has never declared that this standard must be met in cases of sexual harassment in housing; the lower courts decided to adopt it and they could presumably change it. Sexual propositions by a landlord should be considered a presumptive violation of the FHA either as a per se discriminatory term and condition of tenancy in violation of 42 U.S.C. § 3604(b) or as a statement that indicates discrimination in violation of 42 U.S.C. § 3604(c).[190] Either violation should automatically entitle the plaintiff to punitive damages.

There are a number of advantages to this approach. It provides victims with a straightforward mechanism for obtaining relief for a wrong done to them. And, most importantly, it allows society to punish and deter conduct that all agree is wrong.

This framework is not perfect. Some amount of false reporting could result because the possibility of monetary compensation might lead some women to make spurious claims, although there is no reason to think this would be more prevalent than for any other type of tort. The woman would still need to

187. Dubroff, *supra* note 185, at 236–37.
188. Keeley, *supra* note 186, at 426.
189. *See id.* at 424, 426–27; Dubroff, *supra* note 185, at 242–43.
190. *See* Schwemm & Oliveri, *supra* note 35.

prove that the landlord made the proposition, which should weed out unwarranted claims. A more serious problem with this approach is that the threat of such penalties may dissuade law-abiding landlords from renting to low-income women, which would further exacerbate the affordable housing crisis and harm the very people it is meant to help.

2. Policy

Even major legal reforms are unlikely to make a difference without significant changes in policy both with respect to oversight of the landlord-tenant relationship and the provision of affordable housing more generally.

a. The Need for More Oversight of the Rental Relationship and More Tenant Resources

The FHA and its state law equivalents prohibit discrimination in housing, including harassment in housing,[191] but the HUD and the state civil rights agencies that enforce these laws operate on a complaint-driven model and do not affirmatively regulate private rental housing.[192] In many jurisdictions there is little oversight of the landlord-tenant relationship. Regulation of rental housing is conducted by local zoning authorities and typically focuses on the physical condition of the properties. Landlord-tenant laws vary from state to state. They usually focus heavily on the particulars of rent and security deposit collection, duties to repair, and eviction procedures.[193] They are almost always enforced through litigation (which is typically initiated by landlords against tenants).

Individual owner-operators of private rental housing, who are the most likely perpetrators of sexual harassment in housing, therefore exist in a legal and regulatory gray zone. Unfortunately, the women most vulnerable to housing harassment – young, low-income, minority women who are not receiving housing subsidies – are also among the hardest individuals to reach. These women are among the most marginalized in society and have few social, economic, or institutional supports. Serving this population remains one of the biggest challenges for social service providers.

For women who are receiving housing assistance, there are obvious agencies that could provide oversight of landlords and offer resources to tenants who are harassed: the Housing Authorities that implement the Section 8 Voucher Program. Unfortunately, while some Housing Authorities may have effective methods for receiving and acting on complaints, others may be unresponsive to, or even perpetrators of, such harassment.[194] As one commentator

191. *E.g.*, 42 U.S.C. § 3604(b) (2012); MO. REV. STAT. § 213.040.1(2) (2016).

192. Olatunde Johnson, *The Last Plank: Rethinking Public and Private Power to Advance Fair Housing*, 13 U. PA. J. CONST. L. 1191, 1195 (2011).

193. *See, e.g.*, MO. REV. STAT. ch, 535 (2016).

194. *See* Lussenhop, *supra* note 127 (discussing allegations against men running a housing agency).

argues, Housing Authorities should develop standard procedures for training landlords about their obligations under the FHA; educating tenants about sexual harassment; and providing effective methods to receive, investigate, and act on tenants complaints of harassment.[195] The HUD can and should monitor how the Housing Authorities perform on this basis through its Section 8 Management Assessment Program ("SEMAP").[196]

These sensible measures, however, will only reach the 25% of poor women who receive housing assistance. For the other 75%, we must consider avenues for tenant education, regulation, and oversight of the landlord-tenant relationship and complaint mechanisms that can be made available at a variety of points – particularly at the local level. As a starting point, states can require landlords to make mandatory disclosures to their tenants that clearly spell out the right to be free from sexual overtures by landlords. Local governments can conduct public awareness campaigns designed to reach the low-income population. Local code enforcement authorities can operate a hotline to receive complaints from women (which they should be informed about through mandatory disclosures and public education). This would allow them to refer the women to appropriate resources and to investigate the landlords who are the subjects of the complaints. Problem landlords could be identified and penalized just as they would for repeated citations about maintenance or habitability.

Similarly, police departments should be trained how to deal with tenants who allege criminal harassment by their landlords. Specifically, they should be trained to not automatically view such disputes as landlord-tenant problems and to take seriously allegations that the landlord is invading the woman's home.

In April 2018, the DOJ announced a nationwide initiative to combat sexual harassment in housing.[197] The initiative contains three components: (1) a joint task force between the DOJ and the HUD to coordinate and improve training, data-sharing, and outreach, (2) a toolkit for U.S. attorney's offices to use for enforcement, and (3) a public awareness campaign.[198] The federal response is heartening. Enhanced enforcement is long overdue, but it is only one piece of the puzzle. The problem of sexual harassment in housing cannot be litigated away.

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195. Maxwell, *supra* note 126, at 246–47. In addition, the HUD could implement national program changes to eliminate policies that provide opportunities for landlord harassment – for example, requirements that women who receive vouchers lease-up within a limited amount of time or risk losing their vouchers and allowing evictions by the landlord to automatically terminate Section 8 benefits without a hearing. *Id.* at 237–39.

196. *Id.* at 239.

197. Press Release, Dep't of Justice, Justice Department Announces Nationwide Initiative to Combat Sexual Harassment in Housing (Apr. 12, 2018), https://www.justice.gov/opa/pr/justice-department-announces-nationwide-initiative-combat-sexual-harassment-housing.

198. *Id.*

The measures described herein are small, and they would require the concerted actions of thousands of local governments with varying amounts of resources. Even with these changes, reporting rates might remain low, as they are for most forms of sexual victimization. Still, it is clear that something needs to be done. The approaches outlined here are an initial attempt to address the problem of sexual harassment in housing using actual data instead of assumptions and to tailor the response to the problem instead of shoehorning it into an ill-fitting pre-existing framework.

b. The Need for More Affordable Housing and Housing Assistance

Even the most robust legal interventions are unlikely to bring about significant change without addressing its root cause: the fact that so many poor women are left to their own devices to find housing in a private rental market that is spectacularly ill-suited for meeting the existing need.

There has long been a consensus among experts, advocates, and commentators that the United States is in desperate need for more affordable housing and housing assistance for low-income people.[199] We live in a nation where an individual earning minimum wage cannot afford a two-bedroom apartment[200] and where 75% of people who qualify for housing assistance do not receive it because of resource constraints.[201] Waiting lists for public housing and Section 8 Vouchers are years long in many places and are frequently closed to new applicants, so new families cannot even sign up.[202]

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199. *See, e.g.*, Justin D. Cummins, *Housing Matters: Why Our Communities Must Have Affordable Housing*, 28 WM. MITCHELL L. REV. 197, 199–200 (2001) ("Across the United States, the lack of affordable housing has reached epidemic proportions.").

200. *See supra* note 143 and accompanying text.

201. FISCHER & SARD, *supra* note 125, at 10.

202. A recent survey conducted by the National Low-Income Housing Coalition found that:

> - Fifty-three percent [53%] of HCV waiting lists were closed to new applicants for housing assistance. Sixty-five percent [65%] of [these] . . . had been closed for at least one year.
> - Eleven percent [11%] of public housing waiting lists were closed to new applicants. Thirty-seven percent [37%] of [these] . . . had been closed for at least one year.
> - The median HCV waiting list had a wait time of 1.5 years. Twenty-five percent (25%) of HCV waiting lists had a wait time of [three] years or longer.
> - The median public housing waiting list had a wait time of [nine] months. Twenty-five percent (25%) of public housing waiting lists had a wait time of 1.5 years or longer.

NAT'L LOW INCOME HOUS. COAL., HOUSING SPOTLIGHT: THE LONG WAIT FOR A HOME 3 (2016). The HUD recommends that Housing Authorities close their waiting lists once the wait for assistance is between twelve and twenty-four months. U.S. DEP'T OF HOUS. & URBAN DEV., VOUCHER PROGRAM GUIDEBOOK: HOUSING CHOICE 4-4 (2001), https://www.nhlp.org/files/greenbook4/Chap-

As the Pilot Study results indicate, women are most vulnerable to sexual harassment in housing when they have no housing subsidy or assistance to help them remain in their home. Without a subsidy, low-income women who have difficulty paying rent are easy prey for landlords who recognize the bind they are in. Perhaps the results of the Pilot Study can add fuel to the argument for increased affordable housing and housing subsidies. It is shameful that the lack of affordable housing in this country causes millions of rent-burdened families to go without food and other necessities. It is even more shameful that the lack of affordable housing in this country has created a situation that a sizable number of landlords are exploiting for sexual purposes.

C. Study Limitations and Areas for Future Research

This project was a pilot study; therefore its size and scope are not large enough to allow for broad generalization, particularly across different populations and geographic areas. Columbia, Missouri is a Midwestern college town with an exceptionally well-run Housing Authority and a relatively low cost of living.[203] This may have skewed some aspects of the survey responses, although it is difficult to know to what extent this happened. One of the flaws of the survey instrument was that it failed to ask where, geographically, the harassment occurred. During the narrative portion of the housing history, some of the interview subjects stated that they had been living elsewhere when they were harassed – usually Chicago or St. Louis – and that they had later moved to Columbia.[204] It seems likely that areas with a shortage of rental housing, particularly affordable housing, would have higher rates of sexual harassment.

In addition, the population sampled in the Pilot Study was not reflective of poor women as a whole in the United States.[205] It contained a much higher percentage of African Americans and no Latinas, Asians, or other ethnic groups when compared to the nation's demographics.[206]

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

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ter6/FN%2069%20HUD,%20Housing%20Choice%20Voucher%20Guidebook%2074 20.10G%20(Apr.%202001).pdf. Typically, families cannot even place their names on the list until it opens back up again. *See id.*

203. The median monthly gross residential rent in Columbia for the years 2012–2016 was $803. *QuickFacts: Columbia City, Missouri*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/columbiacitymissouri/PST045217 (last visited Sept. 3, 2018). In comparison, the median gross rent for the United States was $949. *Id.*

204. Indeed, a few of the subjects stated that they had moved to Columbia specifically in order to find better housing.

205. *See* discussion *supra* Section II.B.2.

206. *See* discussion *supra* Section II.B.2.

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

CONCLUSION

Sexual harassment in employment has had several defining legal and cultural moments: the *Meritor* case, Anita Hill's testimony in the confirmation hearings for Clarence Thomas, and now #metoo. Although society's response to employment harassment has not been perfect, at least the problem has been recognized and studied. The United States Supreme Court has developed a doctrinal framework specifically to address it. The same has never been done for sexual harassment in housing. Perhaps this is because its victims are likely to be young, poor, and black. Perhaps this is because many housing transactions occur in a relatively unregulated environment. Perhaps courts relied on Title VII as their civil rights template and got lazy when it came time to interpret the FHA.

Whatever the reason for this neglect, it is time for sexual harassment in housing to be dealt with in an effective and systematic way by courts and policymakers. The starting point for any response is information about the problem. The Pilot Study provides an important snapshot of the problem's scope and nature: roughly 10% of low-income women experience harassment by their landlords. Most of them are not receiving any housing assistance or subsidy. The harassment almost always includes requests to exchange sex for rent and is almost always perpetrated by landlords who are both the owners and managers of their properties.

These findings indicate that there will be huge challenges in trying to protect a marginalized population in an under-regulated marketplace for a scarce resource. Any attempts at reform will require taking a hard look at gaps in both the current legal framework for sexual harassment and regulatory oversight of the landlord-tenant relationship. Any response must also be grounded in the economic realities of low-income housing in America. Unless low-income women are given greater support in accessing affordable housing, there will be an almost unlimited supply of vulnerable victims for unscrupulous landlords.

Although the project is a daunting one, the Pilot Study offers a first step at examining the prevalence of sexual harassment in housing. Hopefully it will also inspire further research and attention to this problem.