

Through a Different Lens: Using Masculinities Research to Interpret Title VII

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In October 2013, National Football League Miami Dolphins' right tackle, Jonathan Martin, walked out on the team and checked himself into a mental health institution in Miami. The original story stated that Martin had gone "AWOL," and insinuated that Martin could not take the pressure in professional football. Within days, the story changed. News sources reported that Martin's teammates, led by Richie Incognito, had repeatedly bullied him. Martin, a twenty-four year-old African American player, suffered serious emotional depression as a result. The media's initial response was skeptical. How, commentators asked, can a 315 pound, 6'5" tackle for the Miami Dolphins be bullied? Many opined that the harassment was merely locker room banter that all football players endure.

Because the Martin/Incognito story drew enormous public attention, it is particularly noteworthy that the discussions surrounding the incident focused on race and class, but never acknowledged the issue of gender. In effect, masculinity is invisible because it is considered to be the norm. Masculinities studies are particularly helpful in explaining that behaviors that occur in all male or predominantly male environments occur because of sex. Masculinity is not a biological given, but a social construction of how men should appear and behave. It causes men to perform their masculinity to prove their worth to other men. The locker room scene at the Miami Dolphins is a vivid example of how ideals of masculinity affect behaviors. Society encourages men to demonstrate their masculinity to other men. In order to prove their masculinity and achieve power and status, men demean other men, especially those they perceive to be effeminate or soft.

The Martin/Incognito story also demonstrates that we often use shortcuts that do not necessarily reflect reality. Social science research demonstrates that victims often respond to harassment and bullying in ways that our intuition would not predict. Although many legal scholars have advocated the use of social science research to help judges and juries explain behavior of parties before them, judges reach conclusions based on their own untrained common sense of how people should or do act in certain situations. These conclusions often belie the research. In complex situations involving motivation, intent and perception, social science research is often crucial in helping judges and the fact finders figure out what happened.

This essay explores how masculinities theory can help courts interpret behaviors in Title VII cases and to understand why the courts' views of behavior are often inadequately circumscribed by their own personal experiences. It encourages courts to understand the unconscious bases for discriminatory behavior and treatment and to consider masculinities theory to determine whether illegal discriminatory behavior has occurred. Masculinities theory is particularly helpful in the sex- or gender-based harassment cases where the plaintiff must prove that the behavior occurred "because of sex" and that it was sufficiently severe or pervasive to alter the victim's terms or conditions of employment. But it is also useful in white-collar environments that are imbued by more polite masculine behaviors.

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I will submit for publication but can only do so if I own the copyright because I have a book that will be coming out in January 2016 that will use some of the material.