

## Sex Crime v Sexual Harassment

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Wendy L. Patrick is a career trial attorney, recognized by her peers as one of the 2015 Top Ten criminal attorneys in San Diego by the San Diego Daily Transcript, and named the 2014 Public Lawyer of the Year by the California State Bar Public Law Section. Dr. Patrick has completed over 160 trials ranging from hate crimes, to domestic violence, to first-degree murder.

In her current assignment in the Special Operations Division she handles cases involving sensitive issues including threat assessment. She is President of the Association of Threat Assessment Professionals (ATAP) San Diego Chapter, and an ATAP Certified Threat Manager. In her previous assignment in the Sex Crimes and Human Trafficking Division, Dr. Patrick prosecuted sexually violent predators, human traffickers, stalkers, rapists, and child molesters. She has served as Co-Chair of the statewide California District Attorneys Association Sexual Violent Predators Committee and Human Trafficking Committee.

Dr. Patrick speaks to community groups, law enforcement organizations, and a wide variety of legal and educational institutions both nationally and internationally about threat assessment, cutting edge investigation and use of social media, the methodology of sexual predators and stalkers, and how to increase public awareness and protect the community. Her PhD thesis focused on the psychology of attraction as used by criminals and manipulators in society, and how to spot the red flags.

Dr. Patrick has lectured nationally and internationally on the topics of sexual assault, domestic violence and human trafficking. She has taught human trafficking within the United States, as well as in Hong Kong, South Korea, and South Africa. She frequently teaches sexual assault prevention for the Army, having presented programs domestically as well as in Wiesbaden, Germany.

She has been involved with the San Diego Domestic Violence Council, the San Diego Child Protection Team, and the Sexual Assault Response Team, from whom she received the SART Response with a Heart Award based on her significant contribution to the professional field of sexual assault prosecution. She also lectures frequently on topics involving the safe use of social media, cybercrime, and threat assessment.

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## Preventing Sexual Harassment from Leading to Sexual Assault<sup>1</sup>

Within the #MeToo movement, there is an ongoing discussion of sexual misconduct in the workplace. This often involves behavior that is actionable both civilly and criminally, as sexual assault or battery, as well as sexual harassment. Yet the two are often interrelated, and often part of the same insidious pattern of behavior.

Sexual harassment can lead to sexual assault. That is why it's important to recognize red flags as soon as possible. And certain types of behavior, including physical touching, can constitute both sexual harassment and sexual battery.

Although it is important to check the relevant statutes in each state, sexual battery often require touching an intimate part of another against his or her will, which is for the purpose of sexual arousal, sexual gratification, or abuse.

Sexual touching in non-intimate places or without the requisite intent might be actionable civilly but not criminally, depending on the surrounding facts and circumstances. Accordingly, sexual misconduct can be a criminal or civil violation and subject to applicable statutes of limitations.

In social and professional settings, offenders usually do not suddenly draw attention to themselves by committing a sexual assault. They proceed with caution. Slowly and surely, they graduate to more offensive behavior while flying under the radar for as long as possible.

## Precursors to Sexual Misconduct

Detecting sexual predators requires knowing how to spot the warning signs, usually by acknowledging common precursors to sexual misconduct. Those who are likely to harass or assault usually test the waters before they act. They gauge victim receptiveness, as well as behavior and response patterns in their search of individuals who will not report the harassment. Here are a few of the ways harassers attempt to probe boundaries.

- Downplay the significance of their conduct by making victims seem unreasonable
- Complain that the victim is uptight or can't take a joke
- Shaming or embarrassing the victim in a group setting to make it look like he or she is the problem
- Testing receptiveness with lewd or sexual jokes to look for employees who smile instead of scold

When offenders find someone who doesn't respond negatively to their questionable comments or behavior, the person can become vulnerable to further harassing behavior.

And there are more specific methods harassers use to increase victim vulnerability, and decrease the chances they will report the offensive behavior.

## Truth or Dare: A Lose-Lose Proposition

Remember the game of truth or dare where you either disclose something or take a provocative dare? Sexual offenders in the making use this game to gain power over their victims. Predators learn about their victims through engaging in (often fabricated) self-disclosure, designed to prompt victims to do the same. Lulled into fulfilling a false sense of reciprocity, many victims disclose intimate, private details, which can then be used for purposes of exploitation or blackmail.

Taking a dare involves asking victims to compromise their integrity through engaging in uncomfortable, often shameful behavior. From sending provocative selfies to participating in a one-way webcam session, where the victim cannot see the perpetrator, they acquire material which can be used to compromise the victim's integrity should he or she expose the offender's behavior.

How do perpetrators get victims to open up either through disclosure or unwise behavior? Through strategic remarks such as:

- "You don't strike me as uptight. Are you?"
- "Come on, you can't possibly be that boring!"
- "Please tell me you are not old-fashioned enough to avoid sex on the first date."

## Born to Bond—and to Belong

In other situations, in either an academic or employment setting, predators prey upon the desire to belong, and to fit in. For example, a new employee who initially declines an offender's invitation to go out for a drink after work is met with the remarks such as, "You have to learn to trust your co-workers," or "You don't think you are too good for me do you?" A perpetrator who has to ask, "Don't you trust me?" is likely responding to a victim's expression that she doesn't.

Victims are particularly vulnerable to a predator appealing to the desire to belong when they have recently relocated to a new school, new job, or new city. Without a strong support system in place, recent transplants are easy prey.

Arguably even more vulnerable are young people, such as college students or military cadets, away from home for the first time in an unfamiliar environment. The first order of business for such potential victims is to identify reliable, upstanding mentors within their new environment from whom they can seek guidance and advice, to counteract potentially harmful influences personally and socially.

## Detecting Sexually Permissive Attitudes: Victim Selection

Predators use manipulation and interpersonal strategies to narrow down the pool of prospective victims—honing in on those who are the least likely to resist, and least likely to report the assault. Especially when the victims are apt to fear that they bear some culpability for getting themselves into the situation. One victim (and predator)-oriented mindset is an attitude of sexual permissiveness.

Research demonstrates that employees who hold sexually permissive attitudes are at greater risk for becoming involved in sexual harassment, either as a perpetrator or a victim.<sup>2</sup> Research also demonstrates that men hold more sexually permissive attitudes than women.<sup>3</sup> With both men and women, sexually permissive attitudes may be gauged through tolerance testing and physical boundary probing.

## Tolerance Testing: When Jokes Are Not Funny

From the locker room to the lunchroom, sexual predators test tolerance through noting individual reaction to inappropriate language or remarks. Most people will display discomfort to an off color or sexist joke told in the office lunchroom, or even rebuke the offender. The employee who snickers or smiles, however, is automatically added to the short list of potential victims.

Sensing a kindred spirit when a witness fails to register disapproval to objectively inappropriate conduct, a sexual predator may push further, exploring the level of tolerance for inappropriate remarks or behavior.

## Physical Space Invaders: Boundary Probing

The sexual harasser who walks around the office attempting to give shoulder massages to co-workers is likely to be rebuffed in some fashion by 9 out of 10 employees. Again, he or she is looking for the one individual who does not resist or display discomfort. The sole enabler has demonstrated a willingness to tolerate inappropriate behavior—or a failure to view the boundary-violating behavior as inappropriate. Either way, he or she is danger of being victimized through more invasive behavior.

Other ways in which sexual harassers capitalize upon victim receptivity to inappropriate behavior include shaming, power exploitation, and inappropriate methods of control.

## Workplace Shaming: Attempting to Normalize Inappropriate Behavior

Be wary of the co-worker who complains that she cannot be herself with you around. She complains that you “can’t take a joke” or are too uptight. Such shaming is shameful. Reality check: off-color humor and sexist jokes are *not* normal office behavior. In an age of sexual harassment awareness they are the exception to the rule. If you are offended, you are in good company.

Especially with new employees, be aware of statements claiming “That is the way we do things around here,” “You’ll get used to it,” or anything indicating an attempt to force or normalize inappropriate behavior.

## Power Play

Predators capitalize on status, exploiting relationships of power imbalance. Research conducted on male perpetrators in the workplace demonstrates that males in higher positions are more likely to engage in harassing behavior toward female subordinates.<sup>4</sup>

However, we live in a day and age where female perpetrators and same-sex harassment are prevalent as well as the more stereotypical forms. Nonetheless, we can no doubt agree that in many cases, regardless of the gender of the parties involved, power imbalance is often a contributing factor.

## Exerting Control: Timing is Everything

Another way to establish power is for harassers to test the control they have over subordinates through inappropriate demands on their time. They may insist on having an individual's attention when they know the person is obligated to be doing something else.

Micromanaging bosses or co-workers might demand that employees take their calls during the workday, even when they know the employees were with customers, in meetings, or even interviewing for a promotion. The common denominator is that the demand is actually a test of the level of control they have over potential victims.

## Make Every Month Sexual Assault Awareness Month

In many cases, sexual harassment can be a precursor to sexual assault. Identifying and interrupting sexual misconduct sooner rather than later can spare potential victims down the line. By recognizing problem behavior early on, individuals and communities can enhance both perception and perspective, improving the collective ability to keep each other safe.

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<sup>1</sup> Portions of this article were first published in *Law Enforcement Quarterly* (2018), and in her column at *Psychology Today*.

<sup>2</sup> Shanker et al., "Sexual Harassment," 243 (citing DuBois, Faley, and Knapp (2008)).

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<sup>4</sup> Shanker et al., "Sexual Harassment," 243.