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Evaluating Title VII Exposure in a Manufacturing Setting: A Case Study for Human Resource Management Students

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Evaluating Title VII Exposure in a Manufacturing Setting: A Case Study for Human Resource Management Students

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Abstract: Since Title VII of the Civil Rights Act of 1964 became an established part of the employment legal framework, human resource management professionals and compliance officers have played a vital role in evaluating their companies' vulnerability to litigation based on perceived violations of Title VII, the Age Discrimination in Employment Act, the American with Disabilities Act, and other associated equality protection legislation. Factors to be considered include the plaintiff's burden of proof, legitimate business defenses, and collection and evaluation of reliable data. This case study calls upon human resource management graduate students to evaluate the potential exposure of a defense manufacturer to gender discrimination litigation, and has been presented in an online learning environment.

Human resource management professionals have been challenged by the need to evaluate the potential exposure of their companies to discrimination litigation for the better part of the last century, and the importance of this evaluation process became even more evident with the passage of Title VII of the Civil Rights Act of 1964 (1964). Recent approval by the US Circuit of class action status of a decade-old gender discrimination case against Walmart (*Dukes v. Walmart*, 2010) will undoubtedly result in companies reexamining their policies and reevaluating their work environment to see if there are any lingering or emergent issues that could spark individual or class action litigation.

This case study is modeled after an actual company review by human resource management professionals, whose task was to evaluate the exposure of an American manufacturing company to discrimination litigation. The names of the company, the human resource professionals' company, the products, and the facility are all masked for security reasons and because the information is proprietary to both the human resource professionals and the company, and because of security clearances, the company names, locations and products used throughout the article are fictitious or masked, and any similarities to companies with similar names or who manufacture similar products is coincidental and unintended.

American Defense Corporation (hereafter known as ADC) is an American-based major producer of vehicle-mounted missile launchers. Since 2001, the United States Army and Marine Corps, along with NATO allies, have employed missile technology mounted on a variety of light-armored vehicles in both offensive and defensive capacities in Afghanistan, Iraq, Kuwait, Kyrgyzstan, Qatar, and the United Arab Emirates. ADC secures its work by procuring contracts with the Defense Department of the United States as well as with the appropriate governmental agencies of Canada, Greece, the United Kingdom, and others.

In September, 2009, the management team of ADC contracted with Diversity Solutions, LLC (hereafter referred to as "HR professionals"), a professional human resource management firm with which they had contracted for five years to deal with employee development and conflict resolution issues, to determine potential vulnerability to a Title VII action by female employees at their Oneida manufacturing facility. Specifically, the management team desired to know whether management actions with respect to professional development and working relationships had the potential to create a "hostile environment".

THE LEGAL LANDSCAPE FOR LIABILITY IN EMPLOYMENT DISCRIMINATION CASES

The Statutory Basis for Title VII Liability

Gender discrimination can take many forms. Examples of gender discrimination are found in discriminatory hiring practices masked by illusory rationales (*Griggs v. Duke Power*, 1971), promotion policies which create glass ceilings (US EEOC, 2009), unequal pay (*Ledbetter v. Goodyear Tire and Rubber Company*, 2007), restricted opportunities for professional development, reduced opportunities for future career advancement, and overt or subtle sexual harassment (*Ellison v. Brady*, 1991). Section 1 of the 14th Amendment to the US Constitution (1868) provides for equal protection under the law, and this became the constitutional basis for Title VII of the Civil Rights Act of 1964 (1964). Title VII became the seminal legislative act providing the enforcement mechanism for equal opportunity. It has been amended by the Pregnancy Disability Act of 1978 (1978) and the American with Disabilities Act of 1990 (1990), and accompanied by Age Discrimination in Employment Act of 1967 (1967). The goal of all employment discrimination legislation has been to provide a level playing field for all persons seeking employment opportunities without unduly restricting the free market. All qualified persons are to be equally considered, and employer may not discriminate in employment decisions with respect to gender, age, disability, race, color, religion, national origin, and other factors as amended and expanded in various states (Title VII, 1964). For example, Michigan prohibits discrimination on the basis of weight (*Elliott-Larsen Act*, 1976).

Title VII applies to employers involved in interstate commerce with 15 or more employees (the number 15 does not create a bright line; see *Arbaugh v. Y & H Corporation*, 2006), labor unions with 15 or more members, any labor union with a hiring hall, employment agencies, and state and local governmental units and agencies. It should be noted that all affected employees have Title VII rights, including undocumented workers (EEOC Notice, 1999).

As a specific form of employment discrimination, gender discrimination cases take many forms. Pregnancy discrimination takes place when a female employee is restricted from employment because of her pregnancy (*UAW v. Johnson Controls*, 1991). Wage disparity of employees in hiring or over time has been given renewed attention as a result of the *Ledbetter Fair Pay Act* (2009). Pervasive patterns of denial of professional development or advancement opportunities have become the basis of class action litigation against the world's largest employer (*Dukes v. Walmart*, 2010). Sexual harassment can be overt (*Meritor Savings Bank v. Vinson*, 1986) or unintentional. Same sex harassment claims is an emergent area of sexual harassment discrimination claims (*Oncale v. Sundowner Offshore Services*, 1998).

The Equal Employment Opportunity Commission was created to address cases resulting from perceived violations of Title VII of the Civil Rights Act (1964), the Equal Pay Act (1963), the Age Discrimination in Employment Act (1967), Section 501 of the Rehabilitation Act of 1973 (which prohibits public sector discrimination against disabled persons, 1973), and Title 1 (the employment provision of the American with Disabilities Act, 1990). Class A cases are considered worthy of immediate handling because they have met a high standard of proof. Class B cases warrant further investigation, and Class C cases are considered to have a low likelihood of success, usually because the offending party is not an employer, or the case is dated (*Twomey*, 2007).

To initiate a claim that has any likelihood of being successful with the Equal Employment Opportunity Commission, plaintiffs must establish a nexus between the action or inaction of their company and a clear violation of Title VII. Unfavorable employment outcomes or even the egregious actions of an employer are not sufficient to successfully establish or maintain a Title VII claim, particularly in a society where nearly 90% of employment contracts are at-will. Employers are not

required to hire the most qualified person or any person, and they may even make employment decisions on trivial factors most would consider unrelated to employment. The discrimination has to relate directly to the factors protected in Title VII and associated state-based legislation (Twomey, 2007).

A disparate treatment (intentional discrimination) case can be initiated when a person from a protected class applies, was qualified, was rejected, and the employer sought another individual not in a protected class. In the case of gender discrimination cases, the protected class is “female”. Upon the issuance of an EEOC complaint, the employer must then articulate a legal reason for their choice. If they can do that, the plaintiff must then demonstrate that the reason was illusory (Clarkson, 2009). A disparate impact (unintentional) case is initiated when a plaintiff or class of plaintiffs establishes a disproportionate impact of employment decisions on their protected class. When issued the complaint, the employer must establish a legal reason for the disproportionate impact. Gender must be determining factor for disparate impact cases based on gender to move forward (Clarkson, 2009); if it is clear that all employee groups are being affected by layoffs, for example, the case will probably be unsuccessful.

As with all Title VII cases, employees have the absolute right to initiate complaints as a matter of public policy. A significant basis for many successful gender discrimination cases occurs when companies retaliate against employees filing complaints or assisting in investigations (Crawford v. Metropolitan Government of Nashville and Davidson County, 2009). Harassment or retaliation by coworkers is actionable if it can be demonstrated that the employer knew or should have known and failed to act (Lockard v. Pizza Hut, 1998).

In cases where there is a clear and egregious “pattern and practice” of exclusion has been established, the EEOC can initiate a case without individual claims (EEOC v. Mitsubishi Motor Manufacturing of America, Inc., 1998). Usually there is a track of anecdotal complaints and allegations, and a perceptible statistical trend over a minimum of three years. If the pattern and practice is established, then the EEOC can proceed to establishing independent claims and defenses.

Plaintiff Burden of Proof

As part of the process of determining the company’s potential liability, the HR professionals had to consider the burden of proof faced by potential Title VII litigants. It should be noted that the intent of Title VII was to create equal access and equal opportunity, not to guarantee equal outcomes (Ricci v. DeStefano, 2009). Perceived underrepresentation of any particular protected class is not itself a sufficient basis for successful litigation; neither is a perceived lack of equal pay, as contracts may be bargained freely. Statistical variation always occurs in a free employment market absent of quotas, and there will always be disappointed employment candidates of all classes, protected or not.

The easiest case to litigate successfully in a Title VII action would be one based on disparate treatment, which typically occurs when there is a clear and overt act of discrimination (McDonnell Douglas Corporation v. Green, 1973). However, the plaintiffs must establish a prima facie case; in cases with a clear “smoking gun”, which account for only a small minority of Title VII claims, the HR professionals would follow the lead of most defendant professionals and recommend a settlement as a means of avoiding punitive damages. The discrimination must have resulted in a tangible employment action (Geduldig v. Aiello, 1974), however, and few Title VII actions are based on “smoking gun” claims of overt discrimination, mostly because they lack proof of discriminatory intent.

More difficult to prove, but more common as the basis of a Title VII action, is the assertion that the company’s action resulted in disparate impact; that is, that a company’s actions led to the exclusion or significant inequitable treatment of a protected minority group without clear wrongful intent or malfeasance by the employer, and employers cannot demonstrate that the claimed exclusionary practice is

consistent with business necessity (*Hazelwood School District v. United States*, 1977). As in sexual harassment claims, these claims typically cannot be based on single or isolated instances. In cases where gender or another nominal variable is considered independent, the statistical threshold for coincidence is two or three standard errors (*Casteneda v. Partida*, 1977).

Constructive discharge claims (where the employee claims that they were left with a Hobson's choice, and had to quit) are more difficult to establish. The evidence trail tends to become blurred once an employee has left the company in manner perceived to be voluntary. Success in a constructive discharge case depends on the ability of the plaintiff to establish that the environment was so hostile that quitting was the only solution (*Pennsylvania State Police v. Suders*, 2004). Because of the high burden of proof in cases such as this one, these claims tend to be more restricted to unemployment compensation claims.

A sexual harassment claim creates a legitimate gender discrimination issue. If the plaintiff is claiming that the harassment is a quid pro quo (where the employee is presented with an "or else" scenario), there must be a tangible employer action (*Meritor Savings Bank v. Vinson*, 1986). If the plaintiff is asserting the existence of a hostile work environment, a single offending incident typically cannot be enough to establish employer liability (*Twomey*, 2007). However, the employer may be liable even if no adverse effect on the employee (*Burlington Industries v. Ellerth*, 1998), and the employer could be liable even if it didn't know about the offensive conduct or environment (*Faragher v. Boca Raton*, 1998).

Appropriate Employer Defenses to Title VII Claims

The HR professionals had to also consider that there are a number of defenses which are considered sufficient to mitigate charges of Title VII discrimination. A significant defense that has been employed in many sexual harassment claims is that reasonable care was exercised by the employer in the establishment and enforcement of appropriate company policies, and that the employee failed to avail themselves of the remedies offered by the company. While the existence of anti-discrimination policies is not itself a sufficient defense, failure of employees to follow policies designed to address problems leaves the company with no viable means of avoiding liability (*Faragher v. Boca Raton*, 1998, *Burlington Industries v. Ellerth*, 1998). An example of this would be the failure of an employee claiming harassment to file appropriate complaints despite clear knowledge of the complaint process.

In a very few cases, specific gender-based employment selection has been upheld as a bona fide occupational qualification exception. An example of this would be where males are preferred for prison guard duty in cases where there is a need for invasive custodial care (*Everson v. Michigan Department of Corrections*, 2004). However, the need for gender-based employment selection has to be significant and not merely a matter of customer preference.

When a company has a valid seniority system, either as a result of collective bargaining or employment custom, the courts have consistently upheld employment decisions based on seniority as long as the intent of the seniority system is not itself discriminatory (*US Airways v. Barnett*, 2002). Seniority has been affirmed as a determinative factor in employment decisions such as layoffs, department changes, professional development, and promotions, even if the result is a disparate impact on minority groups differentiated by gender, age, or disability.

At common law, it has been determined that no individual has a right to be protected merely because of a demographic characteristic, or has an inherent right to any particular job, absent contractual agreement to the contrary. This is particularly the case when employees are at will; that is, they can be fired for good cause, bad cause, or no cause, absent violations of public policy (*Bowman v. State Bank of Virginia*, 1985), implied contracts (*Toussaint v. Blue Cross*, 1980), or good faith (*Dare v. Montana*

Petroleum Marketing, 1984). At common law, the courts have consistently affirmed that “there can be a rational basis for treating persons differently...the court has repeatedly held that the state is under no obligation to cure all evils merely because it undertakes to cure some of them” (Goesaert v. Cleary, 1948, as discussed in Cushman, 2000).

In the American free enterprise system, relationships and business behaviors are primarily governed by contractual agreement (Clarkson, 2009). The fundamental essence of contract law suggests that a job is not a right, but a privilege subject to contractual rules. Therefore, no one can claim any special employment rights by virtue of their gender or membership in any protected class. The sanctity and privity of contracts are necessary to a market economy, because they form legally binding agreements without which business people could only rely on good faith (Clarkson, 2009). Contract must be legal or serve a legal purpose, so contractual agreements which discriminate are void (law book). Nevertheless, the existence of employment agreements does not grant any special rights or protections to any protected classes, including female employees. If there are disputes regarding employment agreements, included mandatory arbitration clauses have been found to be enforceable (Gilmer v. Interstate/Johnson Lane Corporation, 1991).

Questions for Students (see teaching notes, Appendix C):

1. Who has the burden of proof in Title VII cases?
2. What specific problems might EEOC investigators have in verifying whether a particular burden of proof has been met?
3. What might be some appropriate defense strategies for a company targeted by a Title VII claim?
4. Would the employment status of the workforce (i.e. union or non-union) or the nature of the Title VII complaint (complaint based on gender as opposed to, say, race) have an impact on the likely success of the Title VII complaint?
5. What type of information might bolster the plaintiff's case?

THE STUDY

The Company and its Employees

ADC operates 23 facilities in the United States, including 16 component manufacturing facilities, 2 research and testing facilities, 2 final assembly facilities, and corporate headquarters. Employees at the four components facilities and one assembly operation located in the north central United States, as well as one southern facility, are organized by a major industrial union; employees at all other facilities (including corporate headquarters), which are located in western and southern states, are at-will. Benefits and work rules are generally similar between the union and non-union plants, although wages for non-skilled hourly workers are about 20% higher in the unionized plants, and wages for skilled trades workers are about 10% higher in the unionized plants.

The Oneida, Florida facility is located in a medium-sized urban area in the Florida panhandle. Purchased by ADC in 1993, the facility is responsible for manufacturing and assembling electronic sensors for eventual inclusion in the missile launcher. There are approximately 380 persons employed at Oneida, including 300 hourly employees, 40 management and management support employees, and 40 engineering and research personnel. About 90% of the hourly and management and management support employees are local residents, while the other 10% have transferred from various other facilities in neighboring southern states. Approximately half of the engineering and research personnel have been relocated by the company from northern facilities. All employees are at-will; Florida is a right to work state. Approximately 40% of the hourly employees are female. About 20% of the management and support staff employees are female, and only about 5% of the engineering and research staff are female.

This compares favorably to the gender composition of similar manufacturing operations in the Oneida area.

The management of ADC-Oneida had received several individual comments from employees in a recent study carried out by the HR professionals which raised concerns about Title VII vulnerability (Appendix B). Those comments became the trigger for this evaluation.

Methodology and Response

Any human resource management-driven diversity evaluation process has to be data-driven to be credible. However, there were immediate obstacles that had to be overcome. There were no apparent hiring or termination trends that would suggest any clear violation of Title VII. There were no “smoking guns” or any physical evidence that provided a clear paper trail to track or evaluate overt disparate treatment. Because of significant levels of distrust by employees of management efforts to gather human resources information, it became clear that any data collection activities would have to be alternately transparent and respect the privacy of individual participants.

To that end, the HR professionals employed a self-developed survey instrument which addressed many questions related to trust, communication, cooperation, quality of work life, professional development, and employee recognition. There was considerable management, union, and employee input into the questionnaire process, and the survey was distributed, with situational variations, in multiple formats at approximately sixty manufacturing, office, and military sites over a ten year period. Terms such as “trust”, “communication”, and “cooperation” were defined for participants, and sample studies were conducted, with solicited feedback, to validate that questions and measurements were clearly understood by the participants. Since the survey is proprietary, the HR professionals have included only selected questions in Appendix A. In addition to the qualitative questions, the HR professionals solicited individual comments from participants in addition to the coded responses.

The HR professionals targeted three significant metrics, employing data from survey responses in the two previous years (identified in Table 1 as Year 1 and Year 2), and adding data from the current iteration (identified as Year 3): relationships with management, quality of work life, and employee development (Appendices A and B). It was felt that evaluation of these three core areas could provide insights into whether a “hostile environment” was either in existence or had the potential to birth at the Oneida site.

If there were significant reported differences in the level of trust, communication, or cooperation with upper management or team leaders based on gender, this could be an indication of the perception of marginalization. The metric “relationships with management” was evaluated by questions related to trust, communication, and cooperation with upper management (the Leadership Team) and immediate supervisors (Team Advisors). If there were significant reported differences in the metric “quality of work life” with respect to the level of receptivity to ideas, feedback, or actual recognition based on gender, this could also be an indication of the perception of hostility. If there were significant reported differences in the metric “employee development” with respect to the level of on the job training or cross training, this could be an indication of a perception of restricted opportunity. The HR professionals also looked at the individual comments to validate the descriptive data and inferential tests.

A key element of the survey was the addition of demographic questions. Here is where trust level became very important. The HR professionals asked participants to self-report demographic information such as gender (a nominal variable), age (grouped as an ordinal variable), seniority (grouped as an ordinal variable), job classification (grouped as a nominal variable, typically asking for identification as management, support, hourly, or skilled trades), and production role. The intent of these questions was to

assist management and employee stakeholders in identifying trends related to Title VII and specific employee groups.

The HR professionals were concerned with the possibility that other demographic factors such as age, seniority, and job classification could be responsible for variation attributed to gender. However, a demographic review of the employees indicated that over 95% of the hourly employees had ten years or

TABLE 1
INFERENCE TESTS OF SIGNIFICANCE USING "GENDER" AS AN
INDEPENDENT VARIABLE

() indicates the gender group with the significantly lower response.

<u>Year 1:</u>	<u>Mean</u>	<u>Chi Sig</u>	<u>Lambda Sig</u>
Relationships with Management			
Trust with Leadership Team	3.276	.093	.235
Trust with Team Advisor	3.812	.076	.800
Communication with Leadership Team	3.077	.165	.388
Communication with Team Advisor	3.762	.023 (f)	.076
Cooperation with Leadership Team	3.333	.144	.199
Cooperation with Team Advisor	3.933	.024 (f)	.182
Quality of Work Life			
Actual Recognition (grouped)	2.814	.632	n/s
Ideas and Innovations are encouraged	3.139	.044 (m)	.085
Rate feedback on ideas	n/a	n/a	n/a
Employee Development			
Rate actual on the job training	3.199	.786	n/s
Rate cross training received	n/a	n/a	n/a
<u>Year 2:</u>	<u>Mean</u>	<u>Chi Sig</u>	<u>Lambda Sig</u>
Relationships with Management			
Trust with Leadership Team	3.419	.012 (f)	.078
Trust with Team Advisor	3.635	.065	n/s
Communication with Leadership Team	3.317	.009 (f)	.778
Communication with Team Advisor	3.575	.035 (m)	.134
Cooperation with Leadership Team	3.502	.187	.312
Cooperation with Team Advisor	3.782	.055	.431
Quality of Work Life			
Actual Recognition (grouped)	2.904	.506	n/s
Ideas and Innovations are encouraged	2.987	.794	n/s
Rate feedback on ideas	n/a	n/a	n/a
Employee Development			
Rate actual on the job training	3.105	.703	n/s
Rate cross training received	2.698	.115	n/s

Year 3:	Mean	Chi Sig	Lambda Sig	Tau Sig.
Relationships with Management				
Trust with Leadership Team	3.414	.001 (f)	.144	.000
Trust with Team Advisor	3.666	.001 (f)	.896	.000
Communication with Leadership Team	3.247	.009 (f)	.886	.021
Communication with Team Advisor	3.561	.001 (f)	.156	.000
Cooperation with Leadership Team	3.422	.001 (f)	.014	.000
Cooperation with Team Advisor	3.692	.010 (f)	.483	.001
Quality of Work Life				
Actual Recognition (grouped)	2.864	.613	n/s	.099
Ideas and Innovations are encouraged	3.100	.808	n/s	.846
Rate feedback on ideas	2.856	.627	n/s	.510
Employee Development				
Rate actual on the job training	3.018	.646	n/s	.705
Rate cross training received	2.724	.239	n/s	.430

less seniority, and were less than 40 years old. Approximately 70% of the management personnel and about half of the engineers had ten years or less seniority and were less than 40 years old. Given the life of the Oneida operation and the relative homogeneity of the employee group with respect to seniority and age, it is unlikely that responses differentiated by seniority and age impacted the effect of the variable gender. A paired T test indicated little variation in responses with respect to job classification, with the exception that management employees reported better relationships with management than did others, which was intuitively obvious; therefore, in sum it is unlikely that responses differentiated by seniority, age, or job classification impacted the effect of the variable gender.

It was agreed that the survey would be distributed and evaluated only by the HR professionals or their representatives, who would retain both the questionnaires and databases as proprietary materials. In no case would the surveys be handled or raw data seen by management personnel. This greatly reduced the employees' fear about whether management was "looking over their shoulders" or would retaliate for negative comments (interestingly, management employees had the same initial trepidation about whether their individual answers would be exposed). As a result, employee and management participation in all sites uniformly exceeded 98% for all working groups, giving the researchers and stakeholders a valuable and reliable source of information. Demographic data provided by the human resources departments of the various sites, including Oneida, to the EEOC mirrored and validated the demographic data provided by the survey respondents. Over time, the number and quality of individual comments actually increased on a majority of the sites, including the Oneida facility, thus validating stakeholder confidence in the process.

Because the HR professionals were dealing with nominal data, it was statistically impractical to look for correlations because too many assumptions would have to be made about the data. Instead, the consultants employed a variety of tests from the chi square "family". Assuming that data was normally distributed over time, chi square analysis was employed to determine whether any particular reaction to questions about trust, cooperation, professional development, etc. were independent of gender (which would be the null hypothesis), or related. Since a few individual distributions may not have been normally distributed, the Wilcoxon test (which requires fewer assumptions about normal distributions) was used as a check. As a check for error in predicting various outcomes when using gender as an

independent variable, the lambda statistic was employed to validate independence or dependence of gender and response outcome, as was Kendall's tau-c (Norusis, 2010).

Questions for students (see teaching notes, Appendix C):

6. What methodologies could be used to determine whether the study questions met the test of internal/external validity?
7. The sample used for the study was a virtual enumeration of the facility's employees. Would a smaller sample have been more appropriate?
8. Given that the questions were ordinal, with the independent variable being nominal, what are the benefits and limitations of the statistical tests mentioned?

The Data

Since the HR professionals were dealing with self-reported nominal and ordinal data, as well as with self-reported individual statements, they determined that it would be prudent to err on the side of caution when evaluating any potential trends in the data (Table 1) or individual comments (Appendix B).

Speaking practically, there are several potential explanations for any variation, even a significant variation, in the responses concerning relationships with management, quality of work life, or employee development when differentiated by gender. It is always possible that any sample could be inaccurate or disproportionately affected by outliers. A review of the responses to the various questions indicates that the responses of both the aggregate and gender groups approximated a normal distribution over a three year time frame, with 95% of coefficients of skewness falling within a range of +/- .12. The researchers were also aware that individual respondents could simply be exercising personal angst over failure to advance in a particular job. There could be perceptions of inadequate compensation or personal problems outside of the purview of the work environment. Misguided perceptions about the legal obligations of the company could be contributing factors to negative responses (e.g. companies are not automatically liable if wages are "71 cents on the dollar for those earned by men" or if gender groups are not equal in numbers). This made the employment of data from three similar sample groups taken over a three year time very important to establish a baseline of analysis and minimize the impact of response outliers. The HR professionals were also alert to situations of modest variation in homogenous angst...that is, if everyone thought that their cross training was inadequate, the "significance" of responses between persons who felt their training was poor and those who felt it was non-existent really wasn't "significant". The individual comments are noted in Appendix B.

Of particular interest to the HR professionals was the growing significant variation in reported male evaluations of relationships with management versus reported female evaluations of relationships with management. While male and female respondents showed no significant variation in their evaluation of quality of work life or employee development issues over the three years of data, there were unmistakable and significant differences in how male and female respondent groups reported trust, communication, and cooperation with management (Table 1). These significant differences were validated by the individual comments.

In year 1 and year 2, which formed the baseline for the evaluation, chi square analysis indicated significant difference between how male and female respondents reported relationships with team advisors (year 1) and the leadership team (year 2) (Table 1). However, lambda analysis indicated that gender was at best a weak predictor variable of trust, communication, and cooperation outcomes when assumed to be an independent variable. In year 3, tau analysis was used as a check for the chi square outcomes; the data once again indicated a clear difference between male and female responses concerning their relationships with management. Lambda analysis clearly indicated again that gender was a weak

predictor of trust, communication, and cooperation outcomes when assumed to be an independent variable.

Questions for students (see teaching notes, Appendix C):

9. Assuming there were no other “smoking guns”, how would you proceed with the data that you have?
10. What other methodologies might you employ in future studies?

CONCLUSION AND LESSONS LEARNED (AFTER STUDENTS HAVE POSTED IDEAS AND RECOMMENDATIONS)

In their initial evaluation of internal complaints, statistical data, and anecdotal information, the HR professionals concluded that there were no clear instances that would form the basis of a disparate treatment claim. There were no known instances of constructive discharge, as no persons within the protected class had been terminated or had left for reasons not known to be family-related. The one known instance of a sexual harassment claim had been addressed through the company’s sexual harassment procedure. The HR professionals concluded that disparate impact would be the likely basis of any Title VII discrimination claim based on gender.

A review of company hiring and professional development practices indicated that there were no job classifications, hourly or salary, in which a BFOQ was asserted as the basis for employment selection. In addition, since there was no collective bargaining agreement detailing seniority rights, and since the majority of employees had less than 10 years of service, it was determined that age and seniority were likely negligible factors in employment decisions. It was the opinion of the HR professionals that the defense that would bring the most scrutiny in a Title VII action would be the defense that the company and its managers exercised reasonable care in both the projection and application of equal opportunity policies.

Based on the evaluation of the data and inclusion of the individual comments, the HR professionals believed that there was no imminent threat of successful Title VII litigation against ADC-Oneida from gender-based protected classes. Although there were emerging trends of significant differences between male and female groups in their reported relationships with management, they occurred in the context of improved overall evaluations of those relationships. In addition, there didn’t appear to be any significant trends with respect to differences in the evaluation of quality of work life or employee development.

However, given the persistence of significant variation with respect to relationships with management, and given the possibility of an interacting variable with gender, the recommendation was made to Oneida management that certain proactive measures regarding diversity within the working environment of the plant would be wise. The first area requiring immediate attention related to company policy. At the policy level, Oneida management needed to promulgate clearly ADC’s zero tolerance policy regarding discrimination of any kind, and particularly gender and racial discrimination. The policy needed to include clear directions on how employees at any level could file a complaint; most complaints would be channeled through the HR director, but there would be specific and known ADC system alternatives if the complainant felt uncomfortable dealing with the HR director.

At the managerial level, it was recommended that mandatory in-class diversity training for managerial and team leadership employees be implemented within the next calendar year, to be conducted by persons not affiliated specifically with ADC or Oneida operations. At the employee level, employees would be made aware of company policy with respect to discrimination and in-class or Web-

based diversity training was recommended to take place within a suitable period of time following completion of training by management and team leadership personnel.

Interestingly, although the HR professionals did not perceive the exposure of ADC-Oneida to gender-based discrimination suits to be significant, the process did bring certain racially-based issues to the service. Pursuant to the follow up of the researchers' recommendations, the human resources manager at ADC-Oneida was replaced and reassigned to a non-HR position within the company, as it was determined by the company that the current HR manager would not be an effective voice for carrying out employee development with respect to diversity training within the Oneida plant or any plant within the ADC system.

The HR professionals used the process to expand on their metrics regarding professional development and quality of work life. With respect to the survey process employed by the HR professionals, questions were added regarding training and professional development interests and opportunities. In addition, questions regarding the receptivity of management to ideas and innovations were expanded, and managers became more aware of the interaction of ideas between hourly and management employees because of the process. Because of the sensitivity of adding additional demographics, a system memo was distributed throughout ADC to encourage managers, support personnel, and union and non-union hourly leadership to promote awareness of the impact of additional demographic factors when considering the potential for Title VII exposure.

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APPENDIX A

Respondents were asked to respond to approximately 50 questions on subjects ranging from relationships with management and coworkers, quality of work life, working conditions, professional and employee development. Response code: (1) Very Low, (2) Low, (3) Neither Low nor High, (4) High, (5) Very High.

Relationships with Management

Trust with Leadership Team
 Trust with Team Advisor
 Communication with Leadership Team
 Communication with Team Advisor
 Cooperation with Leadership Team
 Cooperation with Team Advisor

Quality of Work Life

Actual Recognition grouped; includes:

- Completing Assignments and Accuracy
- Extra Work
- Meeting Deadlines
- Controlling Costs
- Operations Improvements

Ideas and Innovations are encouraged

Rate feedback on ideas

Employee Development

Rate actual on the job training

Rate cross training received

APPENDIX B

Individual Comments (unedited for grammar; company names deleted)

Diversity and Favoritism- Year 2

I think that the job I have is great. I like what I do and I'm good at it. What I have found out in the XXX plant is that there are no women in upper management and no blacks either. I just thought that was odd considering the whole One Team as well as the big diversity launch. I think it should be more diverse. Overall, the XXX plant is a good job to have.

I believe I am a victim of age discrimination.

I also think everyone should be treated equal, no matter the race or gender.

Something has to be done about supervisor's showing favoritism to certain employees. One team member should not know what's happening to the team and the rest of the team in the last to know. The supervisor shouldn't reveal things that are going to happen to the team unless he/she tells the whole team and not just one specific member. One employee shouldn't be exempt from following the rules and stand around all day talking to the TL while others get scolded for a five minute visit.

XXXX plant should be treated the same as other land systems when it comes to holidays.

I am glad to have a job, but when you see people who have Sr. in front of their job title who do far less than you do, it can be very hard to stay positive.

Consider people who have put more time into the company look at time served opposed to degrees sometimes. Some have great work skill and dedication to the company.

Diversity and Favoritism- Year 3

I enjoy working at XX, but there's a lot that can be done to make this job more successful and one thing is there are a very high rate of favoritism at XX and I don't think it's fair. Just like the ML position. No one was interviewed or nothing. Supervisors pick their favorite people and it's not right because some people that they chose have very bad attitudes and don't know how to work with others and I just think it could have been done better. It was very unfair to a lot of XX workers and the new pay rates are unfair to people who are already on merit. You all could have given us something, even if it wasn't but a dime.

They say that there is no discrimination, but there is. We all should be treated equal regardless of our race. I feel like XXX shows a lot of favoritism. (3 similar comments)

Supervisor pets always get the advantages. Do way with pets at work!

There are too many bosses for the employees. The supervisors need to be on floor more and do everyone the same. The plant has too many pets. Everyone doesn't wear safety shoes or glasses. Some can go to lunch for however long, break, come in late, leave early. The rules are here for a day and then gone. Everyone is not treated the same.

Too many family members working here. Favoritism is shown in all departments. We are one team, one goal and all should be treated the same no matter who you are.

APPENDIX C TEACHING NOTES

1. The burden of proof in any civil case lies with the plaintiff. If the plaintiff can establish the basic elements of a Title VII case, the defendant company has the burden of establishing justification for their employment action. The plaintiff then has the obligation to prove that the management's justification was merely pretext.
2. In conducting its fact-finding for a Title VII case, the EEOC investigators need thorough information, or else it will be very difficult to establish homogenous test and control groups (depending on the size of the company) or meet the very high statistical burden (usually exceeding +/- three standard errors).
3. A company targeted by a Title VII suit would want to show that they had clear and consistently-enforced employment policies. If there had been Title VII complaints, such as one for sexual harassment, the ability to show that company policy was followed to the letter with no tolerance for offenders would be compelling evidence.
4. If the workforce were unionized, both the company and the union would have an affirmative defense to minority complaints that they were denied advancement because of lower seniority, as seniority policies have been consistently upheld by the courts (US Airways v. Barnett, 2002). Whether Title VII actions based on race might be more successful than those based on, say, gender, probably relates more to the local cultural environment and any history the company has of retaliation against Title VII plaintiffs.

5. Cases of constructive discharge or retaliation against other Title VII complainants would be powerful evidence of a pervasive pattern of discrimination. In 2011, retaliation was the basis of the largest category of Title VII suits, and the courts have become more aggressive in levying significant penalties against companies and their managers who retaliate against employees {Crawford v. Metropolitan Government of Nashville and Davidson County (2009)}.
6. External validity can be established through the use of real-life situations and replication in a different context (Leedy, 2001). Methodologies that support external and internal validity include triangulation, extensive time in the field, and respondent validation. All were employed in this study and approximately 220 similar studies over a ten year period.
7. Given that different demographic groups differed greatly in size, an enumeration was both practical and appropriate. In this particular manufacturing facility, as in many, there were more males than females, and more younger workers than older. An enumeration was just as feasible as a sample, although that's not always the case.
8. When dealing with nominal and ordinal variables, one always has to deal with the fact that there is no true mean. Consequently, researchers have to be aware that they are measuring association or likelihood of independence, not correlation. This means that researchers need to set the bar high before drawing definitive conclusions.
9. A plausible explanation for these seemingly divergent outcomes would be that there was another variable that, strongly interacting with gender, created the outcomes seen in the data. It would be a good idea to pursue the possibility that there are other factors that impact the variation seen here. Researchers should investigate to see if gender and (dependent variables) are independent if combined with age, race, seniority, or job classification.
10. As noted in the conclusions and lessons learned, the HR professionals believed that there was a variable interacting with gender that led to the variation. In future studies, the researchers were careful to look specifically for an interaction effect among variables. (i.e. gender might interact with race, or seniority might interact with age, or gender might interact with job classification.)