



Sexual Harassment, Free Speech Or . . . ?

Dairy Mart

In early 1992, officials at Dairy Mart's corporate headquarters in Connecticut faced a rapidly escalating problem, and one they thought had been resolved. Dolores Stanley, a ten-year veteran of Dairy Mart, had given the company an ultimatum: If they did not reinstate her as manager of the Toronto, Ohio, Dairy Mart and remove all "adult" magazines from the shelves of the store, Stanley would sue for sexual harassment.

In October 1990, Stanley had been promoted from assistant manager of the Wellsville, Ohio, Dairy Mart, to manager of the Toronto, Ohio, store. Stanley was 33, a mother of three, and a practicing Presbyterian. In her first few days as manager, she had removed all "adult" magazines from the store's shelves.

The third-largest convenience-store chain in the United States, after 7-Eleven and Circle K,¹ Dairy Mart operated about 1,200 stores nationwide. Most sold "adult" magazines, although the store next to corporate headquarters in Enfield, Connecticut, did not. The magazines, including *Playboy* and *Penthouse*, were typically covered in sleeves and stocked behind the counters.

After learning of Stanley's actions, Dairy Mart officials had put the magazines back on the shelves. Dairy Mart's spokesperson, Betty Yopko, explained the store's response: "We're in the retailing business, not the censorship business. If a customer wants to buy them, that's their choice. We don't make the choice for our customers."²

Research Associate Andrea L. Strimling prepared this case under the supervision of Professor Lynn Sharp Paine as the basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation. Research Associates Wilda White and Marc W. Boanwright assisted with research.

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1. Chris Roush, "The Curdling of Dairy Mart," *Business Week*, October 10, 1994, p. 112.

2. Tom Puleo, "Former Dairy Mart manager in Ohio may sue for return of her job; Market mores: Who should censor?" *The Hartford Courant*, January 13, 1992, p. A1.

For Stanley, this was not about censorship, but about her right to a workplace free of sexual harassment: "It goes against everything I believe in as a Christian. There's no way I could participate in that. There's nothing more damaging to the image of women than pornography."³

Stanley also argued that her action had been good for business. Yopko confirmed that business had improved under Stanley, but attributed the turnaround to other factors, including a corporate decision to cut beer prices.

Shortly after Dairy Mart officials put the magazines back on the shelves of the Toronto, Ohio, store, Stanley left Dairy Mart. According to Stanley, she was fired, and according to Dairy Mart officials, she refused to return to work. Now Stanley was threatening to sue under Title VII for hostile work environment harassment.

Stroh Brewery Company

In November 1991, eight female employees of Stroh Brewery filed suit against the company for sexual harassment, claiming they had been subjected to verbal harassment, unwelcome physical contact, and displays of condoms and lewd pictures.⁴

A privately held company, Stroh's had approximately 2,600 employees and \$680 million in annual sales⁵ representing an 8% share of the U.S. beer market, after Coors, Miller, and Anheuser Busch. Together, the four accounted for 88% of the market.⁶

In addition to the legal and managerial issues, the sexual harassment allegations raised a marketing question. The women argued that Stroh's advertising campaigns, including both printed promotions and the "Swedish Bikini Team" television advertisements, directly contributed to a sexually hostile working environment. The Swedish Bikini Team had first appeared in May 1991 promotions of Stroh's Old Milwaukee brand and was scheduled to appear in the January 1992 issue of *Playboy*. The Old Milwaukee ads featured five women in identical blonde wigs and blue bikinis,⁷ parachuting in on a group of men camping.

Stroh's advertising campaign also included printed promotions, some of which were posted in the workplace. One poster showed an apparently topless women holding a beer in one hand and covering her chest with a bouquet of flowers. Another poster, headlined "Home Grown in Minnestrohta," featured women in revealing baseball uniforms.

According to one of the women who filed the suit, "You walk into the lobby to punch in, and you see pictures of Stroh's ads with women who are half-naked...When they [the male employees] are getting feedback from the top of the company that women are bimbos and that's OK, that's why I'm getting treated the way I'm getting treated."⁸

3. Ibid.

4. Tony Kennedy, "Judge says Stroh's ad strategies won't be part of harassment trial; Ads not in workplace to be excluded, ruling states," *Star Tribune*, November 9, 1993, p. 1D.

5. *Ward's Directory of Public and Private Companies*, (Detroit: Gale Research, 1994.)

6. *Beverage World 1993-94 Databank*, (Dayton, Ohio: Keller International Publishing Corporation.)

7. Rorie Sherman, "Stroh's Case Plaintiffs Take Case to Public," *National Law Journal* (December 30, 1991), p. 7.

8. Martha T. Moore, "Taste test: Debate brews over selling beer with sex," *USA Today*, November 15, 1991, p. 1B.

Using female models to sell beer was common within the industry. According to a consultant to the beverage industry, "You still basically have one iron-clad attitude in the brewing industry, which is that you cannot sell beer effectively unless you sell it to young men, and you can't sell beer effectively to young men unless you use sex."⁹

At the time of the suit against Stroh's, however, competitors such as Budweiser and Miller Lite were moving away from sex-based ads. Budweiser's advertising campaign included an ad featuring a 68-year-old woman playing electric guitar, and another showing a father-son basketball game. According to Bud brand manager, "if you upset women in the process of trying to appeal to a 21- to 27-year-old male, I just don't think that's going to last for long."¹⁰ Miller Lite's brand manager said that the "It's it and that's that" campaign was "a conscientious effort to make the people in our commercials seem like they are in regular settings . . . trying to make men and women equal in those commercials."

The news of the suit against Stroh's broke just weeks before Minneapolis hosted the 1992 Super Bowl. On game day, activists picketed the Metrodome, where Stroh's was a featured beer. According to Kevin Ryan of Mark VII Distributors, "There was no measurable effect on total market sales, but it [the protest] had an adverse impact on some customer perceptions."¹¹

Stroh's admitted that some of the sexual harassment claims were "substantially true,"¹² but argued that the harassment was not linked to the television advertising. Stroh's General Counsel said the company would not consider eliminating the Swedish Bikini Team ads unless "we were to determine...that they were offensive to a significant segment of our consumer base. . . . We believe [the ad] is working."¹³

Los Angeles County Fire Department

Los Angeles County Fire Department officials thought they had done the right thing. In July 1992, as part of a broader sexual harassment policy implemented to comply with state and federal law, the Department had banned sexually explicit magazines, including *Playboy*, *Penthouse*, and *Playgirl*, from dormitories, restrooms and lockers in its 127 firehouses. Four years earlier, public scandal about pornographic movies played in public areas of LA city fire stations had led to new city policies banning the display of sexually explicit materials.¹⁴

County attorneys said that the ban was intended to protect the rights of female firefighters, and to correct the "sexually hostile environment" that had kept women off the force.¹⁵ Of the 2,328

9. Martha T. Moore, "Taste test: Debate brews over selling beer with sex," *USA Today*, November 15, 1991, p. 1B.

10. Ibid

11. Jill Hodges and Tony Kennedy, "Stroh's settles harassment suit by women employees," *Star Tribune*, December 2, 1993, p. 1A.

12. Rorie Sherman, "Stroh's case plaintiffs take case to public," *National Law Journal* (December 30, 1991), p. 7.

13. Ibid

14. Jessica Siegel, "LA Rule Barring Playboy Fought," *Chicago Tribune*, December 17, 1993, p. 10.

15. Gale Holland, "LA County contends Playboy is too hot for firehouses," *San Diego Union-Tribune*, June 8, 1994, p. A3.

uniformed firefighters in Los Angeles County, only 10 were women.¹⁶ Bunkrooms and bathrooms were generally not segregated by sex. According to women firefighters, the men showed explicit photos openly at work, making comparisons between their female colleagues and the women in the photos.¹⁷

Captain Steven W. Johnson, a thirty-year veteran of the force, was unhappy with the magazine ban. After county officials rejected his grievance, he filed suit against the county in December of 1993. Supported by the American Civil Liberties Union, he argued that the ban violated his rights to free speech. "I think during your off-duty time you should be able to study, snooze or read a magazine of your choice...I happen to enjoy *Playboy*," said Johnson.¹⁸ Firefighters, who often worked 24-hour shifts, were generally allowed to read or watch television in the evening between calls.

Technological Equipment Corporation

Stefan Eisenfeld thought he had taken a major step in advancing his career when he accepted a position in 1992 as a project manager in the Software Products Division of Technological Equipment Corporation (TEC). TEC was one of the most prestigious firms in the field, and Eisenfeld had set his sights on moving quickly up the ranks to a top corporate position.

Eisenfeld had exceptional qualifications, having graduated from MIT in 1990 with an MBA from the Sloan School and a PhD in engineering. In addition, he held advanced degrees in computer science and law. After graduating from MIT, Eisenfeld had spent two years working for a top management consulting firm. Although he had enjoyed the work and excelled at it, he wanted to move from consulting to management. When TEC recruited him, Eisenfeld saw an important career opportunity.

Eisenfeld moved into his office at TEC in 1992. In his new position, Eisenfeld reported directly to Ed Williams, a senior division manager who had a long career with TEC. Williams' office, decorated with expensive oak furniture and photos of his wife and three children, seemed to reflect success in his business and personal life.

Eisenfeld was quiet, considerate, and hard-working. He had grown up in a separatist Mennonite community in rural Pennsylvania and continued to practice his religion, although he did not follow all of the mores of the community. A committed employee, Eisenfeld worked long hours.

Late one Wednesday evening, Eisenfeld was in his office when he heard scuffling, and a woman's voice, coming from the conference room down the hall. Concerned that someone was being hurt, Eisenfeld ran to investigate, but the conference room door was closed. After returning to his office to call Security, Eisenfeld ran back to the conference room, bursting in to find his boss, Ed Williams, alone by the conference table. Eisenfeld was stunned. He was explaining to Williams what

16. Shante Morgan, "Firefighter seeks right to read Playboy: LA county policy cited in suit as violation of speech, privacy rights," *San Diego Union-Tribune*, December 17, 1993, p. A3.

17. Gale Holland, "LA's ban on Playboy in firehouse is overruled," *San Diego Union-Tribune*, June 10, 1994.

18. Shante Morgan, "Firefighter seeks right to read *Playboy*: LA county policy cited in suit as violation of speech, privacy rights," *San Diego Union-Tribune*, December 17, 1993, p. A3.

he had heard when Security arrived. Williams laughed at Eisenfeld, telling the guards, "What this guy needs is a real woman."

It was clear to Eisenfeld, from the noises and from Williams' response, that Williams had been with a woman in the conference room. The next week, Eisenfeld heard that Williams was having an affair with Jackie Evans, another division manager. Although she held the same title as Eisenfeld, Evans had been with TEC for six years, having advanced rapidly from an entry-level position. Intelligent and hard-working, Evans had a reputation for pushing projects through and rising with their success. Early on, Eisenfeld had noticed and admired the ease with which Evans seemed to fit into the TEC culture.

After the incident in the conference room, Williams began to make off-color sexual comments to Eisenfeld. He would repeatedly ask Eisenfeld to come to his office to discuss business, and then lean close to him and ask, "How big is yours?" or say "I need to speak to you about your masturbating overtime." On several occasions, Eisenfeld returned to his desk after lunch and found pornographic materials on his chair. He assumed Williams had left them there.

It also seemed to Eisenfeld that Williams had told Evans about the incident in the conference room and that she, too, was taking pleasure in embarrassing him. She would wink at him suggestively in the halls and nudge him when they were alone in the elevator.

One evening, Eisenfeld was working late on a project to meet an important deadline. Evans, who was reviewing some aspects of the same project, called him to her office. The office, which had a wonderful east view, was lit by soft incandescent lighting. Eisenfeld noticed that Evans' lipstick was fresh.

Eisenfeld was surprised, and relieved, by Evans' business-like approach. "Let's move to my round table," she said. "I want to get this project out of the way." They spent over an hour working through several tables of data, completely focused on the work. Then, Evans began sliding the arch of her foot along his leg. Eisenfeld jumped up from his chair, but Evans grabbed his hand, pulling herself up to his chest. The two of them fell into a large potted plant.

Evans laughed. "You are too much!" She couldn't seem to stop laughing, and her speech came out in bursts. "Don't take things so seriously . . . this is just to have fun . . . nobody will know."

Eisenfeld got up and left. He went back to his office, shut the door, and sat there for about an hour trying to figure out what to do. Then he went home.

During the next few days, Eisenfeld managed to avoid Evans, but Williams' jokes seemed to increase, with repeated allusions to virginity and sexual organs. Eisenfeld began to question his future with the company, but he did not know what he would say if a prospective new employer asked why he wanted to leave TEC. He also wanted to find a way to handle the problem, rather than running away from it.

Jacksonville Shipyards, Inc.

In late January 1985, Lawrence Brown, vice-president for Operations for Jacksonville Shipyards, Inc., received what he thought was a routine call from Elmer "Ossie" Ahlwardt, vice president of the company's Mayport Division. Ahlwardt had several issues to discuss with Brown, including a request from welder Lois Robinson that a "Playboy type" poster be removed from the walls of the shipfitting shop. Having agreed to meet with Robinson after receiving her call a few days earlier, Ahlwardt wanted some advice on how to handle the request.

Jacksonville Shipyards, Inc. (JSI), a private subsidiary of publicly held Terex Corporation, was based in Jacksonville, Florida. The company repaired commercial and Navy ships at several shipyards, including the Commercial Yard and the Mayport Yard. As described by its employees, JSI was "a boys club," employing seven women and 1,010 men as skilled craftworkers in 1983.

When Robinson called Ahlwardt, she was frustrated and angry. For several weeks, she had been trying to get sexually explicit material removed from the toolroom trailer and the shipfitters' trailer in the Mayport Yard. Such material was not unusual at JSI. In fact, it was pervasive. Though employees were encouraged to request permission to post most kinds of materials—and permission for political and commercial material was sometimes denied—prior approval was not required for the pictures of nude and partially nude women that were displayed throughout the workplace. These included vendors' advertising calendars, pages torn from magazines and taped up on the walls, and varnished wooden plaques with photos showing naked women in explicit poses of sexually submissive behavior. One picture showed a woman's body with the words "USDA Choice" written across it. Hard core pornographic magazines could be found in various work areas available for casual reading, even though bringing magazines and newspapers to work was officially prohibited. The nipple of a woman's breast served as the bull's-eye of a dart board displayed in one area.

Robinson had worked as a welder at JSI since 1977, having been promoted from third-class welder to first-class welder during that period. During her years at JSI, she and the other women had endured harassing behavior. A policy statement posted in some of the shops declared, "Abusing the dignity of anyone through ethnic, sexist, or racial slurs, suggestive remarks, physical advances or intimidation, sexual or otherwise, is not the kind of conduct that can be tolerated." Despite the statement, women's complaints about harassment had been met with laughter or derision. When one woman complained to her supervisor, he put his arms around her in a gesture of mock comfort and repeated a sophomoric sexual joke.

Finally, Robinson had decided something had to be done. Initially, she complained about the pictures to John Kiedrowski, her leaderman. Although Robinson had been assigned to work with the shipfitters and needed to check out welding equipment from the toolroom trailer every morning, Kiedrowski had told her that she had no business in the shipfitters' office. Robinson then spoke to Fred Turner, the welding department foreman. Turner had taken limited action to remove "pin-up" pictures around the shops, but did nothing about the sexually explicit calendars.

Robinson had next taken her complaint to Ellis Lovett, the shipfitting foreman. Lovett had responded by having a calendar within the shipfitters' trailer moved to a wall that could not be easily seen from outside the trailer.

By this point, Robinson's complaints had become common knowledge around the shipyards, leading to increasing verbal sexual harassment not only of Robinson, but also of other female

employees. One woman who worked at the Mayport Yard specifically asked Robinson to stop making complaints because of the responses around the Yard.

Several days after the calendar in the shipfitters' trailer was moved, a "Men Only" sign appeared on the trailer door. At this point, Robinson decided to make a formal complaint. On January 23, she met with Everette Owens, a superintendent at the Mayport Yard, and Chief Shop Steward Quentin McMillan. She told them that the pictures and the "Men Only" sign were degrading and humiliating and that they constituted discrimination and harassment.

Owens disagreed. He told Robinson that the shipyards were a man's world in which she had chosen to work and that the men had "constitutional rights" to post pictures. Owens specifically told the foreman to leave vendors' advertising calendars up on the walls, but he did instruct someone to paint over the "Men Only" sign.

It was at this point that Robinson took her complaint to Ahlwardt, Owens' superior and vice president of the Mayport Yard. Ahlwardt was the highest ranking official and principal supervisor at the Yard. Ahlwardt, who had a "pin-up" in his office, saw nothing wrong with "Playboy type" pictures. However, he agreed to meet with Robinson to discuss her concerns.

In preparation for this meeting, Ahlwardt called Brown to ask for his advice. Brown, a 16-year veteran of JSI who had risen from machinery superintendent to vice president for operations, was responsible for policy and regulations concerning JSI employees at the Commercial and Mayport Yards. Ahlwardt was looking to Brown for guidance on the Robinson matter.