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Professor calls for fair legal standards

By Edward Klopfenstein
For the Oregon Daily Emerald

The 1991 Clarence Thomas nomination uproar was all Anita Hill's fault, according to one Harvard sociologist.

Hill should have recognized Thomas' "down-home style of courting."

University Law Professor Caroline Forell said the above quote by Orlando Patterson represents the view of a male-centered legal system, a system that views justice in sexual harassment cases through the eyes of a mythological middle-class man.

Forell spoke on women and justice Saturday, ending a three-day University Humanities Center sponsored symposium titled "Justice: Race, Class, and Gender."

The professor advocated changing the legal "reasonable person" and "reasonable man" standards presently used in many sexual harassment and rape cases to "reasonable woman." Judges and juries use "reasonable" standards to judge what is and isn't rational behavior when deciding a court case.

To Forell, and many "reasonable woman" advocates, the old standards have never lost their male point of view.

"(The) reasonableness standard has never been neutral and that the norm represented by the 'reasonable person' against which all conduct is measured continues to be male," said the professor.

History proves Forell's case, she said.

The "we" in the Declaration of Independence offers a prime example of the male endorsement of law, Forell said, quoting Law Professor Angela Harris, as the "we" in "We the People" was intended to represent male, white and propertied.

In the history of the U.S. Supreme Court only one sexual harassment case has been heard.

That case was tried 12 years after the 1964 Civil Rights Act that barred sex discrimination in the workplace. The plaintiff, having been raped and thus obviously in an "abusive working environment," won the case.

Proving more subtle harassment appears more difficult under the reasonable man or person standards.

In a 1986 lower court decision, the female plaintiff pleaded that she faced daily assault from sexual slurs and pornographic material. She lost the case.

"It cannot seriously be disputed that in some work environments, humor and language are rough, hewn and vulgar," said the court in its decision, adding that "(The Civil Rights Act) was not meant to ... change this."

When applied, the "reasonable woman" standard has helped female plaintiffs present their cases. Forell cites the case of a female welder working among 846 male shipyard workers as a good example. The judge said the intimidating amount of pornography and sexual slurs, when seen from a woman's perspective, made the workplace an abusive environment.

Critics say creating a "woman" standard might draw stereotypes and hurt women's groups trying to fight for equal rights.

"They fear that the decision-makers will apply their preconceived notions of women as inherently unreliable, hysterical and supersensitive and as a result will hinder women's quest for equality," Forell said.

Forell herself has reservations on the standard, saying it must be carefully defined so it won't invite the stereotypes. She has studied the issue for more than three years, she said.

She also said the "reasonable woman" should apply only where gender is part of the case.

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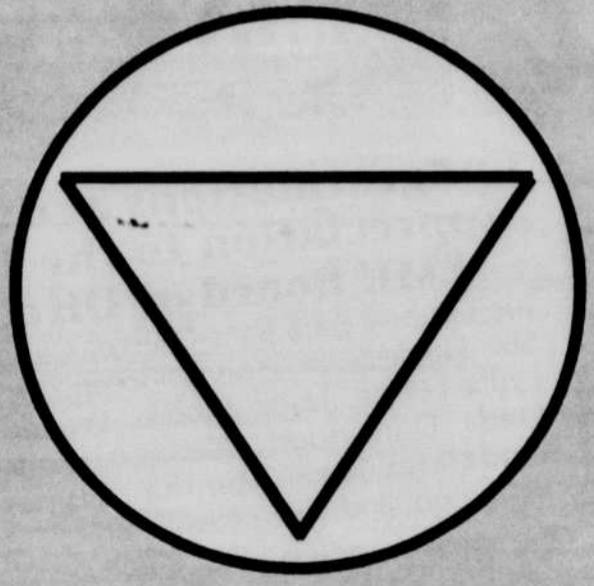


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