

Harassment: Definitions

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DISCLOSURES

- **Governing Boards**
 - Immediate Past President,
Ruth Jackson Orthopaedic Society
- **Editorial Boards**
 - American Journal of Sports Medicine
- **AAOS**
 - Member, Council on Advocacy
 - Member, Diversity Advisory Board
- **Committees**
 - Member, AOSSM Hall of Fame Committee



“If you believe, as I do, that your employees truly are your most valuable asset, you will do whatever you can to help them do their jobs as well as possible.”

Harvey Mackay



Background: Harassment

- True prevalence unknown
- Rates
 - High among medical students, doctors, and healthcare leaders
 - Have not declined among trainees.
- Management or reporting
 - May not be defined by your organization.
 - Formalized process in the federal government and the military.
- Both men and women may be harassed.



Background: Harassment

- **Negative Behavior**

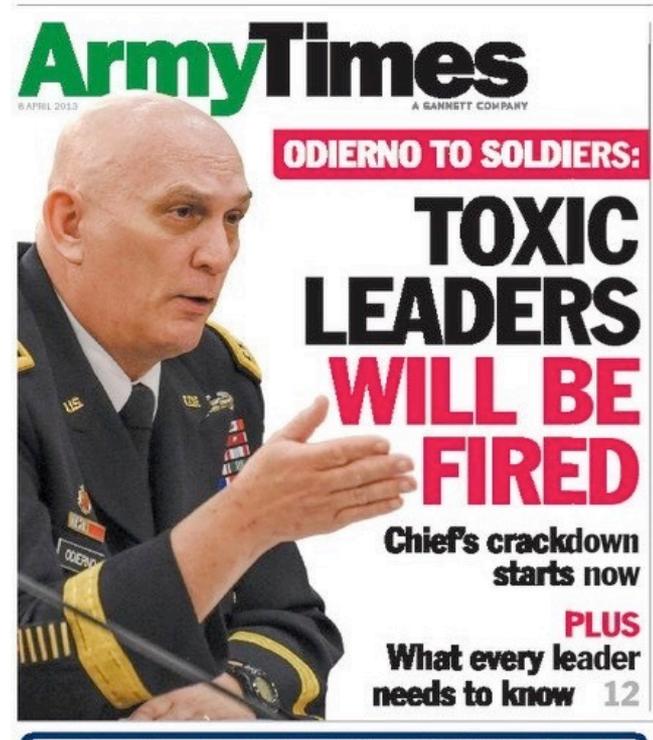
- Offensive, abusive
- Demeaning to a person's worth and integrity
- Excludes people and their ideas
- Demeaning to a person's worth and integrity

- **3 U's: Unethical, Unprofessional, Unproductive**



Background: Harassment

- Associated with
 - poor morale
 - absenteeism
 - decreased performance
- A cause of “toxic work environment”





Definition of Specific Terms



Dictionary Definition: Harassment

- **Origin: French verb *harasser***
- First use in English 1617
- Noun form of the transitive verb to harass
 - exhaust, fatigue; to annoy persistently; to create an **unpleasant or hostile situation** for especially by uninvited and unwelcome verbal or physical conduct
 - to worry and impede by repeated raids



Merriam Webster Online Dictionary, 16 Nov 2019



Harassment and the Law

- Legal definitions
 - State and institutional definitions vary.
 - Federal definition applies to all EXCEPT those on active duty military service.
- Federal enforcement:
 - Supersedes state
 - **Title VII of the Civil Rights Act of 1964**



Clipart #130423



Federal Definition: **Harassment**

US Equal Employment Opportunity Commission

“A form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age of Discrimination in Employment Act of 1967 (ADEA), and the Americans with Disabilities Act of 1990 (ADA)”

- **Unwelcome conduct** based on race, color, religion, sex (including pregnancy), national origin, age \geq 40, disability, or genetic information



EEOC webpage



Federal Definition: **Harassment**

US Equal Employment Opportunity Commission

Unlawful under several conditions when:

- enduring the **offensive conduct** becomes a condition of the employment, is severe or pervasive enough to create a work environment that a reasonable person would consider **intimidating, hostile, or abusive**
- there is **retaliation** against a person filing a discrimination charge, testifying, or participating in support of these laws (**whistleblower harassment**)
- there is **abusive conduct** against a person who opposes employment practices that are discriminating against individuals or opposes persons who violates these laws



EEOC webpage



Offensive Conduct

- Offensive jokes/objects/pictures, slurs, name calling, physical assault or threats, intimidation, ridicule, mockery, insults
- Interference with work performance when
 - so frequent or severe it creates a hostile work environment
 - there is an adverse employment decision



Discrimination

- Refers to the **treatment or consideration** of, or making a distinction in favor or against, a person or thing **based on the group, class, or category to** which that person or thing belongs **rather than on individual merit.**
- **Title VII of the Civil Rights Act of 1964**



Intent to Discriminate: Pre-employment Inquiries

- **May** be regarded as evidence of intent to discriminate when asking:
 - If the applicant is pregnant
 - If marital status or if the applicant is planning to marry
 - number and age of children; future plans to have children
 - childcare arrangements
 - employment status of spouse
 - name of spouse



DISCRIMINATION

Did you get the job?

No.
I think it's because I'm pregnant.



HARASSMENT

How's the new job?

I learned what gaslighting* means. Also, meetings about my own department don't include me.



**attempt to make someone believe he/she is going insane (Merriam Webster Online Dictionary, 29 Mar 2020)*



Protected Categories

- **Pregnancy, childbirth,** or a medical condition related to pregnancy or childbirth
- **Race:** and display of offensive symbols
- **Color:** related to race but distinct; pigmentation, complexion, skin shade or tone
- **Religion:** includes the person's beliefs or practices; employer must reasonably accommodate the employee
- **Sex-Based:** gender, gender identity (includes transgender), sexual orientation
 - Verbal or physical conduct of a sexual nature or offensive remarks
 - Victim and harasser may be man or a woman or of the same sex
- **Age:** applies to
 - private employers ≥ 20 employees
 - state, local, and federal governments
 - employment agencies, labor organizations
- **Disability:** applies to
 - private employers with > 15 employees
 - state, local, and federal governments
 - employment agencies, labor organizations
- **National Origin:** birthplace, ancestry, culture, linguistic characteristics



Aggression, Macro-aggression

- **Definition:** intentional, purposeful actions by an institution that exclude, exploit, or hurt individuals in a group or class of people
- **Examples**
 - Extreme racism, lynching or physical abuse
 - Explicit sexism
 - Exclusion of disabled persons because it creates “a bad impression”



Clipart #130252





- **Bullying**

- attack or intimidation by a person in power or who has perceived power to cause fear or harm AND there is no provocation from the victim
- 3 characteristics: intent, repetition, power imbalance

- **Cyberbullying:** definition varies, online or social media

- “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices”
- Prevalence
 - males more likely to be the cyberbully (similar to bullying)
 - males and females about equally likely to be the victim
- examples: sexting, private photos posted online



Hinduja, 2018; cyberbullying.org [STEP 4]

Kiriakidis Fam Community Health 2010 33(2):82-93



Definition: **Microaggression**

“a comment or action that subtly and often unconsciously or unintentionally expresses a **prejudiced attitude** toward a member of a marginalized group (such as a racial minority)”

“behavior or speech that is characterized by such comments or actions...argues that the power of microaggression lies in its **invisibility to the perpetrator**, who typically finds it **difficult to believe that he or she possesses biased attitudes**”



Merriam Webster Online Dictionary, 16 Nov 2019

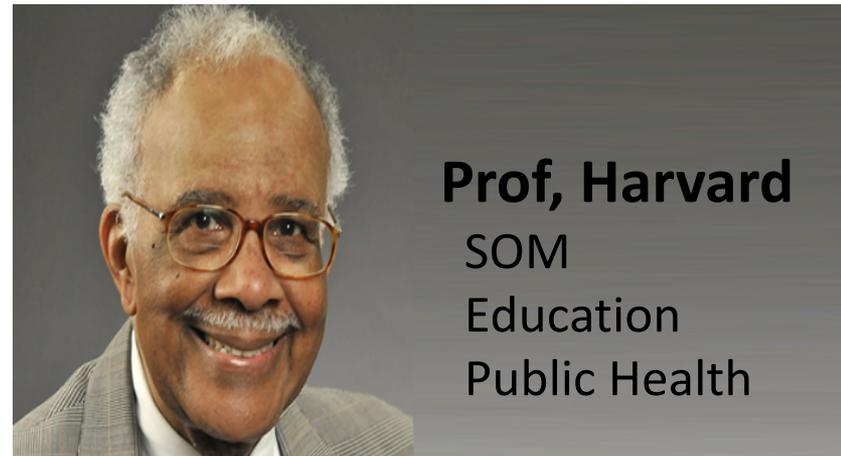


Microaggression

- **Prof Chester M. Pierce, MD**
 - 1970: Insults to “African Americans by non-blacks”
- What is it?
 - Brief indignities or insults towards a group
 - Intentional or not
 - Verbal or non-verbal
 - Subtle, automatic action of an unconscious attitude or belief



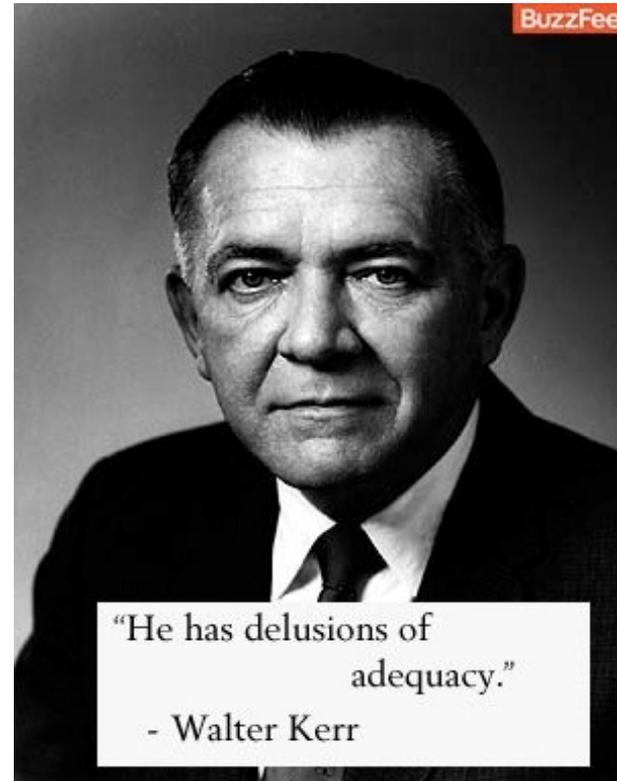
Cmdr., US Navy Medical
Corps
PSYCHIATRY, GLOBAL PSYCHIATRY



Prof, Harvard
SOM
Education
Public Health

Microaggression: Forms

- **Microassault**
 - Racial derogation
 - Avoidant behavior
 - Discriminatory actions
- **Microinsult**
 - Rude, insensitive, and demeaning remarks
 - Subtle snubs
 - Insults hidden to the recipient
- **Microvalidation**
 - Exclusion, negation, or nullification of thoughts feelings of reality



Sue, Am Psychologist 2007 62:271-286



Microaggression: Which Form?

- **Microassault**
- **Microinsult**
- **Microvalidation**

Let me introduce
our Grand Rounds
guest speaker,
Maria



Microaggression: Which Form?

- ~~Microinsult~~

- ~~Microinvalidation~~

- **Microvalidation**

Lack of inclusion for leadership, being ignored or misidentified

- Women physicians, scientists
 - significantly less likely to be addressed by proper title
 - often formally introduced by first name
- 781 video introductions at 2017 and 2018 ASCO Annual Meetings.
 - Professional title ($p < .001$):
 - women 62%
 - men 81% *Duma 2019*

J Clin Oncol, published online before print Oct 11, 2019

PMID 31603705



Action	Abuser	Example
Discrimination	Employer	Adverse action against an employee or groups of employees based on a protected trait (race, gender) or condition (pregnancy, disability)
<i>Sexual Discrimination</i>	Employer	Bias against an employee or group based on gender
Harassment	-Another Employee -Supervisor -Employer -Client -Customer	Unwelcome, unfair or abusive treatment towards an employee; often a pattern
<i>Sexual Harassment</i>	-Another Employee -Supervisor -Employer Client -Customer	Ex: Getting a job or promotion depends on sexual favors; unwanted sexual conduct on sexual favors; unwanted sexual conduct

Title VII of the Civil Rights Act of 1964

- Federal Law
- Protects the spectrum of employment
 - Recruitment
 - Selection
 - Termination
 - Terms and conditions of employment



Clipart #130256



Uniformed Code of Military Justice

Federal military law enacted by Congress

- **No specific offense for harassment.** May come under punitive articles.
 - **Article 120a: Stalking**
 - **Article 133: Conduct unbecoming an officer and a gentleman**
- **Sexual harassment** is now a stand alone UCMJ crime as of 09/20/2019 (Acting SECDEF Patrick Shanahan initiative, May 2019) along with Article 120:

“Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.”



***“Prevention is the best tool
to eliminate harassment in the workplace.”***

US Equal Employment Opportunity Commission

Harassment

<https://www1.eeoc.gov//laws/types/harassment.cfm>

accessed 11/14/2019



***“The employer generally gets the employees
he deserves.” J. Paul Getty***

EEOC RESOURCES

Information or training. 1-800-669-4000

[Http://www.eeoc.gov/employers/contracts.cfm](http://www.eeoc.gov/employers/contracts.cfm)

Poster of Discrimination Laws

<http://www.1.eeoc.gov/employers/poster.cfm>

**Tax Benefits for Hiring Individuals with Disabilities;
Making Your Business ADA Accessible**

<http://www.eeoc.gov/eeoc/publications/adahandbook.cfm#appendixa>

