DISPARATE TREATMENT

and

THE ISSUE OF IMPROPER MOTIVATION

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A Fact Situation Developed by
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This fact situation has been created solely and exclusively for use as an academic exercise on the subject of disparate treatment under Title VII of the Civil Rights Act of 1964, as amended. The scenario is used solely for purposes of professional development of students and professionals in the fields of Law and Human Resource Management. It is not an actual case. The persons and entities appearing in the facts are fictional, and are not to be identified with any person or legal entity.

FACT SITUATION

Michelle Worker, an Asian female, is employed by TSM Industries, Inc., a corporation with ‘home’ offices in Chicago, and operating divisions in Atlanta, Dallas, San Diego, and Richmond. TSM employs more than 3,000 full time salaried or ‘exempt’ employees nationwide in manufacturing, design, software engineering, sales, financial and other positions. Its total operation subsumes the design and manufacture of hardware, and the design and delivery of information management systems for corporate, governmental and community security. TSM is an industry leader in the field of ‘enterprise security’ – or ‘integrated security’ – utilizing local area networks and wide area networks to monitor and provide documentation of activity in public areas, entry to buildings or areas within buildings, etc., and to otherwise utilize video surveillance and communications for security purposes. As a part of its service to customers, TSM provides both consultation regarding the design of integrated systems for the customer’s

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1 Ms. Worker is 36 years old. She has earned bachelors and masters degrees in engineering, with honors, from Clemson University, and has been employed by TSM for seven years.

2 TSM does outsource some of its manufacturing needs to contractors, but its own full time workforce of salaried and exempt employees is employed 40 or more hours per week, 52 weeks per year, and is paid an hourly wage, or a salary, with appropriate provision for overtime.
facilities or environment, and training of personnel in such areas as central station monitoring and security information management.

Ms. Worker was originally hired by TSM as a software engineer, and is employed at the company’s San Diego facility. She has been assigned to projects involving the design of LAN’s and WAN’s, and other aspects of integrated security systems being developed and refined by TSM. While she has limited experience with hardware, she has actively participated in one major hardware design project that resulted in the company’s being awarded a patent.

During the past two years, Ms. Worker has been assigned responsibility for the orientation and training of new software engineers hired by TSM, as well as responsibility for the company’s extensive internship program. TSM’s training program—which Worker created—involves assignment of all software engineers to the San Diego facility for the first three weeks of their employment—under her supervision.

Ms. Worker is also responsible for development and design of the company’s ‘customer training’ units for central station monitoring. In this capacity, she oversees the preparation of materials (e.g., sample policy manuals, CD-ROM’s for employee training, etc.), for the training of customers’ employees in central station monitoring and information management. Her expertise and experience have given her a unique and valuable perspective about the relationship between system design (use of technology) and the role of police or security personnel, and she has written two articles on the subject which have been published in professional police administration journals.

Ms. Worker has begun to feel that she has made her contribution to these areas of company operations. She desires to become more involved in the research and development of enterprise systems, and the customizing of integrated systems for particular customer environments. She seeks increased contact with ‘customers’ in all sectors—industrial, governmental and educational—and believes that she has some new

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3 TSM has designed such integrated systems for several cities (public streets, parks, etc.), and many government building complexes, and large corporate complexes, etc.
4 It is not uncommon for TSM engineers to have some experience with both hardware and software projects, but most are assigned exclusively to one or the other.
5 TSM provides ‘work study’ opportunities for approximately 10 interns at its San Diego facility. Interns spend about 16 weeks at the facility, in programs co-ordinated with their ‘home’ universities.
and innovative ideas for the design of integrated security systems and employee training that will reduce intrusion and assault on college campuses.  

Worker takes her ideas – and her thoughts about developing a new role at TSM – to Henry Hyhatt, her immediate superior. Hyhatt suggests lunch, and the two engage in a lengthy discussion of Ms. Worker’s career ambitions at TSM. Hyhatt makes two arguments: First, he suggests, Ms. Worker is a ‘gifted’ trainer of young engineers hired by TSM. He reminds her of the number of times she has been recognized by the company for her efforts in this role, and observes that her talents – both in creating the company’s orientation and training program, and her work with entry level engineers for their first three weeks with the company – provide unique service to the company. Hyhatt also emphasizes the importance of Worker’s role in developing training materials for TSM’s customers. In sum, he tells Worker that she understands the importance of educating both those who develop enterprise systems (TSM’s own engineers), and those who use them (customers and their employees), and that this quality is rare. Hyhatt then observes – with a tone of frustration – that the company could never find someone as good as Worker to oversee these programs, and suggests that she should probably receive a significant increase in salary – and perhaps a change in title – should she remain in her current role at TSM.

Second, Hyhatt suggests “quite candidly,” that the role Worker seeks would involve substantial travel. Indeed, he says, the kind of customer contact she envisions would take her ‘on the road’ up to 25% of the time, and for days at a time. Seeking Worker’s permission to speak as a friend (which she allows), Hyhatt reminds Worker of

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6 Ms. Worker has created a format which features universally applicable training, but allows for adaptation to particular customer environments. Training units vary, for example, for police officers involved in traditional policing functions, as compared to private security personnel engaged in corporate security.

7 Worker has a genuine interest in the issue of campus security and the safety of college campuses, having read extensive news accounts (in Newsweek, etc.) of the problem of crime on school and university campuses. She feels strongly that, if her ideas are to be developed into systems that work effectively to reduce criminal intrusion, she must engage potential customers in detailed direct discussions, and must personally visit their environments. The market potential in this area, she believes, is significant.

8 Hyhatt, himself an engineer, with an undergraduate degree in electrical engineering, and an M.B.A. degree, is a project director at the San Diego facility. He reports to Dewey Cheatham, Vice-President for Systems Engineering at that facility. Cheatham reports to Page Turner, Vice-President for Information Systems at the company’s Chicago headquarters.

9 Ms. Worker currently earns $84,500.00 per year. During the past two years, she has received an annual bonus of $2,500.00.

10 These are his words.
her commitment to her family, which he describes as the ‘part of (her) character he most admires and respects.’\textsuperscript{11} He ‘counsels’ that he has found his own frequent travel quite difficult, and that it has ‘caused difficulties within his family.’\textsuperscript{12}

Finally, Hyhatt confides in Worker his most important concern. TSM’s customer environment, he explains, is made up of ‘police-types,’ who have worked their whole careers in a ‘paramilitary,’ male culture. The language\textsuperscript{13} and conduct of the workplace is one that breeds sexual overtones, and – Hyhatt observes – potential claims and lawsuits alleging sexual harassment. Moreover, even where overt harassment is avoided, he says, Worker could be put in compromising positions. Hyhatt even fears – he says – that Worker might be subjected to unwelcomed sexual advances, or comments critical of women. Hyhatt suggests that he simply doesn’t believe that Worker should be placed in a role that “takes her away from her family, as well as from what she does better than anyone else in the company – and that subjects her and the company to all sorts of risk.” “This is,” he concludes, “the problem in dealing with female professional employees – Sometimes I hate dealing with this whole issue.”

Worker listens to Hyhatt’s ‘concerns,’ but doesn’t respond at lunch. During the next week or so, she contemplates Hyhatt’s ‘advice.’ She reviews her seven years of work, and recalls that several of the young, white male engineers she has trained are now above her in both rank and salary.\textsuperscript{14} After much thought, she writes a letter to Page Turner, Corporate Vice-President for Information Systems, with a copy to Hyhatt, formally requesting that she be reassigned – and promoted – to deal with the design of enterprise systems (integrating technology and personnel) for specific, large environments, such as cities, and college campuses. She indicates her willingness

\textsuperscript{11} Worker received her masters degree at age 24. She was married at the time to her husband, who is a college professor. The couple had two children during the first two years following Worker’s graduation, and Worker delayed seeking full time employment for three years, until her children were eligible for a pre-school program at the Sullivan Academy, a private elementary and secondary preparatory school regionally accredited by the Western States Association of Colleges and Schools. She was 29 years old when she was hired by TSM.

\textsuperscript{12} Hyhatt says that, since Worker and her family have been able to define a ‘balanced’ lifestyle, and are ‘accustomed to a job that allows her, her husband and her children substantial time together,’ a change in role to a job that takes her away continuously and for much of the week could quickly ‘burn [her] out.’ In short, Hyhatt advises, “Don’t think that you have to become like us ‘older men’ to succeed in your career. Keep your job in perspective.”

\textsuperscript{13} Four-letter words are a common part of the ‘language of the customer’s workplace,’ he says.
to travel, and her husband’s support of her request, in spite of the probable demands and ‘risks’ of the new position.\textsuperscript{15}

Worker receives a reply letter from Turner, stating that the company “cannot justify at this time creating the position you request,” but informing Worker that she is being ‘promoted’ to the position of Project Engineer for Training & Customer Education (a new name for her current position), and will receive an immediate 10\% increase in salary. Turner describes Worker’s position as ‘one of a kind’ in the company, recognizing her ‘unique’ talents and responsibilities, and noting that this ‘promotion’ will give her increased status while allowing her to remain in San Diego ‘full time.’

Three months later, the company promotes two male hardware engineers, ages 34 and 37 – with five years experience in hardware design and minimal software experience at TSM – to positions that involve consultation with customers, at customer sites, and the design of integrated security systems that ‘fit’ the particular customer’s needs. The company cites ‘generally increasing business,’ and ‘a decision to become involved with college and university security,’ in announcing these promotions in its company newsletter. Worker remains involved – from San Diego – in the delivery of training modules and protocols that govern customer use of video and other surveillance technology. She is concerned about her future with TSM.

\textsuperscript{14} She is currently the highest ranking/paid female engineer in the company; there are no females in management.

\textsuperscript{15} Worker is ‘offended’ by the need to explain her husband’s support, but feels that mentioning it is essential under the circumstances.