SUPREME COURT OF THE UNITED STATES

No. 92–1168

TERESA HARRIS, PETITIONER *v.* FORKLIFT SYSTEMS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[November 9, 1993]

JUSTICE GINSBURG, concurring.

Today the Court reaffirms the holding of *Meritor Savings Bank* v. *Vinson*, 477 U. S. 57, 66 (1986): "[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment." The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed. See 42 U. S. C. §2000e–2(a)(1) (declaring that it is unlawful to discriminate with respect to, *inter alia*, "terms" or "conditions" of employment). As the Equal Employment Opportunity Commission emphasized, see Brief for United States and Equal Employment Opportunity Commission as *Amici Curiae* 9–14, the adjudicator's inquiry should center, dominantly, on whether the discriminatory conduct has unreasonably interfered with the plaintiff's work performance. To show such interference, "the plaintiff need not prove that his or her tangible productivity has declined as a result of the harassment." *Davis* v. *Monsanto Chemical Co.*, 858 F. 2d 345, 349 (CA6 1988). It suffices to prove that a reasonable person subjected to the discriminatory conduct would find, as the plaintiff did, that the harassment so altered working conditions as to "ma[k]e it more difficult to do the job." See *ibid.* *Davis* concerned race-based discrimination, but that difference does not alter the analysis; except in the rare case in which a bona fide occupational qualifi-

cation is shown, see *Automobile Workers* v. *Johnson Controls, Inc.*, 499 U. S. 187, 200–207 (1991) (construing 42 U. S. C. §2000e–2(e)(1)), Title VII declares discriminatory practices based on race, gender, religion, or national origin equally unlawful.[1]

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[1]Indeed, even under the Court's equal protection jurisprudence, which requires "an exceedingly persuasive justification" for a gender-based classification, *Kirchberg* v. *Feenstra*, 450 U. S. 455, 461 (1981) (internal quotation marks omitted), it remains an open question whether "classifications based upon gender are inherently suspect." See *Mississippi Univ. for Women* v. *Hogan*, 458 U. S. 718, 724, and n. 9 (1982).

The Court's opinion, which I join, seems to me in harmony with the view expressed in this concurring statement.