

Individual and Corporate Responsibility in a Sexual Harassment Lawsuit

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A recent study provides trial attorneys with new ways to understand jurors' decision making in sexual harassment litigation. Presented here are the study's findings, which include analysis of the results for both individual jurors and juries to determine the impact of the group on individuals and vice versa. The study also compared two juror populations, jury-eligible citizens and college students, because until now, most sexual harassment research has involved college students, who may or may not be representative of the general population in these cases. Also investigated was whether race is a moderating factor in jurors' decisions in sexual harassment cases.

Courts generally have viewed sexual harassment as a form of sex discrimination, prohibited by Title VII of the 1964 Federal Civil Rights Act.

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In 1980, the Office of Personnel Management issued a policy statement on sexual harassment that defined it as "deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature that is unwelcome." Sexual harassment was recognized more than 10 years ago as one of the most frequently litigated areas of employment law.¹ Tort claims usually are added to labor claims to allow plaintiffs to seek redress for pain and suffering

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damages and to have their cases heard by a jury. Sexual harassment law is both rapidly developing and increasingly uncertain because of social and political concerns.² To prevail in a sexual harassment claim against an employer, an employee must prove that "(1) she was subject to unwanted sexual conduct; (2) based upon her sex; (3) that caused her harm."³

One of the major difficulties faced by women who pursue sexual harassment claims is the relative credibility of victim and harasser.

Courts often have held employers responsible for harassing acts of their employees.⁴ Courts also have held employers liable for failing to take proper remedial action upon notification by an employee that sexual harassment has occurred.⁵ Aspects of the victim's behavior generally are analyzed by fact finders to determine whether the sexual harassment victim "went along with it" or in any way "asked for it."⁶ Recent court cases have tended to acknowledge freedom of consent as a necessary precursor to a true consensual relationship, lending some hope for future plaintiffs.⁷

When sexual harassment victims pursue legal action, however, they usually do not fare well in court.⁸ Recent estimates are that only one-third to one-half of plaintiffs in sexual harassment cases prevail, and when they do, monetary compensation verdicts are usually small.⁹ One of the major difficulties faced by women who pursue sexual harassment claims is the relative credibility of victim and harasser.¹⁰ Inequities and credibility differences between plaintiff and defendant can lead the general public to conclude that *they* would have behaved differently than the plaintiff if they were sexually harassed. The Anita Hill-Clarence Thomas case stands as a clear illustration of this effect; many people did not believe Anita Hill because she did not file a formal complaint when sexually harassed by Thomas.¹¹

Fear of retaliation is cited often as a reason why victims, like Anita Hill, do not file charges against their harassers. Some evidence indicates that fear of retaliation may be justified: One survey found that 62 percent of sexual harassment victims reported experiencing retaliation for their response to sexual harassment.¹² More recently, another study reported that 50 percent of plaintiffs in sexual harassment cases were fired and another 25 percent quit in fear.¹³ Thus, while estimates of sexual harassment victimization range from 40 percent to 80 percent of women,¹⁴ it appears that employers and the courts are doing little to prevent it.

One inherent difficulty in studying sexual harassment is that only in its most serious forms is it likely to be labeled "sexual harassment."¹⁵ Victims' perceptions are crucial in the determination of sexual harassment, because contextual information is needed to evaluate the offensiveness of the action.¹⁶ For example, many victims are willing to label a particular behavior as sexual harassment and/or report it as such only when it produces a negative physical reaction in them.¹⁷

GENDER-RELATED PERCEPTIONS OF SEXUAL HARASSMENT

Numerous studies have found that men's definitions of sexual harassment are more narrow than women's; men tend to evaluate only the most serious situations as sexual harassment.¹⁸ However, two 1995 articles question these findings regarding whether women and men have different ideas of behaviors that constitute sexual harassment.¹⁹ These researchers argue that gender differences in perceptions of sexual harassment are not always consistent and that, when gender differences do exist, they are smaller than they appear at first glance. There is, therefore, a need to shift the research focus from simplistic reporting of gender differences to thorough examination of why men's and women's views differ.

Most researchers have found that both men and women tend to view behaviors of higher status aggressors as sexual harassment more often than the same behavior emitted by equal status aggressors (such as coworkers).²⁰ One study, however, found that the aggressor's status had no impact on whether the behavior was considered sexual harassment.²¹ The explanation for this counterintuitive finding was that actual power over the victim is a more important determination of sexual harassment than one's position in the organization.

EXPERIENCES WITH SEXUAL HARASSMENT VICTIMIZATION

Studies focusing on the victim's perception of sexual harassment are increasing in number. Victims of sexual harassment generally report that they were harassed by older, married men of the same race as the victim.²² The power differences between victims and harassers, an antecedent of sexual harassment, is often cited as an explanation for women's varying responses to harassment, including experiencing psychological stress,²³

remembering the details of the incident(s),²⁴ ignoring it/silence,²⁵ quitting the job,²⁶ filing formal charges,²⁷ and expectations of negative consequences from the employer/organization.²⁸ By far, the most common response to sexual harassment victimization is "ignoring it in hopes it will go away."²⁹ The costs, both economic and psychological, to sexual harassment victims who choose to take the most extreme response to sexual harassment—filing a lawsuit—are enormous. One study estimated that only 1 percent of sexual harassment victims pursue legal action and do so only when all other remedies have failed.³⁰ The general public's perception that "everyone sues" does not appear to apply in cases involving sexual harassment; most victims respond by suffering in silence or confiding in a close friend.

THE PRESENT STUDY

The study that is the basis of this article was undertaken to examine the discrepancy between sexual harassment victimization and the general public's perceptions of this experience. In addition, we believe it is important to extend the applicability of research on sexual harassment by utilizing jury-eligible citizens as research participants (as opposed to a sample consisting solely of college students) and by conducting an experimental study of sexual harassment. The vast majority of research on sexual harassment is survey based. There has been considerable criticism of general survey research, particularly surveys conducted with college student participants, as means of investigating sexual harassment.³¹ Specific criticisms stem from college students being unrepresentative of the general population and their lack of work experience, with the latter factor leading to students' underestimation of sexual harassment in the workplace. Our study, in contrast to much of the work that has been done to examine sexual harassment issues, was an experimental study.³² This type of research allows us to make conclusions concerning causality.

We were especially interested in investigating the cross-racial aspects of sexual harassment within the larger context of inappropriate workplace behavior to determine whether race is a moderating factor in jurors' decisions. While it is increasingly known that racial prejudice often plays a part in actual juries, prejudice is less commonly understood within the context of mock juries.³³ Prejudice has often been called "the thirteenth juror"; differential

treatment as a function of race has been shown to occur as long as it can be justified on nonracial grounds.³⁴ For this reason, we manipulated the race of both the female victim and the male harasser within the context of an employee-supervisor relationship involving coerced sexual intercourse.

Because jurors' personalities obviously are key determinants in the way they perceive lawsuits,³⁵ we measured five personality characteristics to assess their utility in predicting jurors' reactions to sexual harassment: legal authoritarianism, just-world belief, universal orientation, rape-myth belief, and sexual harassment empathy. *Legal authoritarianism* refers to the degree to which people endorse conservative, "get tough on criminals" attitudes toward legal issues. Legal authoritarianism has received considerable study since it was first measured almost 30 years ago.³⁶ *Just-world belief* is the degree to which people believe that the world is a fair and just place where bad things happen only to "bad" people.³⁷ Just-world belief has considerable applicability for plaintiffs in sexual harassment cases, because the plaintiffs' behaviors receive more than cursory examination by fact finders. *Universal orientation*, a relatively new personality measure, assesses nonprejudice toward a variety of people and cultures.³⁸ Because our study involved coerced sexual intercourse, participants also completed the *rape-myth scale*.³⁹ People who believe in rape myths typically possess little ability to empathize with rape victims; we were interested in finding out whether mock jurors' rape myths would have a similar impact on a sexual harassment victim. Finally, all respondents completed a measure of *sexual harassment empathy*.⁴⁰ We were interested in understanding how men's and women's perceptions of the plaintiff and defendants were affected by their degree of sexual harassment empathy.

In addition to providing personality-based information, all mock jurors provided responses regarding the following demographic characteristics: age, gender, education, political orientation, ethnicity, marital status, number of children, employment status, student status, occupation, spouse's occupation (if applicable), rape victimization, sexual harassment victimization, sexual harassment accusation, and crime victimization.

When all participants had completed the personality and demographic questionnaires, they were shown photographs of the plaintiff and defendant and then presented with the case facts and jury instructions on audiotape.⁴¹ The case involved a female plaintiff who claimed to have

been sexually harassed, through coerced sexual intercourse, by her male supervisor while at work. The scenario was an out-of-town business trip on which the plaintiff's supervisor, after coercing her to drink alcohol and join him in his hotel room, convinced her to engage in sexual intercourse by telling her it would advance her career. The plaintiff was described as being initially hesitant before ultimately yielding to pressure by her supervisor. The plaintiff sued both her supervisor (the individual defendant) and the company by which they were employed (the corporate defendant). The case description was identical for all mock juries; however, each jury was randomly assigned to view one photograph of the plaintiff (black or white) and one photograph of the individual defendant (black or white).

We were able to analyze the results for jurors and juries to determine the impact of the group on individual jurors and vice versa.

The mock jurors were asked to indicate, on an individual basis, the percentage of responsibility attributable to each of the parties involved in the incident. It was explained that the total amount of responsibility among the plaintiff, individual defendant, and corporate defendant had to equal 100 percent. Participants also were asked to make an award of monetary damages to the plaintiff. Finally, they were asked to estimate their degree of confidence (on a scale of 1 to 6) in the accuracy of their decision.

Following individual decisions, participants were asked to form a jury, select a foreperson, and deliberate until a unanimous verdict was reached on both the liability and damages issues. The group verdict was recorded by the foreperson on a verdict form. After a verdict was reached, mock jurors were asked, once again, to indicate their individual opinions on the liability and damages issues. At that time, they provided another confidence assessment as well as a rating of other jurors' influence on their decision.

RESULTS OF THE PRESENT STUDY

Because our research involved both individual (juror) and group (jury) decisions, we were able to analyze the results for jurors and juries to determine the impact of the group on individual jurors and vice versa. In addition, our study allowed for comparison between two juror populations, jury-eligible citizens and college students. The latter comparison is more crucial than it appears at first

glance because, as stated previously, the majority of research on sexual harassment has involved college students who may or may not be similar to actual jurors on a wide range of characteristics.

Jury Decisions

As depicted in **Table 1**, university students viewed the black plaintiff as less responsible for the sexual harassment than the white plaintiff, while viewing the individual defendant as considerably more responsible than the corporate defendant when the plaintiff was black. The black plaintiff also was awarded more in damages by the students, although this result was not statistically significant.⁴² Jury-eligible citizens found the white plaintiff less responsible than the black plaintiff and blamed the individual defendant far more than the corporate defendant when the plaintiff was white. The white plaintiff, however, was not consistently awarded more damages than the black plaintiff by jury-eligible citizens.

Because the vast majority of both the university students and the jury-eligible participants were white, we are making the assumption that the juries reacted as predominately white juries would. Jury-eligible respondents reacted in the way we anticipated: When the sexual harassment victim was a black woman, they attributed more responsibility to her and less to the defendant. The reaction of the university students is less easily understood. University students responded in a way opposite from what was predicted: They attributed less responsibility to the plaintiff and more to the defendant when the plaintiff was black than when she was white. Perhaps university students, who are frequently made aware of racial bias in society through class discussion and lectures, made an effort not to discriminate or appear biased in deliberations. Jury-eligible participants, who do not receive frequent instruction about racism and its consequences, might have felt more free both to have and to express negative racial opinions and attribute more responsibility to the black plaintiff.

Juror Decisions

The individual decisions mirrored those of the groups: Jury-eligible participants reacted more negatively to the black plaintiff than the white plaintiff and university students did the reverse. University students also awarded more monetary damages to the black plaintiff than did the jury-eligible participants. These results are reported in **Table 2**. This award differential was statistically

Table 1. Jury Decisions of Liability and Damages

	University Students			
	Black Defendant		White Defendant	
	<i>Black Plaintiff</i>	<i>White Plaintiff</i>	<i>Black Plaintiff</i>	<i>White Plaintiff</i>
Plaintiff	15.5	24.4	10.15	15.86
Individual Defendant	53.8	42.48	56.97	49.29
Corporate Defendant	30.7	33.10	33.33	34.86
Award	\$477,500.00	\$378,965.50	\$440,606.10	\$404,285.70

	Jury-Eligible Participants			
	Black Defendant		White Defendant	
	<i>Black Plaintiff</i>	<i>White Plaintiff</i>	<i>Black Plaintiff</i>	<i>White Plaintiff</i>
Plaintiff	16.45	14.5	24.32	10.0
Individual Defendant	47.26	65.75	47.5	64.47
Corporate Defendant	38.55	19.75	30.45	25.53
Award	\$445,806.50	\$206,250.00	\$194,545.50	\$343,421.10

Table 2. Juror Decisions of Liability and Damages

	University Students			
	Black Defendant		White Defendant	
	<i>Black Plaintiff</i>	<i>White Plaintiff</i>	<i>Black Plaintiff</i>	<i>White Plaintiff</i>
Plaintiff	15.5	20.9	16.8	24.0
Individual Defendant	59.8	53.6	56.4	55.2
Corporate Defendant	24.7	25.5	26.8	20.8
Award	\$461,876.32	\$396,724.17	\$508,030.30	\$371,285.71

	Jury-Eligible Participants			
	Black Defendant		White Defendant	
	<i>Black Plaintiff</i>	<i>White Plaintiff</i>	<i>Black Plaintiff</i>	<i>White Plaintiff</i>
Plaintiff	25.7	14.5	22.1	15.3
Individual Defendant	48.9	60.5	52.7	56.3
Corporate Defendant	25.5	25.0	25.2	28.4
Award	\$317,612.90	\$426,000.00	\$292,727.77	\$350,526.32

significant only for predeliberation awards. However, when the plaintiff was black, predeliberation and postdeliberation decisions of responsibility did not vary. Prior research has indicated that deliberations reduce the impact of individual biases on decisions.⁴³ This does not appear to be the case in the present research.

Jurors who had been victims of crime attributed less responsibility to the plaintiff than those who had not been victims of crime.

The race of the man involved in the sexual harassment case also influenced individual decisions, but only after deliberations and only for university students. In this case, jury-eligible participants were not influenced by the race of the defendant in terms of his responsibility or the responsibility of the plaintiff. However, university students found the plaintiff more responsible when the defendant was black than when he was white. University students also found the white defendant more responsible than the black defendant. It would appear, once again, that university students reacted in a way to indicate that they are not prejudiced. Their different reactions only occurred after deliberations. Perhaps they convinced themselves, or were convinced by their colleagues during deliberations, that the black defendant was less responsible. These postdeliberation attributions might have been a way of demonstrating a lack of prejudice to themselves.

Effects of Demographic Variables⁴⁴

Gender

As expected based on past research, men attributed more responsibility to the plaintiff and awarded her lower monetary damages than women. In addition, men attributed less responsibility to the individual defendant in predeliberation decisions. It would appear that the women sympathized with the victim and men with the harasser. Support for this observation can be found in the different responses of men and women to the personality inventories used in the study. Women, who are the more likely victims of sexual harassment, were more empathetic to the plaintiff than were men. They also were less likely to believe myths about rape than were men. Responses to the personality instruments might explain previous findings of dif-

ferent reactions to sexual harassment by male and female respondents.

Age

Older jurors attributed less responsibility to the plaintiff than younger jurors (20.9 percent versus 21.5 percent, respectively). In addition, older jurors held the corporate defendant more responsible (25.6 percent versus 19.7 percent, respectively), while younger jurors held the individual defendant more responsible (58.8 percent versus 53.5 percent, respectively). Education also affected jurors' decision making. Participants with the least amount of education (some high school) attributed the most responsibility to the plaintiff (37.86 percent) and the least to the defendant (35.71 percent). College graduates attributed the least responsibility to the plaintiff (13.3 percent) and the most responsibility to the corporation (31.11 percent).

Crime Victimization

A third demographic variable, crime victimization, also affected jurors' views of the case. Jurors who had been victims of crime attributed less responsibility to the plaintiff (18.07 percent) than those who had not been victims of crime (22.25 percent). This effect was particularly apparent in jury-eligible participants, who attributed much less responsibility to the plaintiff (16.52 percent) when they had been victims of crime than when they had not been victims of crime (23.93 percent). A total of 53 participants reported that they or members of their families had been victims of sexual harassment. These people tended to view the plaintiff as less responsible (16.6 percent versus 21.2 percent), and the company (27.2 percent versus 24.3 percent) and the defendant (56.2 percent versus 54.6 percent) as more responsible than people who had never been victims of sexual harassment. These victims also awarded more monetary damages (\$415,660.38) than nonvictims (\$386,147.08).

Political Orientation

Mock jurors registered as Democrats perceived the plaintiff as less responsible (16.3 percent) than Republicans (20.9 percent), independents (25 percent), or those who were undecided (20 percent). However, mock jurors who were undecided about their political affiliation awarded the most in monetary damages (\$497,240.74), followed by Democrats

(\$418,495.22), independents (\$383,607.14), and Republicans (\$338,831.17). Those who described themselves as liberal attributed less responsibility (16.9 percent) to the plaintiff and awarded her more monetary damages (\$514,166.67) than those who described themselves as conservative, who attributed 19.1 percent of the responsibility to the plaintiff and awarded her \$288,836.90 in damages.

Effects of Personality Variables⁴⁵

Rape myths had a strong impact on jurors' attribution of the plaintiff's responsibility. Mock jurors who endorsed rape myths assigned more blame and awarded less damages to the plaintiff than those who did not believe in rape myths. There also were gender effects for the rape myth variable: Women with low endorsement of rape myths held the individual defendant more responsible than other mock jurors. Jurors with high sexual harassment empathy attributed more responsibility to the plaintiff and awarded less damages than jurors low in sexual harassment empathy. Similarly, jurors who were high in sexual harassment empathy attributed less responsibility to the individual defendant. In addition, the individual defendant was seen as less responsible in the pre-deliberation measure by those high in sexual harassment empathy, who also awarded less damages in post-deliberation decisions. It would appear, then, that the differences in male and female beliefs in rape myths and sexual harassment empathy are the underlying reasons for differences found across many studies between males and females in their views of sexual harassment cases.

Legal authoritarianism had no impact on perceptions of the plaintiff's or individual defendant's level of responsibility. Participants' level of legal authoritarianism did, however, have an impact on their perceptions of the company's level of responsibility. Participants scoring low in legal authoritarianism attributed more responsibility to the company than those high in legal authoritarianism. Apparently, people with high authoritarianism place much of the blame on individuals and consider the company less culpable. Our results suggest the possibility that mock jurors high in legal authoritarianism tend to trust the legal system and/or large companies.

Belief in a just world had no impact on attributions of responsibility to the plaintiff or monetary awards for her. Just-world belief did not influence male participants' liability or damages decisions. However, women with high belief in a just world

attributed less responsibility to the individual defendant than women with low belief in a just world. Interestingly, women with a low belief in a just world attributed less responsibility to the company than did women with a high belief in a just world. Women with a high belief in a just world appear to believe the company needs to watch out for its employees.

Equally compelling as the statistical analysis of the results is the analysis of the comments made by mock jurors during deliberations.

Finally, mock jurors high in universal orientation (nonprejudiced people) were more positive toward the black plaintiff than the white plaintiff. This could be interpreted as a form of anti-prejudice in which the mock jurors awarded the black woman more than twice what was awarded the white woman. It is possible that people with a high universal orientation are extra cautious about their treatment of minorities. They do not want to appear to be biased and consequently lean over backward to be sure they are generous to the minority plaintiff.

Deliberations Analysis

Equally compelling as the statistical analysis of the results is the analysis of the comments made by mock jurors during deliberations. These comments were categorized, based on their content, into 10 distinct groups:

- plaintiff's actions before/during the incident;
- plaintiff's actions after the incident;
- plaintiff's intimidation;
- individual defendant's actions before/during the incident;
- individual defendant's actions after the incident;
- corporate defendant's actions before the incident;
- corporate defendant's actions after the incident;
- consensual nature of the sexual encounter;
- damages; and
- miscellaneous.

By far, the most discussed aspect of the case was the plaintiff's actions and how those actions contributed

to the incident about which she eventually complained. These comments speak for themselves and are presented in **Tables 3-12**.

Implications of the Findings

The results of our experimental study of sexual harassment provide the trial attorney with new ways to understand jurors' decision making within this expanding area of litigation. Even as we approach the next century, race continues to be an important factor in the way we perceive other people. Race emerged as a key factor affecting mock jurors' perceptions of the plaintiff, ultimately having an impact on their liability and damages decisions. Attorneys who represent plaintiffs in sexual harassment lawsuits are well advised to address racial issues with jurors, beginning with voir dire. This is crucial in instances involving a minority plaintiff or cross-racial sexual harassment.

While it comes as no surprise that the behavior of the plaintiff was a focal aspect of deliberations, the degree to which mock jurors discussed the "could haves, should haves, and would haves" was remarkable. Avoiding Golden Rule arguments and instructing jurors to discuss only the evidentiary information do not eliminate the tendency of jurors to put themselves in the plaintiff's shoes as they decide her fate. The trial attorney needs to be aware of the heuristical reasoning⁴⁶ by which jurors reach unanimity. Because most jurors have never experienced a situation similar to the plaintiff's, they use heuristics, including analogies and metaphors, rather than principles of logic when determining the amount of responsibility borne by the plaintiff and the damages she should receive. Furthermore, far from being independent aspects of the verdict, liability and damages appear related in the minds of jurors (see **Tables 1 and 2**). That is, the plaintiff who is viewed as less responsible also tends to receive a higher award. Based on these results, it seems that jurors use the plaintiff's personal characteristics and demeanor to determine how she will, literally, get what she deserves.

The actions of the individual and corporate defendants, while not ignored by mock jurors, were not central to their decision process. Mock jurors clearly blamed the individual defendant to a far greater extent than the corporate defendant. Considerable discussion centered around the company's previous failure to discipline the harasser, but jurors nevertheless believed that he was ultimately to blame. This line of thought, of course,

has direct consequences for sexual harassment cases in which agency or other vicarious responsibility claims are at issue. Given that the corporate defendant is usually the target of sexual harassment litigation, the plaintiff's attorney will have to go to great lengths to emphasize the ways in which its actions (or lack thereof) were the major cause of the plaintiff's damages.

Avoiding Golden Rule arguments and instructing jurors to discuss only the evidentiary information do not eliminate the tendency of jurors to put themselves in the plaintiff's shoes as they decide her fate.

As we have found in previous studies, jurors' personalities have a clear impact on the way they view case issues and litigants.⁴⁷ Because the trial attorney can never hope to change deeply ingrained personality characteristics, he or she must be a keen observer of jurors' personalities and focus voir dire efforts toward understanding how personality variables relate to the case issues. In sexual harassment cases in which degree of rape myth endorsement and sexual harassment empathy are strong predictors of verdict, a supplemental juror questionnaire containing these measures is warranted. Supplemental juror questionnaires are becoming increasingly common in jury selection; they are essential in obtaining honest responses to sensitive issues such as sexual behavior.

It is also important for trial attorneys to be aware of jurors' past experiences. Jurors who have been victims of crimes, particularly sexual harassment, are more sympathetic to the plaintiff than those who have not been victims of crimes. This effect extends to jurors whose family members have been victims. Our findings parallel those of a previous study that also revealed that prior victims of sexual harassment awarded higher damages to a plaintiff regardless of the severity of the harassment.⁴⁸ It appears that potential jurors' direct experiences with sexual harassment are more predictive of verdict than demographic variables such as gender and race.

In conclusion, the present study provides a unique addition to the trial attorney's notebook of sexual harassment research. Future research is underway to examine female-to-male sexual harassment and sexual harassment under conditions of extreme power differences between plaintiff and defendant as we strive to gain a deeper insight into jury behavior in these cases.

Table 3. Juror Comments: Plaintiff's Actions Before/During the Incident (75)*

She has some personal responsibility; she could have left. (29)	She has no self-respect. (5)
She wanted to move up in the company but she should have used better judgment. (14)	She was unprofessional. (4)
She should have known <i>not</i> to go to his hotel room. (14)	There was something going on between them before the trip. (2)
It may have been her first business trip and she had no idea what she was in for. (7)	

Table 4. Juror Comments: Corporate Defendant's Actions Before the Incident (58)

The company was responsible; they knew his record. (24)	The company was right to give him a second chance. (4)
The company should have made sure that she was not left alone with him; they knew his reputation. (10)	The company should have done a more thorough background check due to the past complaint. (4)
The company should have fired him after the first victim came forward. (10)	The company paid "hush" money to the other victim. (4)
	The company wasn't there to watch him at all times. (2)

Table 5. Juror Comments: Damages (52)

She will have a hard time getting another job. (10)	She can find another job. She has a master's degree. (6)
There was no force involved so she doesn't deserve much money. (9)	If we give her a lot of money, the company might think twice before allowing this to happen again. (4)
She's asking for too much money. (8)	The company has the money and the deep pockets. (3)
She will need a psychiatrist for her emotional problems. (7)	The attorney will have to be paid out of this money. (3)

Table 6. Juror Comments: Individual Defendant's Actions Before/During the Incident (46)

As her boss, he shouldn't have put her in that position. (19)	He was a repeat offender. (8)
He invited her to his room with sex in mind. (15)	Most men are going to be looking for sex when they are alone with a woman. (4)

*The number in parentheses indicates the frequency with which a particular category of comment was made.

Table 7. Juror Comments: Plaintiff's Intimidation (36)

She consented to sex because he put her job on the line. (11)	When he threatened her, he "crossed the line." (4)
His position of power intimidated her. (9)	When you're young, you're easily intimidated. (2)
She got into a bad situation and she couldn't get out. (8)	Being new to the company, she couldn't voice apprehension. (2)

Table 8. Juror Comments: Consensual Nature of the Encounter (32)

This wasn't rape; she agreed to have sex. (14)	She used poor judgment in staying and agreeing to have sex. (6)
Consent is responsibility. (6)	If she hadn't agreed to the sex, we wouldn't be here. (6)

Table 9. Juror Comments: Corporate Defendant's Actions After the Incident (29)

She became the sacrificial lamb. (8)	Alpha told her not to complain. (4)
The company should have investigated the situation more thoroughly. (8)	The company can't assume responsibility for employees' actions. (1)
Alpha has a responsibility to the people who work for them. (6)	The company should fire him and give her his job. (1)
	If she hadn't gone to bed with him the company would have behaved differently. (1)

Table 10. Juror Comments: Plaintiff's Actions After the Incident (19)

She should have complained immediately. (6)	She could have gone to someone higher up with her complaint. (2)
She should have gone to the meeting the next morning. (3)	If I have a daughter, she's going to know to file a complaint before she leaves her job. (1)
She lost her job because she performed it poorly. (2)	One-third of rape victims do not report it because they are made to feel like they asked for it. (1)
She had too much to lose by lying. Her story is the real truth. (2)	She must have had firm convictions to go with this. (1)

Table 11. Juror Comments: Individual Defendant's Actions After the Incident (11)

His story was a cover-up. (7)	If he was advertising that they had sex, it is bad, but it isn't sexual harassment. (1)
He's probably going to do this again if the company is let off the hook. (2)	He's an important employee; he won't do this again because he doesn't want to get caught. (1)

Table 12. Juror Comments: Miscellaneous (19)

Stories are conflicting; who knows who's telling the truth? (5)	It could have been an attraction. (1)
Drinking often leads to sex. (3)	She was victimized by two parties. (1)
Company policy regulates business trips. (3)	This is still considered a man's world. (1)
People try to get money from these situations. (2)	All hotels have conference rooms and lobbies for business meetings. (1)
Both the man and woman knew better than to do this. (2)	

ENDNOTES

¹D.E. Terpstra & S.E. Cook, *Complainant Characteristics and Reported Behaviors and Consequences Associated with Formal Sexual Harassment Charges*, 38 *Personnel Psychol.* 559, 561 (1985).

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³*Id.* at 194.

⁴S.G. Bingham & B. Bureson, *Multiple Effects of Messages with Multiple Goals: Some Perceived Outcomes of Responses to Sexual Harassment*, 16 *Hum. Comm. Res.* 184 (1989); C.A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (London, Yale University Press 1979); Terpstra, & Cook, *supra* note 1.

⁵Burns, *supra* note 2.

⁶L.F. Fitzgerald et al., *Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 *J. Soc. Issues* 117 (1995).

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰Burns, *supra* note 2.

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