

Sexual Harassment: Issues for Forensic Psychiatrists

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The number of civil lawsuits related to sexual harassment is increasing. The author bases this paper on her experience as an expert witness in 28 sexual harassment cases over the last 10 years. She delineates the psychological and legal issues about which forensic psychiatrists may be consulted. These include issues related to helping a jury determine the veracity of the complaints of harassment, the psychological effects of the harassment, the prognosis, and the treatment for women who have been harassed. The author gives examples of cases where psychiatric testimony was given to help in the decision making about damages related to the psychological effects of sexual harassment.

Sexual harassment became a widespread topic of public discussion when Anita Hill testified during the 1991 Clarence Thomas U.S. Senate confirmation hearings. However, sexual harassment has been legally described since 1980 when the Equal Employment Opportunity Commission specified that sexual harassment is a violation of Title VII of the Civil Rights Act of 1964 and defined it as: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or advancement (*quid pro quo* cases) or (2) has the purpose or effect of unreasonably interfering with an individual's work performance or creating

an intimidating, hostile, or offensive working environment (working condition cases). The EEOC guidelines also established strict liability for employers when the harassment is committed by a supervisory employee even if the specific acts were forbidden by the employer and regardless of whether the employer knew of the occurrence of the harassment.¹

U.S. Supreme Court View on Sexual Harassment

The first sexual harassment case to reach the Supreme Court, *Meritor Savings Bank FSB v. Vinson*, was decided on June 19, 1986. In *Meritor*, Mechelle Vinson was hired as a bank teller by a vice president of Meritor Savings Bank. She received a number of promotions based on merit and then was fired because she used an excessive amount of sick leave. Vinson sued the bank for sexual harassment. She claimed that during her four years of employment she

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had been subject to sexual harassment by the vice president consisting of requests for sexual favors including sexual intercourse. She stated that she acquiesced because she feared losing her job. She stated that she stopped going to work and this accounted for her absenteeism that was the basis of her termination. The vice president denied these charges, and the bank said that it had no knowledge of these activities. The Supreme Court ruled that offensive hostile environment constitutes illegal sexual harassment as long as it is sufficiently severe and pervasive such as to cause an abusive working environment. The court also said that, even though the sexual relationship was *voluntary*, there was harassment because the conduct was *unwelcome*. The court also ruled that the bank was liable if there was actual knowledge of the harassment *or* if the supervisor was acting as the employer's agent and could, in this capacity, make employment decisions affecting subordinates. Thus, an employer's lack of knowledge does not necessarily insulate the employer from financial liability.²

Role of Forensic Psychiatrists

Sexual harassment is widespread³ and the number of civil lawsuits related to sexual harassment is increasing.⁴ In fact, during the first half of the 1992 fiscal year compared with a year earlier, the EEOC reported a 52% increase in harassment complaints.⁵ During the last 10 years, this author has been consulted in reference to 28 sexual harassment legal cases. The purpose of this paper is to delineate the psychological and legal is-

sues about which forensic psychiatrists may be consulted and utilize examples from the author's sexual harassment cases. While sexual harassment also is experienced by men, the vast majority of victims are women.⁶ All the cases in this paper are of women who reported that they were harassed by men.

Opinions About Whether Harassment Occurred

The ultimate question about whether the harassment occurred is decided by the fact-finder (judge or jury). Occasionally there are witnesses to the harassment or there are multiple plaintiffs who claim harassment by the same offender. In these cases, the veracity of reports of harassment are less in question. However, much harassment occurs in private. There are no witnesses and it is one person's word against the other. This is analogous to the question of credibility that arises in rape and battered woman situations. In rape and wife abuse situations, courts have allowed an expert to testify that a woman's behavior is consistent with that of other women who have been raped or abused.⁷ Similarly, in sexual harassment situations, forensic psychiatrists may be asked to comment about the behavior of women claiming sexual harassment and whether the plaintiff's reactions are similar to those of others who have been harassed. In addition, the forensic psychiatrist may be asked to comment about other issues related to the veracity of the sexual harassment claims, e.g., whether there is evidence of distortion or paranoia by the plaintiff, the significance of the time

course of revelations about the harassment, and alternative explanations for poor performance evaluations and termination.

General Information About Harassment The forensic psychiatrist may be asked to describe harassment and the typical behavior and responses of women who have been harassed. For example, forensic psychiatrists may be asked to educate the court about the fact that harassment ranges from sexually suggestive remarks, teasing jokes, gestures, pressure for dates, requests and pressure for sexual favors through words, letters, or phone calls, deliberate touching, cornering, pinching, and actual or attempted sexual intercourse.⁸ In addition, the forensic psychiatrist may be asked to explain why a person might remain in a harassing environment. It may be helpful to explain to the court that women may comply with requests for sexual favors and remain in the harassing workplace because of economic necessity and/or knowledge of the supervisor's pattern of retaliation. Moreover, the harassed woman may remain in the harassing environment because she feels afraid, embarrassed, all alone, powerless, demeaned, and intimidated.⁹

Ms. A. was a 41-year-old divorced janitor who was harassed by one of her supervisors. He commented about her lips and various body parts. He would also repeatedly follow her into empty restrooms when she was cleaning them and "accidentally" rub against her. She tried to ignore the supervisor's behavior and it continued during her year of employment. The forensic psychiatrist was able to explain that Ms. A.'s behavior of ignoring the harassment and remaining in the harassing environment

was consistent with that of other women who have been sexual harassed.

Factors Relating to Judgments About Whether There is Distortion The forensic psychiatrist might also be asked about underlying psychiatric conditions which would impact on the reliability of the plaintiff's report of harassment. On the one hand, the forensic psychiatrist can inform the court that, even if the plaintiff appears unstable, histrionic, or paranoid, she may be a victim of harassment. The forensic psychiatrist can provide education about the fact that these are common responses to severe harassment⁶ and do not indicate that the plaintiff is distorting her perceptions about the harassment. On the other hand, in some cases, underlying personality characteristics or even psychosis might influence a woman's perception about whether she was being harassed.

Ms. B. was a 27-year-old single secretary who stated that she was harassed by her supervisor. She stated that her supervisor "looked at [her] in a sexual way" and made hand movements as if masturbating. On careful questioning, she stated that her supervisor also said, "You should let your house work for you." She related that she interpreted this comment to mean, "You should become a prostitute."

Ms. C. was a 33-year-old separated service representative in a hospital. She claimed that the hospital administrator tried to touch her breast, kissed her on the neck, and put his penis in her mouth. She had been previously hospitalized with a diagnosis of schizoaffective disorder. Review of her hospital records showed that she had had paranoid ideation, including believing that she would be poisoned in the hospital. The records also spoke of an incident that occurred during her hospitalization where she made an unsubstantiated claim about inappropriate behavior by the public defender. She apparently won a commitment

hearing and the public defender came into her bedroom to discuss the hearing with her. She claimed that she put her arms around him to thank him and then he tried to kiss her and fondle her.

Although the alleged harassment of Ms. B. and Ms. C. may have occurred exactly as described, the evidence of misinterpretation of comments and reports of a prior unsubstantiated claim of inappropriate behavior and prior psychosis made the plaintiffs seem less credible to the jury.

Significance of Adding Details to Incidents In cases of sexual harassment leading to civil lawsuits, there are often many prior reports made by the plaintiff. These may include letters, filing of informal and formal grievances, reports of the union, administrative reviews, and workers compensation reports.¹⁰ Thus, the plaintiff has many written records in which she has described the harassment. At times the details of the alleged harassment may change and the forensic psychiatrist may be asked to comment on the implications of these changes. In some cases the forensic psychiatrist may explain that it is a typical reaction for women to feel embarrassed about the fact that they are being harassed, especially regarding the physical aspects of the harassment. Therefore, women may not report these details initially. In these cases, her addition of further incidents does not mean that she is not telling the truth.

In contrast, a woman may add details at other points in time and this may signify that the incidents are being embellished.

Ms. D. was a 44-year-old sales representative for a large manufacturing company. She filed grievances related to harassment during her employment including being told that women did not belong in that industry and being told that she should not expect favoritism by being allowed to take extra courses. She also filed grievances related to the fact that a supervisor told her that she "looked good in skirts." There were records of her meeting with her union representative where she was repeatedly asked for other examples of harassment. She could give no other examples. She filed a workers compensation claim during which no other examples of harassment were given. In her civil suit deposition, she added other incidents of harassment including that her breasts were fondled and that she saw her supervisor grab and shake his genitals. The fact that these details were added so much later made them seem less credible.

Factors Related to Plaintiff's Performance Evaluation and Termination

In many sexual harassment cases, plaintiffs state that after they refused sexual advances or after they filed a grievance related to their harassment, they were then retaliated against and treated unfairly, including being given poor performance evaluations and being terminated. For example, in one study, two-thirds of women were subjected to retaliation when they refused sexual advances. Many of these women were refused promotions, and more than a quarter of them had been laid off. In addition, 75 percent of the women said that their job performance suffered because they could not concentrate on their work.¹¹ Moreover, some women may use alcohol and prescription and nonprescription drugs in an effort to reduce stress-related symptoms⁶; this may further compromise their perform-

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ance ability. The forensic psychiatrist may be asked to comment on plaintiffs' poor performance evaluations. At times these evaluations may represent poor performance resulting from the stress of harassment and retaliation. At other times, in certain cases, poor performance may be due to factors separate from the harassment as illustrated in the following two case examples.

Ms. E. was a 23-year-old single secretary who stated that her supervisor asked her about her personal life and invited her to lunch. She related that when she filed a grievance, she was repeatedly written up for being late and also received a bad evaluation for performance and attendance. She saw these as evidence of retaliation. The forensic psychiatrist reviewed her personnel files from her prior employment at a department store. Those employment records showed that she had been repeatedly late during this prior employment and her evaluations from that job spoke of poor attendance and problems with insubordination. Thus, poor performance, especially related to lateness and absenteeism, seemed to be a chronic problem for this plaintiff since these problems existed in a prior non-harassing environment.

Ms. F. was a 45-year-old secretary who stated that she was harassed while she worked at a manufacturing plant including being asked on dates and being asked for sexual favors. She complained about the harassment and claimed that she subsequently received poor performance evaluations and was terminated as retaliation. Review of her medical records showed that she was abusing prescription drugs prior to and during the time of her employment including receiving Vicodin, multiple codeine containing compounds, and various benzodiazepines from multiple physicians. Her performance evaluations reflected that she had problems in attention, concentration, and sedation while working. The forensic psychiatrist was able to explain that her poor performance evaluations may have reflected behavior typical of patients who are intoxicated or withdrawing from medications. Her drug abuse

seemed to be a preexisting problem that may have been exacerbated by the stress of harassment but was not precipitated by the harassment.

What Is Current Psychological Condition and Causation?

Effect of Retaliation as well as Harassment The forensic psychiatrist is often asked to evaluate the psychological effect of the harassment on the plaintiff. This is usually done by evaluation of medical and psychiatric records and interview of the plaintiff, including performing a current mental status examination and making a DSM-III-R diagnosis to determine the nature of the plaintiff's present emotional state. It is often difficult to separate out the emotional distress related to the harassment versus the retaliation once the harassment is reported. In fact, the working environment may become more hostile once the harassment is reported, and the woman may have a compounding of the adverse physical, and mental health effects of the original harassment experience.⁶

Ms. G. was a divorced nurse working in the county jail. A deputy sheriff harassed her by asking her out on dates, reading *Hustler* magazine within view of the inmates while she was dispensing medications and asking her unwelcome and intrusive personal questions about her prior marriage and her son. Ms. G. tried unsuccessfully to set limits on the deputy sheriff and told him his behavior was unwelcome and inappropriate. The deputy sheriff continued his behavior and finally Ms. G. reported him to a supervisor. At that point, Ms. G. experienced retaliation from the other deputy sheriffs and nurses. She was asked to withdraw her letter by his colleagues and, when she refused, she experienced isolation and withdrawal from the other deputy sheriffs. She

began to fear for her safety because if a prisoner became violent during her examination she was afraid that the deputy sheriffs would be slow to respond. She eventually felt she needed to leave her job in the jail.

Range of Reactions To do an effective job of evaluating emotional distress, it is helpful to know the expectable range of psychological reactions to harassment. This can range from discomfort, embarrassment, and disgust to depression and paranoia. Psychological effects can include symptoms found in the DSM-III-R diagnoses of post-traumatic stress disorder, major depressive disorder, dysthymic disorder, and adjustment disorder.⁶ Ms. H. is an example of a woman who experienced a relatively minor reaction to being harassed and Ms. I. is an example of a woman who experienced a more severe reaction:

Ms. H. was a lesbian bus driver who was harassed by the bus dispatcher. He would repetitively make comments such as, "I can show you what a man feels like" and "I will give you good runs if you go out to dinner with me." He would also stare longingly at her when she was in the dispatch station. She stated that she felt repulsed and disgusted by him. She said, "Being gay, I knew I hadn't done anything to encourage him." She felt uncomfortable whenever she had to go to the bus dispatch station and would call in sick if she knew she had to have a lot of contact with the bus dispatcher on certain days. Ms. H. requested a transfer to another bus yard and her symptoms went away.

Ms. I. was in one of the first groups of women recruits in the police academy. Her father and grandfather were career policemen and she had always hoped to be a police officer. She had experienced taunting comments related to her gender and jokes since her time in the police academy, e.g., when there was an exercise where she needed to hold a police baton, she found that her baton had been greased before

it was given to her. She ignored most of the harassment and advanced within the ranks. Then, an infamous incident occurred where she was invited to a party for new recruits where, as a joke, prostitutes were hired to perform sex acts on the recruits. Ms. I. was appalled by this incident and reported it to internal affairs with a promise of confidentiality. Shortly after she made the report, she found four-letter words painted on her locker. Other police officers made derogatory comments about her gender and about how women are whistleblowers. She reported these comments to her superiors and then the retaliatory behavior seemed to worsen. She would walk into a room filled with officers and there would be sudden silence or she would walk into a room and other officers would leave. She found that her radio calls were not answered. In another incident, she followed several suspects down an alley and turned around to find that the other officers had disappeared and therefore she had no backup. She began to fear for her life. She realized that she had to leave the police force and became depressed. She withdrew from friends, lost weight, had decreased energy, and poor sleep. She obsessed over the fact that her career was ruined.

Factors Affecting Severity of Reaction

The forensic psychiatrist may be asked to explore factors that may explain the severity of the emotional distress. These may include details about the harassment, the plaintiff's support system, and the presence of a preexisting performance condition and/or prior stressful life events.

Type, Degree, and Duration of Harassment One factor that can affect the psychological response is the type, degree, and duration of harassment. It is important to determine whether there was verbal abuse or physical touching. It is also important to determine the degree of verbal or physical abuse, e.g.,

whether there was fondling or intercourse, and for how long the abuse continued. Ms. J. is an example of a woman who suffered milder harassment and had milder reactions. This contrasts with Ms. K. who suffered more severe harassment as well as a more severe reaction.

Ms. J. was a 40-year-old woman who was the office manager in a delivery company. She was harassed by the truck drivers, who displayed *Playboy* posters in the office. Ms. J. requested the removal of the posters. This was done but then the posters were redisplayed. This continued for several months. The men called her a "prude" and a "busybody." There was a note on one pinup saying, "If you're jealous, don't look at it." Ms. J. experienced embarrassment, outrage, and disgust.

Ms. K. was a 33-year-old secretary who was harassed for one and a half years by her employer. The harassment began with verbal comments and progressed to touching, fondling, and intercourse. The harassment occurred after hours in her boss's private office. Ms. K. stated that she acquiesced to his demands because she thought that she would be fired if she did not agree. Ms. K. eventually became severely depressed.

Presence or Absence of Supportive Relationship Another factor affecting the severity of reactions is the presence or absence of a support system. Ms. L. is an example of a woman who described her spouse as unsupportive. This contrasts with Ms. M., who had a more supportive spouse.

Ms. L. was a 31-year-old woman airport security officer who was repeatedly harassed by another security worker. He would ask her out on dates and touch her breasts or buttocks whenever he caught her alone. Both Ms. L. and her husband were from Central America. Ms. L. discussed these incidents with her husband who told her that she must have done something to provoke and deserve this behavior.

Ms. M. was a 35-year-old police officer in the vice squad. She stated that women in general and also women on the street were always referred to in unflattering terms. She herself was the butt of many jokes and much teasing. Ms. M. met her second husband who was also a police officer, and she stated that her self-esteem improved. She related that she no longer felt comfortable with her colleagues' use of language. She asked them to stop and this increased the derogatory comments about herself and other women. She stated that her husband was very loving and supportive and helped her see that she did not need to put up with this abuse any longer. Ms. M. became angry at the work behavior and mobilized quickly to bring a lawsuit.

Presence of Preexisting Psychological and Prior Stressful Events Another factor affecting the severity of reactions to harassment is whether there are preexisting psychological conditions and/or prior stressful events, e.g., prior depression or other mental illness and prior sexual abuse. For example, some women experience flashbacks and reawakening of memories of prior victimization.⁶ Both plaintiff and defense attorneys use this information to argue their cases. Plaintiff attorneys argue the "eggshell" plaintiff theory, i.e., a relatively minor stress has affected this extremely vulnerable plaintiff to cause severe psychological damage. Defense attorneys argue that their client is not responsible for the current psychological symptoms of the plaintiff.

Ms. N. was a deputy sheriff who had a prior history of childhood sexual abuse, had been a battered wife, and had been treated for depression. As a deputy sheriff, she was harassed by her superiors with repetitive touching of her buttocks and hips and sexual comments. On evaluation, she was diagnosed as having a depressive disorder. The plaintiff's attorney ar-

gued that Ms. N. had a severe emotional reaction to this behavior because her prior psychiatric history made her vulnerable and because this current abuse stirred up memories of her prior sexual abuse. The defense attorney argued that Ms. N's severe emotional reaction was not related to her current abuse but was a result of prior unresolved issues which would have surfaced anyhow.

Other Sources of Causation of Past and Present Emotional State

Attorneys usually ask forensic psychiatrists to determine other sources of the plaintiff's emotional distress. They are especially interested in whether there might be other sources of distress not related to the plaintiff's employment.

Effect of Lawsuit In some cases, judges have ruled that the defendants are only responsible for damages resulting from the workplace harassment and retaliation but are not responsible for emotional distress related to the lawsuit. A previous study has shown that lawsuits by themselves are extremely stressful.¹² In sexual harassment cases, the decision to litigate represents public exposure of a problem about which women may feel guilty or embarrassed.⁹ Nevertheless, since defendants may not be responsible for litigation-related stress, the forensic psychiatrist is asked to distinguish between the adverse psychological affects of the workplace and the lawsuit. Ms. O. is an example of a case where the lawsuit caused distress.

Ms. O. was a 40-year-old married woman who was harassed when she worked as a saleswoman at a beer distributing plant. The harassment included being told that she should wear a T-shirt saying, "How about a tall blond tonight." The plaintiff was tall and blond. The plaintiff filed for workers compensation as well

as a civil lawsuit. The plaintiff had been unemployed since she left her job at the plant. She expended much energy preparing for the lawsuit. She attended multiple depositions and medical, psychiatric, and psychological evaluations that were quite stressful for her. The judge ruled that psychological distress related to the lawsuit itself was not compensable.

Other Psychological Stressors The forensic psychiatrist may also be asked to elucidate other stressful events in the life of the plaintiff since these other stressors may impact on the issue of causation, i.e., a plaintiff may have severe psychological problems but these may not be related to the workplace harassment.

Ms. P. was a 49-year-old divorced secretary who was harassed by the office manager. He asked her out on dates and also touched her buttocks. She complained to management, and the office manager as well as other personnel became distant, cold, and rude. She eventually was terminated and she brought a lawsuit. She became depressed and had low self-esteem and problems obtaining other employment. During psychological evaluation, she related multiple other stressful events that occurred subsequent to her termination of employment: Her son was killed in an automobile accident, her infant grandson died of meningitis, and her new husband revealed he was bisexual. Obviously, these incidents affected her present emotional state.

Medical Conditions Forensic psychiatrists may be asked to comment on physical symptoms caused by the harassment. For example, in one study, more than half of the harassed women experienced nausea, headaches, and fatigue.¹¹ In addition, in some cases, medical conditions unrelated to the harassment may be a cause of psychological symptoms.

Ms. Q. was a 45-year-old mechanic who

worked in a large company and who was harassed. For example, pornographic magazines were left near her locker, a condom was left out, and her shop coat was sprayed with obscene words. She became depressed and irritable. She also had undiagnosed Grave's disease, and this clearly needed to be considered in causation of her current emotional distress.

Prognosis and Treatment

Forensic psychiatrists may be asked about the plaintiff's future emotional state and the expected course of treatment for recovery. These two questions relate to the issue of damages. The answers are determined by the plaintiff's present emotional state and the overall psychological effect of the sexual harassment and retaliation. To my knowledge, there are no studies that compare the efficacy of different treatments for the psychological sequelae of sexual harassment. Several writers have suggested that the best treatment for women who have been sexually harassed is to treat the stress symptoms as a "normal" reaction to a social problem, i.e., the harassment.¹¹⁻¹³ In this model, counseling provides a woman with the opportunity to express anger about her treatment at work and acknowledge possible shame and guilt. In addition, the woman gains the opportunity to explore her fears for her economic survival and to make previously unrecognized connections between her symptoms and her work situation.^{11, 13}

In some women, sexual harassment may stimulate pathological reactions,^{6, 9, 11} and the plaintiff may manifest the symptoms of a range of DSM-III-R Axis I diagnoses as described earlier in this paper. The forensic psychia-

trist may be asked to make recommendations about whether psychotherapy and/or medications would be useful and to prognosticate about the duration and outcome of treatment.

Summary

Sexual harassment exists in the workplace even though it is illegal. As we continue to be a litigious society, lawsuits related to sexual harassment are likely to continue. This article has delineated issues about which forensic psychiatrists may be called upon to give an opinion. Expert testimony by psychiatrists will give juries information that they can use to make decisions about whether the harassment occurred, about factors affecting the plaintiffs' reactions, and about damages related to psychological effects of sexual harassment.

References

1. Equal Employment Opportunity Commission. Guidelines on discrimination on the basis of sex. Federal Register 45:25024-25025, April 1980, and 45:74676-74677, November 1980
2. Meritor Savings Bank v. Vinson, 106 S. Ct. 2399 (1986)
3. Carmen EH, Russo NF, Miller JB: Inequality and women's mental health: an overview. *Am J Psychiatry* 138:1319-30, 1981
4. More people now seeking redress for sexual harassment and winning. *Psychiatric News*, August 21, 1992, p. 7
5. Osborn M: More victims speak out after Anita Hill charges. *USA Today*, August 3, 1992, p. 48
6. Shrier DK: Sexual harassment and discrimination: impact on physical and mental health. *New Jersey Medicine* 2:105-7, 1990
7. Slovenko R: The role of the expert (with focus on psychiatry) in the adversarial system. *The Journal of Psychiatry and the Law* 16:333-73, 1988
8. U.S. Merit Systems Protection Board. Sexual

- harassment in the federal workplace: is it a problem? Washington, DC. U.S. Government Printing Office, 1981
9. Bursten B: Psychiatric injury in women's workplaces. *Bull Am Acad Psychiatry Law* 14:245-51, 1986
10. Petrocelli W, Repa BK: Sexual Harassment on the Job. Berkeley, Nolo Press, 1992
11. Crull P: Stress effects of sexual harassment on the job: implications for counseling. *Am J Orthopsychiatry* 52:539-44, 1982
12. Binder RL, Trimble MR, McNiel DE: Is money a cure? Follow-up of litigants in England. *Bull Am Acad of Psychiatry Law* 19:151-60, 1991
13. Sprathlen LP: Sexual harassment counseling. *J Psychosoc Nurs Ment Health Serv* 2:150-7, 1990