

THE ROLE OF JUROR ATTITUDES TOWARD SEXUAL HARASSMENT ON
DAMAGE AWARDS FOR EMOTIONAL DISTRESS IN SEXUAL HARASSMENT
CASES

Elizabeth A. Burris Garner

APPROVED:

John P. Vincent, Ph.D.
Committee Chair

Tonya Inman, Ph.D.

J. Ray Hays, Ph.D.

John W. Roberts, Ph.D.
Dean, College of Liberal Arts and Social Sciences
Department of English

THE ROLE OF JUROR ATTITUDES TOWARD SEXUAL HARASSMENT ON
DAMAGE AWARDS FOR EMOTIONAL DISTRESS IN SEXUAL HARASSMENT
CASES

A Thesis

Presented to

The Faculty of the Department

of Psychology

University of Houston

In Partial Fulfillment

Of the Requirements for the Degree of

Master of Arts

By

Elizabeth A. Burriss Garner

May 2014

THE ROLE OF JUROR ATTITUDES TOWARD SEXUAL HARASSMENT ON
DAMAGE AWARDS FOR EMOTIONAL DISTRESS IN SEXUAL HARASSMENT
CASES

An Abstract of a Thesis
Presented to
The Faculty of the Department
of Psychology
University of Houston

In Partial Fulfillment
Of the Requirements for the Degree of
Master of Arts

By
Elizabeth A. Burris Garner

May 2014

ABSTRACT

Research suggests that the prevalence of sexual harassment is high in both educational and employment contexts (Foulis & McCabe, 1997). Despite the number of sexual harassment claims, there is a paucity of research examining juror decision making with regards to compensatory damage awards in this context (Cass, Levett, & Kovera, 2010). Research on juror damage assignment in cases of preexisting psychological injury (e.g., “eggshell psyche”) is also sparse. Additionally, little research has been conducted to evaluate the effect that juror attitudes towards sexual harassment have on juror damage awards and the impact of closing arguments on juror decision making. Against this background, the aims of the present study are to (a) expand on previous research by further examining how juror attitudes towards sexual harassment, as measured by the Sexual Harassment Attitude Scale (SHAS; Mazer & Percival, 1989), affect determinations of non-economic, emotional injury claims in a sexual harassment scenario where a plaintiff has preexisting emotional issues (b) test the impact of closing arguments on juror decision making and (c) examine the interaction between closing arguments and juror attitudes on juror decision making, specifically whether juror attitudes towards sexual harassment, as measured by the Sexual Harassment Attitude Scale, will differentially impact juror’s damage awards in response to plaintiff’s or defendant’s closing arguments. The main effect of juror attitude was found to be significant, with mock jurors with intolerant attitudes toward sexual harassment awarding greater amounts in damages than mock jurors with tolerant attitudes toward sexual harassment. The implications of these results are discussed.

ACKNOWLEDGMENTS

I would like to thank my committee members, especially my advisor, Dr. John Vincent, for sharing their expertise, time, and support with me. Their feedback and advice has helped me to grow as a researcher in the field of psychology.

I would also like to thank my husband, Paul, for supporting me through my second experience as a graduate student. Paul has offered understanding and acceptance of the long hours spent studying, seeing clients, and researching and writing. Last, but not least, I would like to thank my family for their love, support, and the emphasis they placed on education.

TABLE OF CONTENTS

Abstract.....	v
Acknowledgments.....	vii
Introduction.....	1
Sexual Harassment Defined.....	2
Prevalence of Sexual Harassment.....	3
Effects of Sexual Harassment.....	5
Sexual Harassment in the Courts.....	6
The United States Legal Process	8
Damages Available in Civil Lawsuits.....	9
Special Issues with Damage Awards.....	11
How Jurors Deal with Damage Determinations.....	14
Possible Third Variables Related to Jury Decision Making.....	15
Purpose of the Present Study.....	17
Method.....	19
Participants.....	19
Materials.....	20
<i>Pre-Case Questionnaire</i>	20
<i>Case Scenario</i>	20
<i>Post-Case Questionnaire</i>	21
<i>Measures</i>	21
<i>Sexual Harassment Attitude Scale</i>	21
<i>Sexual Experiences Questionnaire</i>	22

Design and Procedure.....	22
Results.....	23
Discussion.....	25
References.....	35
Tables.....	43
Figures.....	45
Appendix	49

LIST OF TABLES

<i>Table 1.</i> Descriptive Statistics by Argument Condition.....	43
<i>Table 2.</i> Tests of Between-Subjects Effects (ANOVA).....	44

LIST OF FIGURES

Figure 1. SHAS Total and Damage Award..... 45

Figure 2. Damage Award and Argument Condition..... 46

Figure 3. Argument Condition and Damage Award – Tolerance vs. Mean vs. Intolerance
..... 47

Figure 4. Plaintiff and Defendant Argument Conditions and Damage Award..... 48

LIST OF APPENDICES

Appendix A. Pre-Case Questionnaire.....49

Appendix B. Case Scenario..... 55

Appendix C. Plaintiff’s Closing Argument 60

Appendix D. Defendant’s Closing Argument..... 62

Appendix E. Post-Case Questionnaire..... 64

Appendix F. Sexual Harassment Attitude Scale (SHAS)..... 67

THE ROLE OF JUROR ATTITUDES TOWARDS SEXUAL HARASSMENT ON
DAMAGE AWARDS FOR EMOTIONAL DISTRESS IN SEXUAL HARASSMENT
CASES

Sexual harassment is a common occurrence in the workplace, with over 12,000 charges of sexual harassment being resolved by the EEOC in 2010 (McDonald, 2012). Despite the prevalence of sexual harassment claims, there is a paucity of research examining juror decision making with regards to compensatory damage awards in a sexual harassment context (Cass, Levett, & Kovera, 2010). Notwithstanding evidence that sexual harassment claims often involve damages for emotional distress and that jurors have difficulty determining appropriate compensation for non-economic injuries, such as emotional distress, little research has been conducted to evaluate how jurors assign damages in this context (Eden, 2001; Goodman-Delahunty & Foote, 1995; Marti & Wissler, 2000; Vallano, Winter, & Charman, 2012). Even less research has examined how jurors assess damages in a sexual harassment litigation context where the victim has suffered from a preexisting psychological injury (e.g., “eggshell psyche”) and no research has examined the effects of closing arguments in a sexual harassment context or examined the effects of closing arguments on preexisting attitudes towards sexual harassment. As sexual harassment causes of action are often based upon claims for psychological injury where the victims of workplace sexual harassment have a history of emotional problems, research in this area is of utmost importance (Follette, Polusny, Bechtle, & Naugle, 1996).

Against this background, the aims of the present study were to (a) expand on previous research by further examining how juror attitudes towards sexual harassment, as

measured by the Sexual Harassment Attitude Scale (SHAS; Mazer & Percival, 1989), affect determinations of non-economic, emotional injury claims in a sexual harassment scenario where a plaintiff has preexisting emotional issues (b) test the role that closing arguments had on juror decision making and (c) test the role that the interaction of closing arguments and juror attitudes had on juror decision making, specifically whether juror attitudes towards sexual harassment, as measured by the SHAS, differentially impact juror's damage awards in response to plaintiff's or defendant's closing arguments.

Sexual Harassment Defined

Title VII of the Civil Rights Act of 1964 (amended in 1991) prohibits several forms of harassment, including gender discrimination. Prohibition of two types of sexual harassment, quid pro quo harassment, where employers exchange sexual contact for compensation or promotions, and hostile work environment harassment, where employees are subjected to hostile, offensive, or intimidating work environments as a result of their gender, is included in Title VII. The EEOC requires that the defendant's conduct reach a certain level of severity and pervasiveness to meet the definition of a hostile work environment. The EEOC has adopted criteria from *Rabidue v. Osceola Refining Company* (1986) to determine whether a hostile work environment exists. These criteria require a reasonable person in a similar work environment under similar circumstances to find that the unwelcome behavior is so acute and persistent that it caused the work environment to become hostile (Wiener, Hurt, Russell, Mannen, & Gasper, 1997).

Despite indications that sexual harassment frequently occurs, there is no commonly-utilized definition or standardized method to measure sexual harassment

(Antecol & Cobb-Clark, 2002). The lack of a common definition of sexual harassment and of widely accepted, standardized assessment instruments makes study of sexual harassment difficult (Fitzgerald, Shullman, Bailey, Richards, Swecker, Gold, Ormerod, & Weitzman, 1988). The lack of agreement on definition in research settings is reflective of the lack of agreement in the general public (Foulis & McCabe, 1997). Generally, the public can agree on extreme cases of harassment, such as sexual bribery and explicit sexual propositions or touching; however, ambiguity regarding whether harassment has occurred is common in moderate instances of sexual harassment, such as staring, flirting, and the use of foul language (Foulis & McCabe, 1997; Frazier, Cochran, & Olson, 1995). Despite a lack of a generally accepted lay definition of sexual harassment, most statutes contain elements describing the conduct as unwanted or unwelcome with the purpose or effect of being intimidating, hostile, degrading, humiliating, or offensive (McDonald, 2012).

Prevalence of Sexual Harassment

Prevalence estimates of sexual harassment vary as a function of the definition utilized, method used to sample and question workers, respondents' willingness to label behaviors as sexual harassment, and time frame of retrospective assessment (Ilies, Hauserman, Schwochau, & Stibal, 2003; McDonald, 2012). Consequently, it is difficult to gather accurate data on the occurrence of sexual harassment in the workplace. Regardless of how estimates are quantified, research suggests that the prevalence of sexual harassment is high in both educational and employment contexts, with studies indicating that up to 58% of women have experienced potentially harassing experiences at work (Foulis & McCabe, 1997; Ilies, Hauserman, Schwochau, & Stibal, 2003). There

is conflicting evidence on whether the incidence of sexual harassment has changed over time. Several large-scale studies conducted between 1981 and 2005 show varying rates for different types of sexual harassment; however, the inconsistencies in findings could be due to differences in methodologies, sociocultural understandings of sexual harassment, or both. (McDonald, 2012).

Sexual harassment is most likely to occur between a male perpetrator and a female victim (Angelone, Mitchell, & Carola, 2009). Research indicates that there is a link between male-dominated occupations and work contexts and an increase in sexual harassment, wherein women in balanced or female-dominated organizations are less likely to experience sexual harassment relative to women in male-dominated organizations (McDonald, 2012). It is unclear whether harassment occurs more often between co-workers of equal level or between co-workers at different levels of the organizational hierarchy (Angelone, Mitchell, & Carola, 2009; O'Connell & Korabik, 2000), although it appears that sexual harassment is more prevalent in organizations characterized by large power differentials, such as the military (McDonald, 2012). Additionally, it is worth noting that cases involving multiple incidents of harassment and gender harassment are the most prevalent forms of harassment (Angelone, Mitchell, & Carola, 2009; Frazier, Cochran, & Olson, 1995).

Regarding gender differences, relative to men, women typically perceive more instances of gender harassment and unwanted sexual attention as sexual harassment (Angelone, Mitchell, & Carola, 2009; Russell & Trigg, 2004). Women also appear to hold less tolerant views of sexual harassment than men, although factors other than gender (e.g., ambivalence and hostility toward women) may be stronger predictors of

sexual harassment tolerance than gender alone (Angelone, Mitchell, & Carola, 2009; Russell & Trigg, 2004).

Effects of Sexual Harassment

Victims of sexual harassment often experience a wide variety of psychological and physical impairments (Antecol & Cobb-Clark, 2002; McDonald, 2012), especially women (Lonsway, Cortina, & Magley, 2008). Self-reported consequences of sexual harassment include, but are not limited to: anger, fear, anxiety, irritability, decreased self-esteem, dread of work, and feelings of humiliation, powerlessness or vulnerability, sleep difficulties, headaches, nausea, weight loss, loss of appetite, and gastrointestinal disturbances. Clinically significant psychological problems, such as depression and posttraumatic stress disorder, also have been reported by victims of sexual harassment (Goodman-Delahunty & Foote, 1995; McDonald, 2012; O'Connell & Korabik, 2000).

Employment-related sexual harassment has also been linked to job-related difficulties (McDonald, 2012). These difficulties include increases in job turnover, absenteeism, job dissatisfaction, and job stress. In addition, sexual harassment has been linked to decreases in productivity, organizational commitment, interpersonal relations at work, job satisfaction and motivation, and job involvement (Antecol & Cobb-Clark, 2002; O'Connell & Korabik, 2000). Sexual harassment of this form may also result in involuntary termination or resignation of the victim (Goodman-Delahunty & Foote, 1995).

The economic effects of sexual harassment are notable for both the employee and the employer (Antecol & Cobb-Clark, 2002; McDonald, 2012; Schoenheider, 1986). For example, a recent meta-analysis estimated that lost productivity as a result of sexual

harassment costs approximately \$22,500 per person (McDonald, 2012). Regarding organizational costs, employer losses may include costs related to paying medical insurance claims and sick leave to those who missed work, turnover and recruitment, training, investigation of incidents, tardiness or absenteeism, decreased productivity, damage to the company's reputation, and loss of shareholder faith (McDonald, 2012; O'Connell & Korabik, 2000). Between 1992 and 1994, sexual harassment cost the United States government \$327 million (Antecol & Cobb-Clark, 2002). In 2010, of the 12,000 sexual harassment claims the EEOC resolved, non-litigation monetary benefit costs totaled over \$48 million (McDonald, 2012). Cost estimates for the private sector can also be extremely high (Antecol & Cobb-Clark, 2002).

Sexual Harassment in the Courts

Despite high prevalence estimates, studies indicate that only a small percentage of sexual harassment victims file formal complaints, with estimates ranging from 1 to 30% (Foulis & McCabe, 1997; McDonald, 2012). Of those who file formal complaints, less than 1% subsequently engages in legal proceedings (McDonald, 2012).

Sexual harassment claims may be brought under Title VII litigation or through civil torts litigation. Upon inception, Title VII remedies were merely injunctive, which means they served only to prohibit a reoccurrence of the activity (Schonheider, 1986). Until Title VII was amended in 1991, victims were unable to receive damages, whether compensatory or punitive (Fitzgerald, 2003; Schoenheider, 1986). As such, sexual harassment claims prior to the 1991 amendment of Title VII were often brought under tort law as it provides a remedy in both compensatory and punitive damages for harm caused by the defendant's harassment (Schoenheider, 1986). The 1991 amendments to

Title VII required defendants to compensate victims for their injuries as well as to provide for punitive damages in cases of egregious behavior by the employer (Fitzgerald, 2003). Monetary damages can include damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses (Greene & Goodman-Delahunty, 1995). Despite these amendments, victims often still bring their claims under civil tort law, likely because Title VII requires a difficult burden of proof – that the defendant engaged in the discriminatory act with malice or reckless indifference to the rights of the victim – or because title VII limits the amount of punitive damages that can be imposed on a defendant (Seiner, 2011).

Black's Law Dictionary (Garner, 2004) defines a tort as a private or civil wrong or injury for which the court will provide a remedy in the form of damages. This means that a tort claim involves a determination of liability for the tortious act as well as the right for the plaintiff to be compensated for the actual loss suffered. Tort liability is based upon negligence, which is the failure to exercise reasonable care in a situation. In a tort claim, a plaintiff must show, by a preponderance of the evidence, that he or she would not have suffered the loss had it not been for the defendant's conduct (Abraham, 1992). Traditionally, the plaintiff had to suffer actual, physical harm, but recent cases in many jurisdictions have supported compensation for both physical and psychological injuries and even injuries involving only emotional harm (Abraham, 1992; Vallano, Winter, & Charman, 2012). Sexual harassment litigation falls under civil tort liability when a plaintiff chooses to pursue the claim under torts law in an effort to avoid limitations, including time, monetary, and burden of proof limitations, that are set by federal and state statutory provisions (Graham, 2013; Seiner, 2011).

The United States Civil Legal Process

Civil lawsuits begin when a plaintiff, the complaining party, initiates a lawsuit seeking a judgment in his or her favor. The plaintiff must prove by a preponderance of the evidence that the defendant, the party owing a duty of care, breached that duty and that the plaintiff suffered harm as a result of that breach (Abraham, 1992; Ikpeme Ruths, Christiansen, & Vincent, 2013). Following the discovery and pretrial stages of the litigation, in which the parties build their cases, the claim may go to trial (Colleluori, Eisenstat, & Davidoff, 2011). Typically, civil trials begin with the voir dire examination of the jury. This process involves provision of information to the jury in the form of narrative statements. The attorneys then seek to pick a jury of presumably unbiased, unprejudiced, and impartial jurors who can make a decision based upon the evidence that is presented in the courtroom. Attorneys then make opening statements, which are narrative in form and are limited to factual information. Opening statements are utilized to outline the evidence that will be presented through the testimony of witnesses. Attorneys for the plaintiff and the defendant then present their evidence through the testimonies of witnesses. In civil litigation, the plaintiff has the right to present evidence first. The party presenting a witness will complete direct examination of the witness and then the opposing counsel is permitted to cross-examine the witness. Presentations by lay witnesses are limited to factual information (Lawson, 1969), however expert witnesses in employment cases also may be called to present expert opinions concerning the impact the harassment incident had on the plaintiff's mental status as well as the plaintiff's prognosis for recovery and future employment. Typically, a mental health evaluator who is designated as an expert will review medical records and

case documents, conduct a clinical interview, administer and analyze psychodiagnostic tests, and obtain input from collateral sources who are ideally arms-length from the lawsuit and can speak to the plaintiff's emotional state before and after the alleged cause of action. The evaluator will then address issues of causation, including evaluation of possible preexisting mental health issues; diagnosis; severity; duration, and necessary treatment (Greene & Goodman-Delahunty, 1995). Closing arguments are the final portion of the case presented to the jury prior to deliberation. These statements are argumentative and persuasive and allow attorneys to draw all reasonable inferences from the evidence. As the plaintiff bears the burden of proof, based upon the preponderance of the evidence, the plaintiff is allowed to present the closing argument last (Lawson, 1969).

Damages Available in Civil Lawsuits

Two types of damages are available in civil lawsuits, compensatory and punitive damages. Punitive damages are designed, through the size of the award, to punish the defendant for the tortious behavior as well as to prevent similar occurrences of tortious conduct from occurring in the future (Seiner, 2011; Simons, 2008). In the case of *Philip Morris USA v. Williams* (2007), the court held that a jury can also consider harm to non-parties in punitive damages awards (as cited in Seiner, 2011).

Compensatory damages, which are used to return the plaintiff to his or her pre-injury condition, can be recovered through proof that the employer's discrimination was the proximate cause of the plaintiff's loss (Greene & Goodman-Delahunty, 1995; Greene & Loftus, 1998). Black's Law Dictionary (Black, 1991) describes proximate cause as "that which, in a natural and continuous sequences, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred (p.834)."

Compensatory damages can be broken down into two categories – economic and non-economic damages (Greene & Loftus, 1998). Economic damages serve the purpose of compensating the plaintiff for financial losses incurred because of the defendant's actions. These losses are quantifiable and can include past and future income and medical expenses, moving expenses, job search expenses, therapy expenses, and other such expenses (Goodman-Delahunty & Foote, 1995; Greene & Loftus, 1998). Compensation for these expenses often involve the use of actuarial methods to determine future earning potential, medical costs, and overall life expectancy (Greene & Loftus, 1998; Marti & Wissler, 2000).

Non-economic damages are awarded to compensate a plaintiff for mental anguish, pain, and suffering. Pain and suffering damages can include compensation for bodily harm, which includes pain and disfigurement, disability, injury to professional standing, injury to character and reputation, injury to credit standing, loss of health, loss of enjoyment of life, and emotional distress, which includes but is not limited to anxiety, fear, and depression (Goodman-Delahunty & Foote, 1995; Greene & Loftus, 1998; Marti & Wissler, 2000). Non-economic damages are considered to be the most ill-defined and variable portion of damage awards (Bovbjerg, Sloan, & Blumstein, 1989). Emotional damage awards are especially hard to determine because these damages are not subject to direct market valuation or observation (Goodman-Delahunty & Foote, 1995; Marti & Wissler, 2000; Vallano, Winter, & Charman, 2012). The lack of objective evidence often causes jurors to perceive these types of injuries as non-credible. Despite these shortcomings, most jurisdictions allow a plaintiff to recover damages for emotional distress. As of 1994, only 6 jurisdictions failed to allow for emotional distress damages.

These 6 states follow the psychically injurious impact rule, which provides that recovery is allowed only if a plaintiff is physically impacted and suffers from a physical injury (Eikhoff, 1999).

Non-economic damages may be proven in court through the use of testimony from various sources, ranging from an expert witness, such as a psychologist or psychiatrist, to people who know the plaintiff well, such as clergy, friends, and family, or through testimony of the plaintiff himself or herself (Goodman-Delahunty & Foote, 1995). The problematic nature of non-economic damages is especially apparent in sexual harassment litigation, which almost exclusively involves claims for psychological injury (Vallano, Winter, & Charman, 2012). In sexual harassment claims, emotional harm is not presumed simply because a party was subject to discrimination, instead, the plaintiff must show that the employer's discriminatory conduct was the proximate cause of the plaintiff's injury. This can become especially difficult in cases where the plaintiff suffers from some preexisting emotional issues or where the plaintiff's life involves stress that could contribute to the emotional issues suffered (Goodman-Delahunty & Foote, 1995).

Special Issues with Damages Awards

Under traditional civil torts law, defendants are only liable for damages if it is determined that the defendant's actions were the proximate cause of the plaintiff's alleged injury (Greene & Goodman-Delahunty, 1995). However, in cases where the plaintiff has a pre-existing injury or vulnerability, the eggshell skull or thin skull plaintiff rule applies in traditional torts litigation. Under this rule, an employer must take the victim as he or she is found, which circumvents the typical foreseeability requirement, because a defendant may become liable for more damage than that which

was foreseeable due to a plaintiff's preexisting condition (Calandrillo & Buehler, 2013; Eden, 2001; McQuade, 2001). This means that the defendant is liable for a plaintiff's injuries even if they are greater than those experienced by an average person despite the fact that the defendant or the plaintiff may have been unaware of a preexisting susceptibility (Ikpeme Ruths, Christiansen, & Vincent, 2013). Four situations exist in which the eggshell plaintiff rule will typically arise: (1) where a plaintiff's latent condition is brought to life by the defendant's tortious conduct; (2) where a plaintiff's preexisting injury, which was previously treated, is reactivated by the defendant's conduct; (3) where a plaintiff's preexisting condition is aggravated or worsened by the defendant's conduct; or (4) where a plaintiff's preexisting condition is accelerated by the defendant's conduct (i.e., the plaintiff's preexisting condition would likely have caused future issues, such as disability or death, but the defendant's conduct expedited that result) (Calandrillo, 2006).

Tort law universally accepts the eggshell skull rule for preexisting physical conditions (Calandrillo & Buehler, 2013; Eden, 2001; McQuade, 2001). A lack of uniformity exists between jurisdictions with regard to the application of the eggshell skull rule to non-physical injuries, such as emotional harm, which has been called "the eggshell psyche" (Calandrillo, 2006). This variation by jurisdiction could be a result of the law's view of mental disorders as vague, subjective, and suspicious or it could be a means to prevent fraudulent claims since a clear way to define and prove the presence or absence of mental disorders is lacking (McQuade, 2001).

Causation is difficult in an ordinary sexual harassment case. Determining causation in a case where the plaintiff suffers from a preexisting condition is infinitely

more complex, yet the complexity is most evident in cases where the plaintiff's preexisting injury is psychological in nature (Greene & Goodman-Delahunty, 1995). The current tendency in sexual harassment claims is to follow the eggshell plaintiff rule in cases of damages determinations but not in cases of liability determinations. This means that most jurisdictions will not find behavior that does not meet the EEOC's "reasonable person" standard constitutes harassment simply because the plaintiff is more sensitive because of his or her background. Many, but not all jurisdictions will award more in damages to plaintiffs who suffer greater emotional harm due to the plaintiff's past history provided that the initial severe emotional distress was foreseeable (Eden, 2001; McDonald, 2006). The EEOC also supports the use of the eggshell plaintiff rule (McDonald, 2006). The EEOC (1992) states:

However, if a complaining party had preexisting emotional difficulties and his mental health deteriorates as a result of the discriminatory conduct, the additional harm may be attributed to the respondent. The fact that the complaining party may be unusually emotionally sensitive and incur greater emotional harm from discriminatory conduct will not absolve the respondent from responsibility for the greater emotional harm. (Non-pecuniary losses section, para. 2)

The plaintiff must show that the defendant's conduct was the cause or a substantial cause of his or her emotional distress. As such, a plaintiff with a preexisting condition must differentiate between emotional distress caused by the defendant's harassment and emotional distress that would have developed because of the plaintiff's preexisting mental condition without any interference by the defendant (Levy & Rosenberg, 2003). Most jurisdictions hold the employer liable for all of the plaintiff's

emotional harm unless the defendant can apportion the plaintiff's damages between different factors that contributed to the plaintiff's mental condition. Since apportionment of this type is extremely difficult, it is likely that the defendant will be held responsible for all of the plaintiff's emotional distress so long as the workplace events are a substantial source of distress (Greene & Goodman-Delahunty, 1995; McDonald, 2006).

The eggshell skull rule's application to cases involving preexisting psychological injury (i.e., eggshell psyche cases) is especially important in sexual harassment lawsuits as women who are a target of sexual harassment may have been previously victimized or may have suffered from prior psychological problems (Follette, Polusny, Bechtle, & Naugle, 1996). Typically, this history of victimization leads defense attorneys to argue that the eggshell psyche rule does not apply, either because a woman with a prior history of abuse is unreasonable in claiming that her work environment is hostile or because "the victim cannot be a victim because she already was a victim" (Fitzgerald, 2003, p. 918). Given that research supports the theory that cumulative effects of victimization, rather than habituation, occur with greater exposure to trauma and that many jurisdictions are applying the eggshell skull rule to psychological injuries as well as to physical injuries, these arguments are erroneous (Follette, Polusny, Bechtle, & Naugle, 1996).

How Jurors Deal with Damages Determinations

Studies vary widely regarding whether jurors are able to base damage awards on relevant criteria, such as the severity of the defendant's conduct, and ignore irrelevant criteria, such as the juror's own biases (Greene & Loftus, 1998). Tort law only gives general, qualitative guidelines to juries regarding determination of damage awards. Courts typically call for "fair compensation" or a "reasonable amount" without giving a

guide to what that would entail. As such, variability is present in damage awards, especially in the determination of non-economic damages, such as pain and suffering damages, which typically lack objective evidence to support them (Bovbjerg, Sloan, & Blumstein, 1989). Disagreements between jurors cannot be accounted for by evidence presented in trials because all jurors are exposed to the same evidence. Instead, differences in juror reactions to evidence must result from preexisting differences among jurors on characteristics that may be determinative of damage awards (Huntley & Costanzo citing Diamond, 1990). According to Vallano, Winter, and Charman (2012), “Jurors do not enter the courtroom as blank slates. Rather, jurors’ attitudes and experiences provide them with generic knowledge that affects their perceptions of trial evidence (p. 843).”

Possible Third Variables Related to Jury Decision Making

Due to questions about whether jurors are able to base damage awards on relevant criteria, much research has been performed to investigate whether personal characteristics of jurors, such as gender or attitudes, might affect damage decisions (Eretzian Smirles, 2004). Much of the prior research was focused on the effect of juror demographics on juror decision making (Giewat, 2007) and results of these studies were often inconsistent (Huntley & Costanzo, 1990; Leigh, 1984). There is evidence that female jurors may be more sympathetic to female plaintiffs in a sexual harassment case and may be more likely to define a range of behaviors as harassing (Huntley & Costanzo, 1990; Rotundo, Nguyen, & Sackett, 2001). Additionally, studies indicate that sexual harassment is less tolerated by both men and women if the victim is female (McCabe & Hardman, 2005).

Research has indicated that specific juror attitudes, experiences, and personality may be more predictive of damage awards than juror demographic characteristics (Giewat, 2007; Huntley & Costanzo, 1990). In clear-cut cases of sexual harassment, self-referencing, which involves using the self as a reference point to determine whether or not a case constituted sexual harassment, is unlikely. However, in ambiguous cases of harassment, self-referencing is likely used as a form of empathy and may impact judgments of plaintiff credibility (O'Connor, Gutek, Stockdale, Geer, & Melancon, 2004).

Attitudes toward sexual harassment predicted individuals' tolerance of sexual harassment as well as definitions of sexual harassment. Sexist attitudes are correlated with sexual harassment perceptions, with respondents who rate sexual harassment as serious having a tendency to have less tolerant attitudes towards sexual harassment (O'Connor, Gutek, Stockdale, Geer, & Melancon, 2004). Gender role and masculinity has also been predictive of employee attitudes towards sexual harassment, with those exhibiting less masculinity being less tolerant of sexual harassment. Individuals who defined more types of behaviors as sexual harassment were less tolerant of sexual harassment while those who defined fewer types of behaviors as sexual harassment were more tolerant of sexual harassment (McCabe & Hardman, 2005). A study by Weiner and Hurt (2000) found that those low in hostile sexism rated sexual harassment as more severe, unwelcome, pervasive, and harassing than those high in hostile sexism.

Effects of Attorney Arguments on Jury Decision Making

Attorneys receive training on how to argue before a jury, however, much of this training is based upon attorney lore instead of upon scientific inquiry. Attorneys are

trained to begin arguments with the strongest evidence and to lead the listener step-by-step towards acceptance of the advocate's position (Stanchi, 2006). Despite the apparent importance of closing arguments in jury trials, much research on persuasion has not focused on legal persuasion techniques but has, instead, focused on human behavior and decision making, including such premises as "foot in the door", "door in the face", "involvement of the audience", and "outcome involvement" (Stanchi, 2006).

Several studies have focused directly on legal persuasion techniques, such as the order of presentation at trial. These studies have indicated that the traditional adversarial process has benefits for both the plaintiff and the defendant (Walker, Thibaut, & Andreoli, 1972). Other research has examined trial outcomes based upon one-sided versus two-sided arguments, finding that juries are more likely to be persuaded by arguments that address issues presented by both sides (Lawson, 1970). Studies that have examined trial outcomes based upon in-court presentation, such as trial evidence and arguments, and preexisting juror factors, such as attitudes, have generally found that trial information carries more weight than preexisting juror attitudes (Saks, 1997). No research examining the effects of closing arguments in a sexual harassment context or examining the effects of closing arguments on preexisting attitudes towards sexual harassment has been conducted. In spite of the small amount of research that exists on legal persuasion techniques, persuasive legal arguments remain largely an art, not a science.

Purpose of the Present Study

Large gaps exist in research on juror attitudes in relation to juror damage awards. A lack of research on how jurors assign compensatory damages exists, with very few

studies examining how jurors make decisions to award damages in non-economic cases and even fewer studies examining non-economic compensatory damage awards in sexual harassment cases (Goodman-Delahunty, 1999; Kovera & Kass, 2002; Laughery, Laughery, Meingast, Bean, & Wogalter, 2000; Robbennolt & Studebaker, 1999; Wissler, Evans, Hart, Morry, & Saks, 1997). Little research has examined how juror attitudes towards sexual harassment affect compensatory damage awards and even less research has been performed to evaluate the effect that pro-plaintiff or pro-defendant closing arguments have on damage awards in a sexual harassment litigation context. Lastly, there is a complete lack of research examining whether juror attitudes differentially affect jurors' damage awards in response to pro-plaintiff or pro-defendant closing arguments.

Against this background, the aims of the present study are to expand on previous research by (a) further examining how juror attitudes towards sexual harassment, as measured by the Sexual Harassment Attitude Scale (SHAS; Mazer & Percival, 1989), affect determinations of non-economic, emotional injury claims in a sexual harassment scenario where a plaintiff has preexisting emotional problems (b) test the impact of plaintiff and defense closing arguments on juror decision making and (c) examine the interaction between closing arguments and juror attitudes on juror decision making, specifically whether juror attitudes towards sexual harassment, as measured by the SHAS, will affect jurors' responsiveness to either plaintiff or defendant closing arguments. The following hypotheses are proposed:

H1: Mock jurors with higher tolerance of sexual harassment (i.e., higher scores on the SHAS) will award lower amounts of monetary damages than mock jurors with lower tolerance of sexual harassment (i.e., lower scores on the SHAS).

H2: Mock juror damage awards will vary as a function of argument condition. Specifically, it is expected that mock jurors in the plaintiff-only argument condition will award higher amounts than those in the defendant-only argument condition. Mock jurors in the condition presented with both plaintiff and defendant arguments are expected to award damages between those mock jurors presented with plaintiff-only or defendant-only arguments. Damages will be explored for mock jurors given neither argument.

H3: The interaction between mock juror tolerance of sexual harassment and argument condition will be explored.

Method

Participants

Participants were 491 students enrolled in undergraduate psychology courses at a large public Southwestern university. Students were primarily recruited online (n = 442; 87.2%) through the SONA website for a study titled, “An Empirical Investigation of Factors Influencing Juror Damage Awards for Emotional Distress”; a smaller portion of participants completed the study survey via paper-and-pencil administration (n = 49; 12.8%). All students received two hours of course extra credit for participating in the study. Inclusion criteria for the study included being jury eligible: (1) at least 18 years of age, (2) have citizenship in the United States of America, and (3) have a driver’s license or be registered to vote. Based on these exclusionary criteria, 33 participants (6.7% of the total sample) were excluded for failing to meet the citizenship requirement and 11 participants were excluded for not being jury qualified (i.e. had no driver’s license and were not registered to vote). Thus, the eligible sample included 447 participants.

Cases were included in the current study based on having complete data on all study variables. Specifically, 106 (23.7% of eligible sample) participants were excluded for missing responses to the Sexual Harassment Attitude Scale (SHAS). An additional 228 participants (51.0%) were excluded for not specifying a specific dollar value for damages. These exclusions resulted in a final sample of 203 participants for data analysis.

Materials

Pre-Case Questionnaire

A 36-item questionnaire was developed for the current study and was used to collect demographic and background information about participants (Appendix A). Demographic and background information included variables such as age, gender, education level, religious affiliation, ethnic categorization, and litigation history. Participants were asked if they or someone close to them had a history of physical or sexual assault, sexual harassment, or psychiatric treatment.

Case Scenario

The case scenario utilized in this study involved a claim for emotional injuries in the context of a sexual harassment lawsuit (Appendix B). This hypothetical case was written specifically for this study and does not reflect facts specific to a particular lawsuit. All mock jurors were presented with the same case scenario. Four experimental conditions were established based upon the attorney arguments presented to jurors (Condition 1: plaintiff argument only (Appendix C); Condition 2: defendant argument only (Appendix D); Condition 3: both plaintiff and defendant argument; and Condition 4: No argument).

Post-Case Questionnaire

After reading the case scenarios, participants were informed that the defendant had been found liable for the plaintiff's injuries. Participants were instructed to assess the amount of damages, if any, to be awarded to the plaintiff for her emotional injuries, which includes emotional distress and mental anguish. Participants also were told that the plaintiff previously received damages for medical costs, lost wages, and other damages other than emotional distress. Participants were presented with a 7-item questionnaire, which was developed for the current study to assess damage awards, factors relevant to the damage award, the severity of psychological harm suffered by the plaintiff, and other such information (Appendix E). Participants were then asked to determine a monetary value to compensate the plaintiff for her emotional injuries and describe the factors that were influential in their decision making.

Measures

The Sexual Harassment Attitude Scale (SHAS; Mazer & Percival, 1989) was administered to participants as part of the larger study (Appendix F). The SHAS is a 19-item scale that measures tolerance of sexual harassment on a Likert scale that ranges from 1 (*strongly agree*) to 5 (*strongly disagree*). Sample items include, "An attractive woman has to expect sexual advances and should learn how to handle them." Scores range from 19 to 95, with higher scores indicating more tolerant attitudes toward sexual harassment. SHAS scores are positively associated with male gender and strong gender-role traditionality (Foulis & McCabe, 1997; Lonsway, Cortina, & Magley, 2008), and negatively associated with perceptions of what constitutes sexual harassment (Foulis & McCabe, 1997). This measure has been found to have good internal consistency

(Angelone, Mitchell, & Carola, 2009; Foulis & McCabe, 1997). For the purpose of this study, the SHAS items were reverse coded so that more tolerant attitudes towards sexual harassment (i.e., tolerance) corresponded to lower scores and less tolerant attitudes towards sexual harassment (i.e., intolerance) corresponded to higher scores.

The Sexual Experiences Questionnaire (SEQ), created by Fitzgerald, et al. in 1988, was administered to participants as a part of the larger study. The SEQ is a self-report inventory used to assess the prevalence of sexual harassment. The SEQ has undergone several variations, with newer versions typically having 17-20 questions and older versions having as many as 50 questions. The SEQ assesses 3 factors of sexual harassment: gender harassment, unwanted sexual attention, and sexual coercion. Reliability and validity estimates for this measure vary and are not especially strong (Gutek, Murphy, Douma, 2004). This measure was not utilized for the purposes of this study.

Design and Procedure

Respondents participated in one of four condition groups. Group assignment occurred via students selecting one of four survey links to complete. After providing informed consent, participants completed a pre-case questionnaire containing demographic and life experience questions and then read the case scenario. Based on their study condition, they were presented with one of four argument conditions. After reading the case scenario and the argument(s), participants completed a post-case questionnaire. In the post-case questionnaire, participants were asked to assign a monetary value to the plaintiff's emotional distress and to elucidate a rationale for their monetary assignment. Participants then completed the Sexual Harassment Attitude Scale.

Following the completion of these measures, participants were debriefed via a written summary describing the nature of the study.

Results

Sample characteristics and preliminary analyses

Of the 203 participants included in the final data analysis, 52 participants were male (25.6%) and 151 were female (74.4%). Participant age ranged from 18 to 41 years ($M = 22.8$, $SD = 5.23$) and they classified themselves in one of the following ethnic categories: Caucasian (23.2%), African American (21.7%), Hispanic (18.2%), Asian (14.8%), and Other (4.4%); 17.7% failed to include an ethnicity designation.

The final sample utilized for analysis included 36 participants in Condition 1 (plaintiff argument only), 56 participants in Condition 2 (defendant argument only), 58 participants in Condition 3 (both plaintiff and defendant argument), and 53 participants in Condition 4 (neither argument). Groups did not differ based on age [$F(3,169) = 0.254$, $p = 0.858$], gender ($X^2(3) = 2.96$, $p = 0.398$), or ethnicity ($X^2(8) = 9.516$, $p = 0.301$).

Means and standard deviations were computed (see Table 1). Damage awards ranged from \$0.00 to \$18,000,000.00. The mean damage award across conditions was \$451,484.73 ($SD = 1,701,754.40$). Normality of data was checked. Outlying values were identified by examining standardized z-score distributions. Several methods were utilized to deal with the large amount of variance present. Winsorization was used to reduce the sensitivity of classical statistics to outliers (Ruppert, 2006). Winsorizing of outliers limits the values of the outliers beyond a particular standard deviation without eliminating the outliers (Hawkins, 1993; Yaffee, 2002). To adjust for non-normal distributions (e.g., skewness and kurtosis ≥ 2.0), data ± 2 SDs above the mean were

Winsorized by re-coding values to bring them within the normal distribution, while retaining the naturally occurring rank order. Damage awards of 12 participants were Winsorized, which resulted in a mean damage award of \$202,716.43 (SD = 324,516.04; see Table 1).

Following this method, additional methods were utilized to deal with the variance. Z-scores were computed and outliers +/- 2 SDs above the mean were eliminated. This resulted in an n of 199 and results similar to the Winsorization method. A more conservative method was utilized. Outliers +/- 1.5 SDs above the mean were eliminated. This resulted in an n of 195 and results similar to the Winsorization method. In all three methods used, the argument and interaction conditions were not significant. Non-parametric methods were considered but were not used, as the significance of the argument or interaction conditions likely would not be affected by the use of these methods due to the small amount of outliers identified. Final analyses were completed using the Winsorization method as this method is used more often than the other methods.

Next, an analysis of variance was utilized to investigate the three hypotheses (see Table 2). Results for the first hypothesis revealed significant differences between mean awards based upon SHAS total, $F(1, 203) = 7.16, p = 0.008$, with mock jurors with intolerant attitudes towards sexual harassment awarding significantly more in damages than mock jurors with tolerant attitudes towards sexual harassment (see Figure 1). Results for the second hypothesis did not reveal significant differences between mean awards based upon argument condition, $F(3, 203) = 0.283, p = 0.837$ (see Figure 2). Additionally, results for the third hypothesis did not reveal significant interactive effects

of argument condition and attitude, $F(3, 203) = 0.573$, $p = 0.633$ (see Figures 3 and 4). As there were no other significant group differences, additional post-hoc analyses were not conducted.

Discussion

Sexual harassment is a common occurrence in the workplace, with over 12,000 charges of sexual harassment being resolved by the EEOC in 2010 (McDonald, 2012). Despite the prevalence of sexual harassment claims, there is a paucity of research examining juror decision making with regards to compensatory damage awards in a sexual harassment context (Cass, Levett, & Kovera, 2010). Notwithstanding evidence that sexual harassment claims often involve emotional distress damages and that jurors have difficulty determining appropriate compensation for non-economic injuries, such as emotional distress, little research has been performed to evaluate how jurors assign damages in this context (Eden, 2001; Goodman-Delahunty & Foote, 1995; Marti & Wissler, 2000; Vallano, Winter, & Charman, 2012). Even less research has been performed to examine how jurors assess damages in a sexual harassment litigation context where the victim has suffered from a preexisting psychological injury (e.g., “eggshell psyche”). As sexual harassment causes of action are often based upon claims for psychological injury where the victims of workplace sexual harassment have a history of emotional problems, research in this area is of utmost importance (Follette, Polusny, Bechtle, & Naugle, 1996).

Against this background, the purpose of the present study was threefold – (a) to examine how juror attitudes towards sexual harassment, as measured by the SHAS, affected determinations of non-economic, emotional injury claims in a sexual harassment

scenario where a plaintiff has preexisting emotional issues, (b) to test the role of closing arguments on juror decision making, and (c) to test the interaction between closing argument condition and juror attitudes towards sexual harassment in terms of differentially impacting juror's damage awards response. Findings indicate that hypotheses were partially supported.

Impact of Juror Attitudes on Damage Awards

First, it was hypothesized that mock jurors with intolerant attitudes toward sexual harassment would award greater amounts in damages than mock jurors with tolerant attitudes toward sexual harassment. Hypothesis one was supported, with mock jurors with intolerant attitudes toward sexual harassment awarding greater amounts in damages than mock jurors with tolerant attitudes toward sexual harassment.

Lawyers have assumed that attitudes and beliefs held by jurors will impact their decision making (Saks, 1997). Research has indicated that specific juror attitudes, experiences, and personality may be more predictive of damage awards than juror demographic characteristics (Giewat, 2007; Huntley & Costanzo, 1990). The supported finding, that attitudes are predictive of damage award amounts, supports beliefs held by lawyers and research on juror attitudes. This finding presents important implications for the trial process as it indicates that choosing jurors during the voir dire process based upon their attitudes toward sexual harassment is indeed predictive of damage awards.

Another line of research has indicated that the effects of evidence and arguments are more potent than the effects of juror differences, such as differences in attitudes

(Saks, 1997). The current finding does not support the line of research indicating that arguments have a more potent effect than juror differences, such as attitudes.

Future research could benefit from examination of methods for determining juror attitudes. Typically, jurors provide self-reports in response to attorney questioning. Past research has concluded that attorneys as well as the voir dire process as a whole is ineffective in reaching this aim (Suggs, 1980).

Impact of Argument Condition on Damage Awards

Hypothesis two proposed that damage awards would vary based upon the argument condition mock jurors were presented with. It was hypothesized that jurors receiving only the plaintiff's argument would award more in damages than those receiving only the defendant's argument and that those jurors receiving both arguments would award somewhere between those receiving only plaintiff's or defendant's arguments. The damage award in the neither argument condition was exploratory. While means across the argument conditions were in the anticipated direction, the differences were not significant and failed to support the hypothesis.

Research on the effects of juror differences suggests that the effects of evidence and arguments are more potent than juror differences (Saks, 1997); however, the current findings do not provide support for this premise. The results of the current study indicate that arguments did not have a significant effect on damages awarded, while juror attitudes toward sexual harassment did have an effect on damages awarded.

The lack of support for this hypothesis could be due to several factors. First, the lack of support for this hypothesis could be due to the large amount of variability present in damage awards. This variability could be due to the study's use of individual juror

decision making as opposed to group juror decision making. It is possible that individual decision making resulted in a higher level of variability in damage awards, which could mask results.

Second, it is possible that the case scenario was found to be highly ambiguous to mock jurors. Prior research has indicated that jurors are more likely to rely on assumptions and biases they hold in cases where the evidence is highly ambiguous (Saks, 1997).

Third, it is possible that the lack of support for this hypothesis is due to the format of closing arguments utilized in this study. This study used written closing arguments that were largely fact-based. In practice, closing arguments are verbal and attorneys tend to make all reasonable inferences from the evidence (Lawson, 1969).

Finally, it is possible that the lack of support for this hypothesis is actually representative of real-life jury decision making. It is possible that juror attitudes toward sexual harassment are so ingrained that arguments made by attorneys for either side have no power to sway jury decision making. Since little research has been performed to evaluate the effect that pro-plaintiff or pro-defendant closing arguments have on damage awards in a sexual harassment litigation context where a plaintiff has a history of preexisting psychological issues, this issue has yet to be fully addressed.

Currently, persuasive legal arguments remain an art, not a science (Stanchi, 2006). It is likely that much can be learned by incorporating science into art through the use of empirical methods to evaluate the persuasiveness of closing arguments on jury decision making. Future work could benefit by comparing closing arguments that are more inference based and argumentative with fact-based closing arguments to determine

which format is more persuasive. Additionally, future work may benefit from the use of video taped or live trial stimuli as opposed to written stimuli as these formats more closely resemble the actual trial process.

Interaction Between Argument Condition and Attitudes

Hypothesis three sought to explore the interaction of mock juror tolerance of sexual harassment and argument condition. This hypothesis was not supported, which means that the interaction of argument condition and attitudes toward sexual harassment did not produce a significant effect on damages awarded. In addition to a lack of significance, the means were not in the anticipated direction. Although not significantly different, those individuals who were tolerant of sexual harassment and were given only the plaintiff's argument gave the lowest amount of damages overall, even lower than in the defense-only argument condition.

As with some of the other nonsignificant findings, it is possible that statistical significance would be reached if the variance in damage awards were not so pronounced. Future research could benefit from determining effective methods to reduce variance in damage awards, possibly through use of group jury deliberation and decision making as opposed to solely using individual jury deliberation and decision making. Additionally, it is possible that the lack of significant support for this hypothesis is due to the difficulty juries have in awarding damages for psychological injuries (Dobbs, 2000; Geistfeld, 1995). Future research could benefit from further examination of how jurors assign damages for psychological injuries, especially in cases involving plaintiffs with preexisting psychological injuries.

Limitations

Several limitations should be noted in interpreting the results of this study. First, written stimulus materials were utilized instead of videotaped trial stimuli which could limit the ecological validity of the study. In actual trials, evidence is presented in a primarily verbal format (Lawson, 1969). Future research could benefit from comparing results from jury simulation research utilizing videotaped and written stimuli to determine if differences in damage awards are found.

Secondly, mock jurors were not presented with jury instructions, which could also affect generalizability. Typically, jurors receive pattern jury instructions, which include legal standards, after closing argument presentation (Cecil, Hans, & Wiggins, 1990). As tort law only gives general, qualitative guidelines to juries regarding determination of damage awards, the failure to give jury instructions in this study may not have a detrimental effect on the results or generalizability (Bovbjerg, Sloan, & Blumstein, 1989). Additionally, past research indicates that jurors have difficulty in understanding and applying jury instructions (Cecil, Hans, & Wiggins, 1990). Future research could benefit by examining damage determinations following presentation of jury instructions in various formats. Although some research has been conducted to look at various means for conveying jury instructions to improve juror's understanding of instructions, results have been inconsistent (Cecil, Hans, & Wiggins, 1990). Further research in this area could have major policy implications, especially if alternate forms of jury instructions are found to increase juror understanding of legal standards.

Thirdly, jurors in the study made damage award decisions individually, rather than as a group. Typically, juries are composed of 6 to 12 members (Lawson, 1969). The Supreme Court case of *Williams v. Florida* (1970) opined that one of the reasons for

maintaining juries of 6 to 12 jurors is to “promote group deliberation, free from outside attempts at intimidation.” Determinations by individual jurors may limit the ecological validity of the study. Determinations by individual jurors could also account for some of the large variance present in the damage awards in the present study.

Research on differences between individual and group damage determinations has yielded inconsistent results. Some studies have indicated that group deliberations enhanced juror bias and other studies indicated that group deliberation decreased juror bias (Kerr, MacCoun, & Kraner, 1996 as cited in Kovera, McAuliff, & Hebert, 1999). Even other studies have indicated that group deliberation serves to correct juror misconceptions about the evidence presented in the trial (Cecil, Hans, & Wiggins, 1990). Additionally, some studies indicated that group deliberation decreased damage awards and other studies indicated that group deliberation increased damage awards (Diamond & Casper, 1992, as cited in Mott, Hans, & Simpson, 2000; Hastie, Penrod, & Pennington, 1983; Kalven & Zeisel, 1966; Marti & Wissler, 2000; Saks, 1977). As such, it is unclear whether the failure to have group jury deliberations increased jury bias or the variability of damage awards. Future work could benefit by obtaining individual juror assessment of damages followed by group deliberations and group damage determinations.

Fourth, the population utilized in this study, undergraduate students, may not be demographically representative of an actual jury. The Jury Selection and Service Act requires that jurors be at least 18 years of age and be selected from election or voter registration rolls. The purpose of this form of selection is to obtain a representative cross-section of the community (Kaufman, 1972). Efforts were made to ensure that participants were jury eligible; however, participants elected to participate in the study.

As such, it is possible that participants who participate voluntarily in a jury study differ from jurors picked from election or voter registration rolls.

In addition, all participants were undergraduate students. Participants' mean age was 22.8 years and participants were predominantly female (74.4%). Since participants in this study elected to participate in the study, were all undergraduate students, and were generally young and female, this could have an impact on generalizability of findings. Although it is possible that selection from election or voter registration rolls could result in a jury made up of similar individuals, it is unlikely that a jury would be this homogeneous in terms of age, gender, and education.

Prior research, however, has indicated that demographic differences might not have a large influence on damage awards and that significant differences in decisions are not seen between undergraduate and community samples so it is unclear whether this will have a disparate impact or not (Cutler, Penrod, & Dexter, 1990; Eisenberg & Wells, 2002; MacCoun & Kerr, 1988 as cited in Kovera, McAuliff, & Hebert, 1999). Future work could benefit by providing community and undergraduate sample comparisons to determine whether these samples reach similar award determinations.

Summary and Conclusions

Despite these limitations, the present study also has several strengths. First, the present study utilized a sample of jury-eligible participants. All participants were screened to ensure that jury eligibility requirements, including United States citizenship, age of at least 18 years, and either voter registration or driver's license requirements, were met. Additionally, the university from which the sample was self-selected is

extremely diverse, which resulted in a large, racially diverse group of jury-eligible participants.

Second, the present study utilized the Sexual Harassment Attitude Scale, an empirically sound self-report measure of participant attitudes toward sexual harassment (Mazer & Percival, 1989). By utilizing an empirically sound measure of sexual harassment attitudes, the present study was able to obtain a valid and reliable account of juror attitudes toward sexual harassment.

Third, the present study utilized a case scenario depicting a claim for compensatory damages for psychological injuries where the plaintiff had suffered from preexisting psychological injuries. Research in the area of compensatory damages is rare, especially in the sexual harassment area. Research on damage awards for psychological injuries in this sphere is even more rare and research on damage awards for psychological injuries in sexual harassment cases involving a plaintiff with preexisting psychological injuries is unprecedented. This research serves as a good starting point for eliciting information on how jurors award damages in similar situations; however, more research in this area is needed. This area of research is of importance as most cases of sexual harassment involve plaintiffs claiming psychological injuries who have been subject to some prior form of victimization (Foullette, Polusny, Bechtle, & Naugle, 1996).

The results of this study suggest that juror attitudes are predictive of juror damage awards in a sexual harassment case. The voir dire process, or the process of selecting the jury, involves two types of challenges – peremptory challenges and for cause challenges. Peremptory challenges are granted under statute and each attorney will have a statutorily prescribed number of these challenges. For cause challenges are potentially unlimited.

For cause challenges are utilized when a juror does not meet eligibility requirements or when a juror is so biased or prejudiced that he or she cannot make a fair and impartial decision based upon law and evidence presented at trial (Suggs, 1980). This finding is relevant to legal proceedings because attorneys can consider taking juror attitudes toward sexual harassment into account when selecting jurors during the voir dire process as this may make a difference in juror damage award allocation.

Continuing to obtain empirical support regarding the factors that influence damage awards will ensure that the legal process is shaped and improved by empirical evidence instead of by various forms of lawyer lore. Determining factors that can be utilized to select jurors to best suit the needs of the case will ensure that both plaintiffs and defendants face a fair trial.

References

- Abraham, K.S. (1992). What is a tort claim? An interpretation of contemporary tort reform. *Maryland Law Review*, 51 (1), 172-204.
- Angelone, D. J., Mitchell, D., & Carola, K. (2009). Tolerance of sexual harassment: A laboratory paradigm. *Archives of Sexual Behavior*, 38(6), 949-958. doi: 10.1007/s10508-008-9421-2
- Antecol, H. & Cobb-Clark, D.A. (2002). The changing nature of employment-related sexual harassment: Evidence from the U.S. federal government (1978-1994). *IZA Discussion Paper Series*, 619.
- Black, H.C., (1999). *Black's Law Dictionary*. St. Paul, MN: West Publishing Company.
- Bovbjerg, R. R., Sloan, F. A., & Blumstein, J. F. (1989). Valuing life and limb in tort: Scheduling "pain and suffering." *Northwestern University Law Review*, 83, 908-976.
- Calandrillo, S. P. (2006). An economic analysis of the eggshell plaintiff rule. In *American Law & Economics Association Annual Meetings* (p. 19).
- Calandrillo, S. P., & Buehler, D. E. (2013). Eggshell Economics: A Revolutionary Approach to the Eggshell Plaintiff Rule.
- Cass, S.A., Levett, L.M., & Kovera, M.B. (2010). The effects of harassment severity and organizational behavior on damage awards in a hostile work environment sexual harassment case. *Behavioral Sciences and the Law*, 28, 303-321.
- Cecil, J. S., Hans, V. P., & Wiggins, E. C. (1990). Citizen comprehension of difficult issues: Lessons from civil jury trials. *Am. UL Rev.*, 40, 727.
- Civil Rights Act of 1991. P.L. 102-106, U.S. Code 1981 nt.

- Colleluori, D., Eisenstat, G. D., & Davidoff, B. E. (2011). Civil procedure: Pre-trial and trial. *SMU Law Review*, *64*, 137.
- Cutler, B. L., Penrod, S. D., & Dexter, H. R. (1990). Juror sensitivity to eyewitness identification evidence. *Law and Human Behavior*, *14*(2), 185.
- Dobbs, D.B. (2000). *Law of Torts*. St. Paul, MN: West Publishing Company.
- Eden, S. M. (2001). I Am Having a Flashback... All the Way to the Bank: The Application of the Thin Skull Rule to Mental Injuries-Poole v. Copland, Inc. *NC Cent. LJ*, *24*, 180.
- Eikhoff, C. H. (1999). Out with the Old: Georgia Struggles with Its Dated Approach to the Tort of Negligent Infliction of Emotional Distress. *Ga. L. Rev.*, *34*, 349.
- Eisenberg, T. & Wells, M. (2002). Trial outcomes and demographics: Is there a Bronx effect? *80 Texas Law Review*. 1839.
- Equal Employment Opportunity Commission (1992), *Policy Guide on Compensatory and Punitive Damages Under the 1991 Civil Rights Act*, reprinted in 8 Fair Employment Practices Manual (BNA) 405: 7091, 7097.
- Eretzian Smirles, K. (2004). Attributions of responsibility in cases of sexual harassment: The person and the situation. *Journal of Applied Social Psychology*, *34*(2), 342-365.
- Fitzgerald, L. F. (2003). Sexual harassment and social justice: Reflections on the distance yet to go. *American Psychologist*, *58*(11), 915-924.
- Fitzgerald, L.F., Shullman, S.L., Bailey, N., Richards, M., Swecker, J., Gold, Y.,

- Ormerod, M., & Weitzman, L. (1988). The incidence and dimensions of sexual harassment in academia and the workplace. *Journal of Vocational Behavior*, 32, 152-175.
- Follette, V. M., Polusny, M.A., Bechtle, A. E., & Naugle, A. E. (1996). Cumulative trauma: The impact of child sexual abuse, adult sexual assault, and spouse abuse. *Journal of Traumatic Stress*, 9(1), 25-35.
- Foulis, D. & McCabe, M.P. (1997). Sexual harassment: Factors affecting attitudes and perceptions. *Sex Roles*, 37 (9/10), 773-798).
- Frazier, P.A., Cochran, C.C., & Olson, A.M. (1995). Social science research on lay definitions of sexual harassment. *Journal of Social Issues*, 51 (1), 21-27.
- Garner, B.A. (Ed. 2004). *Black's Law Dictionary* (8th ed.). St. Paul, MN: Thomson West.
- Geistfeld, M. (1995). Placing a price on pain and suffering: A method for helping juries determine tort damages for nonmonetary injuries. *California Law Review*, 83(3), 773-852.
- Giewat, G. R. (2007). Systematic jury selection and the supplemental juror questionnaire as a means for maximizing voir dire effectiveness. *WESTCHESTER BJ*, 34, 49.
- Goodman-Delahunty, J. (1999). Civil law: Employment and discrimination. In R. Roesch, S. D. Hart, & J. R. P. Ogloff (Eds.), *Psychology and Law: The State of the Discipline* (pp. 277-337). New York, NY: Kluwer Academic/Plenum Publishers.
- Goodman- Delahunty, J., & Foote, W. E. (1995). Compensation for pain, suffering, and other psychological injuries: The effect of Daubert on employment discrimination claims. *Behavioral Sciences & the Law*, 13(2), 183-206.

- Graham, J.C. (2013). Torts remedies for sexual harassment. *Florida Torts*, 2.
- Greene, E., & Goodman-Delahunty, J. (1995). Diagnosis of psychological impairment in employment discrimination claims. *Behavioral Sciences and the Law*, 13, 459-476.
- Greene, E. & Loftus, E.F. (1998). Psycholegal research on jury damage awards. *Current Directions in Psychological Science*, 7 (2), 50-54.
- Gutek, B.A., Murphy, R.O., & Douma, B. (2004). A review and critique of the sexual experiences questionnaire (SEQ). *Law and Human Behavior*, 28(4), 457-482.
- Hastie, R., Schkade, D.A., & Payne, J.W. (1998). A study of juror and jury judgments in civil cases: Deciding liability for punitive damages. *Law and Human Behavior*, 22(3), 287-314.
- Hawkins, D. (1993). Robustification of cumulative sum charts by winsorization. *Journal of Quality Technology*, 25(4).
- Huntley, J.E. & Costanzo, M. (2003). Sexual harassment stories: Testing a story-mediated model of juror decision-making in civil litigation. *Law and Human Behavior*, 27 (1), 29-51.
- Ilies, R. Hauserman, N., Schwochau, S. & Stibal, J. (2003). Reported incidence rates of work-related sexual harassment in the united states: Using meta-analysis to explain reported rate disparities. *Personnel Psychology*, 56, 607-631.
- Ipkeme Ruths, I.J., Christiansen, A.K., Vincent, J.P. (2013). An assessment of the “eggshell psyche” in simulated civil litigation. *Psychological INjury and the Law*, 6, 144-155.
- Kalven, H., Jr., & Zeisel, H. (1966). *The American Jury*. Chicago, IL: University of Chicago Press.

- Kaplan, M.F. & Miller, L.E. (1978). Effects of jurors' identification with the victim depend on likelihood of victimization. *Law and Human Behavior*, 2(4), 353-361.
- Kaufman, I. R. (1972). Harbingers of jury Reform. *American Bar Association Journal*, 58, 695.
- Kovera, M. B., & Cass, S. A. (2002). Compelled mental health examinations, liability decisions, and damage awards in sexual harassment cases: Issues for jury research. *Psychology, Public Policy, and Law*, 8(1), 96-114.
- Kovera, M.B., McAuliff, B.D., Herbert, K.S. (1999). Reasoning about scientific evidence: Effects of juror gender and evidence quality on juror decision in hostile work environment case. *Journal of Applied Psychology*, 84(3), 363-375.
- Laughery, K., Laughery, B. R., & Meingast, M. E. (2000). Allocation of pain and suffering awards for consumer product accidents: Effects of level of economic damages. Unpublished manuscript, Rice University.
- Lawson, R.G. (1969). The law of primacy in the criminal courtroom. *The Journal of Social Psychology*, 77, 121-131.
- Leigh, L. J. (1984). Theory of Jury Trial Advocacy. A. *Utah L. Rev.*, 763-806.
- Levy, M. I., & Rosenberg, S. E. (2003). The "Eggshell Plaintiff" Revisited: Causation of Mental Damages in Civil Litigation. *Mental and physical disability law reporter*, 204-206.
- Lonsway, K.A., Cortina, L.M., & Magley, V.J. (2008). Sexual harassment mythology: Definition, conceptualization, and measurement. *Sex Roles*, 58, 599-615. doi: 10.1007/s11199-007-9367-1
- Marti, M.W. & Wissler, R.L. (2000). Be careful what you ask for: The effect of anchors

- on personal injury damages awards. *Journal of Experimental Psychology: Applied*, 6(2), 91-103.
- Mazer, D.B. & Percival, E.F. (1989). Ideology or experience? The relationships among perceptions, attitudes, and experiences of sexual harassment in university students. *Sex Roles*, 20 (3,4), 135-147.
- McCabe, M.P. & Hardman, L. (2005). Attitudes and perceptions of workers to sexual harassment. *The Journal of Social Psychology*, 145 (6) 719-740.
- McDonald, J. (2006). Humpty dumpty goes to court. *Employee Relations Law Journal*, 32(2), 61-70).
- McDonald, P. (2012). Workplace sexual harassment 30 years on: A review of the literature. *International Journal of Management Reviews*, 14, 1-17.
- McQuade, J.S. (2001). Eggshell skull rule and related problems in recovery for mental harm in the law of torts. *Campbell Law Review*, 24 (1), 1-45.
- Mott, N.L., Hans, V.P., & Simpson, L. (2000). What's half a lung worth? Civil jurors' accounts of their award decision making. *Law and Human Behavior*, 24(4), 401-419.
- O'Connell, C.E. & Korabik, K. (2000). Sexual harassment: The relationship of personal vulnerability, work context, perpetrator status, and type of harassment to outcomes. *Journal of Vocational Behavior*, 56, 299-329.
- O'Connor, M., Gutek, B.A., Stockdale, M., Greer, T.M., & Melancon, R. (2004). Explaining sexual harassment judgments: looking beyond gender of the rater. *Law and Human Behavior*, 28 (1), 69-95.
- Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986).

- Robbennolt, J. K., & Studebaker, C. A. (1999). Anchoring in the courtroom: The effects of caps on punitive damages. *Law and Human Behavior*, 23(3), 353-373.
- Rotundo, M., Nguyen, DH., & Sackett, P.R. (2001). A meta-analytic review of gender differences in perceptions of sexual harassment. *Journal of Applied Psychology*, 86 (5), 914-922.
- Ruppert, D. (1988). Trimming and winsorization. *Encyclopedia of statistical sciences*.
- Russell, B.L. & Trigg, K.Y. (2004). Tolerance of sexual harassment: An examination of gender differences, ambivalent sexism, social dominance, and gender roles. *Sex Roles*, 50 (7/8), 565-573.
- Saks, M.J. (1977). *Jury Verdicts*. Lexington, MA: Heath.
- Saks, M. J. (1997). What do jury experiments tell us about how juries (should) make decisions? *S. Cal. Interdisc. LJ*, 6, 1. 1-30.
- Saks, M. J., Hollinger, L. A., Wissler, R. L., Evans, D. L., & Hart, A. J. (1997). Reducing variability in civil jury awards. *Law and Human Behavior*, 21(3), 243.
- Schonheider, K.J. (1986). A theory of tort liability for sexual harassment in the workplace. *University of Pennsylvania Law Review*, 134(6), 1461-1495.
- Seiner, J.A. (2011). Punitive damages, due process, and employment discrimination. 97 *Iowa Law Review*, 473-519.
- Simons, K.W. (2008). The crime/tort distinction: Legal doctrine and normative perspectives. *Widener Law Journal*, 17(3), 719-732.
- Stanchi, K. M. (2006). Science of persuasion: An initial exploration. *Michigan State Law Review*, 411.
- Suggs, D., & Sales, B. D. (1980). Juror self-disclosure in the voir dire: A social science

- analysis. *Indiana Law Journal*, 56, 245.
- Vallano, J.P., Winter, R.J. & Charman, S.D. (2012). Is this injury reasonable? Do psychological injury expectations affect mock jurors' legal decisions in a sexual harassment case? *Psychiatry, Psychology and Law*, 20(6), 834-852.
- Walker, L., Thibaut, J., & Andreoli, V. (1972). Order of presentation at trial. *The Yale Law Journal*, 82, 216-226.
- Weiner, R.L. & Hurt, L.E. (2000). How do people evaluate social sexual conduct at work? A psycholegal model. *Journal of Applied Psychology*, 85 (1) 75-85.
- Weiner, R.L., Hurt, L., Russell, B., Mannen, K., & Gasper, C. (1997). Perceptions of sexual harassment: The effects of gender, legal standard, and ambivalent sexism. *Law and Human Behavior*, 21(1), 71-93.
- Williams v. Florida*, 399 U.S. 78 (1970).
- Wissler, R. L., Evans, D. L., Hart, A. J., Morry, M. M., & Saks, M. J. (1997). Explaining "pain and suffering" awards: The role of injury characteristics and fault attributions. *Law and Human Behavior*, 21(2), 181-207.
- Yaffee, R. A. (2002). Robust regression analysis: some popular statistical package options. *ITS Statistics, Social Science and Mapping Group, New York State University*.

Table 1. Descriptive Statistics by Argument Condition

	Argument Condition				Significance Test
	Plaintiff Only	Defendant Only	Both	Neither	
Age	22.63 (<i>SD</i> =3.86)	22.36 (<i>SD</i> =4.84)	23.23 (<i>SD</i> =6.05)	23.00 (<i>SD</i> =5.53)	$F=0.254, p=0.86$
Gender	Male: N=7 (16.7%) Female: N=30 (83.3%)	Male: N=13 (23.2%) Female: N=43 (76.8%)	Male: N=16 (27.6%) Female: N=42 (72.4%)	Male: N=17 (32.1%) Female: N=36 (67.9%)	$\chi^2=2.96, p=0.40$
SHAS Total	69.14 (<i>SD</i> =15.56)	69.00 (<i>SD</i> =13.09)	66.79 (<i>SD</i> =12.00)	68.23 (<i>SD</i> =13.84)	$F=7.16, p=0.08^*$
Unwinsorized Damage Award	1,124,472.22 (<i>SD</i> =3,420,586.04)	154,303.57 (<i>SD</i> =299,413.54)	480,231.03 (<i>SD</i> =1,467,416.71)	276,905.66 (<i>SD</i> =691,819.99)	$F=2.704, p=0.047$
Winsorized Damage Award	269,809.17 (<i>SD</i> =53,322.16)	144,079.59 (<i>SD</i> =42,754.40)	244,876.10 (<i>SD</i> =42,218.72)	172,985.39 (<i>SD</i> =43,862.91)	$F=0.042, p=0.839$

Table 2. Tests of Between-Subjects Effects

Dependent Variable: Winsorized Award

	F	Sig.
Argument Condition	0.283	0.837
SHAS Total	7.157	0.008*
Condition * SHAS Total	0.573	0.633
R Squared = .065 (Adjusted R Squared = .032)		

Figure 1. Effect of SHAS Total on Damage Award

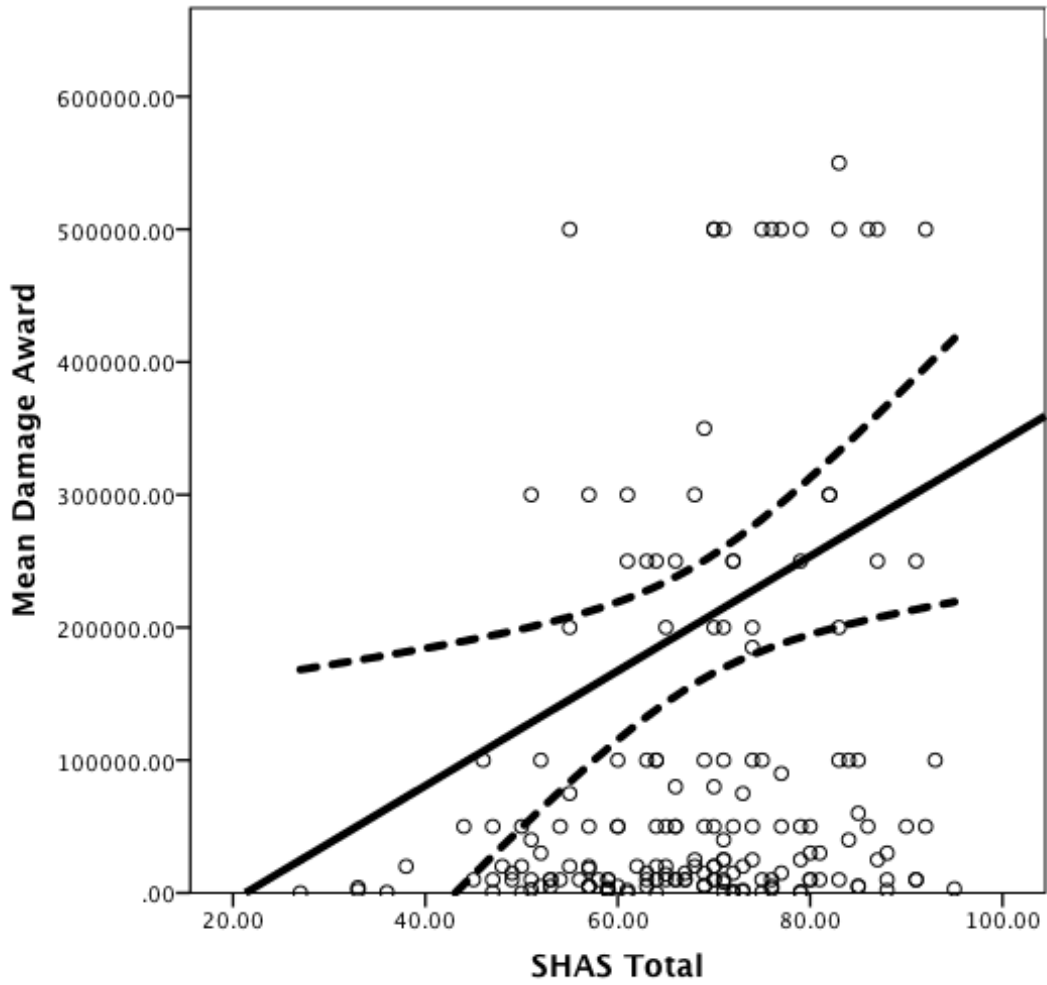


Figure 2. Damage Award by Argument Condition

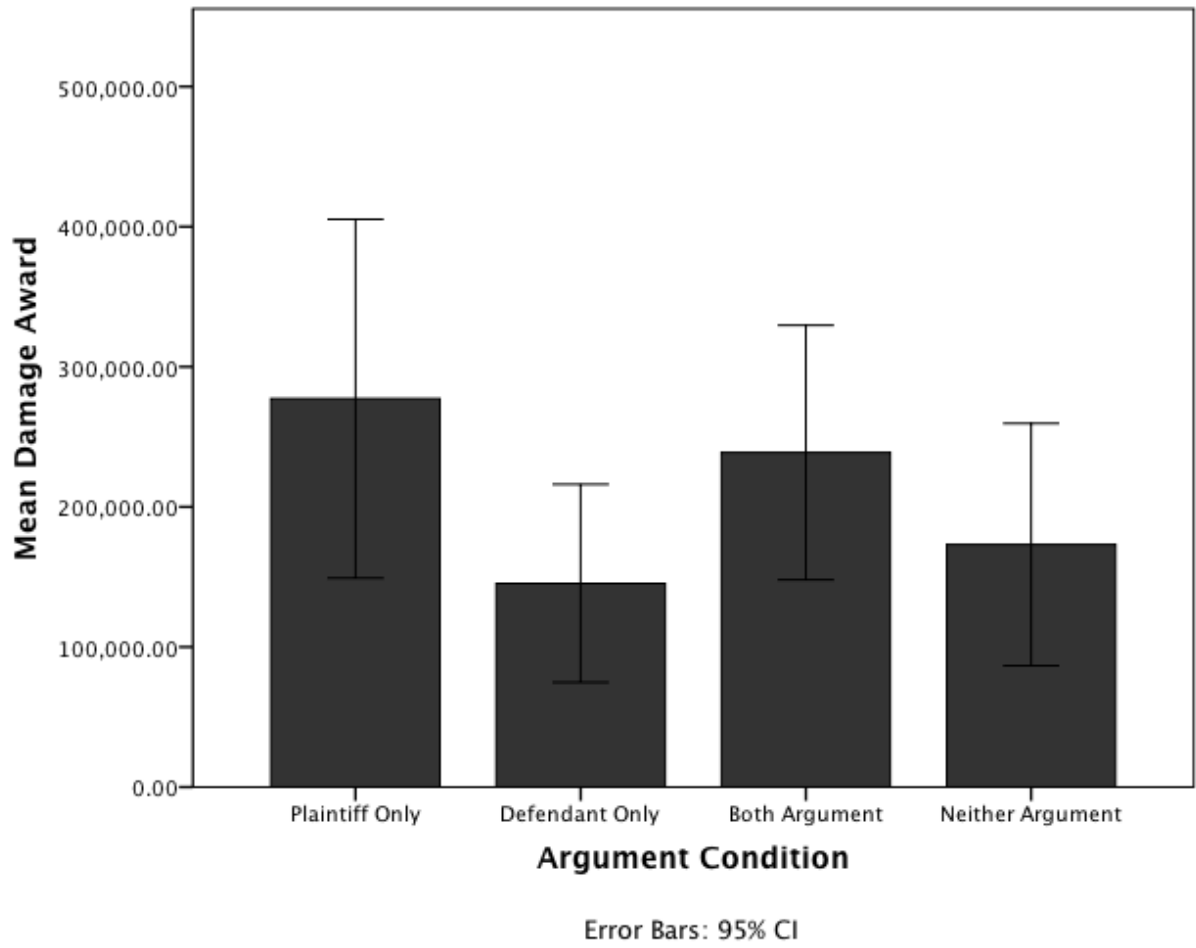


Figure 3. Damage Award by Argument Condition – Tolerance vs. Mean vs. Intolerance

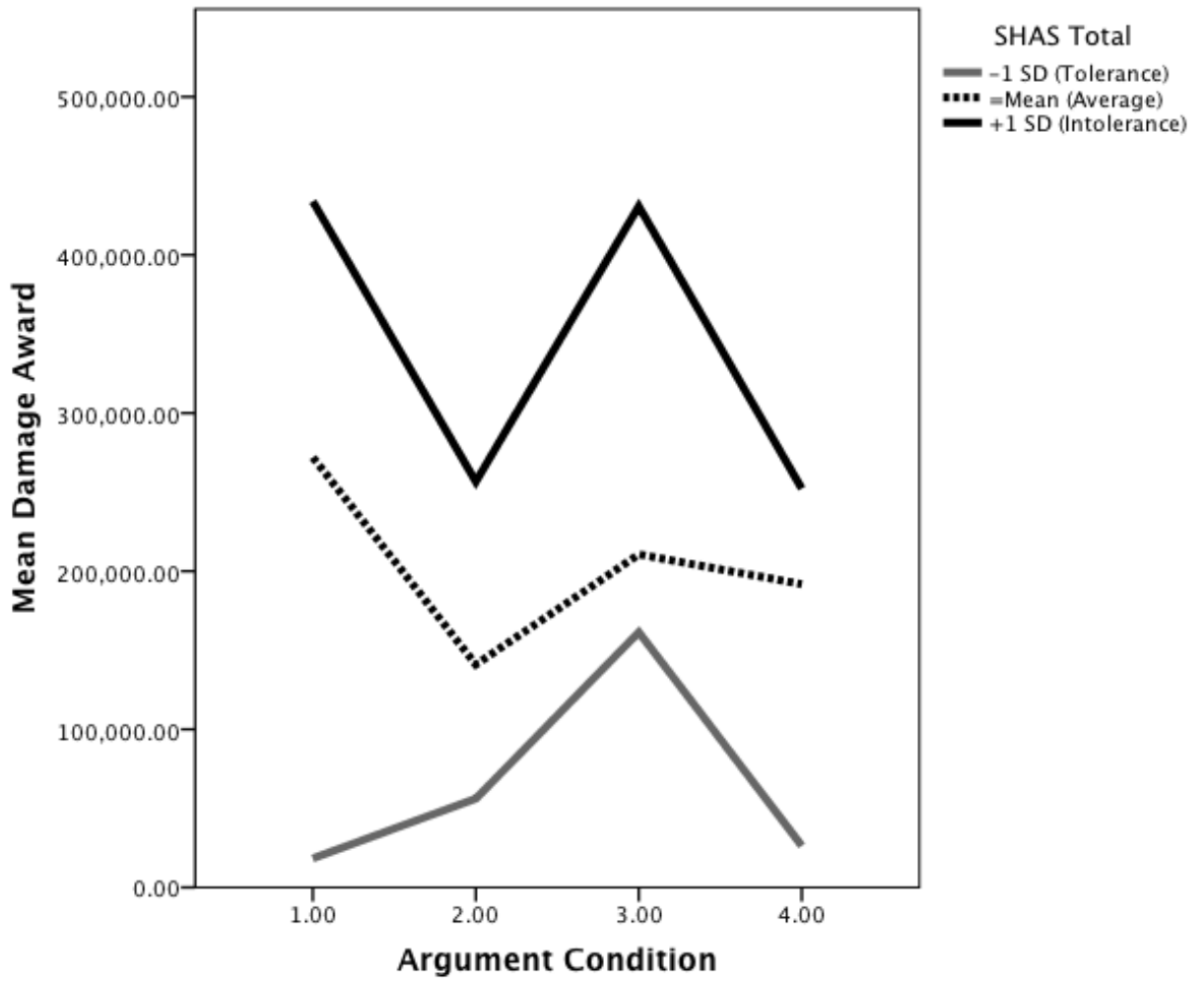
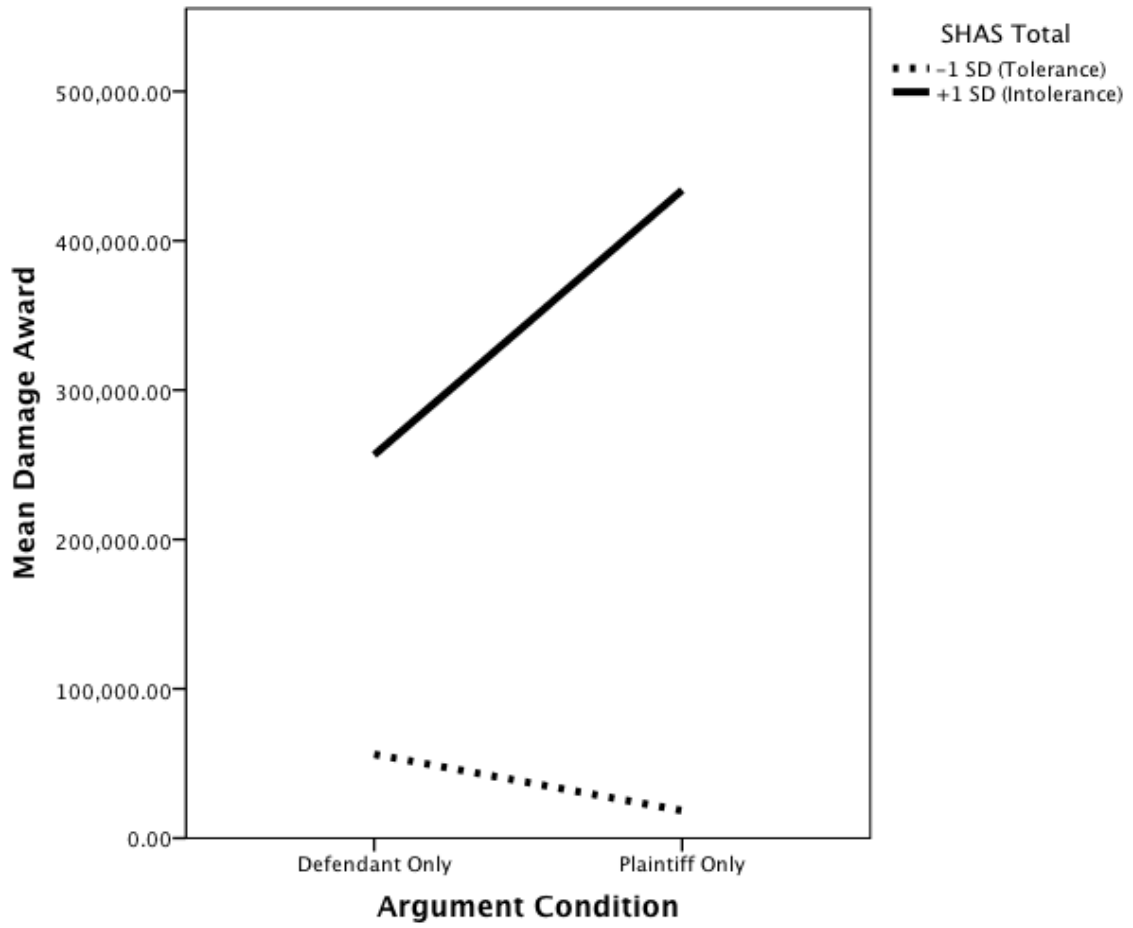


Figure 4. Plaintiff and Defendant Argument Condition and Damage Award



Appendix A

Pre-case questionnaire

1. Age (in years): _____

2. Gender:

Male Female

3. Ethnicity:

African-American Caucasian Asian- American
 Hispanic Other: _____

4. Are you a citizen of the United States of America? No Yes

5. Do you have a valid driver's license from any state? No Yes

6. Are you a registered voter? No Yes

7. Marital Status:

Single (never married) Currently Married Single but married in the past
 Single but living with a non-marital partner Widowed

8. Do you have any children?

No Yes If yes, how many? _____

9. Student level:

Freshman Sophomore Junior Senior Post-Bac

Major(s): _____

10. Current employment status?

Employed full-time Employed part-time Retired
 Unemployed, not looking for work Unemployed, looking for work

11. If you are employed, what is your current occupation? _____

12. What kind of career are you planning on after graduation? _____

13. **Have you ever served in the military, including the National Guard?**

No Yes If yes, which branch? _____
If yes, how long did you serve? _____

14. **What is your current religious affiliation?** _____

15. **Is your current religious affiliation different from the religion in which you were raised?**

No Yes If yes, please explain: _____

16. **In how many cases have you served on a jury?** _____

What types of cases did you hear while serving as a juror? _____

Was your jury experience: positive negative neutral

17. **Have you, or a family member, ever been involved in a lawsuit, civil or criminal?**

No Yes

If yes, who was involved in the lawsuit? _____

If yes, how many different lawsuits? _____

If yes, what types of lawsuits? _____

If yes, how were you or your family member involved in the case(s) and what was the outcome(s): _____

18. **If you or anyone close to you has ever made any type of claim for damages, please explain:**

19. **Have you ever experienced sexual harassment in the workplace or at school?**

No Yes If yes, please explain: _____

If you answered yes to #19, what was the outcome of this experience? Please check all boxes that apply.

- Filed a complaint with employer or school administrator
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)
- Filed a lawsuit (Please explain outcome of lawsuit: _____)
- Voluntarily left job or school
- Was fired/ asked to resign or removed from school
- There was retaliation (Please explain: _____)
- Nothing

20. Has anyone close to you ever experienced sexual harassment in the workplace or academic setting?

No Yes If yes, please explain: _____

If you answered yes to #20, what was the outcome of this experience? Please check all boxes that apply.

- Filed a complaint with employer or school administrator
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)
- Filed a law suit (Please explain outcome of lawsuit: _____)
- Voluntarily left job or school
- Was fired/ asked to resign or removed from school
- There was retaliation (Please explain: _____)
- Nothing

21. Have you ever worked in or gone to school in what you felt was a hostile environment?

No Yes If yes, please explain: _____

If you answered yes to #21, what was the outcome of this experience? Please check all boxes that apply.

- Filed a complaint with employer or school administrator
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)
- Filed a law suit (Please explain outcome of lawsuit: _____)
- Voluntarily left job or school
- Was fired/ asked to resign or removed from school
- There was retaliation (Please explain: _____)
- Nothing

22. Has anyone close to you ever worked or studied in what you felt was a hostile environment?

No Yes If yes, please explain: _____

If you answered yes to #22, what was the outcome of this experience? Please check all boxes that apply.

- Filed a complaint with employer or school administrator
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)
- Filed a law suit (Please explain outcome of lawsuit: _____)
- Voluntarily left job or school
- Was fired/ asked to resign or removed from school
- There was retaliation (Please explain: _____)

Nothing

23. Have you ever been the victim of a crime?

No Yes If yes, please explain: _____

24. Have you ever been the victim of sexual assault?

No Yes If yes, please explain: _____

25. Has anyone close to you ever been the victim of sexual assault?

No Yes If yes, please explain: _____

26. Have you ever received mental health services (i.e., psychiatric hospitalization, therapy, counseling, psychiatric medications)?

No Yes If yes, please explain: _____

27. Have you ever received a psychiatric/psychological diagnosis?

No Yes If yes, please explain: _____

28. Has anyone close to you ever received a psychiatric/psychological diagnosis?

No Yes If yes, please explain: _____

29. If you have had previous experience with mental health services, how would you describe this experience? Do you believe it was beneficial? _____

30. If someone you know has had previous experience with mental health services, how would you describe his/her experience? Do you believe it was beneficial?

31. Do you believe that mental health services can be an effective tool when treating mental health issues? If the answer is no, what do you believe is an effective way of treating such issues?

32. When it comes to political issues, do you consider yourself to be...

Liberal Moderate Conservative

33. When it comes to social issues, do you consider yourself to be...

Liberal Moderate Conservative

34. Have you ever worked in the mental health services area?

No Yes If yes, please explain: _____

35. Has anyone close to you ever worked in the mental health services area?

No Yes If yes, please explain: _____

36. Have you, or anyone close to you, ever worked in the legal field?

No Yes If yes, please explain: _____

Appendix B

Case Scenario

Doe v. Computer Inc.

This case involves the following two parties: the Plaintiff, Jane Doe, an administrative assistant employed by Computer Inc., and the Defendant, Computer Inc., a computer technology company. The specifics of the case are as follows:

Jane Doe was hired as an administrative assistant at Computer Inc. on February 24, 2009. Jane Doe was responsible for providing administrative support to a variety of employees at the company. John Smith was a sales representative at Computer Inc. with an office near Jane Doe. John Smith was Ms. Doe's co-worker, not her supervisor.

According to Ms. Doe, John Smith started becoming "flirtatious" with her towards the end of March 2009, shortly after her employment with Computer Inc. began. Ms. Doe stated that John Smith made frequent comments about her appearance and would often stare at her breasts, buttocks, and legs. Ms. Doe stated that she started to wear conservative pantsuits to discourage Mr. Smith's behavior, but that this change to her appearance only seemed to make the situation worse. Ms. Doe claimed that Mr. Smith commented on her change of dress and asked her to wear clothes that were more "flattering" to her figure. According to Ms. Doe, Mr. Smith stated that seeing a little more "T and A" around the office boosted employee morale and that Ms. Doe's employment might be more "secure" if she dressed more provocatively. Ms. Doe indicated that Mr. Smith's comments made her uncomfortable and highly sensitive to her appearance at work. Despite these feelings, Ms. Doe began wearing more skirts and low-cut blouses at work. Ms. Doe said that she feared that she would upset management and lose her job if she did not "make them happy".

According to Ms. Doe, Mr. Smith's flirtatious behavior and humiliating comments continued for several months. She claimed that during this time, her anxiety over the situation increased and she was unable to do her job. Ms. Doe decided to speak with one of the senior supervisors about Mr. Smith's behavior to get advice on how to handle the situation. The senior supervisor told Ms. Doe to ignore Mr. Smith's behavior and that Mr. Smith would eventually "get bored" with her. Ms. Doe stated that the situation became worse in September of 2009, when she was working late one night. Ms. Doe said that Mr. Smith came up behind her while she was working at her computer and began massaging her neck. She indicated that she found the behavior inappropriate and "disturbing". Ms. Doe stated that, one week later, Mr. Smith put his hand on her thigh as she was sitting at her desk and tried to kiss her. According to Ms. Doe, she moved away and told Mr. Smith to stop. She reported telling Mr. Smith that she was not interested in a sexual relationship and asked him to stop making sexual advances and flirtatious comments. Reportedly, Mr. Smith told her that it would "only be a matter of time until she came around and realized what was good for her."

Despite her fear of losing her job, Ms. Doe decided to speak with the same senior supervisor she talked to previously. Ms. Doe stated that the senior supervisor told her that he would speak with Mr. Smith about the situation. He also told her that Mr. Smith was an "asset" to the company and that they would not want any "complications" that

might risk his employment with the company. Ms. Doe reported that Mr. Smith's "inappropriate behavior" seemed to decrease for several weeks after her discussion with the senior supervisor. Things again became worse in mid-December. According to Ms. Doe, Mr. Smith grabbed her from behind as she was getting ready to leave for the night and started to kiss her neck. Ms. Doe indicated that she pulled away from Mr. Smith and told him that she would "report him" if he tried something like this again. After this incident, Ms. Doe noticed that Mr. Smith was always in the parking lot watching her as she arrived at work and left from work. She indicated that he also followed her one night after work, but she was able to lose him before she reached her home. Ms. Doe indicated that she was extremely upset by Mr. Smith's advances and knew that she had to make a formal sexual harassment/hostile work environment complaint against him to the Director of Human Resources. Ms. Doe did not want to lose her job before the holidays so she decided to speak to Human Resources once she returned to work after the holidays. Ms. Doe scheduled an appointment with the Director of Human Resources for the first week in January of 2010. Unknown to Ms. Doe or the supervisor, Human Resources previously investigated 2 harassment claims against Mr. Smith. Based on the multiple claims, Human Resources thought he would benefit from sensitivity training and he was put on probation.

Ms. Doe attended Computer Inc's annual holiday party on December 20, 2009. Mr. Smith was also at the party. Both Ms. Doe and Mr. Smith had several drinks at the party. Several witnesses at the party thought that Mr. Smith was drunk. AT 11:00 p.m., Ms. Doe decided that she was sober enough to drive home and left the restaurant where the party was being held to walk to her car. Ms. Doe alleged that Mr. Smith grabbed her as she was opening the door to her car. Reportedly, Mr. Smith then told Ms. Doe that he had come "to claim his door prize." Ms. Doe also stated that Mr. Smith said, "I heard you were going to complain to Human Resources so I might as well give you something to complain about." Mr. Smith began to touch Ms. Doe's breasts and to kiss her neck. Ms. Doe was able to get away while Mr. Smith fumbled with his pants' zipper. She ran back to the holiday party and called the police. After this incident, Ms. Doe was hospitalized for a week. After being released from the hospital, Ms. Doe e-mailed her supervisor and quit her job at Computer, Inc.

During the week that Ms. Doe was hospitalized, she was treated in the psychiatric unit for symptoms she claims were a result of her traumatic experience, including depressive symptoms, posttraumatic symptoms, and thoughts of suicide. Ms. Doe began intensive, outpatient individual therapy twice a week after she was discharged from the hospital and she continued to take medications to improve her mood and manage her anxiety symptoms. Ms. Doe was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorders several months after the incident and still suffered from a variety of psychological disturbances at the time of trial two years later. At the time of trial, Ms. Doe was still receiving individual psychotherapy twice a week. Ms. Doe indicated that, during the assault, she feared for her life and thought Mr. Smith was going to rape her. Ms. Doe claimed that she has experienced repeated flashbacks and nightmares almost every day as a result of the harassment and assault. Ms. Doe reported that she is "on edge" and feels as though people are going to harm her. She no longer likes to leave her house and dislikes having contact with other people. She has to have family members do most of her errands and she cannot go out at night because she fears that she will be

assaulted. Ms. Doe's depressive symptoms include sleep disturbance, loss of appetite, weight loss, loss of motivation, persistent sadness, crying spells, feelings of guilt, shame and humiliation, and suicidal thoughts. Ms. Doe reported that she has severe mood swings, ranging between anger, anxiety, sadness, and fear. She also reported that she developed several physical ailments since the incident that prevent her from working, including chronic migraine headaches, nausea, vomiting, and irritable bowel syndrome.

Ms. Doe reported that she has been unable to maintain employment since the incident due to her chronic psychological and physical symptoms. Ms. Doe reported that she has lost the pleasure from activities she enjoyed due to her increased level of anxiety, depression, and fear. She reported that she has little self-confidence and she constantly feels vulnerable. Since the incident, Ms. Doe reports that she has been unable to maintain an intimate relationship and that she has developed a fear of men. Ms. Doe also asserted that her relationships with females have suffered because she feels unable to develop a close emotional bond with others. Ms. Doe was hospitalized on two occasions for suicidal thoughts since the initial hospitalization after the incident. She reported concern about how her condition will affect her children and her ability to raise them in an emotionally stable and nurturing environment.

Ms. Doe was examined by mental health experts hired by both parties in this lawsuit. The experts all agree that Ms. Doe is suffering from a variety of distressing symptoms, however, the experts disagree on the cause of her symptoms.

Ms. Doe claimed that her psychological impairment was a direct result of the hostile work environment and sexual harassment she experienced while employed by Computer, Inc. Ms. Doe claimed that Computer, Inc. was negligent in their duty to provide her with a work environment free of sexual harassment and intimidation. She also claimed that the incident at the holiday part could have been prevented if Computer, Inc. would have followed through with her prior complaints to the senior supervisor. Mr. Smith's employment records revealed three separate prior complaints of sexual harassment by other employees at Computer, Inc. Ms. Doe argued that Ms. Doe stated that Mr. Smith's history of sexual harassment should have made the company more sensitive to her complaints. In summary, Ms. Doe alleged that Computer Inc. owed a duty to her and that the company breached this duty, which indirectly caused her injuries.

Computer, Inc. asserted that they were not responsible for Ms. Doe's injuries. According to the company, Ms. Doe never made an official complaint against Mr. Smith and they were, therefore, not responsible for Mr. Smith's actions. Computer, Inc. has a sexual harassment policy and specific guidelines for reporting violations of the policy. Each employee is given a handbook describing the policy when he or she is hired and asked to sign a document indicating that he or she has read and understands the policy. Ms. Doe signed this document when she was employed. According to the reporting guidelines, the employee must report inappropriate behavior to the Director of Human Resources immediately. At this point, an investigation is opened and the employee under investigation is temporarily put on suspension. Computer, Inc. asserted that Ms. Doe did not follow these procedures and they should not be expected to fix a situation that they knew nothing about. Ms. Doe stated that she informed a senior supervisor about the situation on two occasions and nothing was done. The senior supervisor, testifying on behalf of the company, confirmed that Ms. Doe had discussed the situation with him, but stated that she had only come to him on one occasion. The senior supervisor stated that

Ms. Doe complained about Mr. Smith staring at her and that he told her to ignore him. He also stated that she should discuss the situation with Human Resources if she was concerned or uncomfortable with Mr. Smith's behavior. In response to Ms. Doe's claims regarding the previously complaints against Mr. Smith, Computer Inc. asserted that they handled the situation according to procedure and that Mr. Smith completed sensitivity training and was put on probation. Computer, Inc. reported that, if they had known about Ms. Doe's complaints, they would have immediately suspended Mr. Smith and initiated a formal investigation. In summary, Computer, Inc. asserted that they could not be held responsible for Ms. Doe's injuries because they had no knowledge there was a problem.

During the trial, Computer, Inc. claimed that Ms. Doe's current psychological condition was the result of a preexisting psychological disorder. They reviewed Ms. Doe's mental health records and discovered that she had two previous psychiatric hospitalizations for depression with suicidal thoughts. Ms. Doe was first hospitalized when she was 16 years old and stayed in the psychiatric unit for 16 days. The second hospitalization occurred three years later and lasted 8 days. During both hospitalizations, Ms. Doe was treated with an antidepressant. She also received long-term outpatient therapy from a psychologist after each discharge. Hospital records and progress notes from therapy indicate that Ms. Doe experienced sleep disturbance, feelings of helplessness and hopelessness, difficulty concentrating, sadness, crying spells, and loss of energy. Reportedly, Ms. Doe also suffered from moderate symptoms of anxiety during her second hospitalization. During preparation for trial, the defense also discovered that Ms. Doe was molested by a male cousin before her first psychiatric hospitalization.

The defense claimed that Ms. Doe's current state of psychological functioning was the direct result of prior experiences and a natural progression of her prior history of psychological problems. They asserted that they are not responsible for Ms. Doe's emotional sensitivity and should not be held responsible for her predisposition towards emotional dysfunction. In support of their defense, they cited legal doctrine outlining Ms. Doe's right to recover for psychological injuries. Specifically, they stated that Ms. Doe may not recover for emotional damages caused by other events or circumstances. Ms. Doe countered with legal doctrine stating that Ms. Doe can be compensated for emotional injuries if Computer, Inc's conduct results in the exacerbation of a preexisting psychological injury. Ms. Doe stated that under the legal duty of care, Computer, Inc. is responsible for the consequences of their negligent conduct once Ms. Doe suffered a foreseeable injury. According to Ms. Doe, that is true even if the action merely worsens an existing condition or activates a "latent condition". Ms. Doe also asserted that her current psychological problems are not a worsening of a previous condition since she had previously been diagnosed with Major Depressive Disorder and has now been diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder. Ms. Doe claimed that these were two distinct conditions and that Computer Inc's conduct caused her current emotional injuries.

Summary of case facts:

- Ms. Doe alleged that John Smith made several inappropriate remarks, requests, and gestures over the course of her employment at Computer, Inc. and that his behavior constituted sexual harassment and created a hostile work environment.

- Ms. Doe spoke to a senior supervisor about Mr. Smith's behavior on two separate occasions. On the first occasion, Ms. Doe was told to ignore Mr. Smith. On the second occasion, the senior supervisor told Ms. Doe that he would speak with Mr. Smith.
- Ms. Doe scheduled an appointment with the director of Human Resources to file a formal sexual harassment claim after the situation escalated.
- Mr. Smith assaulted Ms. Doe in the parking lot after the company holiday party.
- Ms. Doe was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder after the period of alleged harassment and victimization.
- Ms. Doe claimed that she suffered from a variety of symptoms related to her victimization.
- Experts on both sides of the lawsuit agree that Ms. Doe is suffering from a variety of distressing symptoms, however, they disagree on the cause of her symptoms.
- Ms. Doe has a prior history of psychiatric hospitalizations and was molested by her cousin prior to her first hospitalization.
- Ms. Doe alleged that the company could have prevented the assault and her subsequent injuries by following through with her prior complaints to the senior supervisor.
- Mr. Smith had three prior sexual harassment complaints filed against him by other employees at the company.
- Computer, Inc. claimed that Ms. Doe never filed a formal sexual harassment complaint with the company and, thus, they never knew there was a problem between Mr. Smith and Ms. Doe.
- The senior supervisor testified that Ms. Doe only discussed Mr. Smith's behavior with him on one occasion and he had recommended that she speak with Human Resources if she had any concerns.

Plaintiff's Closing Argument

Ladies and gentlemen of the jury,

You have found the company Computer Inc. liable for the sexual harassment committed by one of its employees, Mr. Smith against another of its employees, Ms. Doe. At this time, it is now your responsibility to assign a dollar amount to compensate Ms. Doe for the emotional damages she has suffered as a result of this harassment. Monetary compensation for emotional damages is allowed under the law even in situations where the victim suffered only mental injuries and did not suffer from any physical injuries. Recall that we presented evidence that Ms. Doe suffered from psychological symptoms including anxiety and depression as a result of this harassment, which led her to seek out the services of a psychologist to help her deal with the emotional trauma she has suffered as a result of this horrible experience. Since the harassment occurred, Ms. Doe has been unable to keep a job and she feels that she can't trust people and that she is vulnerable. In fact, she can't even enjoy any of the activities she enjoyed before this incident occurred because she is so anxious and depressed. Ms. Doe hasn't even been able to have a steady and intimate relationship since this traumatic incident because she has developed a fear of men as a result of Mr. Smith's horrible treatment of her. Ms. Doe hasn't even been close with her female friends since the incident because she feels emotionally numb and like she can't experience a close emotional bond with others. Ms. Doe has been having such a hard time after this incident that she has had to be hospitalized two times for thinking about killing herself. Ms. Doe constantly worries about her children because she feels she can't care for them properly. Now, ladies and gentlemen, what kind of life does that sound like?

Ladies and gentlemen, you already decided that sexual harassment occurred. In fact, we showed you that Computer Inc. failed Ms. Doe. They failed to provide her with a safe work environment that is free from sexual harassment and intimidation. Computer Inc. knew that Mr. Smith was harassing Ms. Doe because Ms. Doe informed a senior supervisor on multiple occasions. We also proved to you that Mr. Smith has a history of harassment at Computer Inc. His employment records revealed that he has harassed three other women in this way. If Computer Inc. had followed up on her complaints about Mr. Smith or even the complaints of the three prior women he victimized, none of this would have happened to Ms. Doe. Since Computer Inc. did not try to protect Ms. Doe, to whom they owed a duty since she was their employee, they are indirectly responsible for the injuries that resulted and you must decide how much compensation she deserves to receive for these injuries.

Now, ladies and gentlemen, the law holds that in a civil trial like this, we must take the plaintiff as we find them. This means that if Ms. Doe was more sensitive to psychological problems by virtue of some trauma or other psychological problems she suffered prior to this harassment, the defendant, Computer Inc., is required to pay for whatever treatment is necessary to restore Ms. Doe's mental health. Attorneys for the defense have tried to argue that Ms. Doe's psychological symptoms were already present prior to the harassment, and that their client, Computer Inc., is not responsible for paying

for her treatment despite the company's failure to do something about this situation before it got out of hand.

Their view is not consistent with the law. The defense will try to convince you that Ms. Doe's symptoms are a result of she faced in the past. In the past, Ms. Doe did have some issues with depression. Following this incident, Ms. Doe suffered from Major Depressive Disorder as well as Posttraumatic Stress Disorder. These two disorders are two very different conditions. Since Ms. Doe never suffered from Posttraumatic Stress Disorder prior to this incident, the Defense's argument that she already suffered from these problems doesn't hold much water. I, therefore, urge you to require the defendant to pay as much as you see fit for the emotional damage Ms. Doe has suffered because of the sexual harassment that occurred while she was an employee of their company. They also should be responsible for any treatment she has received and will continue to need to help her lead a normal life again. I know that you will do the right thing. Thank you.

Appendix D

Defendant's Closing Argument

Ladies and gentlemen of the jury,

This is the stage of the trial where you must decide how much compensation she would be entitled to for the emotional problems she has had as a result of the unfortunate experience she had while she was an employee of Computer Inc. You have determined that our client is liable for the difficulties she had with a rogue manager. The company assumes full responsibilities for his actions even though there is no way they could have known that he posed a threat to any female employee. How could the company know that Mr. Smith posed a threat, ladies and gentlemen, when Ms. Doe never made an official complaint against Mr. Smith? You heard me right, ladies and gentlemen, the Plaintiff and her attorney are asking you to hold this company responsible for something they didn't even know was happening. Computer Inc. has a strict sexual harassment policy. This policy lists specific guidelines on how an employee is to report sexual harassment within the company. According to this policy, employees must report any inappropriate behavior to the Director of Human Resources immediately. At that point, an investigation is opened and the employee under investigation is put on suspension while the claim is investigated. Every employee is given a copy of this policy and is asked to sign a statement indicating that he or she has read and understands this policy. Ms. Doe signed this document and, in doing so, claimed that she understood this policy. Since Ms. Doe failed to follow these procedures, can you really expect the company to fix a situation that they knew nothing about? You heard from the senior supervisor that Ms. Doe claims she talked to on two occasions. This supervisor testified that Ms. Doe talked to him once and that, during their conversation, she just complained about Mr. Smith staring at her. This supervisor testified that he told Ms. Doe to either ignore Mr. Smith or to report the situation to Human Resources if she was worried about it. Ladies and gentlemen, even Ms. Doe admits that she did not report any of these incidents with Mr. Smith to Human Resources. So how distressed could she really have been?

Ms. Doe's attorney claimed that Mr. Smith had three previous complaints against him from females at the office, however, he was wrong in claiming that nothing was done about these claims. Computer Inc's Human Resources representative testified that the company's sexual harassment procedure was followed in these situations. Mr. Smith was required to complete sensitivity training and he was put on probation. If Ms. Doe had reported her issues with Mr. Smith to the Human Resources office, as required by company policy, the company would have immediately suspended Mr. Smith and performed a formal investigation into those charges. Since Human Resources was not informed of any incidents, the company should not be held responsible for any emotional problems that may have resulted from a situation they knew nothing about.

Ms. Doe's attorneys have told you that Ms. Doe deserves to be given money for the psychological symptoms she has experienced as a result of this unfortunate incident. We showed you, ladies and gentlemen, that Ms. Doe has a long history of psychological problems. We reviewed Ms. Doe's medical records and showed you that she has been hospitalized for depression and suicidal thoughts in the past. Ms. Doe was hospitalized at

the age of 16 for 16 days and again at age 19 for 8 days. Those hospital records showed that Ms. Doe experienced sleep problems, feelings of helplessness and hopelessness, difficulty concentrating, sadness, crying spells, and loss of energy as well as moderate symptoms of anxiety during these hospital stays. During both of those hospitalizations, Ms. Doe was treated with an antidepressant. She also received long-term therapy from a psychologist after each of those hospitalizations. These records even revealed that Ms. Doe had been molested by a male cousin prior to her first psychiatric hospitalization.

The plaintiff is claiming that we are responsible for paying for her current treatment even though we have shown that she had the same types of psychological problems for many years prior to this unfortunate incident. We presented evidence that psychological problems with someone with Ms. Doe's history tend to come back on their own without any new stressor, as evidenced by her multiple hospitalizations in the past. This evidence points to the fact that Ms. Doe's problems were already present prior to her difficulties at work. If those problems were already present, there is no way that they could have been caused by something that happened at work that was purely coincidental. If Ms. Doe's problems weren't caused by this incident but were already present, Ms. Doe should not, under the law, be able to recover for emotional damages. While we are very sympathetic to anyone like Ms. Doe, who has suffered adversity in her life, we urge you to do the honorable and fair thing and not make Computer Inc. responsible for paying for the emotional problems that they didn't cause. Thank you.

Appendix E

Post-case questionnaire

1. What sum of money, if any, would fairly and reasonably compensate Jane Doe for her emotional injuries (e.g., Posttraumatic Stress Disorder, Major Depressive Disorder, etc...) that resulted from the occurrence in question?

\$ _____

2. What factors were important in making your decision on damages for the plaintiff's (Ms. Doe) emotional injuries in this case?

3. To what extent do you believe that preexisting psychological/emotional factors were relevant to Ms. Doe's current claim for emotional distress damages?

- Most Relevant Factor
- Very Relevant, but not the Most Relevant Factor
- Somewhat Relevant
- Not at all Relevant

4. To what extent do you believe that other current stressors in Ms. Doe's life were relevant to Ms. Doe's current claim for emotional distress damages?

- Most Relevant Factor
- Very Relevant, but not the Most Relevant Factor
- Somewhat Relevant
- Not at all Relevant

5. Please check any of the following items that you considered when determining the amount to award the plaintiff (Ms. Doe) for her damages and indicate what percentage, if any, each one represented in your final damage award?

<u>Factors</u>	<u>Percentage of Damage</u>
<u>Award</u>	
<input type="checkbox"/> Medical Costs (includes cost for outpatient therapy and medication)	_____ %
<input type="checkbox"/> Loss of Wages	_____ %
<input type="checkbox"/> Loss of Future Earnings	_____ %
<input type="checkbox"/> Defendant's behavior (XYZ, Inc.)	_____ %
<input type="checkbox"/> Plaintiff's behavior (Jane Doe)	_____ %
<input type="checkbox"/> Loss of Pleasure from life	_____ %
<input type="checkbox"/> Mental Anguish/Emotional distress	_____ %
<input type="checkbox"/> Severity of plaintiff's injuries	_____ %
<input type="checkbox"/> Actions of the defendant	_____ %
<input type="checkbox"/> Financial ability of defendant to compensate the plaintiff	_____ %
<input type="checkbox"/> To punish the defendant	_____ %
<input type="checkbox"/> Cause defendant to be more careful in the future	_____ %
<input type="checkbox"/> Other: _____	_____ %
<input type="checkbox"/> Other: _____	_____ %
Total Percentage of Damage Award = _____ %	

6. Please rate the severity of the plaintiff's psychological injuries on a scale of 1 (no distress/disability) to 6 (severe distress/disability).

Rating: _____

7. Please briefly describe your impressions of the purpose or goals of this study?

Appendix F

The Sexual Harassment Attitude Scale (Mazer & Percival, 1989)

Please read each of the statements listed below and indicate your level of agreement or disagreement with each statement on a 5-point scale.

1 <i>strongly agree</i>	2 <i>agree</i>	3 <i>unsure</i>	4 <i>disagree</i>	5 <i>strongly disagree</i>
----------------------------	-------------------	--------------------	----------------------	-------------------------------

1. An attractive woman has to expect sexual advances and should learn how to handle them.	
2. Most men are sexually teased by many of the women with whom they interact on the job or at school.	
3. Most women who are sexually insulted by a man provoke his behavior by the way they talk, act, or dress.	
4. A man must learn to understand that a woman's "no" to his sexual advances really means "no."	
5. It is only natural for a woman to use her sexuality as a way of getting ahead in school or work.	
6. An attractive man has to expect sexual advances and should learn how to handle them.	
7. I believe that sexual intimidation is a serious social problem.	
8. It is only natural for a man to make sexual advances to a woman he finds attractive.	
9. Innocent flirtations make the workday or school day more interesting.	
10. Encouraging a professor's or a supervisor's sexual interest is frequently used by women to get better grades or to improve their work situations.	
11. One of the problems with sexual harassment is that some women can't take a joke.	
12. The notion that what a professor does in class may be sexual harassment is taking the idea of sexual harassment too far.	
13. Many charges of sexual harassment are frivolous and vindictive.	

14. A lot of what people call sexual harassment is just normal flirtation between men and women.	
15. Sexual assault and sexual harassment are two completely different things.	
16. Sexual harassment refers to those incidents of unwanted sexual attention that aren't too serious.	
17. Sexual harassment has little to do with power.	
18. Sexism and sexual harassment are two completely different things.	
19. All this concern about sexual harassment makes it harder for men and women to have normal relationships.	