

ASSESSMENT OF JUROR REASONING FOR COMPENSATORY DAMAGE AWARD
ALLOCATION 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

Mary Madison Eagle

May, 2012

ASSESSMENT OF JUROR REASONING FOR COMPENSATORY DAMAGE AWARD
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Sexual harassment in the workplace is quite common and litigation based on those claims can be controversial. The number of sexual harassment claims filed with the Equal Opportunity Employment Commission has risen significantly over the past two decades, with nearly 12,000 charges filed in the year 2010 (EEOC, 1997-2010). After a determination of liability has been made, jurors are responsible for determining whether or not the plaintiff is entitled to receive compensation for the psychological injuries and economic losses he or she experienced as a result of the sexual harassment (Title VII of the Civil Rights Act of 1991).

Although a significant amount of research has been conducted on factors that impact juror liability decisions in sexual harassment cases (e.g. Gutek et al., 1999; Levett & Kovera, 2009), few researchers have examined the nature of juror decision-making with regard to compensatory damage awards in a sexual harassment litigation context (Cass, Levett, & Kovera, 2010; Cass & Kovera, 2002). It is common lore among attorneys that jurors who are able to empathize with the plaintiff will award higher monetary damages. As such, plaintiffs' attorneys often choose jurors in the voir dire process who share similar experiences with the plaintiff as it relates to the subject matter of the case. However, researchers have yet to explore how juror characteristics such as juror empathy and juror attitudes toward sexual harassment influence compensatory damage award allocation in these cases. Given the paucity of research in this area in addition to the significant implications of juror decision making in this context, it is important to examine the manner in which jurors determine the amount of compensatory damages they assign to a plaintiff.

Against this background and addressing limitations of previous research, the aims of the present study were to (a) expand on previous research by further examining how jurors approach determining compensatory damages for emotional distress and (b) test the

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meditational role of juror empathy in the relation between juror attitudes toward sexual harassment and compensatory damage award amount. Specifically, 315 participants were recruited from a large Southwestern university to read a mock sexual harassment case scenario and subsequently complete a post-case questionnaire in which they were asked to assign a monetary value to the plaintiff's emotional distress and report on which factors they employed to arrive at their damage award. The link between juror empathy, juror attitudes toward sexual harassment (as measured by the Sexual Harassment Attitudes Scale), and compensatory damage awards was evaluated using regression analyses, controlling for study condition. Results of the significant partial mediation were discussed.

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Background and Specific Aims

Sexual harassment in the workplace is quite common and litigation based on those claims can be controversial. The number of sexual harassment claims filed with the Equal Opportunity Employment Commission has risen significantly over the past two decades, with nearly 12,000 charges filed in the year 2010 (EEOC, 1997-2010). Jurors in sexual harassment cases are charged with the task of determining defendant liability in the face of vague legal definitions regarding what constitutes sexual harassment (Guttek et al., 1999). After a determination of liability has been made, jurors are then also responsible for determining whether or not the plaintiff is entitled to receive compensation for the psychological injuries and economic losses he or she experienced as a result of the sexual harassment (Title VII of the Civil Rights Act of 1991).

Although a significant amount of research has been conducted on factors that impact juror liability decisions in sexual harassment cases (Guttek et al., 1999; Kovera, McAuliff, & Herbert, 1999; Levett & Kovera, 2009; O'Connor, Guttek, Stockdale, Geer, & Melancon, 2004), few researchers have examined the nature of juror decision-making with regard to compensatory damage awards in a sexual harassment litigation context (Cass, Levett, & Kovera, 2010; Cass & Kovera, 2002). Given the paucity of research in this area in addition to the significant implications of juror decision making in this context, it is important to examine the manner in which jurors determine the amount of compensatory damages they assign to a plaintiff.

Against this background and addressing limitations of previous research, the aims of the present study are to (a) expand on previous research by further examining how jurors approach determining compensatory damages for emotional distress and (b) examine the

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factors that jurors report as important when making a decision about compensatory damages for a plaintiff's emotional injuries.

Importance of the Problem

Juror decision-making in civil litigation cases has been of increasing interest to researchers in the fields of psychology and law. Empirical studies examining the nature of the juror decision making process in civil litigation cases seek to determine whether or not jurors award damages appropriately. For the purpose of the present study, "appropriately" can be operationalized as assigning damages in accordance with the guidelines set forth in the Civil Rights Act of 1991. This act defined the damages available to plaintiffs in sexual harassment cases tried in federal jurisdictions under Title VII. Jurors are instructed to award damages based on the pain and suffering the victim experienced as a result of the sexual harassment. "Pain and suffering" generally consists of 1) physical pain 2) mental suffering and 3) mental anguish (Minzer et al., 1993).

Research indicates that jurors generally follow the law when awarding compensatory damages to a plaintiff in personal injury, automobile negligence, medical malpractice, and insurance bad faith cases (Cather et al. 1996; Greene & Loftus, 1998; Greene, Woody, & Winter, 2000;; Laughery, Meingast, Bean, & Wogalter, 2000; Mott, Hans, & Simpson, 2000;Robbenholt & Studebaker, 1999; Wissler et al., 1997). These studies show that jurors appropriately consider the plaintiff's pain and suffering, injury severity, and injury duration when determining compensatory damage awards. More specifically, it was found that jurors' pain and suffering awards are positively correlated with their perceptions of injury severity and jurors do not inappropriately consider information about defendant behavior or wealth when assessing compensatory damage awards (Cass, Levett, and Kovera, 2010). Although

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these studies show that jurors tend to award compensatory damages appropriately in most types of civil litigation cases involving physical harm, few studies have examined the factors determining compensatory damage awards in civil litigation cases where the plaintiff experiences emotional distress as a result of the defendant's behavior. Fewer studies still have looked at how jurors confer compensatory damages in sexual harassment cases specifically (Goodman–Delahunty, 1999; Kovera & Cass, 2002; Cass, Levett, & Kovera, 2010). Although jurors receive instructions on appropriate factors to consider when determining compensatory damages, researchers have shown that some jurors still find the task to be difficult because of the lack of clear guidelines allowing plaintiffs to recover damages for emotional distress in addition to the inherent ambiguity of the task (Geistfield, 1995; Greene & Loftus, 1998; Sunstein & Shih, 2003; Vidmar, 1993).

Damages in Sexual Harassment Litigation

Civil lawsuits brought on by plaintiffs serve the primary purpose of seeking compensation from the defendant for alleged harm. Assuming defendants are found liable, they could be required to pay two different types of monetary damages to the plaintiff: compensatory damages and punitive damages (Hastie, Schkade, & Payne, 1999). Punitive damages are sanctioned if the defendant “engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual” (Sharkey, 2003). Alternatively, compensatory damages are intended to compensate the plaintiff for any type of “future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses” which occurred as a result of the defendant's behavior (42 USC sec. 1981a(b)(1)). Juror instructions on awarding compensatory damages indicate that the juror should consider

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the extent of pain and suffering the plaintiff experienced as a result of the defendant's actions when allocating a monetary sum. Therefore, jurors should award compensatory damages only in cases where the plaintiff suffered harm, regardless of the nature of the defendant's actions. However, recent research indicates that jurors often do not award compensatory damages appropriately in sexual harassment cases (Cass, Levett, & Kovera, 2010). These researchers found that jurors allocated higher compensatory damages when the plaintiff was a victim of severe rather than mild harassment, even though the level of psychological harm experienced by the plaintiff did not differ across conditions. Other studies have found that jurors in sexual harassment cases may even allocate damages randomly (Sunstein & Shih, 2003).

Juror Empathy and Damages

With the exception of gender (Cass, Levett, & Kovera, 2010), no studies have examined how juror characteristics influence the amount of compensatory damages jurors award to a plaintiff. Although several studies have examined the way in which juror characteristics determine sexual harassment case verdicts (e.g. Goodman-Delahunty, 2000; Gutek & O'Connor, 1995), researchers have yet to explore how juror characteristics influence compensatory damage award allocation in these cases. It is common lore among attorneys that jurors who are able to empathize with the plaintiff will award higher monetary damages. As such, plaintiffs' attorneys often choose jurors in the voir dire process who share similar experiences with the plaintiff as it relates to the subject matter of the case. Thus, in sexual harassment cases, attorneys for the plaintiff are likely to choose jurors who have negative attitudes toward sexual harassment. While no research has been conducted on this particular topic, we expect that having a negative attitude toward sexual harassment implies

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that a juror is likely to be more empathic toward a victim of sexual harassment. Therefore, we hypothesize that jurors with negative attitudes toward sexual harassment will be better able to empathize with the plaintiff and will thus award higher compensatory damages.

Although no empirical support exists in this area specifically, it seems logical that jurors who have a negative attitude toward sexual harassment would be more inclined to award higher compensatory damages to a plaintiff who was also a victim of sexual harassment based on recent research conducted on the topics of empathy and empathic concern. Empathy can be defined generally as an affective state that is elicited by the observation or imagination of another person's affective state (De Vignemont and Singer, 2006). Empathy can be the result of conscious thought processes as well as largely uncontrolled, automatic processes (Van Lange, 2008). Perspective-taking is the notion that an individual can view and interpret a situation in the same way that another person interprets the same situation. The notion of perspective-taking is also central to construct of empathy because individuals should be able to see things the way others see them in order to be able to fully empathize with another person (Van Lange, 2008).

Research has demonstrated that empathy is elicited when the perception of another person's behavior automatically activates representations of personal experiences associated with that behavior (Goubert, et al., 2005). Further, researchers have found that when an individual has experienced the same life events as the target of empathy, the individual expresses greater empathic concern for the target of empathy (Hodges et al., 2010; Batson et al. 1996; Barnett, Tetreault, & Masbad, 1987). More specifically, studies have shown that empathy actually activates altruistic motivation and causes individuals to act in ways that will benefit the target of empathy (Batson, 1991; Batson, 1998; Van Lange, 2008). It can be

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inferred from this line of reasoning that jurors who demonstrate empathic concern for plaintiffs in a civil litigation context might be more likely to award them higher sums of money based on a motivation to demonstrate altruistic behavior. As such, it will be important to examine the way in which juror attitudes toward sexual harassment affects juror empathic concern for the plaintiff and how that relates to the amount of compensatory damages jurors award to the plaintiff in a sexual harassment civil litigation context.

Limitations in existing research on juror decision-making

To this author's knowledge, only two studies have examined the process by which jurors assign damages in sexual harassment cases. Cass, Levett, and Kovera (2010) investigated the ways in which sexual harassment severity as well as the way in which an organization handles sexual harassment in the workplace influenced damage awards. The severity of sexual harassment as well as the organizational response were manipulated in this study, while the level of psychological harm to the victim was held constant. The authors cited mixed results, suggesting that jurors sometimes award damages in a legally appropriate manner, and sometimes do not. This study was a follow up to a study conducted by Kovera and Cass (2002), which examined the role that expert psychological testimony may play in sexual harassment litigation. The authors reviewed relevant psychological literature on jury decision making in sexual harassment cases, and concluded that "there is little empirical research examining how jurors make decisions about psychological damage in any context or investigating how jurors award any type of damages in sexual harassment cases" (2002).

While studies have examined some factors associated with juror awards of compensatory damages in sexual harassment cases, there are still several facets of damage award assignment that have yet to be examined. For example, studies on damage award

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allocation typically request that participant jurors confer both punitive and compensatory damages to the plaintiff. In order to more effectively tease apart juror factors involved in compensatory damage award determination, it is necessary to examine whether or not jurors are able to allocate compensatory damages in line with jury instructions if they are told explicitly that punitive damages have already been awarded. Consequently, in the current study, jurors were informed that punitive damages had already been determined, and their task was to assign a monetary value to compensate for the emotional distress that the plaintiff suffered.

Further, to this author's no knowledge, no research exists analyzing juror's qualitative responses to questions regarding reasoning behind compensatory damage award assignment. Previous studies have analyzed whether or not certain factors influence decision-making in damage award allocation, but these factors were typically pre-selected by the researchers and participants were asked to determine to what extent each factor contributed to the compensatory sum awarded to the plaintiff (Cass, Levett, & Kovera, 2010; Woody, 2008).

Finally, researchers have yet to examine the way in which juror attitudes toward sexual harassment influences amount of compensatory damages awarded to the plaintiff. An examination of juror attitudes linked to compensatory damage award assignment is warranted in order to determine the factors which affect juror decision-making processes in sexual harassment cases. These analyses will provide litigators with insight into the thought processes jurors use in allocating awards, which can potentially aid in the voir dire process. The lack of research on the way in which juror attitudes toward sexual harassment and juror ability to empathize with the plaintiff affect compensatory damage award allocation represents a gap in the jury behavior literature.

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The current study

The aim of the present study is to determine how characteristics of the juror, and juror reasoning about compensatory damage award allocation influence damage award assignment in a sexual harassment civil litigation context while improving upon some of the limitations of prior research. Jury eligible participants were asked to assume the role of a juror in a simulated sexual harassment case. Participants were randomly assigned to read one of nine sexual harassment case scenarios and subsequently asked to allocate compensatory damages to the plaintiff with the knowledge that the defendant's liability had already been established. Within the case scenarios, the severity of psychological injury experienced by the plaintiff varied (mild, moderate, and severe) as did the plaintiff's psychological history (preexisting psychological difficulties, concurrent psychological stressors, or preexisting psychological difficulties combined with concurrent psychological stressors). In addition to demographic and background information, prior experience with sexual harassment, attitudes toward sexual harassment, and previous experience with the legal system were assessed. Participants then completed a post-case questionnaire in which they were asked to provide qualitative answers to the following questions: "1. What factors were important in making your decision about the plaintiff's emotional injuries?" and "2. Describe how you approached assigning a monetary value to emotional distress."

The present study will explore the way in which juror attitudes toward sexual harassment influence the amount of compensatory damages jurors confer to a plaintiff. Specifically, the study will seek to determine whether juror use of empathy in compensatory damage award allocation will mediate the relationship between juror attitude toward sexual harassment and the amount of damages jurors assign to the plaintiff. Juror use of empathy in

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damage award allocation will be measured by examining juror responses to the qualitative questions from the post-case questionnaire (1. What factors were important in making your decision about the plaintiff's emotional injuries?" and "2. Describe how you approached assigning a monetary value to emotional distress."). For the purpose of this study, responses will be coded as "empathic" if there is evidence that the mock juror based his or her damage award amount in full or in some part on the notion that he or she understood and shared the feelings of the victim. This can be demonstrated by the juror's report showing a change in his or her own affective state based on an imagination of the victim's affective state or by the juror indicating that he or she determined a damage award amount by attempting to take the perspective of the victim. Juror attitude toward sexual harassment will be measured using The Sexual Harassment Attitude Scale (Mazer & Percival, 1989), which is a self-report measure designed to assess attitudes toward sexual harassment. These procedures are described in more detail below.

We hypothesize that the use of empathy in the allocation of compensatory damage awards will mediate the relationship between juror attitude toward sexual harassment and amount of damages awarded to the plaintiff (see Figure 1).

Jury Simulation Research

It is of importance to note that the research presented here is part of a jury simulation study. In the past, there have been divergent views on the ecological validity of jury simulation studies. Researchers have argued against the use of this type of study citing arguments such as 1) simulation studies use participants that do not reflect an actual jury panel and 2) simulation studies involve incomplete trial procedures (Dunn, 2002)., These arguments can be refuted in large part with a review of previous jury simulation research.

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With regard to whether or not simulation studies reflect an actual jury panel, the vast majority of researchers have not found significant differences between the results of student juries and jury eligible citizens (Hosch, Culhane, Tubb, & Granillo, 2011; Zickafoose & Bornstein, 1999). The second concern regarding incomplete trial procedures is applicable to this particular study, as the participants were requested to award only compensatory damages rather than compensatory and punitive damages, which would be the case in a true trial setting. However, designing the experiment in this way allowed for increased internal validity. In this way, jury simulation studies allow for the assignment of causation, whereas field research typically forfeits such experimental control in favor of greater ecological validity (Bornstein & McCabe, 2005).

Methods

Participants

N = 353 students enrolled in undergraduate psychology courses at a large public Southwestern university. Only jury qualified participants were utilized in the analyses. Jury qualification requires that participants be at least 18 years of age, have citizenship in the United States of America, and have a driver's license or are registered to vote. Based on these exclusionary criteria, 23 participants were excluded for not being jury qualified and another 15 participants were excluded for not specifying a specific dollar value for damages resulting in a final sample of 315 participants for data analysis.

Measures

Pre-Case Questionnaire. A 33-item questionnaire, developed for the current study, was used to collect demographic and background information about the participants

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(Appendix A). Demographic and background information included variables such as age, ethnic categorization, work status (part-time vs. full-time), type of job, gender, education, religious affiliation, number of children, and litigation history. Participants were asked about any history of assault (sexual or physical), sexual harassment, and psychiatric treatment.

One hundred and two participants indicated that they had been a victim of a crime, 39 had been the victim of sexual assault, 73 had someone close to them sexually victimized, 82 had received mental health services, 44 had received a psychiatric diagnosis, and 90 had someone close to them receive a psychiatric diagnosis. With regard to legal involvement, 7 participants had served on a jury, 17 had been involved in a lawsuit themselves, 50 had family members who have been involved in a lawsuit, 26 had made a claim for damages themselves, and 24 had family members who have made a claim for damages. 66 participants reported that they had been sexually harassed in the workplace, and 64 participants indicated that they had worked in a hostile work environment. Further, 43 participants indicated that someone close to them had been sexually harassed in the workplace, and 64 participants reported that someone close to them had worked in a hostile work environment.

Case Scenarios. The case scenario developed for this study involved a claim for emotional injuries in the context of a sexual harassment lawsuit (Appendix B). The case had nine distinct versions reflecting combinations that vary the severity of psychological injury experienced by the plaintiff as well as whether or not the plaintiff had preexisting or concurrent psychological difficulties at the time of the sexual harassment (see Appendix C) :

Scenario 1: preexisting psychological difficulties and mild symptomatology; Scenario 2: preexisting psychological difficulties and moderate symptomatology; Scenario 3: preexisting psychological difficulties and severe symptomatology; Scenario 4: concurrent stressors and

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mild symptomatology; Scenario 5: concurrent stressors and moderate symptomatology; Scenario 6: concurrent stressors and severe symptomatology; Scenario 7: preexisting psychological difficulties and concurrent stressors with mild symptomatology; Scenario 8: preexisting psychological difficulties and concurrent stressors with moderate symptomatology; and Scenario 9: preexisting psychological difficulties and concurrent stressors with severe symptomatology. The nine case scenarios contained the same facts, and varied only due to manipulations of injury severity and preexisting or concurrent psychological stressors. Because previous research has shown that the size and financial state of organizational defendants affect jurors' allocation of damage awards, the defendant in the case scenario was purposely described in ambiguous terms (Bornstein, 1994; Vidmar, 1993).

Sexual Harassment Attitude Scale. The Sexual Harassment Attitude Scale (SHAS, Mazer & Percival, 1989) is a self-report measure assessing attitudes toward sexual harassment. The SHAS asks respondents to indicate their degree of agreement (on a five-point scale from *Strongly Agree* to *Strongly Disagree* with statements reflecting attitudes about sexual harassment (Mazer & Percival, 1989). See Appendix F.

Post-Case Questionnaire. After reading the case scenarios, participants were provided with sample jury instructions for damage awards and asked to make several judgments related to the case scenario they read (Appendix D). The jury instructions were revised for the purpose of this study from the 5th Circuit Pattern Jury Instructions (Civil): 15.1, 15.5 and 77.01 reprinted in *Modern Federal Jury Instructions* (Sand, Sieffert, Loughlin, Reiss, & Batterman, 2001) and the Texas Pattern Jury Charges: PJC 65.3 (Committee on Pattern Jury Charges of the State Bar of Texas, 2000). Participants were informed that the defendant had already been found liable for the plaintiff's injuries and that their task was to

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assess the amount of compensatory damages, if any, to be awarded to the plaintiff for her emotional injuries (i.e., emotional distress, mental anguish). Participants also were informed that the plaintiff had already received damages for medical costs, lost wages, and all other types of damages not included in emotional distress. One additional measure, the Sexual Experiences Questionnaire (SEQ) (Fitzgerald et al., 1988), was administered to participants as part of the larger study on jury decision-making in sexual harassment litigation, but was not utilized in the current study. See Appendix G.

Procedure

Participants were recruited by research assistants from undergraduate psychology courses. After obtaining informed consent, participants were asked to complete a pre-case questionnaire containing demographic and life experience information. Participants then read one of nine case scenarios developed for this study. After reading the case scenario, participants completed a post-case questionnaire in which they were asked to assign a monetary value to the plaintiff's emotional distress and report on which factors they employed to arrive at their compensatory damage award. Participants were debriefed after their participation. Participants received one hour of experimental credit for their participation in the study.

Data coding

A coding system was developed to analyze participants' qualitative responses to the following questions presented in the Post-Case Questionnaire: "1. What factors were important in making your decision about the plaintiff's emotional injuries?" and "2. Describe how you approached assigning a monetary value to emotional distress." After a review of the data, it was apparent that the answers to each of these questions were generally similar within

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participant response sets. Therefore, the two responses for each participant were treated as one response and coded in the following manner.

All responses were coded to determine the presence (1) or absence (0) of the following reasons for compensatory damage award allocation: 1. Arbitrarily / Guesswork, 2. To blame the company (XYZ), 3. To blame the defendant, Mr. Smith, 4. To recuperate lost wages, 5. To compensate for loss of future earnings, 6. To compensate for medical expenses, 7. To compensate for mental health expenses, 8. Do not feel that the victim should be compensated for emotional distress, 9. Victim should be compensated very little for emotional distress, 10. Based on the fact that both parties are at fault, 11. Based on emotional distress (empathy mentioned), 13. Blank / no answer 14. Irrelevant / nonsensical, 15. Damage amount mitigated by the fact that the victim had preexisting psychological conditions, and 16. Damage amount increased by the fact that the victim had preexisting psychological conditions. Response category 11 (Based on emotional distress, empathy mentioned) is the category of interest for the meditational analysis in this study.

Each of the coding variables represents the participants' self reports about the rationale they employed in arriving at this damage amount. Fifteen coding categories were developed so as to ensure the codes encompassed all types of participant responses. See Appendix E for operational definitions of each of the coding variables. To assess for interobserver agreement, two research assistants each coded twenty percent of the data, or 63 responses, using the coding categories established by the author. The participant numbers coded by the research assistants were selected using a random number generator. Percentage agreement was calculated to determine level of interobserver agreement with regard to the coding variable of interest ("Based on emotional distress – empathy mentioned"). Results of

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these analyses indicated acceptable levels of agreement between the author and the research assistants (85% and 87%) with regard to the variable of interest.

Results

Participant characteristics

The final sample consisted of $N = 315$ participants ranging in age from 18 to 49 years ($M = 22.44$). The sample consisted of 228 (72.4%) females and 87 (27.6%) males.

Participants classified themselves in one of the following ethnic categories: Caucasian (33%), African American (24%), Hispanic (19%), Asian (18%), or Other (6%).

Preliminary Analyses

Means and standard deviations were computed (see Table 1) as well as correlations among independent and dependent variables (See Table 2). One participant was eliminated from the analyses due to extreme responding (\$200,000,000 damage award) resulting in a total of 314 participants. To examine possible demographic confounds, we computed a one-way ANOVA using race as a predictor of compensatory damage awards. We also conducted an independent sample t -test to compare males and females on the basis of compensatory damage amounts as well as a correlational analyses to examine the relationship between age and damage awards. All relationships proved to be non-significant, indicating that we did not need to control for any of these demographic variables in subsequent analyses.

As previously stated, the nine conditions of the study manipulated the severity of psychological trauma experienced by the plaintiff as well as the plaintiff's preexisting and concurrent psychological stressors. We collapsed across study condition in all analyses to avoid a possible confounding influence of condition.

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The mediational role of juror empathy in the relationship between juror attitude toward sexual harassment and compensatory damage awards

Regression analyses were performed as a prerequisite to the test for mediation using the procedure outlined by Shrout and Bolger (2002). This procedure is a revised version of Baron and Kenny's original guidelines for assessing mediation (1986). In order to prove mediation, the following conditions must be met in a series of regressions: (1) the independent variable should significantly predict the mediator and (2) the mediator should significantly predict the dependent variable and decrease the effect of the independent variable when both the mediator and independent variable are included in the analysis. In the current study, the independent variable was juror attitude toward sexual harassment, the mediator was juror empathy in compensatory damage award allocation, and the dependent variable was damage award amount. We planned to test whether (a) juror attitude toward sexual harassment predicts damage award amount (b) juror attitude toward sexual harassment predicts juror use of empathy in assigning damages, and (c) juror empathy predicts damage award amount and lessens the effect of attitudes toward sexual harassment on damage award amount when entered simultaneously. Total mediation occurs only when the effect of the independent variable is absent once the mediator is included in the model. Partial mediation occurs when the effect of the independent variable is reduced, but not completely eliminated, when the mediator is included in the model.

Before testing for mediation, formal detection-tolerance and the variance inflation factor (VIF) were used to assess multicollinearity. Because multicollinearity was not an issue, with tolerance greater than .2 and a VIF less than 4 (VIF = 1.032; tolerance = .969), centering the predictor variable was not necessary (Aiken & West, 1991; Holmbeck, 2002).

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To test for the mediational role of juror empathy in the relationship between juror attitude toward sexual harassment and compensatory damage amount, we conducted two regression analyses using compensatory damage award amount, Sexual Harassment Attitude Scale (SHAS) total score, and ratings on the presence or absence of juror empathy according to juror response to the questions: “1. What factors were important in making your decision about the plaintiff’s emotional injuries?” and “2. Describe how you approached assigning a monetary value to emotional distress.” The regression analysis using juror empathy as the predictor and damage award as the dependent variable proved to be significant ($b = .143$, $t(311) = 2.561$, $p = .011$), as did the regression analysis involving SHAS total score and juror empathy ($b = .028$, $\chi^2(311) = 3.939$, $p = .047$). Results of these analyses are presented in Tables 3 and 4. A third regression analysis was conducted using SHAS total score as the predictor and damage award amount as the dependent variable. This analysis proved to be significant ($b = .130$, $t(311) = 2.284$, $p = .023$). Results are presented in Table 5.

The results of the conditions required in Shrout and Bolger (2002)’s mediational model were met as follows: SHAS total score significantly predicted juror empathy; SHAS total score significantly predicted compensatory damage awards; and, when the mediator (juror empathy) and SHAS total score were entered jointly as predictors of compensatory damage awards, the effect of SHAS total score decreased. See Table 6. Post-hoc probing of the significant mediational model was conducted with the Preacher and Hayes (2008) test of the indirect effect because it, unlike a traditional Sobel test, adjusts for covariates such as study condition, which was previously identified as a potential confound. This macro provides a bootstrap test of the indirect effects of SHAS total score on compensatory damage awards, through the proposed mediator (juror empathy) while taking into account the

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aforementioned covariates. In our model, this test confirmed the role of juror empathy as a mediator with the mean of the indirect effect across all bootstrap samples estimated at 1.168 and a resulting confidence interval that did not include 0 ($CI = .201 - 6.729$; Preacher & Hayes, 2008).

The authors conducted post-hoc correlational analyses to examine whether or not a relationship existed between compensatory damage award amount and the other 14 qualitative coding categories (described above in “Data Coding”) not examined as part of the hypothesis of the current study. See Table 7. Results of the correlational analyses indicated significant positive correlations between the coding category “To Punish the Defendant” and damage award amount ($r = .138, p = .045$). Results were also significant with regard to the coding category “Damage Amount Mitigated by the Fact that the Plaintiff had Preexisting Psychological Conditions” and damage award amount ($r = .212, p = .001$). However, follow-up analyses using independent samples t-tests proved non-significant when equal variances were not assumed.

Discussion

The present study sought to better understand the role of juror attitudes toward sexual harassment and juror empathy toward victims of sexual harassment in the allocation of compensatory damage awards. In light of previous literature indicating that empathy is elicited when the perception of another person’s behavior automatically activates representations of personal experiences associated with that behavior as well as research showing empathy is a central component of altruistic motivation, we sought to examine the role of empathy in the allocation of compensatory damage awards. Further, generally

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inconclusive research on the way jurors award compensatory damages as well as a paucity of research on juror attitudes toward sexual harassment in the allocation of compensatory damages warranted further examination of these areas of interest. Against this background, we hypothesized that juror empathy toward the plaintiff in a sexual harassment case would mediate the relationship between juror attitudes toward sexual harassment and the amount of compensatory damages awarded by the juror to the plaintiff.

While no research has been conducted examining the relationship between juror attitude toward sexual harassment and compensatory damage awards specifically, the fact that the former was found to significantly predict the latter is consistent with previous research showing that jurors confer higher compensatory damages when the plaintiff was a victim of severe rather than mild harassment (Cass et al., 2010). Further, although no studies thusfar have specifically examined the relationship between juror empathy toward the plaintiff and juror attitude toward sexual harassment, the finding that jurors who have negative attitudes toward sexual harassment are more likely to empathize with a victim of sexual harassment seems to follow logically based on research indicating that empathy is demonstrated by a change in an individual's affective state based on an imagination of the affective state of the target of empathy (Goubert et al., 2005).

The finding that individuals who empathized with the plaintiff awarded significantly higher compensatory damages than individuals who did not empathize with the plaintiff supports the notion put forth in broader research on empathy and empathic concern that empathy actually activates altruistic motivation and causes individuals to act in ways that will benefit the target of empathy (Batson, 1991; Batson, 1998; Van Lange, 2008). To the best of our knowledge, this is the first study to evaluate the relation between juror empathy

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and compensatory damage award allocation in sexual harassment cases. This finding presents implications for the voir dire process as well as implications for the way in which attorneys should argue their case in front of a jury. The fact that juror empathy was found to partially mediate the relation between juror attitudes toward sexual harassment and compensatory damage awards is an important finding in that it further elucidates the relationship between these three constructs. Furthermore, it provides a theoretical explanation for why plaintiff's attorneys are often likely to choose jurors in the voir dire process who share similar experiences with the plaintiff as it relates to the subject matter of the case. Finally, the partial mediation suggests that focusing solely at juror attitudes toward sexual harassment in the voir dire process overlooks the important role that empathy plays in the way jurors make decisions regarding the amount of compensatory damages to award to the plaintiff.

Several limitations should be taken into account when interpreting the results reported here. First, the study employed written stimulus materials rather than a videotaped trial stimulus, which may limit the ecological validity of the study. In this same vein, the jurors in this study made decisions individually regarding the amount of damages to award, rather than in a group setting as would be the case in a typical jury trial. Research has shown, however, that group deliberations do not necessarily eliminate any errors made by individual jurors in determining compensatory damage awards (Greene, Johns, & Bowman, 1999; Greene, Johns, & Smith, 2001). Finally, it may be the case that our sample is not demographically representative of an actual jury, given the mean age in this study is 22.4 and the large majority of the participants are female (72.4%). However, it should be noted that some researchers have found that there is little support for demographic influences on the amount of damages jurors awarded in state courts (Eisenberg & Wells, 2002).

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Notwithstanding these limitations, the present study also has several notable strengths. First, an empirically sound self-report measure of participant attitudes toward sexual harassment was utilized, providing an informed account of juror attitudes toward sexual harassment (Mazer & Percival, 1989). Additional strengths include a large, racially diverse sample size (33% Caucasian, 24% African American, 19% Hispanic, 18% Asian, and 6% Other) of 315 undergraduate students. Further, the design of the study included several different versions of a trial in which the characteristics of the sexual harassment were varied as was the amount of psychological damage experienced by the plaintiff, which addressed the need identified by Kovera and Cass (2002) to examine the influence of these variables on compensatory damage awards. Finally, this study addressed the need identified by Cass et al. (2002) to separate out the components involved in determining compensatory damage awards in order to gain more insight into the factors involved in the allocation of these types of damages.

Given the complicated nature of this topic, this research has certain relevance in legal settings. An exploration of the factors that influence juror decision-making in sexual harassment cases allows for attorneys to be better informed during the voir dire process as well as throughout the course of litigation. The results of this study presented empirical data suggesting that juror empathy may be relevant with regard to juror decision making on compensatory damage award allocation in sexual harassment cases. Therefore, based on these results, attorneys should consider taking into account juror ability to empathize with the plaintiff into account during the voir dire process, as this may make a difference in juror damage award allocation. This information is also highly relevant to attorneys with regard to factors that should be considered during trial preparation as well as during opening and

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closing arguments in order to obtain desired trial outcomes. Finally, expanding the empirical knowledge of how jurors make decisions in a more general context allows for the continued modification and improvement of the legal system.

Because an open-format question was used to measure juror empathy in this study, future research should further examine the relationship between juror empathy toward the plaintiff and compensatory damage award allocation using a, closed-question measure of empathy, so as to further elucidate the relationship between these two constructs. Schwarz (1999) makes note of the fact that closed and open-question formats can result in pronounced and systematic differences in measurement of the construct of interest.

Additionally, further investigation of juror reasoning for allocation of compensatory damage awards in a sexual harassment context using qualitative variables that were not examined in the current study is warranted. Given the significant positive findings in correlational analyses between compensatory damage amount and two of the qualitative coding variables (“To Punish the Defendant” and “Damage Amount Mitigated by the Fact that the Plaintiff had Preexisting Psychological Conditions”), further investigation is warranted in order to gain more insight into juror thought processes that may impact allocation of compensatory damage awards. Assuming that these constructs can be reliably coded, they may provide additional insight into the thought processes that jurors employ in arriving at damage awards. Even though jurors were asked to look only at specific, legally relevant factors when assigning compensatory damages, that their attitude toward the defendant’s conduct (specifically their belief that the defendant should be punished) was related to damage award amount is worthy of note. Also, the role of a plaintiff’s preexisting psychological condition is likely relevant to the juror’s allocation of compensatory damage

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awards. Given the positive correlation between the coding variable “Damage Amount Mitigated by the Fact that the Plaintiff had a Preexisting Psychological Condition” and compensatory damage award is consistent with the notion that jurors may sympathize with those plaintiffs and actually award more rather than less monetary compensation. A more comprehensive examination of juror self-reported reasons for the allocation of damages using qualitative data could provide valuable information for attorneys during the voir dire process as well as throughout the course of litigation, given the thus far inconclusive results on whether or not jurors are able to appropriately assign compensatory damages as well as the paucity of knowledge on the factors that influence the assignment of compensatory damage awards in sexual harassment cases.

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Tables and Figures

Table 1.

		Descriptive Statistics					
		SHAS Total	Empathy: Present (1) Absent (0)	Ethnicity	Damage Award	Age	Gender
N	Valid	308	314	315	315	313	315
	Missing	7	1	0	0	2	0
	Mean	61.20	.21	2.49	\$885,655.00	22.44	1.72
	Std. Deviation	10.409	.406	1.201	\$11,280,675.80	4.524	.448
	Minimum	34	0	1	\$.0	18	1
	Maximum	90	1	5	\$200,000,000.0	49	2

Table 2.

	<i>SHAS Total Score</i>	<i>Juror Empathy</i>	<i>Damage Award</i>
<i>SHAS Total Score</i>	1	.123*	.143*
<i>Juror Empathy</i>	.123*	1	.150**
<i>Damage Award</i>	.143*	.150**	1

*. Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the .01 level (2-tailed).

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Table 3.

Regression analysis evaluating the mediating role of juror empathy with damage award amount as the dependent variable

Predictor	Outcome	β	t	p	R^2
Juror Empathy	Damage Award	.143	2.561	.011	.032

Table 4.

Regression analysis evaluating the mediating role of juror empathy with SHAS total score as the independent variable

Predictor	Outcome	β	Wald's χ^2	p	Cox & Snell R^2
SHAS Total	Juror Empathy	.028	3.939	.047	.019

Table 5.

Regression analyses evaluating the relationship between SHAS total score and Damage Award

Predictor	Outcome	β	t	p	R^2
SHAS Total	Damage Award	.130	2.284	.023	.028

Table 6.

Regression analyses evaluating the mediating role of experiential avoidance with BPD status as the independent variable

	Predictor	Outcome	β	t	p	R^2
R3	SHAS Total	Damage Award	.117	2.403	.041	.047
	Juror Empathy		.136	2.403	.017	

Note: SHAS = Sexual Harassment Attitude Scale.

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Table 7..	Damages	ARB	TPC	TPD	LOS	FUT	MED	MEN	NOC	LIT	BOT	EMP	BLA	IRR	MIT	INC	SHAS
Damages	1	-.017	-.025	.138*	-.028	-.020	-.022	.110	-.023	-.014	-.013	-.026	-.004	-.013	.212**	-.017	-.074
ARB	-.017	1	.012	.048	.112*	-.097	-.056	-.071	-.077	-.047	-.050	.149**	-.015	.190**	-.068	-.011	-.055
TPC	-.025	.012	1	-.022	.026	-.014	-.079	-.114*	.184**	.008	.113*	.003	-.035	-.107	-.104	-.039	.007
TPD	.138*	.048	-.022	1	.007	-.035	.079	-.024	-.116*	-.072	-.026	-.076	-.023	-.068	-.066	.054	.007
LOS	-.028	-.112*	.026	.007	1	.168**	.244**	.165**	-.125*	-.078	-.082	.078	-.024	-.074	-.076	-.072	.031
FUT	-.020	-.097	-.014	-.035	.168**	1	.016	.071	-.110	-.012	.036	.035	-.021	-.005	-.097	-.012	.033
MED	-.022	-.056	-.079	.079	.244**	.016	1	.240**	-.109	-.067	-.017	-.077	-.021	-.064	-.016	-.053	.048
MEN	.110	-.071	-.114*	-.024	.165**	.071	.240**	1	.153**	-.049	-.056	-.077	-.029	-.089	.025	.000	.010
NOC	-.023	-.077	.184**	-.116*	.125*	-.110	-.109	.153**	1	-.053	-.056	.169**	-.017	-.051	.068	.024	-.019
LIT	-.014	-.047	.008	-.072	-.078	-.012	-.067	-.049	-.053	1	-.034	-.062	-.010	-.031	-.047	-.046	-.085
BOT	-.013	-.050	.113*	-.026	-.082	.036	-.017	-.056	-.056	-.034	1	-.069	-.011	-.033	.021	-.048	-.059
EMP	-.026	.149**	.03	-.076	.078	.035	-.077	-.077	.169**	-.062	-.069	1	-.032	-.054	-.089	.009	-.015
BLA	-.004	-.015	-.035	-.023	-.024	-.021	-.021	-.029	-.017	-.010	-.011	-.032	1	.329**	-.015	-.014	c
IRR	-.013	.190**	-.107	-.068	-.074	-.005	-.064	-.089	-.051	-.031	-.033	-.054	.329**	1	-.045	-.043	-.062
MIT	.212**	-.068	-.104	-.066	-.076	-.097	-.016	.025	.068	-.047	.021	-.089	-.015	-.045	1	-.066	-.084
INC	-.017	-.011	-.039	.054	-.072	-.012	-.053	.000	.024	-.046	-.048	.009	-.014	-.043	-.066	1	.004
SHAS	-.074	-.055	.007	.007	.031	.033	.048	.010	-.019	-.085	-.059	-.015	c	-.062	-.084	.004	1

Note: Variable names in the above table correspond to the abbreviations listed in Appendix E. ARB = Arbitrarily / Guesswork. TPC = To Punish the Company. TPD = To Punish the Defendant. LOS = To Recuperate Lost Wages. FUT = To Compensate for Loss of Future Wages. MED = To Compensate for Medical Expenses. MEN = To Compensate for Mental Health Expenses. NOC = Do Not Feel the Victim Should be Compensated for Emotional Distress. LIT = Feel the Victim Should be Compensated Very Little for Emotional Distress. BOT = Based on the

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Fact that both Parties are at Fault. EMP = Based on Emotional Distress, Empathy Mentioned. BLA = Blank / No Answer. IRR = Irrelevant / Nonsensical. MIT = Damage Amount Mitigated by the Fact that the Victim had Preexisting Psychological Conditions. INC = Damage Amount Increased because of the Fact that the Victim had Preexisting Psychological Conditions.

Damages = Compensatory Damage Award Amount

SHAS = Total Score on the Sexual Harassment Attitude Scale

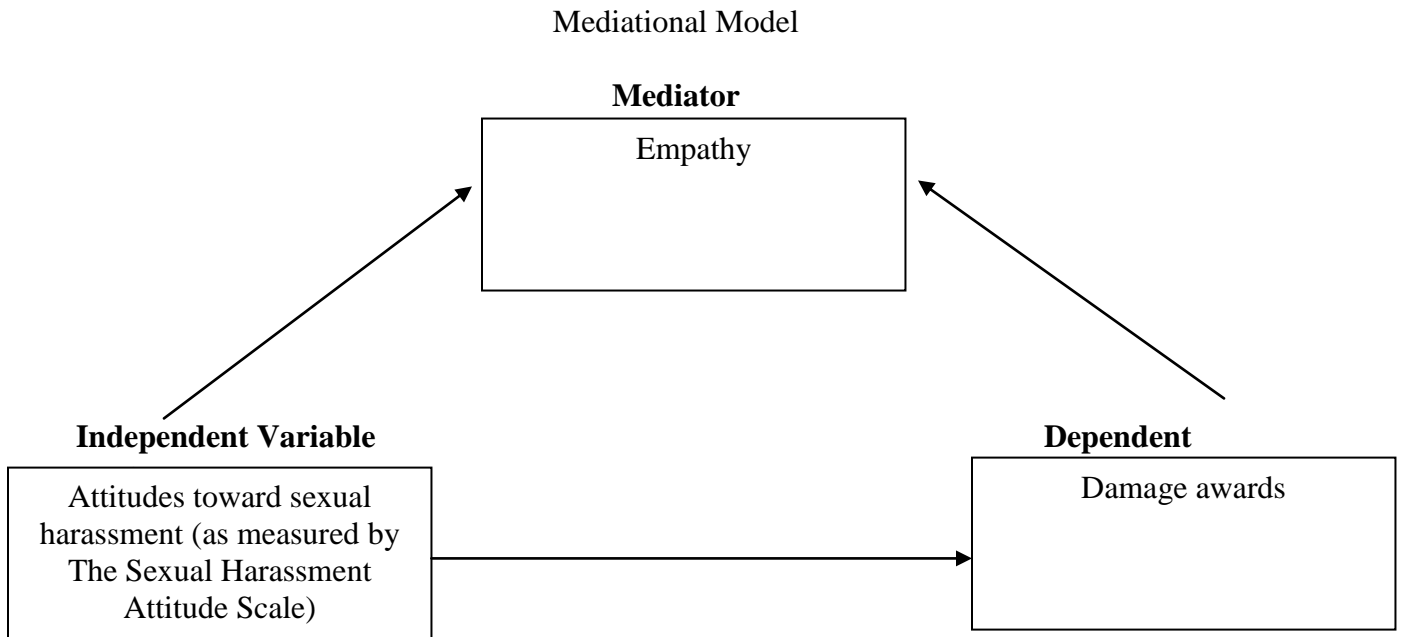
* Correlation is significant at the .05 level (2-tailed)

**Correlation is significant at the .01 level (2-tailed)

c. Cannot be computed because at least one of the variables is constant.

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Figure 1.



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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 nonmarital 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. In what type of industry are you currently employed? _____

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

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

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

15. What is your religious affiliation? _____

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

No Yes If yes, please explain: _____

17. 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

18. 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): _____

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

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20. Do you have any beliefs against awarding damages for emotional injuries?

No Yes If yes, please explain: _____

21. Have you ever experienced sexual harassment in the workplace?

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
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)
- Filed a lawsuit (Please explain outcome of lawsuit: _____)
- Left job
- Was fired/ asked to resign
- There was retaliation (Please explain: _____)
- Nothing

22. Has anyone close to you ever experienced sexual harassment in the workplace?

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
- Filed a complaint with the Equal Employment Opportunity Commission (EEOC)

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- Filed a law suit (Please explain outcome of lawsuit: _____)
- Left job
- Was fired/ asked to resign
- There was retaliation (Please explain: _____)
- Nothing

23. Have you ever worked in what you felt was a hostile work environment?

- No Yes If yes, please explain: _____

If you answered yes to #23, what was the outcome of this experience? Please check all boxes that apply.

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

24. Has anyone close to you ever worked in what you felt was a hostile work environment?

- No Yes If yes, please explain: _____

If you answered yes to #24, what was the outcome of this experience? Please check all boxes that apply.

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

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

- No Yes If yes, please explain: _____

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

- No Yes If yes, please explain: _____

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

- No Yes If yes, please explain: _____

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

- No Yes If yes, please explain: _____

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

- No Yes If yes, please explain: _____

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

No Yes If yes, please explain: _____

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

Liberal Moderate Conservative

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

Liberal Moderate Conservative

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

No Yes If yes, please explain: _____

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

No Yes If yes, please explain: _____

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

No Yes If yes, please explain: _____

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Appendix B

Doe v. XYZ, Inc.

This case involves the following two parties: the plaintiff, Jane Doe, an administrative assistant employed by XYZ, Inc.; the defendant, XYZ, Inc., a computer technology company.

The specifics of the case are as follows:

Jane Doe was hired as an administrative assistant at XYZ, Inc., a computer technology company, on February 24, 1995. Jane Doe was responsible for providing administrative support to a variety of employees at the company. John Smith was a sales representative at XYZ, Inc. with an office near Jane Doe. John Smith was Ms. Doe's co-worker, and did not have a supervisory role with Ms. Doe.

According to the plaintiff (Ms. Doe), John Smith started becoming "flirtatious" with her towards the end of March 1995, shortly after her employment at XYZ, Inc. began. The plaintiff (Ms. Doe) indicated that John Smith made frequent comments about her appearance and would often stare at her breasts, buttocks, and legs. The plaintiff (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. The plaintiff (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 the plaintiff (Ms. Doe), Mr. Smith stated that seeing a little more "T and A" around the office boosted employee morale and that the plaintiff's (Ms. Doe) employment might be more "secure" in management's opinion if she dressed more provocatively. The plaintiff (Ms. Doe) indicated that Mr. Smith's comments made her uncomfortable and highly sensitive to her appearance at work. Despite these

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feelings, Ms. Doe began wearing more skirts and low-cut blouses at work. The plaintiff (Ms. Doe) indicated that she feared that she would upset management and lose her job if she did not “make them happy.”

According to the plaintiff (Ms. Doe), Mr. Smith’s flirtatious behavior and demeaning comments continued for several months. She claimed that during this time, her anxiety over the situation escalated and interfered with her job performance. 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 the plaintiff (Ms. Doe) to ignore Mr. Smith’s behavior and that Mr. Smith would eventually “get bored” with her. The plaintiff (Ms. Doe) stated that the severity of the situation escalated in September of 1995 when she was working late one night. Ms. Doe alleged 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.” The plaintiff (Ms. Doe) indicated that a week after this incident, Mr. Smith put his hand on her thigh as she was sitting at her desk and attempted to kiss her. According to the plaintiff (Ms. Doe), she moved away and told Mr. Smith to stop. She indicated that she told 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 the plaintiff (Ms. Doe) 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 had discussed the situation with previously. The plaintiff (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 they would not want any

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“complications” that might risk his employment with the company. The plaintiff (Ms. Doe) indicated that Mr. Smith’s “inappropriate behavior” seemed to subside for several weeks after her discussion with the senior supervisor until one night in mid-December. According to the plaintiff (Ms. Doe), Mr. Smith grabbed her from behind as she was getting ready to leave for the night and started to kiss her neck. The plaintiff (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. The plaintiff (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. The plaintiff (Ms. Doe) did not want to jeopardize her employment before the holidays so she decided to address the issue once she returned to work after the holidays. The plaintiff (Ms. Doe) then scheduled an appointment with the Director of Human Resources for the first week in January of 1996.

The plaintiff (Ms. Doe) attended XYZ, Inc.’s annual Christmas party on December 20, 1995. Mr. Smith was also in attendance at the party. Both the plaintiff (Ms. Doe) and Mr. Smith had several drinks at the party and it appeared to several witnesses at the party that Mr. Smith was intoxicated. At 11:00pm, the plaintiff (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. The plaintiff (Ms. Doe) alleged that Mr. Smith grabbed her and put a knife to her throat as she was opening the door to her automobile. The plaintiff (Ms. Doe) stated that Mr. Smith told her that he would kill her if she screamed or tried to get away. Reportedly, Mr. Smith

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then told the plaintiff (Ms. Doe) that he had come “to claim” his “door prize.” The plaintiff (Ms. Doe) also stated that Mr. Smith told her that he “might as well rape” her since she was planning to “tattle” on him to Human Resources. Evidently, Mr. Smith had heard about the meeting the plaintiff (Ms. Doe) had scheduled with the Director and assumed that the meeting was about him. Mr. Smith began to fondle Ms. Doe’s breasts and kiss her neck. The plaintiff (Ms. Doe) was able to get away when Mr. Smith put the knife down to unzip his pants. At this point, Ms. Doe ran back to the Christmas party and called the police. After this victimization, the plaintiff (Ms. Doe) resigned from her position at XYZ, Inc.

(Insert Symptom Severity IV)

The plaintiff (Ms. Doe) claimed that her impairment in psychological functioning was a direct result of the hostile work environment and sexual harassment she experienced while employed by XYZ, Inc. She claimed that XYZ, Inc. was negligent in their duty to provide her with a work environment free of sexual harassment and intimidation. She also claimed that her victimization at the Christmas party could have been prevented if XYZ, Inc. would have followed through with her prior complaints to the senior supervisor against Mr. Smith. Mr. Smith’s employment records revealed three separate prior complaints of sexual harassment by other employees at XYZ, Inc. The plaintiff (Ms. Doe) argued that Mr. Smith should have been terminated based on these prior complaints. At the very least, the plaintiff (Ms. Doe) stated that Mr. Smith’s history of sexual harassment should have made the company more sensitive to her complaints. In summary, the plaintiff (Ms. Doe) alleged that XYZ, Inc. owed a duty to the plaintiff (Ms. Doe) and that XYZ, Inc. breached this duty. She also alleged that XYZ, Inc.’s breach of duty and negligence indirectly caused her injuries.

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XYZ, Inc. asserted in their defense that they were in no way responsible for the plaintiff's (Ms. Doe) injuries. According to the company, the plaintiff (Ms. Doe) never made an official complaint against Mr. Smith and they were thus not responsible for his actions. XYZ, 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 is 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, a comprehensive investigation is opened and the employee under investigation is temporarily put on suspension. XYZ, Inc. asserted that Ms. Doe did not follow these procedures and that they could not be expected to remedy a situation they knew nothing about. The plaintiff (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 the plaintiff (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 the plaintiff's (Ms. Doe) claims regarding the previous complaints against Mr. Smith, XYZ, Inc. asserted that they handled the situation according to procedure and that Mr. Smith had completed "sensitivity training" and had been put on "probation." XYZ, Inc. reported that if they had known about Ms. Doe's complaints, they would have immediately suspended Mr. Smith and initiated a formal

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investigation. In summary, XYZ, Inc. asserted that they could not be held responsible for the plaintiff's (Ms. Doe) injuries because they had no knowledge that there was a problem.

(Insert Alternative Causation IV)

Summary of Case Facts

- The plaintiff (Ms. Doe) alleged that John Smith made several inappropriate remarks, requests, and gestures over her course of employment at XYZ, Inc. and that his behavior constituted sexual harassment and created a hostile work environment.
- The plaintiff (Ms. Doe) spoke to a senior supervisor about Mr. Smith's behavior on two separate occasions. On the first occasion, the plaintiff (Ms. Doe) was told to ignore Mr. Smith. On the second occasion, the senior supervisor told the plaintiff (Ms. Doe) he would speak with Mr. Smith.
- The plaintiff (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 the plaintiff (Ms. Doe) in the parking lot after the company Christmas party.
- Allegedly, Mr. Smith put a knife to the plaintiff's (Ms. Doe) throat and threatened to rape her and kill her. Reportedly, Mr. Smith heard about the plaintiff's (Ms. Doe) scheduled meeting with the Director of Human Resources.
- The plaintiff (Ms. Doe) was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder after the period of alleged harassment and victimization.
- The plaintiff (Ms. Doe) claimed that she suffered from a variety of symptoms related to her victimization.

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- Experts on both sides of this lawsuit agree that the plaintiff (Ms. Doe) is suffering from a variety of distressing symptoms, but disagree on the cause of her symptoms.
- The plaintiff (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.
- In their defense, XYZ, Inc. claimed that the plaintiff (Ms. Doe) never filed a formal sexual harassment complaint with the company and thus, they never knew there was a problem and could not be held accountable for Mr. Smith's conduct.
- The senior supervisor testified that the plaintiff (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.
- **(Insert relevant summary facts from the IVs)**

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Appendix C

IV1: Level of Psychiatric Impairment

Severe

The plaintiff (Ms. Doe) was hospitalized for a week after this incident. While hospitalized, the plaintiff (Ms. Doe) was treated in the psychiatric unit for symptoms the plaintiff (Ms. Doe) claims were a result of her traumatic experience including depressive symptoms, posttraumatic symptoms, and thoughts of suicide. The plaintiff (Ms. Doe) began intensive, outpatient individual psychotherapy twice a week after she was discharged from the hospital and continued pharmacological treatment to improve her mood and manage her anxiety symptoms. The plaintiff (Ms. Doe) was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder several months after the assault and still suffered from a variety of psychological disturbances at the time of the trial two years later. At the time of the trial, the plaintiff (Ms. Doe) was still receiving individual psychotherapy twice a week. The plaintiff (Ms. Doe) indicated that she feared for her life during the victimization and thought Mr. Smith was going to rape her, and possibly kill her. The plaintiff (Ms. Doe) claimed that since the extended period of harassment and the victimization, she has experienced repeated flashbacks and nightmares of the assault and harassment, and has intrusive thoughts and images of the victimization almost every day. Ms. Doe reported that she always seems to be “on edge,” and is hypervigilant to stimuli in her environment. She indicated that she constantly feels as though people are watching her or are going to harm her, thus she dislikes leaving her house and dislikes having contact with other people. She stated that she has to have family members do most of her errands and she cannot go out at night at all due to a fear that she will be assaulted. Ms. Doe’s depressive symptoms include sleep disturbance,

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loss of appetite, weight loss, loss of motivation, persistent sadness, crying spells, feelings of guilt, shame and humiliation, and suicidal ideations. Ms. Doe reported that she has severe mood swings, fluctuating between anger, anxiety, sadness, and fear frequently. She also noted that she has developed several physical ailments since the victimization that prevent her from working including chronic migraine headaches accompanied by nausea and vomiting and irritable bowel syndrome.

The plaintiff (Ms. Doe) reported that she has been unable to maintain employment since the harassment and victimization due to her chronic psychological and physical symptomatology. She also noted that she feels considerable loss as a result of the harassment and victimization including loss of sense of self, loss of faith in people and standards of fairness and equity, and loss of enjoyment from life. Ms. Doe explained that she has experienced a loss of pleasure from activities she enjoyed before the harassment and victimization due to her increased level of anxiety, the presence of intrusive thoughts related to the victimization, and her overall depression and fear. She indicated that she has little self-confidence and constantly feels vulnerable. Since the victimization, the plaintiff (Ms. Doe) has been unable to maintain an intimate relationship and has developed a fear of men in general. She noted that she has severe “anxiety attacks” and flashbacks anytime she interacts with males. She indicated that she has been unable to maintain her friendships with men and tends to avoid all contact with men. She also asserted that her relationships with females have suffered due to her feelings of emotional numbness and inability to experience close emotional bonds with others. The plaintiff (Ms. Doe) has been hospitalized on two occasions for suicidal thoughts since her initial hospitalization after the assault. The plaintiff (Ms. Doe) reported that she often feels that life is not worth living and believes that she will never be

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the person she was before this experience. She is also concerned about how her condition will affect her children and her ability to raise them in an emotionally stable and nurturing environment. The plaintiff (Ms. Doe) was examined by mental health experts hired by both parties in this lawsuit. The experts all agreed that Ms. Doe is suffering from a variety of distressing symptoms, but disagree on the cause of her symptoms.

Moderate/Average

The plaintiff (Ms. Doe) was hospitalized for two days after this incident for observation and evaluation. While hospitalized, the plaintiff (Ms. Doe) was treated in the psychiatric unit for symptoms the plaintiff (Ms. Doe) claims were a result of her traumatic experience including depressive symptoms and posttraumatic symptoms. The plaintiff (Ms. Doe) received outpatient individual psychotherapy once a week after she was discharged from the hospital and continued pharmacological treatment to improve her mood and manage her anxiety symptoms for several months after discharge. The plaintiff (Ms. Doe) indicated that she feared for her life during the victimization and thought Mr. Smith was going to rape her, and possibly kill her. The plaintiff (Ms. Doe) was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder several months after the assault and still suffered from moderate levels of psychological distress at the time of the trial two years later. At the time of the trial, the plaintiff (Ms. Doe) was receiving individual therapy once every two to three weeks for maintenance of her therapeutic gains. The plaintiff (Ms. Doe) claimed that since the extended period of harassment and the victimization, she has experienced flashbacks and nightmares of the assault and harassment, and has intrusive thoughts and images of the victimization once or twice a week. Ms. Doe reported that she always seems to be “on edge,” and is hypervigilant to stimuli in her environment. She indicated that she

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sometimes feels as though people are watching her or are going to harm her, which makes her anxious when she leaves the house. Ms. Doe's depressive symptoms include sleep disturbance, loss of appetite, weight loss, loss of motivation, persistent sadness, crying spells, feelings of guilt, and shame and humiliation. During her initial hospitalization after the assault, she also experienced suicidal ideations, but never made an attempt on her life. Ms. Doe reported that although some of her symptoms have subsided with treatment, she still experiences a moderate amount of psychological discomfort as a result of the victimization and extended period of harassment. She indicated that she sometimes has mood swings, fluctuating between anger, anxiety, sadness, and fear. She also noted that she developed some physical ailments after the victimization that make it difficult for her to work including migraine headaches accompanied by nausea and vomiting.

The plaintiff (Ms. Doe) reported that she has had difficulty maintaining employment since the harassment and victimization due to her psychological and physical symptomatology. She also noted that she feels considerable loss as a result of the harassment and victimization including loss of sense of self, loss of faith in people and standards of fairness and equity, and loss of enjoyment from life. Ms. Doe explained that she has experienced a loss of pleasure from activities she enjoyed before the harassment and victimization due to her increased level of anxiety and depression. She indicated that she has little self-confidence and constantly feels vulnerable. Since the victimization, the plaintiff (Ms. Doe) has had difficulty maintaining intimate relationships and is skeptical of men in general. She also asserted that her relationships with females have suffered due to her feelings of emotional numbness and loss of pleasure from life. The plaintiff (Ms. Doe) reported that she often feels that she will never be the person she was before this experience.

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She is also concerned about how her condition will affect her children and her ability to raise them in an emotionally stable and nurturing environment. The plaintiff (Ms. Doe) was examined by mental health experts hired by both parties in this lawsuit. The experts all agreed that Ms. Doe is suffering from a variety of distressing symptoms, but disagree on the cause of her symptoms.

Mild

After this incident, the plaintiff (Ms. Doe) began outpatient treatment for symptoms the plaintiff (Ms. Doe) claims were a result of her traumatic experience including depressive symptoms and posttraumatic symptoms. The plaintiff (Ms. Doe) received outpatient individual psychotherapy once a week and received pharmacological treatment to improve her mood and manage her anxiety symptoms for several months. The plaintiff (Ms. Doe) indicated that she feared for her life during the victimization and thought Mr. Smith was going to rape her, and possibly kill her. The plaintiff (Ms. Doe) was diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder several months after the assault and claimed that she was still suffering from moderate levels of psychological distress at the time of the trial two years later. At the time of the trial, the plaintiff (Ms. Doe) was receiving individual therapy once a month for maintenance of her therapeutic gains. The plaintiff (Ms. Doe) claimed that she experienced intrusive thoughts and images of the victimization for several months after the harassment and victimization, but has not had these symptoms for quite some time. However, Ms. Doe reported that she always seems to be “on edge,” and sometimes feels as though people are watching her.

Ms. Doe’s depressive symptoms at the time she started therapy included loss of motivation, sadness, crying spells, and feelings of shame and humiliation. Ms. Doe denied

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having suicidal ideations throughout treatment. Ms. Doe reported that although most of her symptoms have subsided with treatment, she still experiences some psychological discomfort as a result of the victimization and extended period of harassment. She indicated that she sometimes has mood swings, fluctuating between sadness and anger, and has difficulty concentrating on tasks.

The plaintiff (Ms. Doe) reported that she has had difficulty maintaining employment since the harassment and victimization due to her psychological distress. Ms. Doe also reported that she has experienced a loss of pleasure from several of the activities she enjoyed before the harassment and victimization due to increased levels of anxiety and depression. She indicated that she has little self-confidence and often feels vulnerable. Since the victimization, the plaintiff (Ms. Doe) has had difficulty maintaining intimate relationships and is skeptical of men in general. The plaintiff (Ms. Doe) was examined by mental health experts hired by both parties in this lawsuit. The experts all agreed that Ms. Doe has suffered from a variety of distressing symptoms, but disagree on the cause of her symptoms.

IV1: Alternate Causation

Preexisting Psychological History

During the trial, the defense 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 ideation. The plaintiff (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, the plaintiff (Ms. Doe) was treated with an antidepressant. She also received long-term outpatient therapy from

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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 the plaintiff (Ms. Doe) had been molested by a male cousin before her first psychiatric hospitalization.

The defense claimed that the plaintiff's (Ms. Doe) 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 the plaintiff's (Ms. Doe) emotional sensitivity and should not be held responsible for her predisposition towards emotional dysfunction. In support of their defense, they cited legal doctrine outlining a plaintiff's (Ms. Doe) right to recover for psychological injuries. Specifically, they stated that the plaintiff (Ms. Doe) may not recover for emotional damages caused by other events or circumstances. The plaintiff (Ms. Doe) countered with legal doctrine stating that a plaintiff (Ms. Doe) can be compensated for emotional injuries if the defendant's (XYZ, Inc.) conduct (actions or negligence) results in the exacerbation of a preexisting psychological injury. The plaintiff (Ms. Doe) stated that under the legal duty of care, the defendant (XYZ, Inc.) is responsible for the consequences of their negligent conduct once the plaintiff (Ms. Doe) suffers a foreseeable injury. According to the plaintiff (Ms. Doe), this is true even if the action merely exacerbates an existing condition or activates a "latent condition." The plaintiff (Ms. Doe) also asserted that her current psychological problems are not an exacerbation of a previous condition since she had previously been diagnosed with Major Depressive Disorder and has now been diagnosed with Posttraumatic

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Stress Disorder and Major Depressive Disorder. Ms. Doe claimed that these were two distinct conditions and that the defendant's (XYZ, Inc.) conduct caused her current emotional injuries.

Concurrent Psychological Problems

During the trial, the defense claimed that Ms. Doe's current psychological condition was the result of other concurrent stressors in the plaintiff's (Ms. Doe) life. Reportedly, Ms. Doe was under a significant amount of stress at the time of the alleged harassment and victimization due to continuous hostile interactions with her ex-husband. The plaintiff's (Ms. Doe) ex-husband was suing her for custody of their children and had raised several allegations about the plaintiff's (Ms. Doe) fitness as a mother. Ms. Doe's ex-husband was threatening to take the children away from her and was having a private detective follow her to collect information for the upcoming custody trial. Ms. Doe was also under considerable financial strain due to the custody dispute and was having difficulty paying her bills, including her mortgage, and feared that she might lose her home. Additionally, the plaintiff's (Ms. Doe) father died during the alleged period of harassment. Reportedly, the plaintiff (Ms. Doe) had a very strained relationship with her father before he died and experienced significant feelings of regret and guilt after he passed away.

The defense claimed that the plaintiff's (Ms. Doe) current state of psychological functioning was the direct result of other stressors in the plaintiff's (Ms. Doe) life. They asserted that they are not responsible for the plaintiff's (Ms. Doe) emotional sensitivity and should not be held responsible for her predisposition towards emotional dysfunction or symptomatology that resulted from causes outside of their control (i.e., the custody dispute, financial strain, the death of her father). In support of their defense, they cited legal doctrine

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outlining a plaintiff's (Ms. Doe) right to recover for psychological injuries. Specifically, they stated that the plaintiff (Ms. Doe) cannot recover for emotional damages caused by other events or circumstances. The plaintiff (Ms. Doe) countered with legal doctrine stating that a plaintiff (Ms. Doe) can be compensated for emotional injuries if the defendant's (XYZ, Inc.) conduct (actions or negligence) results in the exacerbation of a preexisting psychological injury. The plaintiff (Ms. Doe) stated that under the legal duty of care, the defendant (XYZ, Inc.) is responsible for the consequences of their negligent conduct once the plaintiff (Ms. Doe) suffers a foreseeable injury.

According to the plaintiff (Ms. Doe), this is true even if the action merely exacerbates an existing condition or activates a "latent condition" The plaintiff (Ms. Doe) also asserted that her current psychological problems are not an exacerbation of her difficulties related to the custody dispute or the death of her father and that the defendant's (XYZ, Inc.) conduct caused her current emotional injuries.

Preexisting and Concurrent Psychological Problems

During the trial, the defense claimed that Ms. Doe's current psychological condition was the result of a preexisting psychological disorder that had been exacerbated by other concurrent stressors in the plaintiff's (Ms. Doe) life. They reviewed Ms. Doe's mental health records and discovered that she had two previous psychiatric hospitalizations for depression with suicidal ideation. The plaintiff (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, the plaintiff (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

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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 the plaintiff (Ms. Doe) had been molested by a male cousin before her first psychiatric hospitalization.

The defense also claimed that Ms. Doe's current psychological condition was the result of other concurrent stressors in the plaintiff's (Ms. Doe) life. Reportedly, Ms. Doe was under a significant amount of stress at the time of the alleged harassment and victimization due to continuous hostile interactions with her ex-husband. The plaintiff's (Ms. Doe) ex-husband was suing her for custody of their children and had raised several allegations about the plaintiff's (Ms. Doe) fitness as a mother. Ms. Doe's ex-husband was threatening to take the children away from her and was having a private detective follow her to collect information for the upcoming custody trial. Ms. Doe was also under considerable financial strain due to the custody dispute and was having difficulty paying her bills, including her mortgage, and feared that she might lose her home. Additionally, the plaintiff's (Ms. Doe) father died during the alleged period of harassment. Reportedly, the plaintiff (Ms. Doe) had a very strained relationship with her father before he died and experienced significant feelings of regret and guilt after he passed away.

The defense claimed that the plaintiff's (Ms. Doe) current state of psychological functioning was the direct result of prior experiences and other stressors in the plaintiff's (Ms. Doe) life and a natural progression of her prior history of psychological problems. They asserted that they are not responsible for the plaintiff's (Ms. Doe) emotional sensitivity and should not be held responsible for her predisposition towards emotional dysfunction or symptomatology

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that resulted from causes outside of their control (i.e., the custody dispute, financial strain, the death of her father). In support of their defense, they cited legal doctrine outlining a plaintiff's (Ms. Doe) right to recover for psychological injuries. Specifically, they stated that the plaintiff (Ms. Doe) cannot recover for emotional damages caused by other events or circumstances. The plaintiff (Ms. Doe) countered with legal doctrine stating that a plaintiff (Ms. Doe) can be compensated for emotional injuries if the defendant's (XYZ, Inc.) conduct (actions or negligence) results in the exacerbation of a preexisting psychological injury. The plaintiff (Ms. Doe) stated that under the legal duty of care, the defendant (XYZ, Inc.) is responsible for the consequences of their negligent conduct once the plaintiff (Ms. Doe) suffers a foreseeable injury.

According to the plaintiff (Ms. Doe), this is true even if the action merely exacerbates an existing condition or activates a "latent condition" The plaintiff (Ms. Doe) also asserted that her current psychological problems are not an exacerbation of a previous condition or the result of other stressors since she had previously been diagnosed with depression and has now been diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder. Ms. Doe claimed that these were two distinct conditions and that the defendant's (XYZ, Inc.) conduct caused her current emotional injuries.

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Appendix D

Post-Case Questionnaire

Assume that you are a juror in this case and are being asked to make a determination on damages to be awarded to the plaintiff (Ms. Doe). Assume that the company, XYZ, Inc., has already been found liable (responsible) for the plaintiff's injuries. Also assume that Ms. Doe and XYZ, Inc. have agreed on the amount of compensatory damages that will be awarded to the plaintiff for lost wages and any medical costs the plaintiff might have incurred. Assume that you are given the following general jury instructions for compensatory damages:

General Instructions on Compensatory Damages

Once the defendant (XYZ, Inc.) has been found liable to the plaintiff, you must determine an amount that is fair compensation for all the plaintiff's (Ms. Doe) damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff (Ms. Doe) whole – that is, to compensate the plaintiff (Ms. Doe) for the damage that the plaintiff (Ms. Doe) has suffered. Compensatory damages are not limited to expenses that the plaintiff (Ms. Doe) may have incurred because of her injury. If the plaintiff (Ms. Doe) wins, she is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that she has suffered because of the defendant's (XYZ, Inc.) conduct.

You may award compensatory damages only for injuries that the plaintiff (Ms. Doe) proves were proximately caused by the defendant's (XYZ, Inc.) allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's (Ms. Doe)

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damages, no more and no less. Damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant (XYZ, Inc.). You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff (Ms. Doe) has actually suffered or that the plaintiff (Ms. Doe) is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff (Ms. Doe) prove the amount of her losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence. You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence:

a) pain and suffering

If you should find that the plaintiff (Ms. Doe) is entitled to a verdict, then you should award her a sum that will reasonably compensate her for any pain, suffering, and mental anguish already suffered by her as a proximate result of the defendant's (XYZ, Inc.) conduct.

In addition to any award for pain and suffering by the plaintiff (Ms. Doe) up to now, if you find from the evidence in this case that any of plaintiff's (Ms. Doe) injuries are permanent so that she is reasonably certain to suffer in the future from the same cause, you must make such allowance in your verdict. In considering this, you should take into account both the nature and extent of plaintiff's (Ms. Doe) injury and the period of time that has

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elapsed from the date of the injury to the present time and the period of time that the plaintiff (Ms. Doe) can be expected to live. *Instructions revised from the 5th Circuit Pattern Jury Instructions (Civil): 15.1, 15.5 and 77.01 reprinted in Modern Federal Jury Instructions (Sand, Sieffert, Loughlin, Reiss, & Batterman, 2001).*

In the instructions above, “proximate cause” means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event (*PJC 65.3: Texas Pattern Jury Charges prepared by the Committee on Pattern Jury Charges of the State Bar of Texas (2000)*).

You are further instructed that under the legal duty of care, the defendant (XYZ, Inc.) is responsible for the consequences of his or her negligent conduct once the plaintiff (Ms. Doe) suffers a foreseeable injury. This is true even if the action merely exacerbates an existing condition or activates a “latent condition.” In other words, the plaintiff (Ms. Doe) may not recover for emotional damages caused by other events or circumstances, but can be compensated for emotional injuries if the defendant’s (XYZ, Inc.) conduct results in the exacerbation of a preexisting psychological injury. The important question is whether or not the defendant’s (XYZ, Inc.) behavior “aggravated,” “accelerated,” or contributed in anyway to the severity and/or course of the mental injury, even if it was a preexisting disorder. The defendant (XYZ, Inc.) should be held liable for all damages that their behavior has proximately caused, whether the plaintiff (Ms. Doe) is sensitive or not.

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You are now asked to make a determination on the amount of damages the plaintiff (Ms. Doe) should receive, if any, to compensate her for her emotional injuries (i.e., emotional distress, mental anguish). Remember that the plaintiff (Ms. Doe) has already received compensation for the other components of compensatory damages (i.e., medical expenses (including any costs for medication or psychotherapy), pain and suffering associated with any physical injury, lost earnings/wages). Your award should only reflect the amount of damages, if any, the plaintiff (Ms. Doe) deserves for the emotional injuries described in the case scenario. Remember not to include any amount for any condition not resulting from the defendant's (XYZ, Inc.) conduct.

- 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?

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3) Describe how you approached assigning a monetary value to emotional distress.

4) 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

5) 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

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6) Please check any of the following items that apply to the case scenario you read? (you may check more than one item)

Ms. Doe was hospitalized for a week immediately after the victimization and two more times before the trial for having suicidal thoughts.

Ms. Doe was hospitalized for a few days after the victimization and was receiving outpatient individual psychotherapy once every two to three weeks at the time of trial.

Ms. Doe experienced physical symptoms in addition to psychological/emotional symptoms.

Ms. Doe had other significant concurrent stressors in her life at the time of the alleged harassment and victimization.

Ms. Doe had a prior history of psychological problems (i.e., psychological problems before the alleged harassment and victimization)

Ms. Doe was diagnosed with Posttraumatic Stress Disorder

Ms. Doe was diagnosed with Major Depressive Disorder

7) Please check any of the following items that you considered when determining the amount to award the plaintiff (Ms. Doe) for her damages?

Medical Costs (includes cost for outpatient therapy and medication)

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- Loss of Wages
- Loss of Future Earnings
- Defendant's behavior (XYZ, Inc.)
- Plaintiff's behavior (Jane Doe)
- Loss of Pleasure from life
- Mental Anguish/Emotional distress
- Other: _____
- Other: _____

8) Please rate the severity of the plaintiff's psychological injuries on a scale of 1 (no distress/disability) to 10 (severe distress/disability).

Rating: _____

9) Please briefly describe your impressions of the purpose or goals of this study?

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In regards to the factors that you indicated were important to your decision in Question # 6, please indicate what percentage, if any, each one represented in your final damage award (Question #1).

Percentage of Damage Award

Medical Costs: _____

Loss of Wages: _____

Loss of Future Earnings: _____

Defendant's behavior (XYZ, Inc.): _____

Plaintiff's behavior (Jane Doe): _____

Loss of Pleasure from life: _____

Mental Anguish/Emotional distress: _____

Other: _____:

Other: _____:

TOTAL = 100%

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Appendix E

Arbitrarily/Guesswork (ARB): Indicates that the participant randomly assigned a compensatory damage award amount to the plaintiff, and could not articulate any reasoning behind the amount assigned.

To Punish the Company (TPC): Indicates that the participant assigned a compensatory damage award amount to the plaintiff in order to require that retribution be paid by XYZ, Inc. due to the participant's perceived improper response by the company.

To Punish the Defendant (TPD): Indicates that the participant assigned a compensatory damage award amount that Mr. Smith should pay as retribution to Ms. Doe for his actions.

To Recuperate Lost Wages (LOS): Indicates that the participant assigned a compensatory damage award amount to the plaintiff in order to recuperate wages lost by the plaintiff that were directly due to the incident.

To Compensate for Loss of Future Wages (FUT): Indicates that the participant assigned a compensatory damage amount to the plaintiff based on the assumption that the plaintiff would not be able to return to work for a period of time and should be compensated.

To Compensate for Medical Expenses (MED): Indicates that the participant assigned a compensatory damage award to the plaintiff in order to provide reimbursement for any medical expenses incurred due to the incident. This could include, but is not limited to, doctors' visits and hospitalizations.

To Compensate for Mental Health Expenses (MEN): Indicates that the participant assigned a compensatory damage award to the plaintiff based on costs that the plaintiff incurred due to the incident. This could include, but is not limited to, therapy and psychotropic medication.

Do Not Feel the Victim Should be Compensated for Emotional Distress (NOC): Indicates that the participant did not award a compensatory damage award in this case because a) participant did not feel that the plaintiff deserved compensatory damages based on the facts of the case or b) participant did not believe emotional distress should be compensated monetarily, and therefore awarded \$0.0.

Feel that Victim Should be Compensated Very Little for Emotional Distress (LIT): Indicates that the participant awarded a small compensatory damage award to the plaintiff because the participant felt that damages due to emotional distress should be assigned a small monetary value.

Based on the Fact that Both Parties are at Fault (BOT): Indicates that the participant assigned a compensatory damage award to the plaintiff based on the view that both the defendant and the plaintiff share liability for the incident and/or its consequences.

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Based on Emotional Distress-Empathy Mentioned (EMP): Indicates that the participant assigned a compensatory damage award to the plaintiff due to emotional distress that the plaintiff endured as a result of the incident. The participant demonstrates empathy in his/her response by using phrases such as “I put myself in her shoes”.

Blank/No Answer (BLA): Indicates that the participant did not provide a response.

Irrelevant/Nonsensical (IRR): Indicates that the participant gave a response that did not relate to the awarding of compensatory damages to the plaintiff.

Damage Amount Mitigated by the Fact that the Victim had Pre-existing Psychological Conditions (MIT): Indicates that the participant assigned a lower compensatory damage award based on the fact that the plaintiff had pre-existing conditions that were not directly related to the incident.

Damage Amount Increased by the Fact that the Victim had Pre-existing Psychological Conditions (INC): Indicates that the participant assigned a greater compensatory damage award based on the fact that the plaintiff had pre-existing psychological conditions that, although not directly related to the incident, were exacerbated by the incident.

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

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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.	

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Appendix G

Sexual Experiences Questionnaire

YOUR EXPERIENCES AT WORK OR SCHOOL

In this part of the questionnaire, we would like to know about your experiences at work or school. **For each item, please circle the number that most closely describes your own experience with co-workers, supervisors, classmates, or professors.** Please answer as frankly and completely as you can; remember that YOUR ANSWERS ARE ANONYMOUS.

Have you ever been in a situation where any of your co-workers, supervisors, classmates, or professors:

						IF AT LEAST ONCE, how much did this bother you? (If multiple times, please pick the most distressing occurrence to you)				
	Extremely Never	Once or Twice	Some- times	Often	Many Times	Not at All	Slightly	Some- what	Very Much	5
a) ...habitually told suggestive stories or offensive jokes?	0	1	2	3	4	1	2	3	4	5
b) ...made unwanted attempts to draw you into a discussion of personal or sexual matters (e.g., attempted to discuss or comment on your sex life)?	0	1	2	3	4	1	2	3	4	5
c) ...made crude and offensive sexual remarks, either publicly (for example, in the office), or to you privately?	0	1	2	3	4	1	2	3	4	5
d) ...made offensive remarks about your appearance, body, or sexual activities?	0	1	2	3	4	1	2	3	4	5
e) ...gave you unwanted sexual attention?	0	1	2	3	4	1	2	3	4	5
f) ...was staring, leering, or ogling you in a way that made you feel uncomfortable?	0	1	2	3	4	1	2	3	4	5
g) ...attempted to establish a romantic or sexual relationship despite your efforts to discourage him or her?	0	1	2	3	4	1	2	3	4	5
h) ...displayed, used, or distributed sexist or suggestive materials (e.g., pictures, stories, or pornography)?	0	1	2	3	4	1	2	3	4	5
i) ...frequently make sexist remarks (e.g., suggesting that women are too										

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emotional to be scientists or to assume leadership roles)?	0	1	2	3	4	1	2	3	4	5
j) ...has continued to ask you for dates, drinks, dinner, etc., even though you have said "no"?	0	1	2	3	4	1	2	3	4	5
k) ...made you feel like you were being subtly bribed with some sort of reward or special treatment to engage in sexual behavior?	0	1	2	3	4	1	2	3	4	5
l) ...made you feel subtly threatened with some sort of retaliation for not being sexually cooperative (e.g., the mention of an upcoming evaluation, review, etc.)?	0	1	2	3	4	1	2	3	4	5
m) ...touched you (e.g., laid a hand on your bare arm, put an arm around your shoulders) in a way that made you feel uncomfortable?	0	1	2	3	4	1	2	3	4	5
n) ...made unwanted attempts to stroke or fondle you (e.g., stroking your leg or neck, touching your breast, etc.)?	0	1	2	3	4	1	2	3	4	5
o) ...made unwanted attempts to have sex with you that resulted in you pleading, or physically struggling?	0	1	2	3	4	1	2	3	4	5
p) ...implied faster promotions, higher grades, or better treatment if you were sexually cooperative?	0	1	2	3	4	1	2	3	4	5
q) ...made it necessary for you to respond positively to sexual or social invitations in order to be well treated on the job?	0	1	2	3	4	1	2	3	4	5
r) ...made you afraid that you would be treated poorly if you didn't cooperate sexually?	0	1	2	3	4	1	2	3	4	5
s) ...treated you badly for refusing to have sex with a coworker, supervisor, classmate, or professor?	0	1	2	3	4	1	2	3	4	5
t) ...have you ever been sexually harassed?	0	1	2	3	4	1	2	3	4	5

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