

Jean Jew's Case: Resisting Sexual Harassment in the Academy

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The claim of sexual harassment is nearly twenty years old. From the first cases brought in the mid-1970s¹ to the recurring headline-making controversies of the present—Hill/Thomas,² Tailhook,³ Packwood⁴—sexual harassment claims have generated heated debate about the validity of women's interpretations of their experiences and the credibility of women's accounts of injury.⁵ Like most legal claims, the courts have repeatedly been called upon to refine the cause of action, to resolve ambiguities in the definition of harassment and uncertainties about the limits of the law. Recently in *Harris*

[†] Professor of Law, University of Iowa. This essay is based on a combination of personal recollection and information from the public record. I was a member of the Jean Jew Justice Committee in 1990 and a member of the Council on the Status of Women from 1987-1991. I gained the information contained in this essay from my extensive participation in those two groups and from attending most of the trial held in state court on Professor Jew's defamation claim. Carolyn Chalmers, Professor Jew's attorney, supplied me with relevant portions of the transcript of the federal trial. Unfortunately, there are no available transcripts of the state trial. My account of that proceeding is based on my memory of the testimony I heard and information Jean Jew subsequently reported to the Jean Jew Justice Committee.

To satisfy myself that my recollections were not mistaken, I asked Jean Jew, Sue Buckley, Nancy Hauserman and Peter Shane to review this essay for factual accuracy. I am grateful for their help and for the encouragement to write about these events given to me by Margery Wolf and Mari Matsuda. I am under no illusion that my account of this case is objective or complete. It is simply my account. Particularly because so many of my friends and colleagues played a role in this extraordinary case, I wish to stress that the opinions expressed in this reflection are my own.

1. The first case to recognize a claim for sexual harassment was *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976) (finding that female employee, whose male supervisor had made sexual advances and retaliated against her when she declined, had suffered sex discrimination under Title VII of the Civil Rights Act of 1964). By 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines prohibiting sexual harassment and providing the basic framework for litigating claims. 29 C.F.R. § 1604.11 (1993).

2. For a sampling of the literature on the Hill/Thomas hearings, see RACE-ING JUSTICE, ENGENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY (Toni Morrison ed., 1992); Emma C. Jordan, *Race, Gender and Social Class in the Thomas Sexual Harassment Hearings: The Hidden Fault Lines in Political Discourse*, 15 HARV. WOMEN'S L.J. 1 (1992); Symposium, *Gender, Race and the Politics of Supreme Court Appointments: The Import of the Anita Hill/Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1279 (1992).

3. The Tailhook scandal was the name given to the sexual assaults on military and civilian women which took place at the September 1991 convention of the Tailhook Association, a group of retired and active-duty naval aviators. For initial accounts of the events, see Neil Lewis, *President Meets Female Officer in Navy Incident*, N.Y. TIMES, June 28, 1992, at 12; Eric Schmitt, *Wall of Silence Impedes Inquiry Into a Rowdy Navy Convention*, N.Y. TIMES, June 14, 1992, at 1.

4. For a sampling of the news accounts of allegations of sexual harassment made against Senator Bob Packwood by women who worked for him between 1969 and 1990, see *Accuser Reports Pressure to Keep Quiet on Senator*, N.Y. TIMES, Nov. 30, 1992, at 7B; Clifford Krauss, *Drinking Might Have Prompted Sexual Advances*, N.Y. TIMES, Nov. 28, 1992, at 9; Clifford Krauss, *Ethics Panel Interviews Packwood Accusers*, N.Y. TIMES, Apr. 18, 1993, at 26; Michael Wines, *Packwood Yields Diaries; Judge is Told of Revisions*, N.Y. TIMES, Dec. 17, 1993, at 26A.

5. I discuss the extensive literature on sexual harassment and the major trends in the legal doctrine in Martha Chamallas, *Writing About Sexual Harassment: A Guide to the Literature*, 4 UCLA WOMEN'S L.J. 37 (1994).

v. Forklift Systems, Inc.,⁶ a unanimous United States Supreme Court reinforced the right of sexual harassment plaintiffs to bring suits not only for economic injury, but also for noneconomic injury stemming from sexually hostile or abusive working environments.⁷ The Court also clarified the elements of the abusive work environment claim, ending a divisive split in the circuits.⁸ However, I doubt whether the new Supreme Court precedent will lessen the intensity with which sexual harassment controversies are fought. Even when people agree upon basic principles, there can be sharp disagreement in concrete cases—disagreement about who is telling the truth, disagreement about who deserves to be sanctioned, and disagreement about the appropriate role of the employer in preventing or rectifying the harassment.

Moreover, the refined legal doctrine does not address what has been called in the social science literature “the second injury”: the injury sexual harassment victims experience when they bring their claims to court. The harsh treatment of Anita Hill as a complaining witness before the Senate Judiciary Committee was but one dramatic example of the cruelty of sexual harassment disputes. The strategy of discrediting the plaintiff is a staple in sexual harassment litigation.⁹ Despite attempts to focus the legal inquiry on the actions of the defendant, rather than on the behavior of the plaintiff, lawyers know that they must warn prospective sexual harassment plaintiffs that they too will effectively be put on trial. Feminist lawyers may often find themselves wondering whether faith in the law is warranted. Given what they have learned about sexual harassment litigation, are women foolish to sue their employers for sexual harassment? Will the trial be as bad or even worse than the abuse the plaintiff suffered at work? Are women victimized by sexual harassment doomed to be falsely constructed during the course of the litigation either as helpless victims or vindictive liars?

6. 114 S. Ct. 367 (1993).

7. Since its first sexual harassment decision in *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986), the Court has recognized two types of sexual harassment—*quid pro quo* and hostile or offensive working environment. In *quid pro quo* cases, the harassment is directly linked to the grant or denial of an economic benefit. The EEOC guidelines provide for liability when “submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment [or] . . . is used as the basis for employment decisions affecting such individual.” 29 C.F.R. § 1604.11(a)(1), (2) (1993). Hostile work environment occurs when the harassing conduct of a supervisor, co-employee or third party (for example a client or customer) “has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.” 29 C.F.R. § 1604.11(a)(3) (1993).

8. Most importantly, the Court refused to require plaintiffs to prove that they had suffered severe psychological harm as a required element of the claim. *Harris*, 114 S. Ct. at 371.

9. Victims of sexual harassment are faced with many of the same problems in court as those faced by rape victims in criminal prosecutions. See Susan Estrich, *Sex at Work*, 43 STAN. L. REV. 813 (1991). It is often the response of the victim, rather than the conduct of the harasser, which is scrutinized during the course of the litigation. At trial, defendants often try to destroy the credibility of sexual harassment plaintiffs by introducing evidence bearing on plaintiff’s provocative dress, sexual history, or other sexual conduct outside of work. See generally Cindi Fox, *Evidentiary Issues in Sexual Harassment Litigation*, 1 BERKELEY WOMEN’S L.J. 115 (1985); Wendy Pollack, *Sexual Harassment: Women’s Experience vs. Legal Definitions*, 13 HARV. WOMEN’S L.J. 35, 57 (1990).

The case that has been the most influential in my own thinking has been the lawsuit Professor Jean Jew brought against the University of Iowa. This case has taught me a host of potentially conflicting lessons.¹⁰ Sometimes I consider Jew's case to be a complete victory; she won in the courts, she changed public opinion in our community, while insisting that she should not be forced to find a new job in a more hospitable environment. Sometimes, however, I regard Jew's case as a warning that legal claims of sexual harassment offer only very limited prospects for social transformation.

Jew's victory was exacted at an extremely high cost. Jew fought the University for more than a decade and was treated cruelly by a institution which, during the lengthy ordeal, professed a commitment to sexual and racial equality.¹¹ As Jew acknowledged, her public stance was made possible only because she was relatively privileged in terms of education, economic and social position and had no partner or child who might also suffer from the stress and ostracism that accompanies such a lawsuit.¹² I also regard Jew's case as special because certain unusual factors, including grassroots organization and extensive press coverage, combined to overcome the formidable institutional resistance to her claims.

This essay chronicles Jean Jew's struggle to have the University acknowledge that she had been treated unfairly. As a matter of legal doctrine, Jew's case is significant because it is one of only a few cases in which a faculty member has successfully argued that her academic department constituted a hostile working environment.¹³ It is significant as a case study of gender hostility in a predominantly male working group of elite professionals in which the harassment was every bit as virulent as that which occurs in factories and construction sites.¹⁴ It is significant as a painful yet powerful demonstration of how race and sex discrimination intersect to create distinctive burdens for women of color. Finally, it is significant for what it reveals to feminists about the interplay between law, litigation and grassroots political activism.

10. Jew v. University of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990).

11. One sad irony is that by the time of the trials in the Jew case, the University of Iowa had a very detailed, progressive policy against sexual harassment in place. See Policy on Sexual Harassment and Consensual Relationships (July 1993) (on file with author). The Jew litigation provided an impetus for the drafting of the policy. See Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment at 13, Jew v. University of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2) [hereinafter Plaintiff's Memorandum].

12. See Andy Brownstein & Diana Wallace, *UI, Regents Put Case to Rest*, DAILY IOWAN, Nov. 13, 1990, at 1A.

13. See, e.g., King v. Board of Regents of the Univ. of Wis. Sys., 898 F.2d 533, 538 (7th Cir. 1990) (holding that abusive treatment by colleague had created hostile environment); cf. Field v. Clark Univ., 817 F.2d 931, 933 (1st Cir. 1987) (finding that sexual harassment by male colleague had tainted vote on tenure).

14. For vivid descriptions of sexual harassment in blue collar jobs, see Elvia R. Arriola, "What's the Big Deal?" *Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21, 57-58 (1990); Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1834-35 (1990).

Harassment and Discrimination

Jean Jew is a research scientist. She grew up in Mississippi and went to undergraduate and medical school at Tulane University. She is first-generation Chinese-American. Those who know Jew often describe her as serious, hard working and very devoted to her career. In 1973, shortly after receiving her M.D., she came to the University of Iowa as a post-graduate associate in the department of anatomy. She was twenty-four years old. A year later she was placed on the tenure track. At that time she was the only woman in a faculty position in a basic science department in the College of Medicine.

Jew came to Iowa as part of a research team from Tulane. Her mentor was Terence Williams, who was recruited to head Iowa's department of anatomy. At Tulane, Jew had already worked extensively with Williams in the field of the nervous system and electromicroscopy. Before the Tulane group ever arrived, the anatomy department at Iowa was factionalized and morale was poor.¹⁵ The tension grew after Williams became department head. Some of the older faculty members in particular did not like Williams or the way he ran the department. Faculty members complained that he would not tolerate disagreement with his views, and many feared that he would attempt to eliminate dissenters.

Jew suffered from her association with Williams. Beginning in her first year and lasting for thirteen years thereafter, Jew was the subject of rumors that she and Williams were having a sexual relationship and that Jew had been given preferential treatment in the department because of the relationship. The campaign of sexual slander was extensive, reaching students throughout the College, as well as staff and faculty in other parts of the University. There was even gossip about the alleged relationship at national and international meetings of anatomists and neuroscientists. Throughout this time, Jew insisted that her relationship with Williams was professional and friendly only. Despite the persistence of the rumors, Jew did not distance herself from Williams; she continued to socialize with him and his wife and to collaborate with Williams on a number of research projects.

At times, the comments about Jew turned vicious. The startling aspect of her case was the crude treatment of Jew by some of the male faculty in her department. She was called a "stupid slut," a "dumb bitch," a "whore" and a "chink"—sometimes even to her face.¹⁶ She was the subject of sexually denigrating graffiti and cartoons which appeared intermittently in the men's room and on a bulletin board outside the office of a faculty member. She was also defamed in an anonymous letter sent to a male colleague describing Jew in racist, lewd terms such as "Chinese pussy."¹⁷

15. Jew v. University of Iowa, 749 F. Supp. 946, 948 (S.D. Iowa 1990).

16. *Id.* at 949.

17. Plaintiff's Memorandum, *supra* note 11, at 10.

The situation reached a critical point when Jew became eligible for promotion to full professorship. By the time the faculty committee met to vote on Jew's promotion, Williams had been pressured to resign as head of the department, and his supporters were now in the minority among senior faculty.¹⁸ The committee voted five to three against Jew's promotion.¹⁹ Two of those voting against Jew's promotion were the same faculty members who previously had made sexual slurs about Jew.²⁰ One of these men repeated his slur of Jew to another full professor on the very day of the vote, referring to her as a "whore."²¹ One of the others voting against Jew complained that she had received professional advantages denied to him, and a fourth person in the majority remarked during the discussion on Jew that "women and blacks have it made."²² The stated reason for the denial of promotion was that Jew had not established independence in her research, implying that her longstanding collaboration with Williams had been costly to her career.²³

Administrative Inaction

Before the denial of the promotion, Jew took her complaints of sexual harassment to administrators in the College of Medicine and to the central administration of the University. When Jew approached the Vice President of Academic Affairs, she told Jew that nothing could be done and that Jew would only make things worse for herself by pursuing a complaint.²⁴ The Dean of the College of Medicine told Jew that a single woman in a small town such as Iowa City had to realize that she lived in a "goldfish bowl environment."²⁵

After she was denied the promotion, Jew hired Carolyn Chalmers as her lawyer and filed a formal complaint. Chalmers, then a partner in a small public interest law firm in Minneapolis, had a reputation as a successful feminist litigator. Chalmers had represented women employees in a class action suit against Jostens, Inc.²⁶ and a number of women faculty members in a suit against the University of Minnesota.²⁷

To avoid litigation, the sides agreed to convene a panel of three faculty members to investigate Jew's sexual harassment complaint.²⁸ The panel was chaired by a lawyer on the faculty of the College of Business²⁹ who had been

18. *Jew*, 749 F. Supp. at 951-52.

19. *Id.* at 953.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 954.

24. Trial Transcript at 889, *Jew v. University of Iowa*, 749 F. Supp. 946 (S.D. Iowa 1989) (No. 86-169-D-2) [hereinafter Trial Transcript].

25. *Jew*, 749 F. Supp. at 951.

26. *Nagy v. Jostens, Inc.*, 787 F.2d 446 (8th Cir. 1986).

27. *Rajender v. University of Minnesota*, 546 F. Supp. 158 (D. Minn. 1982).

28. *Jew*, 749 F. Supp. at 955.

29. *Id.*

active in several women's organizations on campus and had been called upon frequently to serve as a representative of women's interests on committees at the University.³⁰ The other two panel members were male faculty members from the College of Medicine. Both parties approved each of the panel members. The hearings conducted by the panel were quite formal; the testimony of witnesses was sworn and transcribed.³¹ The panel's report concluded that Jew had been defamed and harassed because of her sex and recommended that immediate administrative action be taken on her behalf.³²

At this point, the University intensified its formal resistance to Jew's claims. It never implemented the panel report,³³ nor did it take steps to repair Jew's reputation. It allowed the case slowly to proceed to trial—a process that took six years.³⁴ During those six years, Jew became very active in groups concerned with women's issues on campus. She worked with a diverse group of faculty and staff studying affirmative action in other colleges within the University and was elected Chair of the Council on the Status of Women. Through such work, a group of women in the University, including myself, came to respect Jew and believe her account. When the case proceeded to trial, these women were prepared to watch the cases closely.

The Trials

The federal trial lasted twelve days, held mainly during November of 1989. The case was tried before Judge Harold Vietor, sitting without a jury. The University designated a female administrator whose primary responsibility was overseeing nonacademic staff to be the "client" for the purposes of the trial and to attend all court sessions. The University was officially represented by two lawyers from the Office of the Attorney General.

Because the trial was in Des Moines, one hundred miles from campus, few people from the University were able to attend. On some days, a representative from the Council on the Status of Women or from the local chapter of the

30. Letter from Nancy Hauserman, Associate Professor and Ombudsperson, University of Iowa, to Marcilynn A. Burke, Editor, *Yale Journal of Law and Feminism* (Mar. 9, 1994) (on file with the *Yale Journal of Law and Feminism*).

31. *Jew*, 749 F. Supp. at 955

32. *Id.*

33. The only step the University took in response to the panel report was to hire a handwriting analyst several months after the report was issued to examine the anonymous graffiti and notes. The analyst determined that the handwriting sample of someone who was not a faculty member was the most likely match to the anonymous writings and asked for more samples from the individual. The University did not supply the samples until three years later. *Jew*, 749 F. Supp. at 956.

34. The first judicial rulings in the Jew litigation came from the state courts. Two years after filing her complaint, Jew won the right from the Iowa Supreme Court to pursue a state civil rights claim. *Jew v. University of Iowa*, 398 N.W.2d 861 (Iowa 1987). The court rejected the University's contention that public employees should be restricted to appealing only under the terms of the Iowa Administrative Procedure Act and permitted Jew to file a civil rights action in the state district court without first exhausting administrative remedies. *Id.* at 864.

American Association of University Professors (AAUP)³⁵ was present to hear testimony. The newspaper coverage was not extensive. The Des Moines Register carried a few stories,³⁶ but to my knowledge, the Iowa City Press Citizen never assigned anyone to cover the story.

The University's litigation strategy was to discredit Jew by trying to show that she had indeed been sleeping with Williams and that the rumors had a basis in fact. The theory of the defendant's case was that Jew had incited or provoked the harassment and that the response to Jew did not constitute a sexually hostile environment.³⁷ The litigators demonstrated little concern for how their trial strategies might undermine the University's stated position of promoting the advancement of women and condemning racist behavior on campus. To me and others who followed the legal developments, this strategy was intimidating.

In a variety of ways, those defending the University alerted faculty and staff that the only institutionally loyal course of action was to side against Jew in the litigation. In a memorandum, a lawyer from the central administration instructed the medical faculty not to speak to anyone about the case.³⁸ Persons who appeared on the plaintiff's potential witness list were called by counsel from the Attorney General's office and asked sharp questions about the substance of their testimony.³⁹

In addition to denying that particular harassing incidents had ever occurred, the University tried to prove that Jew was in some way responsible for the sexual slurs made by her colleagues. At trial Jew was asked whether she had ever had a sexual relationship with Williams. When she responded negatively, the University tried to impeach her testimony by introducing medical records from her gynecologist showing that Jew had been using birth control pills during the period in question. Over the plaintiff's objection, the judge allowed University counsel to ask Jew if she had a prescription for birth control pills from 1973 to 1978.⁴⁰ Presumably to cast aspersions on Jew's character, in a written brief to the court, the University stated that Jew's sister, who was

35. The AAUP's involvement in the Jew litigation was marginal and ambivalent. The AAUP had previously been involved in a tenure dispute between the University and a male faculty member, who claimed that Williams had treated him unfairly and had given Jew preferential treatment. Only after Jew won her case in federal court did some AAUP members urge the University to drop the appeal and publicly criticize the University's handling of the case. See Ekhard E. Ziegler, *Public Image*, DAILY IOWAN, Nov. 7, 1990, at A8 (Letter to the Editor written by AAUP President).

36. See Lou Ortiz, *U of I Argues "Free Speech" in Bias Suit*, DES MOINES REG., Nov. 21, 1989, at M1; Lou Ortiz, *U of I Dean Says He Didn't Discipline Faculty Members Accused of Harassment*, DES MOINES REG., Nov. 16, 1989, at M1.

37. Plaintiff's Memorandum, *supra* note 11, at 15.

38. Memorandum from Julia Mears, Assistant to the President, to the Medical Faculty (Nov. 9, 1989) (on file with author).

39. I received a call and decided to end the conversation after a few minutes of adversarial questioning. Although my name appeared on the plaintiff's initial witness list, I was never called to testify at trial.

40. Trial Transcript, *supra* note 24, at 1159-60.

also employed by the anatomy department, had once been a Playboy bunny⁴¹ and referred to Jew as a "claimant without a conscience."⁴²

Before the opinion was handed down in the federal case, Jew's state defamation claim against Professor Robert Tomanek was tried before a jury in Iowa City. Although the University was not a defendant in this action, the state paid the legal fees and ultimately the entire damage award for Tomanek.⁴³ Like the defense in federal court, the strategy in state court evidenced no regard for what an all-out battle against Jew might mean for other women at the University or for the reputation of the University. For example, the defendant challenged for cause a prospective juror who had taken a Women's Studies course.⁴⁴ The defendant disputed the testimony of a woman who had served as Associate Dean for the College of Liberal Arts who stated that the personal vilification of Jew violated several University policies.⁴⁵ Through the testimony of the former Vice President for Academic Affairs and a University lawyer, the defendant took the position that even sexual and racial slurs fell within the bounds of academic freedom because they were made in context of an intra-departmental dispute.⁴⁶

In the federal harassment case, the truth of the allegations about any sexual relationship between Jew and Williams was arguably only indirectly relevant as evidence that Jew's own conduct somehow provoked or incited the harassment. In the state defamation case, however, truth was a clear defense and the defendants again set out to show that the rumors were true. The defendants produced a witness who claimed she saw Williams having sex with a woman in the library in the department of anatomy. She assumed that the woman was Jew because, she stated, the woman had "yellow legs." To show that the witness's testimony was distorted by racial stereotypes, Jew's attorney conducted an experiment for the jury. She asked them to compare her bare "white" legs to those of her client's.

The defense strategy in the state trial drew upon the sexual stereotype that all close interactions between men and women must have a sexual dimension. At one point, Tomanek's counsel asked a witness whether he knew of any other male/female research team in the department besides Jew and Williams with such a long history of collaboration. The witness could think of only one other team, which happened to be a husband/wife team. The insinuation carried an ominous message for junior faculty women trying to establish a record of

41. Memorandum in Support of Defendants' Motion for Summary Judgment at 5, *Jew v. University of Iowa*, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2) [hereinafter Defendants' Memorandum].

42. *Id.* at 35.

43. The University and the Attorney General's office each claimed the other was liable for the payment. Linda Hartmann, *UI, State Spar Over Legal Fees in Defamation Suit*, IOWA CITY PRESS CITIZEN, Oct. 27, 1990, at 1.

44. Jean Jew, Remarks at the Meeting of the Jean Jew Justice Committee (Oct. 14, 1990) (describing the defense tactics used during the state court proceedings).

45. See Monica Seigel, *UI Administrator Takes the Stand*, IOWA CITY PRESS CITIZEN, June 13, 1990, at 1A.

46. *Id.*

research, especially since there were no other women in Jew's specialty with whom she could have collaborated.⁴⁷

Legal Victories

Jew's first major victory came from the state jury which held Tomanek liable for both compensatory and punitive damages.⁴⁸ The trial and its outcome were covered extensively by the local newspaper⁴⁹ and the campus newspaper, *The Daily Iowan*.⁵⁰ Each day a contingent of faculty and staff supporting Jew attended the trial, became familiar with the incidents and discussed the implications of the defense strategy for their professional lives at the University.

Shortly after the start of the fall semester in 1990, Vietor issued his opinion in the federal case. The 20-page ruling was decidedly favorable to Jew: Vietor found that Jew had been subjected to sexual harassment, that the harassment was serious and that the University had failed in its duty to take prompt remedial action.⁵¹ These findings entitled Jew to affirmative relief from the sexually hostile working environment, including an order that the court's opinion and the faculty panel's report be distributed to top University officials, all College of Medicine department heads and all faculty and staff in the department of anatomy.⁵² Vietor also determined that the harassment of Jew had impermissibly tainted the decision not to promote her seven years earlier and that she was qualified for promotion.⁵³ He took the relatively unusual step of ordering her retroactive promotion to full professor,⁵⁴ along with lost back pay. The issue of attorney's fees was reserved for a subsequent hearing in which the court would determine the amount Chalmers was entitled to recover for her representation of the prevailing party in a Title VII suit.

47. One other female junior faculty member in the department had collaborated on research projects with a senior male faculty member. She was denied tenure in 1983, the same year Jew was denied promotion.

48. The jury awarded \$5000 in actual damages and \$30,000 in punitive damages. *Jew v. Tomanek*, No. 49536 (Iowa Dist. Ct., June 13, 1990).

49. See Monica Seigel, *Defamation Trial Arguments End*, IOWA CITY PRESS CITIZEN, June 13, 1990, at 1A; Monica Seigel, *UI Administrator Takes the Stand*, IOWA CITY PRESS CITIZEN, June 13, 1990, at 1A.

50. See Diana Wallace, *UI Professors Deny Sexual Relationship in Final Testimony*, DAILY IOWAN, June 12, 1990, at 1; Diana Wallace & Katherine Knabe, *Jury Begins Deliberations in Local Trial*, DAILY IOWAN, June 13, 1990, at 1A; Diana Wallace, *Jury Finds Tomanek Guilty of Slandering Female Colleague*, DAILY IOWAN, June 14, 1990, at 1.

51. *Jew*, 749 F. Supp. at 958-60.

52. *Id.* at 963.

53. *Id.* at 960-61. The court held that the University failed to meet its burden of proof under *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). The University had not shown by a preponderance of the evidence that Jew would have been denied promotion in the absence of discriminatory factors.

54. *Id.* at 962-63. For two cases granting tenure and promotion, see *Brown v. Trustees of Boston Univ.*, 891 F.2d 337, 359 (1st Cir. 1989) ("Courts have quite rarely awarded tenure as a remedy."); *Bennun v. Rutgers*, 737 F. Supp. 1393 (D.N.J. 1990) (granting retroactive promotion to full professor). In Jew's case, the judge believed that it would be extremely difficult, seven years after the fact, to structure a fair promotion review. *Jew*, 749 F. Supp. at 962-63.

After all the years of speculation and rumors, Viator issued the simple finding that "[t]here had never been a romantic or sexual relationship between Dr. Jew and Dr. Williams."⁵⁵ He also dispatched the University's provocation defense by finding that "Dr. Jew did not, by word or deed, invite the type of comments made about her and Dr. Williams. . . . Indeed Dr. Jew has conducted herself throughout her employment at the University as a serious and committed teacher, scholar and member of the academic community."⁵⁶

In addition to clearing Jew's name, Viator's opinion contained a thorough and detailed account of the incidents that formed the basis of Jew's claim of a hostile work environment. In clear, dispassionate prose, Viator's narrative painted a vivid picture of the cruel and unprofessional way some of Jew's colleagues treated her, a picture that shocked many who thought that doctors and professors did not act this way.⁵⁷ He also had little positive to say about the University's handling of Jew's complaint; his understated comment that the University's response was "ambivalent at best"⁵⁸ would later be quoted repeatedly and would serve to pressure the University to change its course of action.⁵⁹

Perhaps the most important legal aspect of Viator's opinion was his analysis of the sex-based nature of the hostility directed at Jew. The University had taken the position that Jew's harassment was not really sexual in nature. The central problem according to the University was the animosity toward Williams. The University claimed that Jew suffered not because she was a woman but because of her political alignment with the detested chairman of the department.⁶⁰ Viator rejected this argument, reasoning that among the faculty who supported Williams, only Jew was accused of using sex to further her career.⁶¹ The men on the "wrong side" in the department, those who aligned themselves with Williams, did not have their achievements diminished.⁶² Viator also stated that the rumors about Williams and Jew did

55. *Id.* at 948-49.

56. *Id.* at 951.

57. *Id.* at 949-951. One editorial writer, for example, urged his readers to read Viator's opinion, which had previously been published in the newspaper:

Go back and read it; no report can do it justice. In plain, studiously unemotional language, it told how the internal politics of the anatomy department of the College of Medicine had for at least 10 years and maybe longer been driven by baseless accusations about the sexual behavior of a faculty member.

James Flansburg, *Being Ashamed of the U of I*, DES MOINES REG., Nov. 3, 1990, at 7A.

58. *Jew*, 749 F. Supp. at 959.

59. See e.g., Chris Osher, *U of I Ordered to Promote Professor in Sex Bias Case*, DES MOINES REG., Aug. 20, 1990, at 1; Andy Brownstein, *Appeal Deadline at Hand for UI Harassment Ruling*, DAILY IOWAN, Sept. 25, 1990, at 1A; Andy Brownstein, *UI Given Extension to Consider Appealing Harassment Case*, DAILY IOWAN, Sept. 27, 1990, at 1A.

60. Defendants' Memorandum, *supra* note 41, at 18.

61. *Jew*, 749 F. Supp. at 958.

62. Jew's opponents claimed that because she co-authored scholarship with Williams she had not demonstrated the "requisite independence of scholarship." *Id.* at 954. However, the district court found that Jew's record demonstrated that she had amassed "a sustained record of independent grant funding" and that co-authored works were common and encouraged at Iowa's College of Medicine. *Id.* Unlike her male colleagues, Jew's collaborative projects were used to discredit her record rather than to enhance it.

not have the same effect for each.⁶³ The slanderous statements portrayed Jew as trying to use sex, rather than merit, to advance. Although the rumors charged Williams with being unethical, no one questioned his competency as a researcher. No one asserted that it was Jew's talent that made their joint projects successful. Viotor's complicated and nuanced assessment of the effect of the rumors and harassing statements negated the University's argument that life in the department of anatomy was equally bad for men and women. His assessment also saved a classic case of sexual slander from being classified as having no connection to sexual harassment.

The Jean Jew Justice Committee

Initially there was only moderate publicity on the ruling. Various newspapers in the state carried stories announcing and describing the judgment,⁶⁴ but there were no editorials or in depth coverage. I was a member of two groups of faculty and staff who urged University administrators to put an end to the matter and not to pursue an appeal. The two top administrators, the President and Vice President for Academic Affairs, who were relatively new to their positions, professed an inability to stop the ongoing litigation.

The University's decision to appeal the case to the Eighth Circuit Court of Appeals provided the impetus for political mobilization on behalf of Jew. In an official statement by the Board of Regents, the University claimed that Viotor's order violated the free speech rights of faculty members and placed the University in the position of "policing the statements and behavior of faculty members in ways that appear inconsistent with academic life and constitutional protections."⁶⁵ Immediately after the public announcement of the appeal, in mid-October of 1990, the Jean Jew Justice Committee was formed. The core group included leaders in feminist activist and academic groups, as well as men and women who either knew Jew personally or had followed the case. By word of mouth, the group grew into a diverse coalition

63. *Id.*

64. *See, e.g.,* Chris Osher, *U of I Ordered to Promote Professor in Sex Bias Case*, DES MOINES REG., Aug. 20, 1990, at 1.

65. Linda Hartmann, *UI Faculty Say Appeal Sends Bad Message*, IOWA CITY PRESS CITIZEN, Oct. 13, 1990, at 5A. The University's free speech argument was on very shaky legal ground. The United States Supreme Court has consistently ruled that a state may act to protect its employees from libelous speech without violating the First Amendment. *Milkovitch v. Lorain Journal Co.*, 497 U.S. 1 (1990). During this period, a faculty member at the University of Iowa Law School wrote an op-ed article explaining the weakness in the University's position. Peter Shane, *Harassment is not Privileged Speech*, DAILY IOWAN, Sept. 28, 1990, at 6A. The University may have had a stronger case if it had challenged only the propriety of Viotor's ordering a retroactive promotion, since very few courts had granted tenure or promotion as relief to discrimination victims. *See supra* note 54. However, even if the University had prevailed on the remedial issue, Jew would still have been entitled to a sizable award for attorney's fees, having prevailed on the claims of a discriminatory denial of promotion and a sexually hostile working environment. The only way for the University to avoid paying Jew's attorney was to convince the appellate court that Viotor's rulings on the merits were wrong.

of people intent on forcing the University to drop the appeal. It took as its primary mission the job of informing the University community and the state about the facts of the case. The group quickly conducted a fundraiser which generated more than enough money to pay for mailing and advertising costs. In retrospect, the most important action taken by the Jean Jew Justice Committee was the distribution of a copy of Judge Viotor's opinion to every faculty member at the University. The impact of the mailing was profound. In response to the mailing, over 200 people signed a full page ad in the *Daily Iowan* urging people to judge the facts for themselves by reading Viotor's opinion.⁶⁶

Over the next several weeks, the newspapers in the state finally began to comment on the case. All the editorials were critical of the University;⁶⁷ many expressed scorn and disbelief at the University's refusal to end the suit. One columnist, who styles himself "the old reporter," had particularly harsh words for the University; he referred to the behavior of the administrators as "sickening" and "disgusting" and suggested that the press had been reluctant to cover the story because it was too "raw" to report in "family newspaper[s]."⁶⁸

With increased print media coverage, the sentiment within the University began to shift radically, and the view that the University was on the wrong side gained widespread support. For example, eighteen members of the Math Department wrote a letter to the *Daily Iowan* calling for the University to drop the appeal and issue an apology.⁶⁹

The Settlement

Only hours before a public forum scheduled by the Jean Jew Justice Committee to mark one month since the filing of the appeal, the parties settled the case. The lawyers from the Attorney General's office were supplanted in the last round of negotiations by private counsel representing the President of the Board of Regents.⁷⁰ By the terms of the settlement, the University agreed to abide by the district court's decision. Jew was retroactively promoted to full professor, given back pay and compensated for her state defamation judgment and pending civil rights action. Of great importance to a financially strapped University and state government, under the terms of the settlement, Chalmers was paid \$895,000 in attorney's fees.⁷¹ The terms of the settlement were

66. DAILY IOWAN, Oct. 17, 1990, at 12A.

67. See, e.g., *Delay Justice No Longer*, DES MOINES REG., Oct. 31, 1990, at 8A; *Double or Nothing*, IOWA CITY PRESS CITIZEN, Oct. 16, 1990, at 7A; *UI Never Learns*, DAILY IOWAN, Oct. 16, 1990, at 6A.

68. Flansburg, *supra* note 57, at 7A.

69. Norman L. Johnson et al., *Letter to the Editor*, DAILY IOWAN, Oct. 24, 1990, at 8A.

70. I learned about the substitution from Jean Jew's report at a meeting of the Justice Committee on Nov. 12, 1990.

71. See Charles Bullard, *U of I, Professor Settle Sex Harassment Case*, DES MOINES REG., Nov. 13, 1990, at 1.

made public,⁷² in contrast to many discrimination settlements in which the plaintiff gives up the right to disclose the contents of the parties' agreement.⁷³ It was clear that Jew had won; the settlement did not require her to compromise on any of her initial demands.⁷⁴

Beyond the specific litigation demands, however, it was considerably less clear what Jew had won from the University. The President of the University issued a formal statement stating that, "Dr. Jew deserves our apologies and our respect for her stand."⁷⁵ He did not, however, embrace her publicly in any other way and delegated to others the responsibility of implementing that part of the court order requiring the University to create an environment in the department that was free of sexual hostility. The University instituted no disciplinary proceedings against Tomanek and refused Jew's request to transfer his tenure line outside the department of anatomy. Judge Vietor deferred the University's motion requesting a declaration of the University's compliance.⁷⁶ Over eighteen months after the settlement, the University sought the advice of a special committee of three persons from outside the University to advise it on whether the University had taken "all reasonable steps" to comply with the court order and to finally resolve the case. The committee issued a lengthy report including suggestions for further monitoring of the department of anatomy and the creation of new structures both within the College of Medicine and the University at large.⁷⁷ It did not, however, express any opinion as to whether the University had complied with the court mandate.

Explaining the University's Resistance: Stereotypes, Tokenism and Perspective

A case as painful, prolonged and politically significant as Jew's deserves to be examined closely for what it reveals about the conditions under which such events can occur and the importance of law and litigation to feminists. Like most institutions worried about their public image, the University of Iowa simply wanted to put the case behind it. The public statements of University officials spoke of healing rather than assessing. The Vice President for Academic Affairs boldly and naively pronounced that he could guarantee that

72. See *id.* For the first time, the national media became interested in the case. See Barbara Kantrowitz & Heather Woodin, *Diagnosis: Harassment*, NEWSWEEK, Nov. 26, 1990, at 62.

73. For a discussion of confidentiality clauses in sexual harassment settlements, see BARBARA LINDEMANN & DAVID D. KADUE, SEXUAL HARASSMENT IN EMPLOYMENT LAW 644-45 (1992).

74. See *Jean Jew, UI Reach Settlement*, DAILY IOWAN, Nov. 19, 1990, at 1.

75. See Andy Brownstein & Diana Wallace, *UI, Regents Put Case to Rest*, DAILY IOWAN, Nov. 13, 1990, at 1A.

76. See Application for Determination of Compliance, *Jew v. University of Iowa*, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2). The motion is still pending.

77. Report of Special Review Committee to Evaluate Environment within Department of Anatomy given to Vice President Peter Nathan and Interim Counsel Mark Schantz (June 25, 1992) (on file with the *Yale Journal of Law and Feminism*). See also Sara Epstein, *Review Committee Says UI Can Do More for Jew*, DAILY IOWAN, Sept. 18, 1992, at 1.

nothing like this would ever happen again.⁷⁸ Jew also stated her desire to get back to work in what she hoped would be an improved environment.⁷⁹

Now that over three years have passed since Jew's victories in court and the University's capitulation, I find myself constructing a guardedly optimistic appraisal of the case. In retrospect, I think that the University's resistance to Jew's claim—and perhaps even the callousness of its defense—was predictable given the dominant attitudes and structural conditions at the College of Medicine and in the larger University community.⁸⁰ I now regard Jew's victory as extraordinary. The lesson that stays with me is that it takes both legal action and direct political agitation to sustain even limited victories in this highly contested area of the right of women to dignity and to economic parity.

Why did the University oppose Jew's complaint of sex discrimination? As simple as it sounds, I believe that several of the key people at the University who opposed Jew's claim—men and women—did so because they believed that Jew was dishonest, unscrupulous and undeserving of support from the University. They believed the rumors about the sexual relationship and were even willing to come to the aid of crude professors like Tomanek—simply to show that the University would not give in to “bad” women. The more fundamental question is why these administrators and others would believe rumors that failed to persuade the faculty panel members, the jury or the federal court judge. In my view, the rumor campaign against Jew was successful and persistent because it drew upon deep-seated and harmful stereotypes about professional women and about Asian academics in American universities. In contrast to the official fact-finders who were constrained to base their judgment solely on the evidence presented, many within the University community making less considered judgments may have allowed stereotypes to influence their views.

The false narrative constructed about Jew was believable in part because of its familiarity. Jew was portrayed as a cold, conniving woman whose success was due to her sexual relationship with a man in power rather than her achievements as a teacher and researcher. The narrative drew on both sexual and racial stereotypes. It supported the stereotype that women sleep their way to the top; that women are not really good at science and if they achieve in that area, it must be due to the talent of men; that women of color are promiscuous; and that Asians overachieve in their jobs, but are not truly talented or creative. As Vietor's opinion recognized, it was no fortuity that the vilification of Jean Jew took a sexualized form. The opponents of Jew circulated rumors accusing her of “physically using her sex as a tool for gaining favor, influence and power”⁸¹ Vietor pointed out how attacks

78. See Linda Hartmann, *UI Jew Settle Suit*, IOWA CITY PRESS CITIZEN, Nov. 13, 1990, at 1A.

79. See Marge Gasnick, *UI Must Promote Professor*, IOWA CITY PRESS CITIZEN, Aug. 29, 1990, at 1A.

80. See *supra* text accompanying notes 15-23.

81. *Jew*, 749 F. Supp. at 958.

on Jew were cast in sexual terms, while criticism of Williams, as department head, were regarded as political or professional.⁸² This aspect of the *Jew* litigation demonstrates how sexual harassment can reduce professional women to sexual objects, diverting attention from women in their roles as professionals.

To the community beyond the College of Medicine, the racial dimensions of Jew's harassment were not as prominent as the sexual component. Only after Vietor's opinion was disseminated, for example, did many people learn for the first time that Jew is Chinese and that her ethnicity was also the subject of her opponents' ridicule and abuse.⁸³ It is telling, however, that the sexual attacks on Jew were often also racial in nature (e.g., "Chinese pussy"). Jew's harassment took on a specific sexualized and racialized form because she is a Chinese woman. It is impossible to understand the nature of her sexual harassment apart from her position as a racial minority in a predominantly white department. Her case exemplifies what Professor Kimberle Crenshaw has described as the "dual vulnerability" of women of color in the work place.⁸⁴ For Jew, the dynamics of racism and sexism in her department intersected to produce a distinctive type of harassment that cannot simply be labeled either sexual or racial.

The University's litigation strategy traded on these racial and sexual stereotypes by depicting Jew as an unworthy plaintiff, while at the same time attempting to discount the sexually and racially specific nature of the harassment. The defense proceeded on the assumption that the harassment of Jew would not be actionable if the rumors about the sexual relationship between Jew and Williams were true. Implicit in the defense theory was that Jew could have forfeited her right to work in a non-hostile environment because of her sexual conduct. The University's attempt to defeat her claim by proving that her conduct incited the harassment, however, lacked substantial legal support.⁸⁵ Although Judge Vietor made the factual finding that there had been no sexual relationship, the finding was not essential to his legal conclusion that Jew had been sexually harassed. The law requires only that the

82. *Id.*

83. The traditional structure of Title VII cases may have obscured racial issues in this litigation. As a practical matter, Jew was forced to choose whether to litigate the case as a case of racial *or* sexual harassment and she chose the latter. As yet, there is no distinctive cause of action under Title VII designed for women of color, such as Jew, who are subjected to racist and sexist behavior. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141-50.

84. See Kimberle Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CAL. L. REV. 1467, 1467-68 (1992) (describing the inseparability of race from sex, Crenshaw notes, "our experiences of racism are shaped by our gender, and our experiences of sexism are often shaped by our race.").

85. Generally an employee's conduct toward the harasser is admissible to show that the alleged harassment was not unwelcome. Plaintiff's conduct with third parties in the workplace has sometimes been admissible to show that plaintiff herself engaged in the kind of crude behavior that is the subject of the lawsuit. See LINDEMANN & KADUE, *supra* note 73, at 541-42. In *Jew*, however, the University made no claim that Jew ever engaged in crude behavior at work or acted in a way that led her opponents to believe that their harassing comments were welcomed.

discriminatory conduct be sufficiently severe or pervasive to create a hostile or abusive environment.⁸⁶ The defense strategy of portraying Jew as a "bad girl," unworthy of legal protection, responded more to conventional notions of morality than to the legal requirements of the cause of action.

I also regard it as critically important that Jean Jew was a token woman in the College of Medicine. I use the term "token" here in the sense that Rosabeth Moss Kanter⁸⁷ and other social scientists⁸⁸ who have examined structural barriers to equality use the term—to mean a woman (or member of a minority group) who is the only woman or one of only a few women at her level in an organization. Stereotyping is more likely to occur when women are rare in an organization. In highly imbalanced settings like the College of Medicine, the numerical "many" dominate the few and are able to typecast women workers and reduce their chances for advancement. Jew was cast into the role trap of "seductress," which Kanter describes as a common fate for young attractive token women.⁸⁹ Writing in 1977, when Jew was the only woman in a tenure track position in her department, Kanter explained how such token women are often taken under the wing of a powerful man in the group. This close alliance often becomes the subject of resentment by other men, and the token woman risks being treated as a "whore" and as a sexual object simply because she is a rarity in the group.⁹⁰

The scarcity of women professors at the College of Medicine also meant that Jew's promotion would be judged entirely by a group of men. By pointing out this structural feature, I am not assuming that if any woman had voted on Jew's promotion, the result necessarily would have been different. Women in male-dominated environments often do not resist the status quo and certainly some women at the University at Iowa went along with and helped to construct the University's defense. However, the total absence of women in the decision-making process at the College of Medicine made it more likely that the sexist stereotypes about Jew would play a role. I doubt whether many men in the department empathized with Jew, or feared that the kind of rumors that were going around about Jew might some day be directed at them and damage their careers. The role trap into which Jew was cast did not have a male counterpart.

86. *Harris v. Forklift Sys., Inc.*, 114 S.Ct. 367, 368 (1993). The Eighth Circuit has made it clear that a plaintiff's sexual behavior outside the workplace does not give co-workers the right to taunt the plaintiff sexually at work. *Burns v. McGregor*, 989 F.2d 959, 963 (8th Cir. 1993) (holding that plaintiff's posing nude for a biker magazine does not justify harassment).

87. See ROSABETH MOSS KANTER, *MEN AND WOMEN OF THE CORPORATION* 208-10 (1977).

88. See generally Judith Long Laws, *The Psychology of Tokenism: An Analysis*, 1 *SEX ROLES* 51 (1975); Lynn Zimmer, *Tokenism and Women in the Workplace: The Limits of a Gender Neutral Theory*, 35 *SOC. PROBS.* 64 (1988). Structuralist approaches have also been employed by legal writers to critique anti-discrimination doctrine. See Schultz, *supra* note 14, at 1749; Martha Chamallas, *Feminist Constructions of Objectivity: Multiple Perspectives in Sexual and Racial Harassment Litigation*, 1 *TEX. J. WOMEN & L.* 95, 98 (1992).

89. KANTER, *supra* note 87, at 234-35.

90. *Id.*

Beyond the stereotyping and structural features that sustained people's belief in the rumors, another factor that may help to explain the University's resistance to Jean Jew's claims was the perspective embraced by University administrators. The Administration approached the situation in the Department of Anatomy from a male-centered perspective, treating the problem from the beginning as managing competition among the men—the men who supported Williams and the men who were against Williams. In this narrative, Jean Jew was invisible, or at best a minor player.⁹¹ The administration responded to Jew's complaint of denial of promotion and sexual harassment as if it were a sideshow, one more manifestation of the personnel problems surrounding Williams in the anatomy department.

When the University lawyers argued that this case had nothing to do with sex, despite the repeated sexual slurs and the mistreatment of the sole woman professor, I believe they were sincere. The tragedy of the case is that the University never seemed to care much about losing the talents of Jean Jew, despite her promising early career. By taking Williams as its central focus, the University failed to understand the environment at the department of anatomy from Jew's perspective—from a woman's perspective. Even at the last stages of the case when the Board of Regents announced its grounds for appeal, it expressed concern only for the free speech rights of the male faculty members who had abused Jew.⁹² This "academic freedom" argument turned the victimizers into the victims and was the product of a partial male-centered viewpoint. The erasure of Jew as the real party in interest, coupled with the denial that this case was really about sex discrimination and sexual harassment, made it easier for the University to play hardball and to deploy offensive stereotypes that it would not have used in everyday discourse.

Understanding the Victory: Feminism, Authority and Political Mobilization

Given this strong resistance, how did Jew finally get the University to settle the case? I doubt that Jew changed many minds at the College of Medicine, the central administration of the University or the Attorney General's office. However, Jew was victorious; she forced the University to settle on her terms. Although Jew would likely have prevailed on appeal, her victory was greater because she compelled the University to recognize her injury and her power, rather than simply abide by the terms of a court order.

A complicated set of factors combined to overcome the University's resistance. First, there was the importance of legal feminism. The cause of

91. In his opening statement, Tomanek's lawyer told the jury that Jew was only "subpart" of a larger personnel conflict and tried to diminish the personal harm to Jew by focusing on the problems of a decentralized administration in a large university. Having been in attendance that day, I regard this statement as a stark example of Jew's marginality.

92. Andy Brownstein, *Regents: First Amendment Behind Appeal*, DAILY IOWAN, Oct. 15, 1990, at 1A.

action for sexual harassment—particularly the recognition of a sexually hostile environment—had been created in the late 1970s by feminist activists and scholars.⁹³ It is one of the few legal harms that derives from the experiences of women. Although men can be sexually harassed,⁹⁴ the meaning of harassment is largely shaped by women's claims and the chances of being harassed are much greater for women.

Jew also benefited from the research of feminist social scientists like Kanter whose work has been used by expert witnesses in Title VII cases to explain the dynamics of sexism in the workplace. A key precedent relied on in the *Jew* litigation was *Price Waterhouse v. Hopkins*.⁹⁵ In that case, another token woman, Ann Hopkins, had been denied promotion by colleagues in her accounting firm who made sexist comments about her during the deliberation process. In holding that the treatment of Hopkins violated Title VII, the Supreme Court was influenced by testimony about stereotyping and tokenism given by a social psychologist from Kanter's structuralist school.

Second, and more specific to Jew's case, was that she had the benefit of a talented feminist lawyer who displayed extraordinary dedication to her case. Even though Chalmers and her firm were ultimately compensated for the years of litigation, few lawyers would take such risky cases, because only the winning party recovers attorney's fees and there is no possibility of obtaining punitive damages.⁹⁶ The relationship that developed between Jew and Chalmers was a rare one and exceeded the normal professional connection: Chalmers maintained close contact with Jew for the entire period in which she represented her, even when little was happening in the case. Jew was also an unusual client: she developed a sophisticated knowledge of the law and evidence and learned a great deal about the workings of the University bureaucracy through her work on the Council on the Status of Women. Most importantly, she built a network of support through her efforts on behalf of other women.⁹⁷

93. For a brief discussion of the development of the cause of action, see Chamallas, *supra* note 5, at 39-43.

94. The EEOC, for example, reported that in 1992, 968 of the 10,577 sexual harassment claims were filed by men. In 1991, 514 out of a total of 6886 claims were filed by men. See *Man Wins \$1 Million Sex Harassment Suit*, N.Y. TIMES, May 21, 1993, at A15.

95. 490 U.S. 228 (1989). For a discussion of the importance of Kanter's and other social science research in *Price Waterhouse*, see Martha Chamallas, *Listening to Dr. Fiske: The Easy Case of Price Waterhouse v. Hopkins*, 15 VT. L. REV. 89 (1990).

96. At the time of the litigation, plaintiffs alleging sex discrimination could not recover either compensatory or punitive damages under Title VII. Jew's prospects for large monetary gain were small because her claim for back pay was not very large. The Civil Rights Act of 1991 now allows sex discrimination plaintiffs to recover compensatory and punitive damages up to a combined maximum of between \$50,000 and \$300,000, depending on the size of the employer. 42 U.S.C. § 1981a(b)(3) (Supp. III 1992).

97. Jew built her network slowly and unobtrusively. I recall that I worked with her for several months on a report assessing affirmative action at Iowa's College of Pharmacy before she even mentioned the existence of her case to me.

Third, because Jew's was a case of sexual slander, it could also be understood within a conservative framework and thus even persons unsympathetic to feminist claims could believe that Jew had been wronged. Particularly in the defamation action, Jew was portrayed as a chaste woman plaintiff who was injured by the immoral action of a male defendant. Long before sexual harassment was recognized as a legal harm, female plaintiffs in tort actions had been able to recover for false imputations of unchastity, even without the ordinary requirement of proof of special damages.⁹⁸ The harm originally recognized in such cases was the loss of value of the woman as a potential wife. Jew was able to use the antiquated tort claim to vindicate her interest in sex equity in the workplace. At the same time, she established herself as an injured party in the eyes of traditionalists who did not believe that it was proper to treat women in that way.

Fourth, the University was unable to defend its position in the face of the authoritative narrative written by Judge Viotor. The opinion gave a compelling account of what happened in a manner detailed enough and clear enough to give readers a feel for the situation as he perceived it. It was a well-written narrative as well as a judicial opinion. As a white male federal judge who was not labeled as a liberal, Viotor's opinion was particularly credible. It carried more weight than either the judgment of the faculty panel or the state jury.

Fifth, and most importantly, was the political pressure exerted by the Jean Jew Justice Committee. The mere issuance of Viotor's opinion did not have an immediate impact. For over two months, there was no public outcry and little media interest. Instead, it was the publicity campaign of the Jean Jew Justice Committee that activated the opinion and gave political momentum to the case. Viotor's words spoke for themselves only after the wider public actually read portions of the opinion and the case became the topic of sustained media attention. Both the authoritative narrative and the political mobilization were essential ingredients in getting the University to change its course. For Jew and for many others on campus, it was an exhausting—even if ultimately triumphant—effort.

Finally, Jew was fortunate in that she did not have to confront a series of news stories or other publicity contesting Viotor's narrative. One article in the *Daily Iowan* written while the appeal was pending focused on Williams' bad history as department head and restated the rumors of sexual favoritism, with no mention of Viotor's factual finding that there had never been a sexual relationship.⁹⁹ This story, however, was not taken up by the other papers which generally stuck to Viotor's account.¹⁰⁰ At this time, there were no

98. WILLIAM L. PROSSER, *LAW OF TORTS* 759-60 (4th ed. 1971).

99. Andy Brownstein, *UI Harassment Case Has Deep, Colorful History*, DAILY IOWAN, Oct. 22, 1990, at 1A.

100. See *supra* notes 69 and 71. The *Des Moines Register* also published extensive excerpts from Viotor's opinion. See, e.g., *The Decision in U of I Sexual-Harassment Case*, DES MOINES REG., Oct. 31, 1990, at 9A.

publicists for the University position. A campaign of counter-publicity which could have diffused the momentum of the Jean Jew Justice Committee never materialized.

* * * *

Jean Jew's case had a radicalizing and dispiriting effect on me. I still find it hard to believe that the University contested Jew's claim that she was unfairly denied a promotion, even though it conceded that at least one of the men sitting in judgment had called her sexually derogatory names. Whatever else the case might come to mean, the fierceness with which the University defended its position was a graphic demonstration that sexual harassment victims have much to lose by simply invoking the legal process. The privileges of education, rank or social position did not protect Jew from a scripted defense that called her character into question and invaded her privacy.

Taking the long view, however, Jean Jew's case is remarkable for what it reveals about the importance of incursions of feminism into the law in the last two decades. When Jew came to Iowa in 1973 and first suffered harm from her colleagues' cruel treatment, no court had granted recovery to a sexual harassment victim.¹⁰¹ When Jew first complained to the central administration at Iowa in 1979, there were no federal guidelines defining harassment and no national policy condemning the practice.¹⁰² When Jew first filed suit in 1985, there was no Supreme Court opinion recognizing hostile environment claims.¹⁰³ Only the cumulative efforts of many plaintiffs like Jew made it possible for Jew to articulate her harm as a legal injury and to secure a legal judgment. The irony of Jew's long ordeal is that it took almost that long for the law to catch up with her injury.

101. The first major victory came in *Williams v. Saxbe*, in which the court held that retaliatory action by a supervisor against an employee who rejected his sexual advances constituted a violation of Title VII. 413 F. Supp. 654, 657 (D.D.C. 1976).

102. In November, 1980 the EEOC first issued guidelines defining sexual harassment as a violation of Title VII. 29 C.F.R. § 1604.11(a) (1993).

103. In 1986, the Supreme Court decided its first sexual harassment case, holding that plaintiffs could recover in hostile environment suits even if they could not prove direct economic harm. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).