IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Victoria Elkins, et al.	Case No. C-1-99-988
Plaintiffs,	Judge Weber
v.	
American Showa, Inc.,	
Defendant	

DECLARATION OF DEBORAH KNAPP, Ph.D.

The defendant in the above-mentioned case has taken the position that the plaintiffs, Victoria Elkins, et al., do not represent a class. Moreover, the defendant claims that its expert's report "presents ***compelling evidence that the plaintiff's do not represent a class***" (p. 5, *Defendant American Showa, Inc.'s Memorandum in Opposition to Class Certification*). In this regard, I have been engaged by plaintiffs' counsel to opine on the likely number of sexual harassment incidents at American Showa, Inc. (ASI) and the conclusions of the defendant's expert on the types and frequency of sexually harassing behavior at ASI. My opinions are based on the documents reviewed, my professional experience and education, and established principles of social-science research.

Summary of Conclusions

Conclusion 1: An analysis of the academic literature (twelve studies spanning sixteen years) concerning the reporting behavior of sexual harassment victims reveals that between 88 and 99 percent of victims do not make official reports when sexually harassed. Applying these reporting rates to those at American Showa, Inc. (ASI), the likely number of incidents of sexual

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harassment ranges from 325 to 3,900 with a mean of 650 incidents. Hence, we may conclude that most incidents of sexual harassment go unreported at ASI and that the official reports of such behavior are indicative of an underlying and pervasive problem.

Conclusion 2: The defense expert's study, based on the ASI Associate Survey and her *Work Environment Interview*, is significantly flawed with respect to study design and implementation and therefore, the conclusions reached by this process cannot be considered valid or reliable.

Conclusion 3: Given that the evidence in the academic literature suggests significant under reporting of incidents of sexual harassment at ASI and that there exist significant problems with the validity of the defense expert's report and conclusions, it is my opinion that numerous female employees at ASI have been subjected to many types of sexually-harassing behaviors and that they have been unable to find relief either from the company's management or through the usage of the organization's sexual harassment policies and procedures.

INTRODUCTION

The specific issue addressed below pertains to the number of sexual harassment complaints filed with the human resources department at American Showa, Inc. (ASI) and how those complaints correlate with ***unreported*** acts of sexual harassment at the facility. In order to explain my opinion, I will address each of the following: (a) evidence in the sexual harassment literature relating to sexual harassment victims' reporting behavior and (b) the conclusions of the defendant's expert on the types and frequency of sexually harassing behavior at ASI.

SEXUAL HARASSMENT VICTIM'S REPORTING BEHAVIOR: EVIDENCE FROM THE ACADEMIC LITERATURE

The sexual harassment literature is replete with studies that indicate most targets of sexual harassment do not make official complaints either to their organization or to another agency. In fact, the defendant's expert concurs with these findings in several published works:

"A common response, particularly to less severe situations, is simply to ignore the harassment and do nothing (*endurance*), or to pretend that the situation is not happening or has no effect [*denial*...]" (p. 119).[1]

"The most common problem-solving strategy appears to be avoidance;..." (p. 120).[2]

"By far the most infrequent response [to sexual harassment] is to seek institutional or organizational relief (i.e., notify a supervisor, bringing a formal complaint, and filing a lawsuit)" (p. 121).[3]

"...legal claims are by far the least common response—truly the 'court of last resort'" (p. 121).[4]

"Despite the prevalence of harassment, it has been relatively rare for formal complaints to be brought; most evidence suggests that only a small percentage of victims ever discuss their experiences with anyone in authority..." (p. 59)[5]

"Evidence suggests that less than 5% of victims ever report their experiences to anyone in authority..." (p. 6).[6]

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[1] Fitzgerald, L. F., Swan, S., & Fischer, K. (1995). Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment. *Journal of Social Issues, 51*, 117-138.
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] Fitzgerald, L. F., Hulin, C. L., & Drasgow, F. (1994). The antecedents and consequences of sexual harassment in organizations: An integrated model. In G. Keita & J. Hurrell (Eds.), *Job stress in a changing workforce: Investigating gender, diversity, and family issues* (pp. 55-74). Washington, D.C.: American Psychological Association.

Moreover, in her deposition, the defendant's expert responds to the question by plaintiff's counsel "Do you find that reporting sexual harassment is the least common way that women coped with it?" by indicating "Everybody finds that" and further states " that's the general wisdom" with respect to the issue of reporting (p. 54, *Deposition of Louise F. Fitzgerald, Ph.D.).*

The table below provides evidence from twelve studies spanning sixteen years (including one by the defendant's expert) that also support this finding:

Sexual Harassment Study[7]	% Formal Complaints	Sample Description
U.S. Merit Systems Protection Board (1981)	3%	Federal government employees
Gruber & Bjorn (1982)	7%	Female employees at an auto assembly plant
Maypole (1986)	6-7%	Social workers
U.S. Merit Systems Protection Board (1987)	5%	Federal government employees
Fitzgerald et al., 1988	3%	Graduate and undergraduate students
Grauerholz (1989)	5%	Female university professors
Martindale (1989)	10%	DoD employees
Wishnietsky (1991)	7%	High school students
Women's Legal Defense Fund (1991)	1-7%	Female civilian work force
U.S. Merit Systems Protection Board (1994)	12%	Federal government employees
Gruber (1995)	8%	Canadian women
Cochran, Frazier, & Olson (1997)	2%	University staff, faculty, and students

[6] Fitzgerald, L. F. & Shullman, S. L. (1993). Sexual harassment: A research agenda for the 1990s. *Journal of Vocational Behavior, 42,* 5-27.

[7] U.S. Merit Systems Protection Board. (1981). *Sexual harassment in the federal workplace: Is it a problem?* Washington, DC: U.S. Government Printing Office; Gruber, J. E. & Bjorn, L. (1982). Blue-collar blues: The sexual harassment of women autoworkers. *Work and Occupations, 9,* 271-298; Maypole, D. E. (1986). Sexual harassment of social workers at work: Injustice within? *Social Work, 31,* 29-34; U.S. Merit Systems Protection Board. (1988). *Sexual harassment in the federal government: An update.* Washington, DC: U.S. Government Printing Office; Fitzgerald, L. F., Shullman, S. L., Bailey, N., & Richards, M., Swecker, J., Gold, Y., Ormerod, M. & Weitzman, L. (1988). The incidence and dimensions of sexual harassment in academia and the workplace. *Journal of Vocational Behavior, 32,* 152-175; Grauerholz, E. (1989). Sexual harassment of women professors by students: Exploring the dynamics of power, authority, and gender in a university setting. *Sex Roles, 21,* 789-801; Martindale, M. (1989). *Sexual harassment in the military: 1988.* Arlington, VA: Defense Manpower Data Center; Wishnietsky, D. H. (1991). Reported and unreported teacher-student sexual harassment. *Journal of Education Research, 84(3),* 164-169; Women's Legal Defense Fund (1991). *Sexual harassment in the workplace.* Washington, D.C.: Women's Legal Defense Fund; Gruber, J. E. & Smith, M. D. (1995). Women's responses to sexual harassment: A multivariate analysis. *Basic and Applied Social Psychology, 17, 543-562;* U.S. Merit Systems Protection Board. (1995). *Sexual harassment in the federal workplace: Trends, progress, continuing challenges.* Washington, DC: U.S. Government Printing Office; Cochran, C. C., Frazier, P. A., & Olson, A. M. (1997). Predictors of responses to unwanted sexual attention. *Psychology of Women Quarterly, 21,* 207-226.

As indicated by the extant literature, reporting rates for sexual harassment range from 1 to 12 percent. That is, the percentages of sexual harassment victims that *do not* make official complaints range from 88 to 99 percent (both the mean and median of the above reporting rates are six percent). From these data we may estimate a likely range of unreported incidents of sexual harassment at ASI. However, some dispute exists as to the number of sexual harassment complaints documented by ASI. They are:

Number of reports cited by the defendant's expert	39
Number of reports cited by the plaintiffs	46

In order to provide the most conservative estimate, the range of estimated incidents of sexual harassment is calculated based on the lowest number (i.e., 39 complaints).

Official Reports of Sexual Harassment at ASI	Estimated Range of Unreported Incidents of Sexual Harassment 88%-99% rate	Estimated Mean (and Median) of Unreported Incidents of Sexual Harassment at ASI 94%
39	286-3,861	611

Based on the preceding analysis regarding sexual harassment reporting, the likely number of incidents of sexual harassment at ASI ranges from 325 to 3,900 with a mean (or median) of 650 (these rates include *reported and unreported* acts of sexual harassment).

The academic literature also provides several reasons that targets of sexual harassment are unlikely to report acts of sexual harassment: they fear retaliation, they fear that reporting may affect their jobs, they blame themselves or believe they will be blamed by others, or they feel humiliated.[8] Indeed, blaming the victim does not appear to be an uncommon reaction among

[8] See Gutek, B.A. (1985). *Sex and the workplace: Impact of sexual behavior and harassment on women, men, and organizations.* San Francisco: Jossey-Bass; Rabinowitz, V. C. (1990). Coping with sexual harassment. In M. A. Paludi (Ed.), *Ivory Power: Sexual harassment on campus* (pp. 103-118). Albany: SUNY Press; Sandroff (1992). Sexual harassment: The inside story. *Working Woman*, 47-51, 78; Thacker, R.A. (1992). A descriptive study of

employees at ASI. For example "Putative class member Nancy Grooms attests 'In my experience, female American Showa employees use sexual harassment complaints as a tool to get what they want from men.'" (p. 18, *Defendant American Showa, Inc.'s Memorandum in Opposition to Class Certification*).

In fact, the defendant's expert has also discussed this issue in a number of her many publications in the area of sexual harassment. For example, in the Fitzgerald et al., 1988 study, the authors found that: "Only 3% had attempted to report a harassing situation; others indicated in general that (1) they would not be believed; (2) they had not wanted to cause trouble or be labeled as troublemakers; or (3) they had either dealt with the situation themselves or felt it was not serious enough to report" (p. 162).[9] The experiences of women at ASI seem to be consistent with these findings.

Further, sexual harassment often leads to negative financial consequences for organizations in terms of absenteeism, turnover, and increased transfer rates.[10] The experiences of many of the plaintiffs are consistent with the findings that sexual harassment may lead to absenteeism and turnover. For example, most of the named plaintiffs left Showa. In addition, Melissa Straight and Tracey Cromer had problems with absenteeism (pp. 13-14, 29, *Defendant American Showa, Inc.'s Memorandum in Opposition to Class Certification*).

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behavioral responses to sexual harassment targets: Implications for control theory. *Employee Responsibilities and Rights Journal, 5,* 155-171.

[9] Fitzgerald, L. F., Shullman, S. L., Bailey, N., & Richards, M., Swecker, J., Gold, Y., Ormerod, M. & Weitzman, L. (1988). The incidence and dimensions of sexual harassment in academia and the workplace. *Journal of Vocational Behavior, 32,* 152-175.

[10] Coles, F. S. (1986). Forced to quit: Sexual harassment complaints and agency response. *Sex Roles, 14,* 81-95; Faley, R. H., Knapp, D. E., Kustis, G. A., & DuBois, C. L. Z. (1999). Estimating the organizational costs of sexual harassment: The case of the U.S. Army. *Journal of Business and Psychology, 13(4),* 461-484; Gutek, B A., Nakamura, C. Y., Gahart, M., Handschumacher, I., & Russell, D. (1980). Sexuality in the workplace. *Basic and Applied Social Psychology, 1,* 255-265. U.S. Merit Systems Protection Board. (1981). *Sexual harassment in the federal workplace: Is it a problem?* Washington, DC: U.S. Government Printing Office; U.S. Merit Systems Protection Board. (1988). *Sexual harassment in the federal government: An update.* Washington, DC: U.S. Government Printing Office; U.S. Merit Systems Protection Board. (1995). *Sexual harassment in the federal workplace: Trends, progress, continuing challenges.* Washington, DC: U.S. Government Printing Office.

Evidence in the literature also suggests that fears of retaliation are not unfounded. The defendant's expert has indicated in several publications that this fear of retaliation is a real concern among sexual harassment victims. For example:

> "Victims react in a variety of ways for a variety of reasons; in particular, the choice not to file a complaint appears to have mainly to do with a well-founded fear of retaliation and cannot be taken simply to imply that the behavior was either welcome or trivial" (p. 134)[11]

> "Contrary to conventional wisdom, assertive and formal responses [to sexual harassment] were associated with more negative outcomes of every sort. Women who reported harassment to their supervisors or who filed complaints were more likely to quit, be fired, or be transferred; to need or utilize medical and psychological assistance, feel worse about their jobs and so forth. This finding is consistent with Livingston's (1982) analysis of the original merit systems data set (USMPSB, 1981) as well as with Cole's (1986) examination of self-identified victims in California, strongly suggesting the influence of some sort of whistleblower."(p. 896)[12]

Consistent with these findings, substantial evidence exists to suggest that many ASI employees fear they will not be believed or fear retaliation if they report incidents of sexual harassment. The comments from the defense expert's associate interviews represent indicia of such an atmosphere:

1. Respondent 518: "Would be risky to report about someone in a higher position (techs, section heads), managers will side with supervisors & 'cover for them.'

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[11] Fitzgerald, L. F., Swan, S., & Fischer, K. (1995). Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment. *Journal of Social Issues, 51*, 117-138.

[12] Hesson-McInnis, M. S. & Fitzgerald, L. F. (1997). Sexual harassment: A preliminary test of an integrative model. *Journal of Applied Social Psychology, 27*, 877-901.

Woman would be considered a troublemaker, rumors would circulate around the plant."

2. Respondent 562: "If you report a person with connections nothing will be done re SH. Would be risky for woman, they would find ways to give her a hard time, write her up, etc."

3. Respondent 645: "risk of reporting SH, risk from managers if reported, managers would make it harder. Doesn't trust her present manager. When on the line in machine dept., Tai Redman has bad mouth, comes across to women badly, mouthy, talks badly, doesn't treat women with respect. She almost quit job over him when she was on the line. Likes a ladies man. Made a comment about her to a coworker (overhead [sic] that he said she had a nice butt). Make you feel stupid and humiliated."

4. Respondent 602: "Female techs may not be believed if they go to the section head"

5. Respondent 699: "Risky to report, because supervisors might 'come down on her hard'."

Finally, the sworn statement of Jane Doe (an ASI employee that has not signed onto the lawsuit as a plaintiff) provides significant insight into the fear of retaliation experienced by female employees at ASI. First, in response to plaintiffs' counsel's question, "And because you're meeting with us to give us information, do you fear that there might be retaliation against you at the plant?" Jane Doe indicates, "If they found out who I am, yes, I do" (p. 5, *Sworn Statement of Jane Doe*). She also testified that in a meeting with defense counsel in which she was pressured to sign a pre-typed affidavit indicating that a sexually-hostile environment did not

exist at ASI she said, "I explained to him [defense counsel] that I don't want to be involved in the lawsuit because there could be repercussions between me and my family members" (p. 10, *Sworn Statement of Jane Doe*) and "Well, basically, I told him [defense counsel] that, you know, he doesn't work there and he doesn't know how things kind of go downhill from one person to the other" (p. 15, *Sworn Statement of Jane Doe*). Finally, she indicated significant discomfort with the fact that a male coworker inquired as to her conversations with ASI's attorney and further, that all of the management people that were there at the time saw her go into the meeting with defense counsel.

Clearly, the defendant's assertion that "the failure to file a charge indicates a lack of interest" (p. 8, *Defendant American Showa, Inc.'s Memorandum in Opposition to Class Certification*) is not consistent with the overwhelming evidence in the literature or by the publications and testimony of its own expert. Indeed, the defendant's expert indicates in a 1995 publication that "One of the most common set of facts in sexual harassment litigation involves a situation where a woman endures or tolerates harassment for some period of time, never speaking out publicly or reporting to management before leaving her job" (p. 131).[13]

Based on the preceding analysis, we may conclude that most incidents of sexual harassment go unreported at ASI and that the official reports of such behavior are indicative of an underlying and pervasive problem.

CONCLUSIONS OF THE DEFENDANT'S EXPERT ON TYPES AND FREQUENCY OF SEXUALLY HARASSING BEHAVIOR AT ASI

As previously indicated, the defense asserts that it's expert's report presents compelling evidence that the plaintiffs do not represent a class. The defendant's expert concludes in her

[13] Fitzgerald, L. F., Swan, S., & Fischer, K. (1995). Why didn't she just report him? The psychological and legal implications of women's responses to sexual harassment. *Journal of Social Issues, 51,* 117-138.

report that "harassing behavior has been relatively infrequent and inoffensive at the Blanchester facility" (p. 3, *Expert Report of Louise F. Fitzgerald, Ph.D.*) She bases this conclusion on a process she called the *Work Environment Interview* that entailed the use of several instruments, including ASI's Associate Survey, the *Sexual Experiences Questionnaire (SEQ)*, and associate comments elicited as part of her study at ASI. I will address each of these elements individually.

Work Environment Interview

In the *Work Environment* Interview, the defendant's expert conducted a series of surveys and interviews to support her arguments. She submits that sixty participants were randomly selected and all were assured confidentiality (although not anonymity). A management employee was then given a list of employees and was given the task of asking each employee if they were willing/able to participate in the interview process. Those that chose to be interviewed were sent to an area near the entrance of the facility (employees waiting to be interviewed remained in a common area near the entrance). Although the defendant's expert could assure confidentiality in terms of responses, she could *not* provide the same confidentiality for employees in terms of their *involvement* in the process given the fact that the list of participants was available to management and given that those not involved in the interviews knew which of their fellow employees did participate (and visa versa).

Moreover, unlike past research or expert reports performed by the defendant's expert, the individuals that answered the survey did not read the survey themselves then respond (the typical "paper and pencil" method). Instead, one or more of the defense expert's associates read the survey questions to each respondent and recorded the associate's answer. In addition, following the survey questions, members of the defense expert's team interviewed employees with "more open-ended questions" (p. 27, *Expert Report of Louise F. Fitzgerald, Ph.D.*).

ASI's Associate Survey

In her report, the defendant's expert asserts, "...research has consistently shown that harassment and discrimination exert significant impact on all aspects of job and organizational satisfaction" (p. 11, *Expert Report of Louise F. Fitzgerald, Ph.D.*). To support this conclusion, she uses outcomes from the Associate Survey conducted annually by ASI and examined the years 1996-2001. She concludes that because the survey indicates that there are no differences between male and female ASI employees with respect to any aspect of job satisfaction, it is unlikely that women in plant were experiencing sexual harassment at a level different than that of men. Her logic is as follows: 1) sexual harassment impacts all aspects of job satisfaction; 2) female ASI employees have job satisfaction levels that are the same as those of male ASI employees; 3) therefore, there must not be a sexual harassment problem at ASI (interestingly, the defendant's expert chose not to survey male employees concerning the levels of harassment at the Blanchester facility to determine whether differences exist between male and female employees with respect to their experiences with sexually-harassing behaviors). I am aware of no study that attempts to determine levels of sexual harassment by this process.

Moreover, while it is true that some studies indicate an association between job satisfaction and sexual harassment, an assessment of the two specific studies used by the defendant's expert in support of her aforementioned conclusions reveals that this association is, at best, tenuous.

For example, in the Fitzgerald, Drasgow, Hulin, Gelfand, and Magley (1997) study[14], the authors used the *SEQ-R* to measure sexual harassment and the *Job Descriptive Index* to assess three measures of job satisfaction (supervisor satisfaction, coworker satisfaction, and work

[14] Fitzgerald, L. F., Drasgow, F., Hulin, C. L., Gelfand, M. J., & Magley, V. J. (1997). Antecedents and consequences of sexual harassment in organizations: A test of an integrated model. *Journal of Applied Psychology, 82,* 578-589.

satisfaction) of female employees at a large West Coast Utility. While the measure of work satisfaction ***did not*** have a statistically significant relationship with sexual harassment, the variance in sexual harassment explained by supervisor satisfaction and coworker satisfaction were 3% and 8%, respectively. In the Schneider, Swan, and Fitzgerald (1997)[15] study of female employees at a large, private-sector organization in the Northwest and female faculty and staff at a large Midwestern University, the same measures were used and yielded identical results. That is, supervisor satisfaction explained 3% of the variance in sexual harassment and coworker satisfaction explained 8% of the variance in sexual harassment (once again, the work satisfaction measure did not show any statistically significant correlation with sexual harassment). Hence, it does not appear that the studies used by the defendant's expert to support her conclusion that harassment exerts ***significant impact*** on all aspects of job and organizational satisfaction support this assertion.

Moreover, the defendant's expert further supports her conclusion by focusing on a single item in the ASI associate survey: "I work in a harassment-free environment" (p. 15, *Expert Report of Louise F. Fitzgerald, Ph.D.*). Since this item is in no way specific to ***sexual*** harassment (i.e., it may be perceived as racial, religious, or ethnic harassment), no valid assessment of the environment with respect to sexual harassment can be made.

Finally, the ASI associate survey does not meet social science standards for reliability and validity. Very simply, reliability means the extent to which a test or any measuring procedure yields the same result on repeated trials. Validity refers to the extent to which a test measures what it purports to measure. There are many methodologies that may be used to test the validity and reliability of a survey instrument. However, we have no information that the ASI

[15] Schneider, K. T., Swan, S., & Fitzgerald, L. F. (1997). Job-related and psychological effects of sexual harassment in the workplace: Empirical evidence from two organizations. *Journal of Applied Psychology, 82,* 401-415.

associate survey is either reliable or valid. Hence, *even* if we were to accept the aforementioned logic used by the defendant's expert, she does not use a reliable, valid instrument to test her proposition.

The Sexual Experiences Questionnaire (SEQ)

The method in which the defendant's expert administered the *SEQ* calls attention to the fact that her methodology included other threats to the validity of her study.[16] The first threat is that of *instrumentation,* in which changes in a measuring instrument may, in turn, change subjects' scores and therefore, introduce error into the measurement process. For example, in her study at ASI, the defendant's expert altered the *SEQ* by eliminating several items. This altered version of the *SEQ* was not validated prior to its administration. Interestingly, the defendant's expert has published several studies in the academic literature that attempt to validate changes (i.e., adding or eliminating survey items) to this instrument.[17]

In addition to altering the questionnaire without validating it, there also exists the possibility that respondents were either not consistent in their responses or that they did not fully grasp the content of the questions asked of them. This becomes clear when we compare respondents' answers on the *SEQ* with their responses to the open-ended questions recorded by the interviewers employed by the defendant's expert.

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[16] See Campbell, D.T. & Stanley, J. C. (1963). *Experimental and quasi-experimental designs for research*. Boston: Houghton Mifflin Company.

[17] See Fitzgerald et al. (1988). The incidence and dimensions of sexual harassment in the workplace. *Journal of Vocational Behavior, 32*, 152-175; Fitzgerald, L. F., Gelfand, M. J., & Drasgow, F. (1995). Measuring sexual harassment: Theoretical and psychometric advances. *Basic and Applied Social Psychology, 17*, 425-445; Gelfand, M. J., Fitzgerald, L. F., & Drasgow, F. (1995). The structure of sexual harassment: A confirmatory analysis across cultures and settings. *Journal of Vocational Behavior, 47*, 164-177; Fitzgerald, L. F., Magley, V. J., Drasgow, F., & Waldo, C. R. (1999). Measuring sexual harassment in the military: The sexual experiences questionnaire (SEQ-DoD). *Military Psychology, 11*, 243-263; Mazzeo, S. E., Bergman, M. E., Buchanan, N. T., Drasgow, F., & Fitzgerald, L. F. (2001). Situation-specific assessment of sexual harassment. *Journal of Vocational Behavior, 59*, 120-131.

Respondent	*SEQ* Question	*SEQ* Answer	Respondent Comments
195	Watching or hearing about your co-workers receiving sexist or crude comments. Watching or hearing about your co-workers receiving sexual attention they did not want.	NEVER NEVER	"There are male/female things everywhere and you just deal with it unless it gets to extremes and then you report."
398	Have any of your male co-workers, techs, section heads, or managers: Tried to get you to talk about personal or sexual things when you didn't want to? Tried to have a romantic or sexual relationship even though you let him know you didn't want to? Kept on asking you out even after you said "no?" Touched you in a way that made you feel uncomfortable?	 NEVER NEVER NEVER NEVER	Respondent reported a situation where a "fellow Associate who told her that he had dreamed about her, kept asking her out, would follow her around and push her into lockers and machines if she wasn't friendly."
430	Watching or hearing about your co-workers receiving sexist or crude comments. Being aware of the sexual harassment of your co-workers.	NEVER NEVER	"A few men say things without thinking that can offend women, but I ignore it. If directed personally towards me I would stand up for myself. Some take it more to heart than I do. There have been some sexual harassment cases, but they were handled well."
518	Watching or hearing about your co-workers receiving sexist or crude comments. Watching or hearing about your co-workers receiving sexual attention they do not want.	NEVER NEVER	Sexual harassment is "not bad for her, but [she] knows other women who don't like it because they get harassed." Respondent also tells story about a co-worker who repeatedly asked her and a friend out; "after she

Respondent	*SEQ* Question	*SEQ* Answer	Respondent Comments
	Thinking that Showa does not do enough about someone who harasses others.	NEVER	said 'no' several times he finally stopped, moved on to another woman." "Would be risky to report about someone in a higher position....managers will side with supervisors and 'cover for them.' The woman would be considered a troublemaker, rumors would circulate around the plant. [She] thinks it is unlikely anything serious would be done if you complain about a person in a higher position."
598	Have any of your male co-workers, techs, section heads, or managers: Said offensive things about how you look, your body, or your sex life. Said things that put women down.	 NEVER NEVER	"A guy on her line would tell her he was going to spank her, that she was slow, told her she and her husband should get a water bed and put oil in it."
645	Have any of your male co-workers, techs, section heads, or managers: Said offensive things about how you look, your body, or your sex life. Said things to put women down.	 NEVER NEVER	About Ty Redman, "bad mouth, came across to women badly, talks badly, doesn't treat women with respect, [she] almost quit job over him when she was on the line, almost like a ladies man, made a comment to her about a co-worker (overheard that he had said she had a nice butt), made you feel stupid and humiliated."
747	Thinking that Showa does not do enough about someone who harasses others.	NEVER	Respondent complained about one person. It was "added to the pile of papers. Finally she said 'Move me.' They did. Promote this person away from other people because this company doesn't demote people." Also,

Respondent	*SEQ* Question	*SEQ* Answer	Respondent Comments
			the "boss decides he don't like you; he will make it rough on you. Don't argue with him. Especially if he doesn't like women. Women should shut up and do their job."
798	My uniform is of appropriate quality.	STRONGLY AGREE	"Color is bad, gets dirty, gets sprayed with alcohol, even by accident, shows through."
969	My uniform is of appropriate quality. Supervisors play favorites. Associates are treated fairly. My Section Head treats everyone fairly. My Section Head makes work assignments fairly.	STRONGLY AGREE DISAGREE STRONGLY AGREE STRONGLY AGREE STRONGLY AGREE	At that time of the month "not good." "[Name omitted] looks at you like you have no clothes on. If you are not pretty and preppy, if you are older, you get nasty jobs. Acts like women should bow down to him. Unfair treatment with comp. days. Wouldn't let me leave - if I was a man he would let me do it, if I was young, pretty. A woman having a relationship, sleeping with a boss (Section Head) left for over an hour without clocking out. Anyone else would have gotten in trouble. [She] could take longer lunches - an extra 20 to 30 minutes. She said, 'I can do anything I want 'cause I give him blow jobs on the way to work.' Happened with another woman also."
248	Thinking that Showa does not do enough about someone who harasses others.	NEVER	"Wished they [Showa] cared more."

Although plaintiffs' counsel has access to the names of the individuals that completed both the survey and the answers to the open-ended questions, there is no method for matching respondents' answers to the surveys with answers the respondents provided to questions asked in the open-ended interviews. Because the method used by the defendant's expert supplies no method for making this determination, plaintiffs' counsel cannot cross-examine the respondents with respect to these inconsistencies. Hence, the defendant's expert relies on hearsay evidence to support her conclusions.

The defendant's expert also uses the ASI employees' responses to the *SEQ* to conclude that "The perceptions and alleged experiences of the named plaintiffs are at variance with those of the prospective class members (i.e., they do not appear to be drawn from the same population)" (p. 9, *Expert Report of Louise F. Fitzgerald, Ph.D.*). To support this conclusion, the defendant's expert compares what ***each individual respondent experienced*** with respect to sexually harassing behavior. In other words, she concludes that because each respondent experiences different types of sexual harassment, there can exist no hostile environment at the plant.

However, it is an analysis of the *SEQ* responses that ***is not included*** in the report that is particularly interesting. That is, there is no attempt to look at the patterns of sexually harassing behaviors ***across the organization***. Certainly, if we take each individual's experience with respect to all the different types of sexual harassment, the behaviors might appear random. However, the *SEQ* was designed ***by the defendant's expert*** to assist in *classifying* different forms of harassment into one of three types: gender hostility, unwanted sexual attention, and sexual coercion[18]. Clearly, it is by using the instrument to categorize types of harassment occurring

[18] See Fitzgerald et al. (1988). The incidence and dimensions of sexual harassment in the workplace. *Journal of Vocational Behavior, 32*, 152-175; Fitzgerald, L. F., Gelfand, M. J., & Drasgow, F. (1995). Measuring sexual

throughout the facility that we might best assess the organization's environment with respect to sexual harassment, as opposed to examining whether or not each individual employee experiences the behaviors in a similar pattern to all other employees.

Biases in the *selection* of respondents may also represent a threat to the validity of the study. This may have occurred when individuals placed on the list of possible survey participants opted out of the process. More importantly, only those individuals know the reason(s) they declined participation and they are not available for cross-examination (once again, the defendant's expert relies on hearsay evidence to support her conclusions). Additionally, because an employee of ASI was used to select those individuals to take the place of those unwilling or unable to participate, we cannot be sure as to the randomness of *all* participants' inclusion in the survey.

The threat of *reactivity* may have also tainted the validity of the survey instruments used. That is, the process of measuring itself may, in fact, *change what is being measured.* Certainly the highly charged, adversarial environment in which the surveys were conducted may have introduced this threat to validity. Additionally, the fact that the surveys were conducted over a period of two days would have primed prospective participants with respect to their answers (it is likely that those who had already participated in the process may have shared with their coworkers the types of questions that were asked, what the interviews entailed, differences in presentation style of interviewers, etc.)

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Moreover, *reactivity* may occur when the testing process itself becomes a stimulus for change rather than a passive record of behavior. For example, in a study that tests the efficacy of a drug rehabilitation program, an initial drug test may serve as a stimulus for subjects to stop ingesting psychoactive substances, even without the therapeutic treatment. Similarly, subjects in the defense expert's study may have had their perceptions altered upon finding that they were to provide information on a highly controversial issue that they likely believed would alter their working lives. Finally, these perceptions may have been contaminated when participants learned that the individuals performing the study were, in fact, advocates for the defense (this information was proffered to participants *prior to* answering survey questions).

In addition, when the defense expert visited ASI or toured the plant, she was often in the company of either a management employee or defense counsel prior to the administration of the her surveys and interviews. Further, immediately prior to and following the defense expert's study process, individual employees were approached to meet privately with defense counsel in order to obtain their (the employees') signatures on pre-typed affidavits in support of the defendant's position that a sexually-hostile environment does not exist at ASI.

Given this information, it is likely that the process of being interviewed by defense advocates placed a chilling effect on individual employee's responses to the questions asked of them.

Finally, because subjects in the defense expert's study completed several surveys in a relatively short period of time, ***multiple treatment interference*** error may have been introduced into the process, meaning that one survey may have an impact on responses provided in a subsequent survey. In other words, the effects of prior tests on future tests cannot be eliminated or erased (hence the expression, "one cannot step in the same river twice").

CONCLUSIONS

Conclusion #1: An analysis of the academic literature (twelve studies spanning sixteen years) concerning the reporting behavior of sexual harassment victims indicates that between 88 and 99 percent of victims do not make official reports when sexually harassed. Applying these reporting rates to those at American Showa, Inc. (ASI), the likely number of incidents of sexual harassment ranges from 325 to 3,900 with a mean of 650 incidents. Hence, we may conclude that most incidents of sexual harassment go unreported at ASI and that the official reports of such behavior are indicative of an underlying and pervasive problem.

Conclusion #2: The defense expert's study, based on the ASI Associate Survey and her Work Environment Interview, is significantly flawed with respect to study design and implementation and therefore, the conclusions reached by this process cannot be considered valid or reliable.

Conclusion #3: Given that the evidence in the academic literature suggests significant under reporting of incidents of sexual harassment at ASI and that there exist significant problems with the validity of the defense expert's report and conclusions, it is my opinion that numerous female employees at ASI have been subjected to many types of sexually-harassing behavior and moreover, they have been unable to find relief either from the company's management or through the usage of the organization's sexual harassment policies and procedures.

I hold all of my opinions to a reasonable degree of scientific certainty.

I declare under penalty of perjury that the foregoing is true and correct.

Dated on February 22, 2002.

Deborah Erdos Knapp, Ph.D.

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