
Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women

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Resource mobilization and gender socialization theories go a long way toward explaining why so many sexually harassed women opt not to report their problems, but they shed little light on why some still choose to take action and sue. This article examines how relationality can affect a sexually harassed woman's decision to sue. An analysis of 31 litigation narratives shows that regardless of the severity of the harassment, or the amount of legal aid available, maternal responsibilities, marital commitments and parental approval can become pivotal considerations. Some considered the integrity of familial ties to be priceless assets worth suing for. Others deemed them too valuable to risk losing in a contest over rights. These narratives confirm feminist assertions that relationships—especially familial ones—often play a central role in the choices that women make. They also challenge popular assumptions about what constitutes a “personal choice” and under what circumstances women are likely to chose to litigate.

For most people litigation is a high-risk endeavor. Regardless of the principles at stake, or the amount invested, winning is never guaranteed and losing is always an option (Cornell 1990). Although the rewards can be exceptional for those who win, losing can be demoralizing and financially devastating. What compels ordinary people to assume the risks of litigation and file suit?

Certainly the need for monetary reimbursement for the loss of profits, employment, and even health propel many to sue. Noting increases in the number of such claims, tort reformists have argued that the promise of substantial pecuniary gain encourages the use of civil litigation for personal profit (see, for example, Huber 1988 and also Lieberman 1981). But in addition to financial recoupment and profit, litigation studies have shown that plaintiffs are as often motivated by more intrinsic desires,

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such as the assertion of self-worth (Bumiller 1988), the expression of personal dignity (McCann 1994), the acknowledgment of cherished principles (Conley & O'Barr 1990), atonement for the loss of a life deemed dear (May & Stengel 1990), and even for revenge (Sloan & Hsieh 1995).

Until recently, men have dominated the civil litigation arena. But, as women's legal status has increased and the social situation of many women has improved, their opportunities for civil litigation have expanded (Hoyman & Stallworth 1986). The introduction of the Violence against Women Act and the broadening of civil rights claims that can be made under Titles VII and IX, have substantially increased the number and type of legal remedies for which women can now file suit. In addition, government agencies like the Equal Employment Opportunity Commission (EEOC) and the Office of Civil Rights (OCR) now offer women the opportunity to litigate their gender discrimination claims with a minimum amount of financial risk.

Perhaps one of the more provocative litigation opportunities extended to women has been the reconceptualization of sexual harassment as a form of civil rights violation (MacKinnon 1979 & 1987). The availability of substantial remedies along with the possibility of punitive awards under Titles VII and IX promises not only to transform the policies and practices of those who employ women, but to revolutionize women's litigation patterns as well (MacKinnon 1993). From 1980 until 1994, for example, the rate of sexual harassment claims filed with the EEOC steadily increased by about 12% per year (Bureau of National Affairs 1994). Since 1980, the Supreme Court has ruled on at least seven sexual harassment claims, and the media is now replete with stories of women who have "hit the jackpot" and earned millions through sexual harassment litigation.

Critics worry that increasing the number and type of legal remedies that women can sue for and expanding their access to government litigation aid has done more to raise the number of frivolous litigations than to elevate the legal or social status of women (Lieberman 1981). As one lawyer recently put it, ". . . making it easier for women to sue for sexual harassment will not eliminate the problem of sexual harassment, it will only increase the amount of litigation regarding it" (NBC Nightly News Report, 27 June 1998).

Yet, despite the apparent financial lucrativeness of sexual harassment claims making, it remains underreported. Random surveys of federal employees consistently report that though 42–44% of working women experience behaviors deemed legally actionable, only 7% actually file formal charges (U.S. Merit Systems Protection Board 1981, 1995, 1988). In addition, Fitzgerald, Swan, & Fisher (1995) estimate that less than 1% of those claims are ever heard in a court of law.

While researchers have probed significant amounts of data to discover the various psychological and social factors affecting the reporting choices that sexually harassed women make (see, for example, Gruber 1989; Gwartney-Gibbs & Lach 1992; Fitzgerald et al. 1995; Riger 1991), the social and psychological processes that move women beyond the “naming and claiming” stages (Felstiner, Abel, & Sarat 1980–81) to actually assigning legal blame have not been closely examined. Given current trends and debates regarding women’s responses to sexual harassment, as well as the expansion of opportunity women have for litigation, this seems to be an especially important and perhaps crucial time, to theorize in greater depth about the process by which women arrive at the decision to litigate their sexual harassment complaints.

Taking a narrative approach (Ewick & Silbey 1995; Riessman 1993), this article focuses on this one particular choice in the lives of 31 sexually harassed women. It draws upon their actual words to discover how they perceived their risks of litigation, the options they considered, and then to document how they arrived at the decisions they eventually made.

I. Literature Review

Resource mobilization theory asserts that potential litigants count time, money, energy, and legal expertise as litigation assets (Freeman 1977; Galanter 1974; Gamson, Fireman, & Rytina 1982). Those with enough resources to sue are more likely to view litigation as a viable option (Mayhew & Reiss 1969; Miethe 1995). From this perspective Gleason (1981) argues that more women do not seize the litigation opportunities available to them because they lack the necessary resources to do so (see also Hoyman & Stallworth 1986).

Because a majority of sexual harassment claims are triggered by dismissal, and therefore the loss of substantial income (Bureau of National Affairs 1994; Coles 1986), those who need to litigate the most typically lack the financial means to do so. Thus, most of those who have lost their jobs to harassment ask government agencies to take legal action. Government-funded litigation is possible, but in reality it is quite rare. Only a fraction of the complaints taken in by federal agencies ever become lawsuits. Of those that do, the vast majority are disposed of through mediation rather than litigation, and the rest are left to pursue justice through the engagement of private attorneys (Bureau of National Affairs 1994).

Resource mobilization theory helps explain why so many of those who engage in civil action are economically and socially affluent, but it fails to explain why so many of those without sufficient resources still manage to file suit. But perhaps more impor-

tant, resource mobilization does little to explain why so many sexually harassed women who have the resources to litigate choose not to. Gender socialization theorists argue that even women with the financial means to sue are unlikely to seize the opportunities available to them because they have been taught to tolerate unwanted sexual attention (Riger 1991). Despite revolutionary changes in women's consciousness brought about by feminism and the Women's Movement, many women continue to accept unwanted sexual attention as an unfortunate fact of life, one that is to be tolerated rather than contested (Fitzgerald et al. 1995). As a result, regardless of the resources available to them, more women are likely to respond to sexual harassment with capitulation and avoidance than with direct confrontation or formal complaint (Gruber 1989; see also Cook & Stambaugh 1997).

Traditional gender socialization not only teaches women to tolerate unwanted sexual attention from men but also to avoid adversarial contestation (Gwartney-Gibbs & Lach 1992; Lach & Gwartney-Gibbs 1993). Few actions are more overtly adversarial than litigation. Women who openly challenge practices of gender discrimination often find themselves engaged in a "no holds barred" contest in which they are commonly discredited, scapegoated, and even retaliated against for taking legal action (Stambaugh 1997; see also Dandekar 1990 and Lenhart & Shrier 1996). Given the immense social and psychological risks that litigation entails, it is not surprising that so few women would want to sue; yet, each year a significant number of sexually harassed women manage to overcome the forces of gender socialization and file suit.

Certainly resource mobilization and gender socialization theories go a long way toward explaining why so many sexually harassed women opt not to report their problems much less litigate them. Yet, these theories shed little light on how some still arrive at the decision to file suit. What compels some women to resist their gender socialization and engage in such a contentious process? How do those without sufficient financial resources, find the means to file suit? In addition to stigmatization, retaliation, the stress of adversarial dispute, and job loss, are there other risks that a potential sexual harassment plaintiff is likely to consider?

Feminist studies of women's rationality and legal reasoning show that relationships—especially familial ones—often play critical roles in the choices that women make (see especially Gilligan 1982; West 1987, 1988. More recent applications of relational theory to the study of legal decisionmaking include Conley & O'Barr 1990 and Ferraro & Pope 1993). Referred to at times as the "integrated perspective" (Brush 1992), or the "connection thesis" (West 1988), relational theory asserts that as birth mothers and society's primary caregivers, women experience

deeply emotional and close physical connections to those who inhabit the world around them. These connections weave “hierarchical webs of varying degrees of dependence” (West 1988:141). Thus, relational theorists argue, the options that women deem most viable, and the choices that they eventually make are often a product of the size and complexity of the webs of interdependence in which they are embedded. When women are closely tied to others, however, relational bonds can operate either as constraining tethers or as empowering facilitators (Ferraro & Pope 1993).

While extensive relational connections increase one’s commitments and responsibilities, they also proliferate opportunities for garnering love, care, and moral support. Those with important commitments to keep or who have relationships that are especially empowering are likely to place a high value on the ties that connect them to others. Bonds to parents, spouses, and children are treasures, and when the integrity of those ties or the well-being of those to whom they are bonded is at risk, litigation can appear to be a viable means for protecting them. Along the same lines, when ties to abusive or unsupportive relations become liabilities, filing charges can be the most effective means for severing them (Merry 1990).

Regardless of one’s gender, relationality is accompanied by a unique constellation of values and fears (Conley & O’Barr 1990). Those who are highly connected and who find virtue or reward in keeping one’s commitments and honoring one’s responsibilities, also place a high value on relationships. Thus, it follows that in deciding whether to file a civil lawsuit, women who are highly connected to others are likely to weigh heavily both the positive and negative effects that legal action might have on the well-being of their loved ones, as well as the impact that litigation may have on the integrity of bonds to those who empower them (West 1987, 1988).

Litigation scholarship has established that relationships are important factors. Miethe’s (1995) study of litigiousness, for example, finds the client-attorney relationship to be one of the more powerful factors shaping the choices that potential and actual plaintiffs make. In addition, Felstiner et al.’s (1980–81) work demonstrates that the character and depth of the relationship between disputing parties shape the options that litigants choose to consider, as well as the actions they eventually take. Finally, Gwartney-Gibbs & Lach (1992) have argued that relations with those who investigate claims and determine cause for complaint (namely, government agents) affect the perceived viability of litigation and one’s commitment to pursue it. But what about the rest of the relational web that enmeshes the lives of women who contemplate litigation?

May & Stengel (1990) note that families of litigants often act as decisionmaking “brokers” in that they provide counsel and judgments that have the power to significantly shape the seriousness and duration of disputes. While the scholarly literature regarding litigation as well as women’s decisionmaking suggests that personal relationships are important, the role that relationality can play in the litigation choices that women make has escaped close examination. Thus, the following pages analyze the litigation choices that 31 sexually harassed women actually made and explore the various ways in which relational considerations affected their decisions to file or not to file suit.

II. Data Collection and Analysis

The data for this analysis are 31 narratives told by women who reported their sexual harassment to authorities, and who also considered litigating their claims in a court of law. Thirteen of the narratives are verbatim transcripts collected via intensive interviewing, and the remaining 18 are excerpts from field notes documenting a 12-month participant observational study of a sexual harassment peer support group.

Local attorneys, professional counselors, victim assistance volunteers, and a crisis hotline operator referred interviewees to the study. All of the interviews were informant-structured (Graham 1984) and highly dialogic (Oakley 1981). The interview sessions took place between 1991 and 1994, averaged 90 minutes in length, were (audio) tape recorded, and then transcribed verbatim into text. Upon completion of each interview, participants filled out a brief questionnaire surveying various aspects of their socioeconomic status (see Appendix A). Completed transcripts were given to each interviewee and any revisions they requested were integrated into the final document (Acker, Barry, & Esseveld 1993).

The field notes documented participation in 23 biweekly sexual harassment peer support group meetings. Interactions with support group members were much more fleeting than those with interviewees, were not taped, and therefore were less developed and generally quite brief. Limitations inherent in data collection via field observation also made it difficult to survey the social status of this group with the same accuracy as with the interviewees. Because they were guaranteed confidentiality, interviewees readily volunteered a wealth of intimate details about their victimization, job loss, and their family’s reactions to their plights. In contrast, the support group members tended to use a more “factual” and dispassionate discourse more appropriate for public conversation. Thus, I limited the use of the peer support group narratives to the saturation of concepts and to check the validity of my interpretations of these 31 accounts.

The 31 accounts were first organized by dominant topics of discussion and then by recurring or salient themes (Agar 1983). While coding identified a wide range of issues, the topic “the decision to sue (or not to sue)” was prevalent. Talk of spouses, children, and parents was especially salient and occurred regularly throughout all 31 accounts. As a validity check, I submitted drafts of early analyses to eight participants¹ and asked for comments. Only two women, Cecilia and Gail, provided extensive feedback. Thus, the following analysis is the result of an interpretive collaboration with these two key informants (Acker, Barry & Esseveld 1983).

III. The Respondents and Their Choices

When viewed as a whole, perhaps one of the more defining characteristics of this group of women was their general dearth of financial and social resources for sustaining successful litigations. Those who shared information about their earnings drew no more than \$25,000 per year and few mentioned having any savings or financial holdings. Data measuring their household income were not gathered, but most appeared to be, and many described themselves as being members of either the middle or working classes. At the time of their harassments, most held jobs in either the service or the industrial sectors, and with the exception of Faith and Tina, who were professionals, the rest were semiskilled or unskilled laborers. Only two women had completed graduate programs, five held college degrees, and the rest had high school diplomas or equivalents.

Galanter (1974) argues that legal knowledge and direct experience using it are litigation assets. His work suggests that possession of these assets is likely to affect how potential litigants perceive their options and the choices they are likely to make. More recently, May & Stengel (1990) theorize that, at least among medical malpractice complainants, those with more legal knowledge are *less* likely to sue, while those with more legal experience are *more* likely to sue.

Other than uncontested divorce proceedings and routine child custody filings, only Gail had first-hand experience with high-stakes litigation. Two years prior she had prevailed in a wage discrimination claim against a previous employer. Working as a legal secretary, Alicia had second-hand knowledge of how large corporations sue, and as a lay magistrate, Cecilia’s legal knowledge was limited to traffic law.

In addition to a general lack of financial resources and litigation expertise, another dominant characteristic of this group was

¹ By the time the analysis was completed, some of the research participants had moved or changed their telephone numbers. In addition, the peer support group had disbanded.

an abundance of relationships. About one-half of the women were married, and with the exception of Stella and Beth, the other half were engaged in romantic relationships. One-half of the participants had children under the age of 12 and five had teenagers. Three women supported husbands who were either disabled or unemployed. Faith and Gail provided financial support and health care to terminally ill parents. Alicia was pregnant with her first child.

Only three of the 31 women—Stella, Beth, and Tina—did not have the responsibility to care for or support family dependents. None of those who were divorced received any alimony, and a majority of them were single parents raising children with little or no assistance from their ex-husbands. In sum, this particular group had not only an abundance of intimate or familial relationships, but also a significant amount of responsibility to provide and care for the loved ones.

All 31 of the women considered filing a lawsuit, but only four of them—Eve, Beth, Cecilia and Gail—actually did so. At the time of their interview, Beth and Eve had already settled their claims out of court, for the equivalent of one year's wages or \$20,000 and \$25,000, respectively. Cecilia and Gail's attorneys had filed their suits and each were engaged in the deposition phase of the pretrial process.

At the time they were being interviewed, 10 of the 31 interviewees stated they had definitely arrived at the decision *not* to file a lawsuit. Thus, about 16 women were still weighing their options during the time their narratives were recorded.

While a variety of paths to formal action were considered, 67% (21 out of 31) began by filing complaints with government agencies. In only two of those cases (Beth's and June's) did the investigations find sufficient cause for government intervention. Both were cleared through mediation rather than litigation. Complaints without causal findings were disposed of with the issuance of "right-to-sue-letters."² Seven women consulted with private attorneys. Zoie and Eve obtained representation upon complete contingency. Cecilia's attorney took her case for a \$1,500 deposit and Gail received representation that was billed at a half-price rate of \$75 per hour.

² Government agencies investigate complaints to determine whether legal action by that agency is warranted. If sufficient cause is found, the agency either files suit or mediates a resolution. If cause for action is deemed insufficient, the complainant is issued the right to pursue his/her claims through private litigation. By law, sexual harassment complainants are precluded from filing a claim without having first obtained the right to do so from the appropriate government agency.

IV. Findings

Among these 31 women job loss, or fear of it, was the primary trigger for a serious consideration of litigation. After careful thought, many of the unemployed eventually chose not to litigate, and some of those who did not lose their jobs decided to seek legal representation. Despite the strict criteria used by government agencies and private attorneys to take cases upon contingency, most believed that, despite these restrictions, there were still choices to be made. The lucky two whose complaints were found to have sufficient cause for government agency intervention, for example, had to decide whether to accept government mediation, or to reject it and pursue litigation on their own. Those who consulted with private attorneys had to decide whether they had the financial resources or emotional fortitude to prevail.

In talking about how they weighed their options, all 31 women referred to familial relationships they deemed to be especially important or precious. Carefully considered were maternal responsibilities, marital commitments, parental approval, and the impact that litigation might have on their families. At times familial ties were counted as assets for successful litigation; at other times they were listed as liabilities.

For most the decision to sue rested upon assessments of their abilities to do so while also being good mothers, wives, and daughters. If the filing of a suit threatened the well-being of family members or to strain familial ties, then potential plaintiffs were reluctant to embrace such a choice. In contrast, if litigation held promise for making life better for their families, or for restoring familial harmony, then it was given serious consideration. In many instances the love of family and their willingness to help out were counted as essential for surviving the rigors of litigation.

Maternal Responsibilities

For mothers, a key factor affecting their decisionmaking was the impact that legal action might have on the well-being of their children. Some worried that taking legal action might bring harm to their children, others felt they had a responsibility to protect their children from the aftermath of harassment. Regardless of the choice that was eventually made, mothers commonly evoked maternal responsibility as the final arbiter in their decisionmaking.

Gail, for example, decided to consider litigation seriously when the harassments she had been enduring at her place of work spilled over into her home life and touched the life of her eight-year-old son. As the only woman foreman [*sic*] working in a large military supply manufacturing plant, for nearly three years

Gail had tolerated without complaint a regular stream of sexualized epithets and sexist pranks. Each time she reported the offensive gags to her direct supervisor, he responded by “blowing off” her concerns with assertions that such antics were common among line workers, and that it was her responsibility as a foreman to rise above them. Gail struggled to take his advice, and endured the pranks until the day her son intercepted an obscene telephone call that was meant for her:

They called up and when my son answered the phone, one of them said, “Hey, did you know that your Momma sucks my dick.” It scared him to death! So, I said, “That’s it. They can do all kinds of stuff at work but they have to be told that my family is off limits!”

So, as Gail explained in her interview, though she was willing to “take an awful lot on the chin” at work, she had a lot less tolerance for harassment that touched the life of her son. It was concern about his well-being that motivated Gail to go against her supervisor’s advice and formally complain. So, in Gail’s case, outrage over her son’s victimization as well as a sense of responsibility for his safety outweighed the potential risks that formal action might present.

In some cases maternal responsibility deterred rather than facilitated the decision to file suit. While Gail used litigation to meet her obligations as a protector, others worried that taking legal action would make it more difficult for them to meet their children’s needs. Unlike many of the women in this study, Alicia had the financial means to pursue litigation. But her interview was filled with talk of her pregnancy and worries about the effect that the stress of such contentious action might have on it.

Alicia’s harassment took place in a private law firm where she worked as a legal secretary. When one of the partners in her firm began to make sexualized remarks and off-color jokes about her pregnant body, she knew he was violating a law and that she had a legal right to file charges. Alicia carefully documented each incident and in her seventh month of pregnancy consulted with an attorney who agreed to draft a letter of demand.

Yet, shortly afterward Alicia decided against sending the letter and quit her job instead. When asked why, she explained that a recent obstetrics checkup revealed that her blood pressure was too high, and therefore was putting her pregnancy at risk. In light of this new development, her doctor ordered her to avoid stressful situations and to take better care of herself.

Alicia firmly believed it was the stress of having to cope with her supervisor’s remarks that had raised her blood pressure, but through her work inside a legal firm she had also observed how stressful litigation can be. Putting her pregnancy first, she followed the doctor’s orders and eliminated both the stress of harassment and the potential stress of litigation by quitting her job

entirely. Thus, Alicia decided to take her chances with the risks that came with unemployment rather than put her unborn child through the rigor of contentious action.

Mothers who lost their jobs to harassment considered litigation a means to provide for their families. Cecilia's story illustrates well the dilemma that unemployed providers faced and the choices they made to resolve it.

For four years Cecilia had served as one of two traffic judges in a very small municipality in a rural part of the state. Two months after she had reported the other judge for fixing tickets in exchange for sexual favors from female defendants, the city council voted unanimously not to renew the contracts for *both* Cecilia and the judge she had accused. In her first interview Cecilia explained that she had chosen to invest her energy in a job search rather than litigation:

I've thought about it and I've decided the law should not be used to seek revenge. No one but God has the right to punish them for what they have done. So, I am going to give this one up to God. . . . I'm going to pick up the pieces and get on with my life.

Yet, in a followup interview Cecilia announced that she had not only changed her mind, but had also consulted a specialist in sexual harassment cases. When asked what prompted the reconsideration, she replied: "I've got mouths to feed." Thus, while Cecilia was convinced that her dismissal was retaliation for blowing the whistle, her justification for choosing to litigate rested more upon her responsibilities to feed her children than upon her own personal need for justice.

These three accounts illustrate the hard choices that sexually harassed women with children must make. The need to meet one's maternal responsibilities is pitted against one's own personal desires for retribution and justice. But each woman found her own resolution to the conflict between personal desire and familial responsibility. Those with "mouths to feed" were much more likely to use litigation as a means for fulfilling their obligations as providers. Others resisted the desire to litigate when doing so appeared to threaten their ability to protect and nurture their young.

Marital Commitment

In deciding whether to pursue litigation, those who were married weighed heavily the effect that litigation might have on their ability to maintain marital harmony and keep commitments they had made to spouses. Among the married, a particularly salient topic of conversation was the emergence of marital discord. All reported that the stress of being harassed—and in some cases

of being unemployed as a consequence of harassment—had placed significant strain on marital relations.

As a result, those who were married claimed they were fighting with their spouses more often and the bones of contention involved differing assessments of the seriousness of the situation, as well as conflicting judgements about what should be done.

Jealous and overly protective husbands fumed about what other men were being allowed to do and say to their wives at work. Others fretted over the impact that their wives' unemployment had on their families' economics. While most tried to be sympathetic to their wives' plights, many were also critical of their wives' passive tolerance.

For the women experiencing this type of marital conflict the degree to which they believed that litigation would ease marital tensions or exacerbate them determined the choices they made. In addition, the amount of authority their husbands had in the home, and the desires these men expressed, played crucial roles in the final choices the married women made.

As a mother of three young children and the wife of a leader in the Mormon church, June confessed that at times she found the sexual flirtations of her thesis advisor flattering. But on the day he reached across his desk and attempted to unbutton her blouse, the fun of "innocent flirtation" was forever soured by feelings of fear and violation. She contacted the university's sexual harassment complaint officer and inquired about the procedures for filing a complaint. The university's investigation found cause for her charges and issued a sealed letter of reprimand. Calling the university's attempt at punishment "gutless," "useless," and "pitifully inconsequential," she consulted with her family's attorney who fanned her outrage and encouraged her to sue. After three meetings with him, she changed her mind and abandoned the cause.

In talking about events leading to her change of heart, June repeatedly referred to a particularly painful fight between herself and her husband. Returning home from a meeting with her attorney, she found her husband agitated and overcome with fury:

He started yelling at me, telling me that the lawsuit was taking up too much of my time. He said the kids needed me and that I was neglecting them. He said, "If you don't drop this lawsuit I'm going to sue [the university] for loss of my conjugal rights!"

While June's husband shared her outrage, he also held a low opinion of those who take their personal problems to court. June suspected that he was simultaneously angry that a man had violated his wife and embarrassed that his wife had, in his mind, become overly litigious.

June suspected that her husband would not have protested so much had the lawsuit not affected his life or routine. But because he was the sole provider and primary decisionmaker in her fam-

ily, June's decision not to sue privileged her husband's personal values above her own. At the same time it also placed her own valuing of marital harmony above her craving for retribution.

Unlike June, Tina did not have as strong a desire for legal justice. In fact she feared and was highly suspicious of, the formal legal process. But like June, a key factor in Tina's decisionmaking was her need for marital harmony and her husband's need to restore the family's honor. In contrast to June's husband, Tina's partner had a high opinion of litigation. Originally from a legally conservative country in the Middle East, Tina's spouse celebrated American legal ideology with great zeal. He not only embraced the concept of civil rights, but considered it especially sacred. He was frustrated by his wife's passivity in the face of humiliating requests for sex and dates and could not forgive her unwillingness to stand up and fight for her civil rights. As a result, her inability to stop the harassment on her own and her reluctance to formally complain about it had become a primary and chronic source of marital conflict.

Recalling their last argument, Tina claimed that he had called her a "weeny" and then threatened to leave her if she failed to demand her legal rights and sue her harasser. Tina explained that she was by no means a religious conservative, but as a Muslim woman she had a difficult time overcoming religious-cultural mandates prohibiting women from engaging in public contestation—especially with men. Ironically, it was the demands of her Muslim husband that moved her out of the inertia supported by traditional gender socialization. So to keep the family peace, Tina followed her husband's directives and filed a report with the EEOC.

Both June's and Tina's narratives reveal how difficult it can be for women in male-dominated households to partition their own personal desires from those of their husbands and then to act upon those desires completely autonomously. June wanted to file suit; Tina did not. On one level each privileged the desires of those upon whom they depended for financial support, but at another level each successfully placed first and foremost their own personal desires for family peace over the need to advance their civil rights.

Love as a Litigation Asset

As part of their intake interviews or the initial consultation routines, EEOC officers and private attorneys lectured potential plaintiffs on the difficulties of litigation and the necessity of sufficient emotional and moral resolve. Many of those seeking help from government agents and private attorneys were "lectured" on the "evils" of civil litigation and warned that the process takes a particularly high toll on a plaintiff's health and well-being. Po-

tential plaintiffs were informed that litigation was “ugly,” “mean,” and consumptive. Implicit in these types of lectures is the notion that successful litigation of sexual harassment complaints demands the effective mobilization of intrinsic resources for maintaining self-esteem, personal fortitude, and high energy (Freeman 1977).

In deciding whether they should sue, the women (sometimes in consultation with their attorneys) inventoried their resources for maintaining resolve and self-esteem. As a means to reduce stress and shore up her self-esteem, Beth enrolled in a college course. Joan’s attorney referred her to a clinical psychologist for help in handling the insults of litigation. Yet, because she was unemployed, she felt the counselor’s reduced rate of \$65 per hour was a luxury she could ill afford. So, like most of the women in this study, Joan turned to family for emotional and moral support. Pledges of unconditional love and expressions of moral support made it easier to accept the risks that accompany legal action and then to survive the emotional rigors that the process of suing can impose.

To add insult to injury, shortly after the city council voted not to renew Celia’s contract, the man she had accused filed a multi-million dollar lawsuit against both Cecilia and their former employer. Unemployed and a single mother of two children, Cecilia’s spirit was crushed by the news. Interestingly, talk of her mother’s love and wise counsel filled her account of these events. In fact, Cecilia credited the unconditional love of her mother more than her attorney’s ferocious advocacy for her ability not only to pursue her own lawsuit but also to survive the anxiety and humiliation of countersuit:

... Mom and I don’t always agree. She’s not a women’s libber and to tell you the truth, she doesn’t think much of my decision to file a lawsuit. She’s always saying, “Leave it to God. Leave it to God.” But, even though we disagree, I know she loves me and she’s always there for me. She just sits and listens while I go on and on.

So, although Cecilia’s mother did not think highly of litigation and did not approve of Cecilia’s decision to contest her dismissal, Cecilia counted her mother’s love as one of her most precious litigation assets.

Likewise, Gail found a special strength of resolve in the dedication of her loving, but chronically unemployed husband. Only 48 hours after she had turned in a written request to lodge a formal complaint against her harassers, she received notice that her job had become another casualty in the company’s most recent “reduction in force” effort. With mortgage payments due and no other dependable source of income in sight, Gail was particularly disappointed to learn that the EEOC would not champion her claim. Right-to-sue letter in hand, she consulted an at-

torney who agreed to file her claims at a reduced rate of \$75 per hour. Even though his fee was a bargain, Gail worried that losing her case would certainly bankrupt her family. To describe how her decision was made, she related an endearing story that evidenced her husband's prowess as a jokester:

Well, we were sitting at the kitchen table and we were talking about how we were going to pay the bills. And on the table was the letter from my attorney saying he'd take the case for \$75 an hour. And he just looks at me, hands me a pen to sign it with and then says, "Hey, let's go for it!" And when you win that jackpot, baby, I'm going to buy you a brand new car with a vanity license plate that says, "THANKS JOE!" [her supervisor].

Her account reveals that the decision to sue was not made by Gail alone, but in close consultation with her husband. But perhaps even more important, the license plate joke showcases her husband's affection and the high value that Gail placed upon it. With even less income to leverage than Gail had, her husband contributed the one thing he had to give—his unconditional love and moral support. Gail found that her husband's wit and humor made it easier to press on in the face of both legal and financial uncertainty.

The Pooling of Family Resources

All those who retained legal aid did so at either reduced rates or upon contingency. As a means to minimize the expense of litigation, attorneys accepting cases at less than full price delegated much of the "leg work" to their clients. For example, Cecilia's counselor took her case on contingency for a one-time \$1,500 nonrefundable deposit and then cultivated a working partnership and negotiated with her a division of labor. He wrote the letters of demand, filed papers, and kept regular contact with her employer's attorneys, but it was Cecilia's responsibility to collect and then organize the various evidentiary documents needed to build a case. While Cecilia enjoyed doing legal work, she also found that it consumed much of her time and energy. Jobless with school-aged children, she found that the high demands of pursuing legal action made it difficult to meet the needs of her children and also maintain an active job search.

Like Cecilia's attorney, Eve's lawyer also delegated "leg work" to his contingency clients. At the time she was interviewed, Cecilia's case was still active but weeks before she was taped, Eve had successfully settled her lawsuit. Reflecting back on her career as a plaintiff-on-contingency, Eve summed up the experience:

A lawsuit is a full-time job! Most people have no idea how much work is involved. Until we settled, that lawsuit was my life, my entire world. Now that it's all over, we're taking the whole sum-

mer to fix up the yard and the house because for those two years we just had to let it all go.

So, as Eve's comment points out, civil litigation siphons a significant amount of energy and those whose cases are pursued upon contingency must invest even more. Yet, those with a lot of family responsibilities have little if any extra time to devote to legal action. Thus, those desiring contingency contracts looked for ways to resolve competing demands upon their time. Without the means to purchase the services of maids, nannies, household repair or yard care specialists, most turned to family and sought to draw upon the pooled resources of their children, spouses, parents, and siblings.

The wife of a disabled veteran and the mother of four children, Zoie's responsibilities both as the family's breadwinner and as its primary homemaker and caregiver were quite high. She sought legal advice after receiving a negative performance evaluation that arrived suspiciously on the heels of her report to the company's personnel director stating that her supervisor had repeatedly asked to "feel her up" and "jack off" in front of her. To protect her job, Zoie filed complaints with both the police and the EEOC but neither found sufficient cause for filing charges.

An attorney agreed to take the case on contingency but in so doing, made it Zoie's job to locate witnesses, collect documents, and to research her harasser's criminal record. Still employed and the mother of four children, Zoie felt she had little extra time to nurture a legal claim. But rather than quit the litigation, she turned to her large family and asked for their assistance. She redistributed the family chores and channeled the high energy of her young children into litigation:

Well I had so many papers to keep track of that I had to buy an entire file cabinet for it all! My oldest daughter and I did the file folders. . . . So, the stuff comes in, I throw it in a box . . . the kids sort it all into piles and then either I or [eldest daughter] take the piles and put them into the file folders.

For some, so many dependent relationships would be a serious impediment to successful legal action. But for Zoie the multiplicity of relationships was an asset. She capitalized upon the labor power of her large family and exploited it in order to fulfill her obligations as a contingency plaintiff.

Because it can take years to settle a claim, successful litigation demands creative financial management. As their claims lurched toward resolution at painfully slow pace, those who were pressing wrongful dismissal claims soon found themselves in a financial double bind. Without steady income, they lacked sufficient funding to adequately bankroll lawsuits, but without litigation they had little hope of regaining employment comparable to what they had lost. One attorney aptly described the dilemma's horns: "When it comes to civil litigation, it takes an awful lot of money

to win an awful lot of money.” For the jobless breadwinners who wanted to sue, the task, then, was to find “an awful lot of money.” A number of the women bankrolled their litigations with gifts and loans received from family.

A single mother of two, Cecilia felt litigation was her best hope for restoring her ability to provide for her family. But, with only \$250 in the bank, she did not have enough to cover the \$1,500 down payment, much less to support herself and her children while her case slowly crept through the legal system. Cecilia heaved a great sigh of relief when her brother lent her \$1,250 and her mother offered to house and feed Cecilia and her two children until she could “get back on her feet.” In talking about events leading to her decision to contract the services of a lawyer, she reflected upon her mother’s support:

The only thing that Mama owns is her house. It’s paid for. She supports herself on Papa’s retirement pension and a small disability check. . . . We’re really cramped in that little house of hers. For the first time in their entire lives, my kids have to share a room. And it’s hard, you know, being 48 years old and having to move back to your mother’s house. . . . But you, know, I’ll always love Mama for taking us in. But that’s just the way she is. She does things like that.

In the expensive game of litigation the individuals who constituted Cecilia’s extended working-class family would be counted as “have nots” (Galanter 1974). But as a collective of individuals they found they could pool their resources and have enough to successfully bankroll Cecilia’s suit.

Litigation as an Assertion of Autonomy

Most of the women in this study treasured familial relations and either used litigation or avoided it as a means to protect them. The well-being of children as well as the desires of partners were commonly used to justify not only the decision to sue, but also the decision not to sue. Responsibilities to provide and care for family were weighed heavily, while pledges of unconditional love, moral support, and even financial aid facilitated a willingness to enter into the legal unknown. Yet, not all the choices these women described were based solely upon the needs and desires of others, and for some relationality did have its limits. Certainly the more connected these women were, the more relationality played an important role in the choices they made. But in addition to quantity, the quality of familial ties—the degree to which they tethered or liberated the individuals who experienced them—was important as well.

Regardless of their closeness to family and the value placed upon family bonds, common among these narratives were women’s valuation of autonomy. Many expressed the desire and

even an obligation to fight for what was rightfully or legally theirs. For women unencumbered by the responsibilities and commitments that accompany familial connection, the decision to litigate one's individual rights was certainly easier than it was for those with young children to support or marriages to maintain.

Childless and single, Beth was free to take on the challenge of becoming the first woman to perform construction work inside a large utility company. A survivor of poverty with strong working-class values, she took exceptional pride in her financial independence. She could not contain her outrage when the very same grievance board that had dismissed her sexual harassment complaint also voted to suspend her without pay for grazing the side of a cement mixer truck. Without a second thought, Beth took her grievance to the Human Rights Commission and with their help, she eventually negotiated an out-of-court settlement for \$20,000. For Beth, her decision to litigate, as well as her survival of it, was a source of personal pride. A large portion of her narrative involved the day she cashed her settlement check:

... it was the first time in my entire life that I did something for me—just for *me*. The first time I ever stood up for myself and said, “Hey, what about me?” So, I felt pretty good about it.

In Beth's case, it was her autonomy and the lack of familial connection that afforded her the opportunity to litigate and find success in it. Without maternal responsibilities or marital commitments, she felt free to seek justice without having to consider the ramifications of such actions for others. Beth's account reveals that in addition to fulfilling the practical need for compensation, the litigation also served to validate the value of individuality and personal independence.

Like Cecilia, Eve was also a member of a large extended family, but unlike Cecilia's family, Eve's was more hierarchically arranged. Eve's family was even larger than Cecilia's and, in financial terms, much wealthier. But the decision to mobilize family resources was usually made by Eve's father alone, rather than through collective discussion. Eve wanted very much to litigate but needed more money to do so. At a family gathering, she approached her father for financial backing but he refused her request:

Well, we were about to put dinner on the table when Dad pulls me aside and says, “Let's take a walk.” So, we go outside and he's telling me I shouldn't do this. That nothing good can ever come out of it. I mean I'm 35 years old! And he still thinks I'm his “little girl,” his “princess.” But I'm a grown woman now. I've got a family of my own.

In spite of her father's disapproval, Eve filed charges against an institution exceptionally rich in litigation resources—the department of corrections. For Eve, the litigation eventually became a

means to not only to assert her self-worth, but also her independence from the bonds of parental control.

Finally, of the 31 women who provided narratives, Stella had the fewest connections to family because her familial ties were more often a source of trauma than empowerment. At the age of 16 she ran away from her alcoholic mother's home and for two years managed to support herself on the wages she earned as a thrift store clerk. When asked what she liked most about the job she had lost to harassment, she said:

Well, the customers were really great there. Really great. It was kind of a family atmosphere. The regulars brought me cookies and sent me postcards . . . and besides, that job paid enough. I could pay my rent with it.

Her response suggests that her minimum wage job was especially precious to her because it enabled a healthy distance from an abusive relationship and facilitated more empowering relations with others.

The one thing Stella disliked about her job was her 30-year-old male supervisor's propensity to embarrass her with sexual talk and gestures. According to her, the "worst" incident was the one in which he threw her on a pile of mattresses marked for sale and then pressed his hardened penis against her body. Given Stella's need for financial independence and the pleasure she took in customer relations, she was understandably distraught when she learned that she had been fired after calling in sick.

Even though Stella feared and despised her harassing supervisor, she wanted her job back and she was willing to go to any length to achieve her reinstatement. However, because the thrift store employed fewer than 50 employees, the EEOC turned her away and an hour's consultation with an attorney revealed that the earnings potential of her case was not nearly enough to warrant representation upon contingency. Stella worried that without reinstatement she would have to relinquish her hard-won independence and move back in with her alcoholic mother.

As a high school dropout, Stella's understanding of what civil rights are, and how they can be violated as well as legally asserted, was limited by what she saw on television and at the movies. From those sources she had learned that sexual harassment was a civil rights violation and that the "bear hug" constituted sexual harassment. But the motivation to assert her civil rights was a secondary to her need to regain the means to maintain her personal autonomy and financial independence from her mother.

In sum, the accounts that Stella, Eve, and Beth provided illustrate the ways that familial ties can be liabilities rather than assets. In addition, they demonstrate how litigation becomes a means for asserting personal independence and maintaining individual autonomy. Their stories serve as negative cases establishing the limits to relationality and its impact on women's litiga-

tion. Beth's and Stella's accounts are testaments to the fact that not all women are highly connected to others, and some women can and do make important life decisions on their own. While many of the choices Eve made throughout her life were inscribed by a constricting web of patriarchy, in deciding to file a sexual harassment lawsuit, she managed to assert her own personal desire—one decidedly at odds with those of her father. In short, for each of these women, harassment or the loss of employment due to harassment was untenable because it placed at risk their *autonomy from*, rather than connection to, family.

V. Discussion

When research participants are given the opportunity to control the structure and content of their narratives, we get a rare glimpse of more than *what* they prefer to talk about, we also learn *how* they choose to talk about it (Graham 1984; Riessman 1993). Without prompting, these 31 women chose to talk about how they arrived at the litigation choices they made and they did so by privileging concerns about their familial relationships. The preponderance of references to children, husbands and parents suggest that they believed that relationships—especially those with family—are important topics for research conversation. The strong relational threads inside these narratives also indicate that relationality played an important, and often pivotal, role in the choices these women made.

Previous studies have shown that the nature and strength of relations with attorneys (Miethe 1995), government agents (Gwartney-Gibbs & Lach 1992), employers (McCann 1994) and even opponents (Felstiner et al. 1980–81) greatly affect how disputants think and feel about litigation. The stories these women told indicate that relationships with their children, marital partners and even their parents may play an equally important role in the litigation decisions these sexually harassed women made. Their motivations to sue, as well as not to sue, included feelings of maternal duty and loyalty to spouses, as well as the unconditional love and support of parents and siblings. Their accounts breathe life into the assertions of relational theorists that, at least among women who are highly connected to others, the integrity of relationships matters a great deal in the legal choices that women make (Ferraro & Pope 1992; West 1987, 1988). Furthermore, my analysis of these stories shows that they matter in a number of complex ways.

A primary consideration for those deciding whether or not to seek legal action was how litigation might affect those to whom they were closely tied. Those with maternal and marital responsibilities give careful consideration to those options that would enable them to meet their family's financial and emotional needs.

When filing suit promised to make life better for loved ones, then the risks and rigors that litigation imposes were worth assuming. Yet, when the stress and demands of legal action threatened to put the well-being of family members at risk, complainants looked for extralegal means to solve their sexual harassment problems. In making the decision to sue, many inventoried the amount of love, care and help upon which they could depend. Litigation became a less daunting proposition in those cases where pledges of support exceeded their families' demand for it.

The relational decisionmaking that characterizes these narratives contrasts and therefore confronts, a number of taken-for-granted assumptions about the motivations of sexual harassment victims and women litigants. First, both substance and procedure for civil law are premised on a liberal view of human nature that assumes that all legal actors are (or at least should be) autonomous beings and that the choices they make reflect the true nature of their own personal desires (West 1987). Second, the liberal view of litigation often assumes a cost-benefit model of decisionmaking. There is the premise that the litigants are motivated by a desire to maximize personal benefits and minimize personal harms (Cornell 1990; Gleason 1981; Hoyman & Stallworth 1986). Third, behind the legislation of civil rights laws lies the premise that if sufficient options for legal protection and remedy are made available, then those who need them will use them.

But, as these narratives so vividly illustrate, the lives of many women are not completely autonomous and are often profoundly relational. The vast majority of the women in this study were mothers and by definition mothers are not autonomous, but are highly connected to and depended upon by their children (West 1987, 1988). Responsibility to provide for their children forces many mothers into economic dependence upon spouses and employers. For such women, litigation pits the need to meet familial responsibilities against personal longings for formal justice.

In the history of the most recent women's movement the concept of "personal choice" has become central. Over the years, feminists have devoted considerable energy and resources to preserving women's right to choose, expanding the number of options for women to choose from, and mobilizing sufficient resources to enable women to act on their own desires rather than those of their families. But these stories illustrate how—at least among those who value relationality—malleable the concept of personal choice can be.

Gender socialization encourages and rewards relationality among women. Women socialized to value family ties and to protect them at all costs cannot easily separate their personal desires

from those with whom they are highly connected. Rarely did those who were married make their litigation decisions alone, and some of the choices that were made reflected a greater desire for relational harmony than for legal vindication.

Like so many other civil rights victims, most made a conscious choice to not take legal action (Bumiller 1988). Their accounts help explain why more women do not claim their right to legal remedies that feminists have fought so hard to institutionalize. As their stories show, for the relationally oriented, parental responsibility, spousal commitment, and insufficient moral and emotional support are not minor details but major stumbling blocks in the quest for legal justice.

Resource mobilization research posits that time, money, and previous litigation experience are important resources for successful litigation (Freeman 1977; Galanter 1974; Mayhew & Reiss 1969; Miethe 1995). The stories these women told illustrate the various ways in which relationships can also facilitate litigation success. Through the lens of traditional resource mobilization theory, these 31 women could easily be classified as “have nots”—in other words, plaintiffs lacking sufficient resources for litigation success (Galanter 1974). Yet, they were relationally wealthy and a number of them managed to draw upon relational power to expand their strength and enhance their ability to endure. For many, love was an invaluable resource for surviving the cold, harsh reality of legal action. Their pooling and creative use of their family’s finances and labor power extends our understanding of how some women manage to transcend the financial and emotional stress of legal action and successfully file suit.

Legal theorist Robin West (1987, 1988) argues that it is through such essential biological functions as birth, suckling, and sexuality that women become deeply connected to others and that the quality of that experience determines the degree to which they value it. But the works of sociologists Chodorow (1978) and Gilligan (1982) demonstrate how relationality is developed and maintained through social interaction. Gender socialization gears women to tolerate male aggression, evade confrontation, and to avoid investment in risky endeavors. It also teaches women to frame their options for responding to men’s harassment in relational terms. So, for many sexually harassed women, desires for connection and the need for interpersonal harmony mitigate desires for formal justice (Ferraro & Pope 1993). But, as Gail’s, Eve’s, and Stella’s narratives show, relationality does not completely overshadow the desire for autonomy as each valued the freedom of individualism enough to litigate for it. Their stories show that while the decisionmaking of many women may be relational, some will assume considerable risk and make great sacrifice to evoke the law’s power to preserve their autonomy.

In closing, a primary intention of sexual harassment legislation is to establish new rules governing public relationships, and provide those without sufficient social or economic capital the necessary legal tools to protect their autonomy and remedy the damage caused by unwanted connection. This study suggests that, at least for the relationally oriented, the decision to evoke such a rule is largely contingent upon the nature and complexity of the relational web within which the victim lives her life. While in theory, the status of family ties and the nature of personal relationships are superfluous to one's legal rights and the desire to sue for them, in practice, they are central concerns.

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Appendix A. Socioeconomic Status of Interviewees

Pseudonym	Age	Ethnicity	Family ^a	Religion	Degree/Diploma	Occupation
Alicia	23	Latina	Married (P)	Catholic	A.A.	Legal secretary
Alaine	33	Latina	Married (3)	Catholic	High school	Admin. assist.
Beth	44	White	Divorced (0)	Protestant	High school	Construction worker
Betty	49	White	Divorced (0)	Spiritualist	M.A.	Family counselor
Cecilia	48	Latina	Divorced (2)	Catholic	High school	Traffic judge
Diane	40	White	Married (1)	Mormon	High school	Project manager
Eve	35	White	Married (0)	Protestant	High school	Prison guard
Faith	38	White	Divorced (1)	Protestant	High school	Prison guard
Gail	43	White	Married (1)	Protestant	High school	Foreman
Joan	28	White	Married (0)	Protestant	B.A.	Commission sales
June	33	White	Married (3)	Mormon	M.S.	Student
Stella	18	White	Single (0)	Protestant	G.E.D.	Sales clerk
Tina	24	M.East.	Married (0)	Muslim	B.S.	Psych. case worker
Zoie	35	White	Married (4)	Mormon	G.E.D.	Security guard

^a Numbers in parentheses indicate how many children the woman has. "P" indicates that the woman is pregnant.