

Psychology of authority in quid pro quo sexual harassment cases

50 years of psychological science demonstrate influence of authority and social norms

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In a lawsuit, Molly alleged that her supervisor offered her financial bonuses and vacation days in exchange for sexual favors during the three years she was employed by the company. Though the behavior of her boss clearly constitutes quid pro quo sexual harassment (sexual favors solicited in exchange for rewards and improved working conditions), such cases can be particularly difficult to argue to a jury. This is because jurors often struggle against the feeling that Molly herself is at least partially to blame for submitting to her supervisor's sexual advances.

Quid pro quo sexual harassment may be defined as forcing an employee to be subjected to sexual conduct in exchange for (or at the threat of losing) such job benefits as job security, favorable performance reviews, or promotions. (*Meritor Sav. Bank v. Vinson*, 477 US 57, 65, 106 S. Ct. 2404-2405)

Acquiescence to a sexual advance is not fatal to the case if the advance itself was not welcome. (*Meritor Sav. Bank, FSB, Vinson*, 477 US at 68, 106 S. Ct. at 246) The test is whether when a supervisor requested sex, a reasonable woman would believe submission was necessary to save her job. (*Holly D. v. California Institute of Technology*, 339 F3d 1173 at 1175, 9th Cir. 2003)

Although Molly's submission to her supervisor's sexual advances does not preclude her from compensation under the law, juries too often regard plaintiffs like Molly with more suspicion than empathy. Didn't Molly actively choose to submit to her bosses requests? When asked to do so, hadn't she voluntarily worn



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low-cut tops, tolerated obscene comments from her supervisor; and even on one occasion initiated a sexual encounter at work? Why didn't she refuse to perform sexual acts earlier? Why didn't she say "no" the first time? Most importantly, by keeping herself in the bad situation for three years, isn't she responsible for her own discomfort?

Though naive intuitions may push us to assign blame to the victims of sexual harassment, especially quid pro quo, there is a large scientific literature that demonstrates how implicit and explicit social pressures exert a powerful influence on human behavior. This research reveals that most people would avoid saying "no," especially when doing so would contradict an authority figure or group of peers.

In the rest of this article, we will discuss scientific findings on the influences of authority and social pressure. We present this very brief research overview in the hope that readers will be able to use these findings to educate jurors as to why victims of sexual harassment submit to the sexual requests made by their peers and superiors in quid pro quo situations. We believe this work will prove interesting and useful in building an argument against consent as a defense.

Power of authority

Half a century's worth of psychological research demonstrates that people reliably submit to the requests of their superiors, regardless of whether or not they personally want to perform the requested acts. In fact, an overwhelming majority of people will even

perform acts that they judge to be morally reprehensible when simply asked to do so by someone they perceive to be authoritative.

This research goes back to the aftermath of World War II, when Yale University psychologist Stanley Milgram became interested in the question of how German soldiers could have carried out orders to torture and slaughter during the Holocaust. What force enabled millions of soldiers to commit such horrific acts against other human beings? More crucially, what might it take for typical Americans to engage in such violent behavior?

In what is now considered a classic experiment, Milgram found the answer: not much.

The Milgram experiments were designed to measure human obedience to authority figures. (Milgram, 1963, 1974) Participants in these studies were instructed to teach another person a list of words and to punish that person's

mistakes by administering electrical shocks. They were told that the shocks were necessary to facilitate learning. For each wrong answer, the strength of the shock would increase by fifteen volts.

Unbeknownst to the study participants, the "learners" were actors pretending to be other study participants, and the electrical shocks were not real. However, it was all made to seem real to the actual study participants: As voltage increased, the participants heard increasingly pained sounds from the person they were "shocking," followed by banging on the wall, and eventually just silence.

Participants who expressed discomfort or a desire to stop were simply told by the researcher that they had "no other choice" and "must" continue. These commands were delivered in a neutral tone and carried no explicit threats as to what would happen if the command was ignored.

The question is: What percent of

participants would continue to deliver shocks to the learner in the adjacent room? How long would participants continue to administer shocks with merely verbal instruction to do so?

In a survey of Yale students, Milgram found that people believed that only 3 percent of the study participants would continue up to the maximum voltage of 450 volts. Intuitively, that sounds about right.

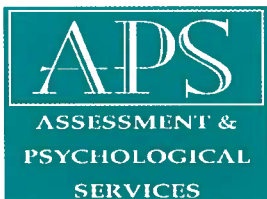
But the experimental results violated all intuitions: 65 percent of study participants actually delivered the maximum voltage as punishment to the learner. The implication is that almost two-thirds of us would obey a person of authority to the point of apparently inflicting severe pain to someone else. The result is especially striking considering that the scenario did not involve explicit threats, coercion, or legally sanctioned authority.

The Milgram experiment has been replicated a number of times and has

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reliably resulted in about the same rates of obedience. One especially colorful replication (Sheridan & King 1972) found that twenty of twenty-six participants would actually shock a puppy with the maximum voltage, removing any doubt that the original participants only obeyed because they believed the experiment to be fake.

In this version of the experiment, the shocks again occurred with increasing intensity and generated actual responses from the puppies ranging from foot flexion and occasional barks at the lowest level, to barking continuously and howling at the highest. (Though these shocks were painful, they were amperage-limited to prevent them from causing any serious harm to the puppies.)

Interestingly, in this version, gender also had a highly significant effect on behavior: 100 percent of the women were fully obedient, compared to only 54 percent of the men.

The implications of these results on arguing *quid pro quo* cases to a jury should be obvious: Jurors are likely to believe that they themselves would not engage in acts they find morally reprehensible simply because they were asked to do so, but scientific research suggests otherwise. Calling this research to the attention of jurors could help them to understand why the victims of sexual harassment submit to the requests of their superiors, often for extended periods of time, without protest. It is likely that most of us would do the same.

Power of social pressure

Of course, the role of authority is not the only factor contributing to the submission of victims of sexual harassment. This is made quite obvious by the fact that harassers are not always superior to their victims. Another body of research — that on the power of social pressure — may be useful in strengthening the plaintiff's argument in these sorts of cases. In these experiments, participants conform to the behavior of others without any explicit instruction to do so. Indeed, they conform even to the point of giving obviously wrong answers to easy questions.

In conformity experiments carried out by American Gestalt psychologist Solomon Asch at Swarthmore College, participants were asked to judge which of three lines on a board was longer. (Asch, 1951) One line was clearly longer than the others, but participants were required to answer after hearing a number of other people answer the question incorrectly. (Search for "conformity experiments" on www.YouTube.com for entertaining demonstrations of this type of task).

If at least three people answered the question incorrectly before a participant was asked, that participant would often provide the same incorrect answer, conforming to others' responses. These results demonstrate people's willingness to go against their better judgment simply to avoid deviating from the opinion of the group. Interestingly, conformity rates decrease substantially if just a single individual dissents from the otherwise unanimous crowd.

As with the Milgram experiments, these findings may explain why individuals may struggle to speak up against sexual harassment, especially when they are surrounded by co-workers who remain silent. The behavior of others exerts a tremendous implicit social pressure on people to conform. This conformity behavior may be particularly relevant in explaining how sexualized work environments are created and sustained (*i.e.*, in cases of hostile environment sexual harassment).

In environments where obscenities, sexual joking, sexually explicit images, pornography, and sexually degrading language become common, retaliation against anyone who complains about their discomfort is common. (Fitzgerald, Swan, & Fischer, 1995) The case of Lois Jenson is a well-known example. When Jenson first filed her lawsuit against Eveleth Taconite Co., the other women placed a hangman's noose above her work area and forced her into social isolation.

Interestingly, many of Jenson's female colleagues later joined her suit (Bingham & Gansler, 2002), perhaps empowered by the same force that led to decreased conformity rates in the single-dissenter condition in the Asch conformity experiments.

It is crucial that jurors be made to understand the strength of these social pressures to prevent them from erroneously assigning blame to the victims. The Asch experiments are an effective tool for illustrating to the jury the power of social pressures as a means of explaining why victims of sexual harassment rarely speak out immediately.

Applying psychological science to sexual harassment cases


People are easily brought to do extraordinarily immoral or stupid things. Factors like authority and social pressure have an extremely powerful influence on our behavior.

A troubling fact for a jury-driven judicial system is that our intuitions about why people act the way they do or how most people would act in a given situation are far from the truth. Laboratory experiments that provide controlled

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experiments and quantitative findings are key to uncovering how people actually act.

Calling the jury's attention to these classic scientific findings early in your argument can prevent jurors from unfairly assigning blame to the victims of sexual harassment on the grounds that a reasonable person would have removed herself from the situation earlier or would never have submitted to requests for sexual favors. Importantly, these experiments can help jurors realize that were they in the plaintiff's position, they most likely would have done many of the same things.

Once jurors understand that the actions of the plaintiff adhere to behavioral norms, they can focus on holding the party who initiated the quid pro quo sexual harassment or created the hostile work environment accountable for their actions.

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Dog that didn't bark

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special damages in the definition provided in paragraph C.

In fact, the original Senate bill filed in 1999 included the words "and special" in the definition in paragraph C of 2798.4, so that it read "damages include all general *and special damages*." (Emphasis added.)

Notwithstanding the proposed inclusive language, the Senate passed an amendment deleting the words "and special" from the bill, so that it read "damages include all general damages." The bill was eventually passed in its amended form as it stands today without the words "and special."

In light of the legislature's consideration of this subject and its specific action in deleting the words "and special" from the definition of damages, and in light of the mandate for strict construction of legislation in derogation of a plaintiff's rights, the conclusion is inescapable that the legislative intent with regard to the immunity provided in Sect. 2798.4 is that it applies only to a plaintiff's general damages and not special damages. Of course, a plaintiff's special damages would still be subject to the ordinary rules of comparative fault.

La. C.C. Art. 2 states, "Legislation is a solemn expression of legislative will." In light of the legislative history of Act 1999 No. 1224, the legislative will seems clear.

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