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# A Critical Race Feminism *Empirical* Research Project: Sexual Harassment & the Internal Complaints Black Box

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*Not everything that is faced can be changed. But nothing can be changed until it is faced.*<sup>1</sup>

## INTRODUCTION

Thus far, empirical research has not formed a large part of the scholarship developed by Critical Race Feminism ("CRF"): legal scholars who emphasize the legal concerns of Women of Color.<sup>2</sup> To be sure, a few CRF scholars have used an empirical approach to their analysis of how the law affects Women of Color.<sup>3</sup> But those efforts have by and large focused on qualitative research paradigms rather than on quantitative research.<sup>4</sup> This is not so surprising, considering the nonlegal quantitative

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<sup>1</sup> See *Quotable Quotes*, READER'S DIG., Aug. 1, 1971, at 114, available at <http://creativequotations.com/one/23.htm>.

<sup>2</sup> ADRIEN KATHERINE WING, *Introduction to CRITICAL RACE FEMINISM: A READER* 1, 1-7 (Adrien Katherine Wing ed., 2003) (describing CRF jurisprudence that addresses oversight of Women of Color in law as being race intervention in feminist discourse and feminist intervention in Critical Race Theory).

In this Article, I capitalize the terms "Black," "White," "Women of Color," and "White women," in order to denote the political meaning of race and the social significance of racial classifications as something beyond just skin color. Accord Victor F. Caldwell, Book Note, 96 COLUM. L. REV. 1363, 1369 (1996) (reviewing *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Williams Crenshaw et al. eds., 1995)) (contrasting Critical Race Theory historical view of race, which acknowledges past and continuing racial subordination, with formal view of race, which treats race as "neutral, apolitical descriptions, reflecting merely 'skin color' or region of ancestral origin"). Although capitalizing "White" may be interpreted as furthering the supremacy of whiteness, capitalization also serves the important role of piercing the veil of transparency cloaking whiteness and its concomitant privileges. Only when whiteness becomes more generally perceived as a race-based privilege will racial justice efforts have a meaningful opportunity to be effective. See generally Barbara J. Flagg, "Was Blind, But Now I See": *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 980-91 (1993) (examining requirement of discriminatory intent rule from perspective of white person's consciousness and proposing alternative to existing discriminatory intent rule and thereby exemplifying importance of acknowledging existence of whiteness as race like any other).

<sup>3</sup> See, e.g., Elvia R. Arriola, "What's the Big Deal?" *Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21, 54-65 (1990) (detailing empirical research of racialized sexual harassment in construction industry); Donna Coker, *Enhancing Autonomy for Battered Women: Lessons from Navajo Peacemaking*, in *CRITICAL RACE FEMINISM: A READER*, supra note 2, at 293 (using empirical approach to assess positives and negatives of Navajo peacemaking, and concluding that it can result in Navajo women feeling coerced into reaching solutions that may not be in their best interests).

<sup>4</sup> Qualitative research can take three different approaches: (1) examining a single case study in detail; (2) a collective case approach that focuses on a number of instances of a social phenomenon and analyzes them in terms of their specific and generic properties; and (3) examining multiple instances of a social process as that process is displayed in a variety

skills and specialized resources that are required to statistically analyze pre-existing data sets and otherwise collect and code raw data.<sup>5</sup> With the advent of interdisciplinary scholarship, however, there are now greater opportunities for legal scholars to garner the additional skills needed to adequately conduct empirical research.<sup>6</sup> More importantly, incorporating empirical research more directly into CRF jurisprudence can further CRF's law reform goals.<sup>7</sup> Empirical research is "consciously intended to test assumptions and provide factual information that will assist legislators, lawyers and judges to perform their key roles better in correcting social problems, resolving disputes and administering justice, and it also provides the essential grist for law reform when research demonstrates improvement is needed."<sup>8</sup> Specifically, when responsibly

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of different cases. See Norman K. Denzin & Yvonna S. Lincoln, *Introduction to this Volume*, in *STRATEGIES OF QUALITATIVE INQUIRY*, at xi, xiii-xiv (Norman K. Denzin & Yvonna S. Lincoln eds., 1998). Quantitative research differs from qualitative research, inasmuch as quantitative research emphasizes the measurement and statistical analysis of causal relationships between variables and qualitative research, instead, uses a wide range of empirical materials like interviews, observation, case study, and personal experience to study how social experience is created and given meaning. See Norman K. Denzin & Yvonna S. Lincoln, *Introduction: Entering the Field of Qualitative Research*, in *STRATEGIES OF QUALITATIVE INQUIRY* 1, 8, 24 (Norman K. Denzin & Yvonna S. Lincoln eds., 1998).

<sup>5</sup> See Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 80-114 (2002). It is also quite possible that CRF scholars have been disinclined to incorporate quantitative empirical research methods into their work because of the documented misuse of irresponsible and politically influenced statistics that have harmed communities of color. See, e.g., *N.C.A.A. Uses Bad Statistics, Group Says*, N.Y. TIMES, Sept. 23, 1994, at B13 (discussing how NCAA use of flawed statistics for determining eligibility for prospective student athletes did not "serve a very reliable basis for judgment" and helped "rotate out qualified blacks"). Indeed, social scientists themselves have conceded that there is a disturbing increase in the inappropriate use of statistics in research. See STEPHEN GORARD, *QUANTITATIVE METHODS IN EDUCATIONAL RESEARCH: THE ROLE OF NUMBERS MADE EASY* (2001). Yet there is still a value in incorporating quantitative empirical methods when they are responsibly done and go beyond the presentation of statistically significant correlations, and also discuss their substantive significance. "Substantive significance" is defined as a "term used to refer to the importance of an association between variables that cannot be determined by empirical analysis alone but depends, instead, on practical and theoretical considerations." EARL R. BABBIE, *ADVENTURES IN SOCIAL RESEARCH: DATA ANALYSIS USING SPSS (11.0/11.5) FOR WINDOWS* 513 (2003).

<sup>6</sup> See Lee Epstein & Gary King, *Building an Infrastructure for Empirical Research in the Law*, 53 J. LEGAL EDUC. 311, 315 (2003) (describing empirical research training that law professors can now receive at institutes like Inter-University Consortium for Political and Social Research at University of Michigan and Washington University Workshop on Empirical Legal Scholarship).

<sup>7</sup> See WING, *supra* note 2, at 2 (detailing CRF as being concerned with identifying how law fails Women of Color and formulating relevant solutions).

<sup>8</sup> N. William Hines, *Empirical Scholarship: What Should We Study and How Should We Study It?*, ASS'N OF AM. L. SCH. NEWSL., Apr. 2005, at 10, available at

conducted, empirical research can elucidate racial disparities in the application of law that may not be apparent from the traditional analytical method of examining court opinions.<sup>9</sup> My own CRF empirical analysis of sexual harassment reporting patterns is such an example.

In this Article, I present a CRF empirical sexual harassment project I recently conducted as a case study of how empirical research can be valuable to the future of CRF. Part I introduces the sexual harassment study and discusses the empirical questions it sought to explore. Part II then presents the empirical research design and the general trends that the data provided. Part III analyzes the key findings of the study and how it contributes to an understanding of how the application of sexual harassment law implicates race. The statistical analysis of survey responses from a group of 120 female sexual harassment victims suggests that White women and Women of Color may differ in their uses of internal complaint procedures. The racial disparity is particularly significant in light of recent Supreme Court decisions tying employer liability to the use of internal complaint procedures.<sup>10</sup> The Article concludes by detailing the ways in which the case study highlights the utility of empirical research for CRF legal analysis and praxis.

#### I. AN INTRODUCTION TO THE RACIAL DISPARITY OF SEXUAL HARASSMENT

The idea of designing a CRF study of sexual harassment began after I conducted a statistical analysis of sexual harassment complaints covering the years 1964 to 2000, which demonstrated two startling patterns by race.<sup>11</sup> First, Women of Color were consistently overrepresented as complaining parties in comparison to their presence in the female labor force year after year.<sup>12</sup> Second, White women were underrepresented despite their larger presence in the female labor force.<sup>13</sup> A statistical analysis of the data indicated that pure chance did not explain the racial

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<http://www.aals.org/am2006/theme.html> (explaining why 2006 AALS Annual Meeting theme is empirical scholarship).

<sup>9</sup> Questionable practices in the collection and analysis of empirical data in the past may very well have dissuaded CRF scholars from incorporating empirical research methods. See *supra* note 5 and accompanying text.

<sup>10</sup> See *infra* Part III.D.

<sup>11</sup> See Tanya Katerí Hernández, *Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race*, 4 J. GENDER RACE & JUST. 183, 186-87 (2001).

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* at 185-87.

disparity.<sup>14</sup> What the data alone could not do, however, was explain the causality between a woman's race and the likelihood that she would file a formal sexual harassment complaint.

Social scientists and legal scholars, with few exceptions, generally treat sexual harassment as a race-neutral gender context.<sup>15</sup> Thus, the existing social science literature does not explain the correlation between race and formally reporting sexual harassment incidents.<sup>16</sup> Yet, the social science literature does help dispel a number of hypotheses for the

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<sup>14</sup> See *id.* at 187.

<sup>15</sup> See Sasha Patterson, *Contributions of Feminist Jurisprudence: Sexual Harassment and Social Context*, 21 *STUD. L., POL. & SOC.* 135, 145 (2000) ("In sexual harassment law, race often continues to act as [a] phantom. Black women's experience is conspicuously absent from many feminist critiques that have been influential in informing sexual harassment doctrine."). Sexual harassment studies continue to be primarily race-neutral, despite the early indicators by sexual harassment law innovators that Women of Color were more vulnerable to sexual harassment. See CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 30, 53 (1979) (describing Black women as "most vulnerable to sexual harassment, both because of the image of black women as the most sexually accessible and because they are the most economically at risk," and observing that "sexual harassment can be both a sexist way to express racism and a racist way to express sexism"). Some of the few exceptions that do examine sexual harassment as a racialized experience are: Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 *MICH. L. REV.* 2479, 2498-2502 (1994) (discussing how Title VII and courts have failed to accommodate complexity of intersectional forms of discrimination against women in workplace because Title VII and courts currently require claimants to disaggregate and choose among elements of their identities); Arriola, *supra* note 3, at 58-61 (arguing that law of sexual harassment responded to political outcry and strength of predominantly white, middle-class women's movement and did not address problems that were faced by women who sought work in non-traditional, blue-collar fields like construction); Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 *J. GENDER RACE & JUST.* 177, 180-82 (1997) (discussing how convergence of racial and gender stereotypes of Asian Pacific and Asian Pacific American women generates type of compounded sexual and racial harassment, or "racialized sexual harassment," at workplace, and addressing how law's failure to recognize compoundedness of racialized sexual harassment allows converging stereotypes and oppressive structures that give rise to these injuries to flourish); Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 *S. CAL. L. REV.* 1467, 1469-71 (1992) (addressing dimensions of race, class, and other intersections in sexual harassment of African American women); Andrea L. Dennis, *Because I Am Black, Because I Am Woman: Remediating the Sexual Harassment Experience of Black Women*, 1996 *ANN. SURV. AM. L.* 555, 559-60 (1996) (exploring how intersectionality is ignored in judicial response to sexual harassment and thereby underprotects legal interests of Black women); Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 *GOLDEN GATE U. L. REV.* 817, 819-21 (1993) (suggesting framework for understanding how race and culture play pivotal role in sexual harassment).

<sup>16</sup> See Tanya Katerí Hernández, *The Intersectionality of Lived Experience and Anti-Discrimination Empirical Research*, in *HANDBOOK OF EMPLOYMENT DISCRIMINATION RESEARCH: RIGHTS AND REALITIES* (Laura Beth Nielsen & Robert L. Nelson eds., 2006) (reviewing social science literature regarding women's sexual harassment reporting patterns and its general lack of racially specific analysis).

correlation. For instance, empirical studies conducted by James Gruber and a study by Richard Sorenson dispute the premise that Women of Color are more prone to file sexual harassment charges than White women who experience the same victimization.<sup>17</sup> In fact, social scientists like Jann Adams and Audrey Murrell, who have discussed the role of race in sexual harassment, have observed that Women of Color may actually have a tendency to underreport instances of sexual harassment.<sup>18</sup> Marla Kohlman's study of sexual harassment reporting in the General Social Surveys of 1994 and 1996 concludes that Women of Color are less likely to report sexual harassment than are White women.<sup>19</sup> This is true, despite empirical studies by Azy Barak, Darlene DeFour, and Audrey Murrell suggesting that Women of Color are disproportionately targeted as sexual harassment victims.<sup>20</sup> In fact, Mary Giselle Mangione-Lambie's study suggests that White women tend to perceive sexual harassment incidents more seriously than Women of Color do.<sup>21</sup> Lawrence Neuman's study suggests that White women classify a broader range of

<sup>17</sup> James E. Gruber & Lars Bjorn, *Blue-Collar Blues: The Sexual Harassment of Women Autoworkers*, 9 WORK & OCCUPATIONS 271, 286-87, 292 (1982); Richard C. Sorenson et al., *Solving the Chronic Problem of Sexual Harassment in the Workplace: An Empirical Study of Factors Affecting Employee Perceptions and Consequences of Sexual Harassment*, 34 CAL. W. L. REV. 457, 470, 475 (1998).

<sup>18</sup> Jann H. Adams, *Sexual Harassment and Black Women: A Historical Perspective*, in SEXUAL HARASSMENT: THEORY, RESEARCH AND TREATMENT 213-24 (W. O'Donohue ed., 1997); Audrey J. Murrell, *Sexual Harassment and Women of Color: Issues, Challenges, and Future Directions*, in SEXUAL HARASSMENT IN THE WORKPLACE: PERSPECTIVES, FRONTIERS, AND RESPONSE STRATEGIES 51 (M.S. Stockdale ed., 1996).

<sup>19</sup> See Marla R.H. Kohlman, *Person or Position?: The Demographics of Sexual Harassment in the Workplace*, 23 EQ. OPPORT. INT'L 143, 157 (2004) [hereinafter Kohlman, *Person or Position?*] (detailing study that showed Black women are less likely to indicate they have been sexually harassed when compared with White women); Marla R.H. Kohlman, *Locating Sexual Harassment Within Intersections of Experience in the U.S. Labor Market* 97 (2000) (unpublished Ph.D. dissertation, University of Maryland College Park Department of Sociology) (on file with author) (examining reports of sexual harassment in nationally representative sample from General Social Surveys of 1994 and 1996, and demonstrating that reports of sexual harassment vary substantially by race and gender).

<sup>20</sup> Azy Barak, *Cross-Cultural Perspectives on Sexual Harassment*, in SEXUAL HARASSMENT: THEORY, RESEARCH AND TREATMENT, *supra* note 18, at 276; Darlene C. DeFour, *The Interface of Racism and Sexism on College Campuses*, in IVORY POWER: SEXUAL HARASSMENT ON CAMPUS 45, 48-49 (M.A. Paludi ed., 1990); Murrell, *supra* note 18.

<sup>21</sup> Mary Giselle Mangione-Lambie, *Sexual Harassment: The Effects of Perceived Gender, Race and Rank on Attitudes and Actions* 104 (1994) (unpublished Ph.D. dissertation, California School of Professional Psychology at San Diego) (on file with author) ("White women tended to perceive incidents as more serious and to recommend harsher actions than non-white women and both white and non-white men. In fact, non-white womens' 'Seriousness' scores and recommended actions were almost equivalent to those of men.").

behaviors as sexual harassment.<sup>22</sup> Some psychologists, like Angela Hargrow, have theorized that, because Women of Color are accustomed to racist and sexist behavior in the workplace, they may be less prone to immediately file sexual harassment complaints.<sup>23</sup> Kathleen Rospenda's study concluded that sexual harassment victims are more likely to use internal coping methods rather than take any action against a harasser from a different racial or ethnic group.<sup>24</sup> This is particularly salient to Women of Color, who are primarily victimized in the workplace by White men, according to the Merit Systems Protection Board study.<sup>25</sup>

In contrast, women are less likely to restrict themselves to internal coping methods after intraracial sexual harassment incidents.<sup>26</sup> The increased action may be explained by the disrespect women may feel when sexually harassed by a member of their own racial group, from whom they expect group-based allegiance and cordiality. For example, in Angela Hargrow's survey of a geographically diverse sample of Black working women, the data showed that Black women see Black male subordinates and supervisors as more harassing than White males with the same job statuses.<sup>27</sup> Consequently, there was no support for the hypothesis that Black women were more likely to report a White harasser than a Black harasser. Jami Obermayer's hierarchical log-linear analysis of a sample of the data collected by the Department of Defense for its 1995 study of sexual harassment in the military suggests a similar

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<sup>22</sup> W. Lawrence Neuman, *Gender, Race, and Age Differences in Student Definitions of Sexual Harassment*, 29 WIS. SOCIOLOGIST 63 (Spring/Summer 1992); Mangione-Lambie, *supra* note 21, at 104.

<sup>23</sup> Angela M. Hargrow, *Speaking to Our Realities: From Speculation to Truth Concerning African American Women's Experiences of Sexual Harassment* 56 (1996) (unpublished Ph.D. dissertation, Ohio State University) (on file with author).

<sup>24</sup> Kathleen M. Rospenda, Judith A. Richman, & Stephanie J. Nawyn, *Doing Power: The Confluence of Gender, Race, and Class in Contrapower Sexual Harassment*, 12 GENDER & SOC. 40, 54 (1998) (citing L.M. Cortina et al., "¿Dios mío... qué hacer?" Hispanic Women's Responses to Sexual Harassment (May 1996) (unpublished paper presented at 1995 Annual Meeting of the Midwestern Psychological Association in Chicago, Illinois) (on file with Professor Lilia M. Cortina, University of Michigan Psychology Dept., lilia@umich.edu); see S. Arzu Wasti & Lilia M. Cortina, *Coping in Context: Sociocultural Determinants of Responses to Sexual Harassment*, 83 J. PERSONALITY & SOC. PSYCH. 394, 402 (2002) (explaining how Hispanic women's coping responses to sexual harassment use less advocacy-seeking than Anglo American women's responses do).

<sup>25</sup> MERIT SYS. PROT. BD., *SEXUAL HARASSMENT IN THE FEDERAL WORKPLACE: IS IT A PROBLEM?* (1981), reprinted in *SEXUAL HARASSMENT IN AMERICA: A DOCUMENTARY HISTORY* 19-22, 21 (Laura W. Stein ed., 1999).

<sup>26</sup> Rospenda et al., *supra* note 24, at 54.

<sup>27</sup> Hargrow, *supra* note 23, at 51-52.



conclusion.<sup>28</sup> The data suggests that when Women of Color are subjected to unwanted crude sexual attention by someone of a different race, they will respond with coping and avoidance strategies, rather than reporting the behavior as they would with harassers of the same race.<sup>29</sup> Obermayer noted that reporting rates increase with harassers of a different race for incidents of sexual coercion.<sup>30</sup> Yet sexual coercion cases are the most infrequent of formally filed sexual harassment cases and accordingly cannot explain the overarching racial disparities of the reported cases.<sup>31</sup> Furthermore, Karen Dugger's study concluded that, while employment empowers White women to challenge dominant gender role attitudes, it does not have the same effect for Women of Color and Black women in particular.<sup>32</sup>

In addition, the argument that the racial disparity primarily results from the lower socioeconomic status of Women of Color is undercut by examining the prevalence of sexual harassment across all occupational levels.<sup>33</sup> Barbara Gutek's early empirical data indicated that women with fewer personal resources tend to respond indirectly rather than by filing formal complaints.<sup>34</sup> Furthermore, Azy Barak's study measuring sexual harassment across occupational groups found that 16.6% of White women indicated they had been sexually harassed, in comparison to 48.6% of Black women.<sup>35</sup> This finding is consistent with the work of noted sociologist James Gruber, who asserted that occupational status does not greatly influence women's responses to sexual harassment.<sup>36</sup> In addition, the victim's educational level does not appear to significantly

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<sup>28</sup> See Jami Leigh Obermayer, *Women of Color and White Women's Resistance to Sexual Harassment* (2001) (unpublished Ph.D. dissertation, American University Sociology Department) (on file with author).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Hernandez, *supra* note 11; *infra* Appendix C.

<sup>32</sup> Karen Dugger, *Social Location and Gender-Role Attitudes: A Comparison of Black and White Women*, 2 GENDER & SOC. 425, 425-48, 439 (1988).

<sup>33</sup> James E. Gruber, *An Epidemiology of Sexual Harassment: Evidence from North America and Europe*, in SEXUAL HARASSMENT: THEORY, RESEARCH, AND TREATMENT, *supra* note 18, at 84, 88 (analyzing factors that influence prevalence of sexual harassment, and concluding that occupational status is not determinative of sexual harassment victimization).

<sup>34</sup> See BARBARA A. GUTEK, *SEX AND THE WORKPLACE* (1985).

<sup>35</sup> Barak, *supra* note 20.

<sup>36</sup> James E. Gruber & Michael D. Smith, *Women's Responses to Sexual Harassment: A Multivariate Analysis*, 17 BASIC & APPLIED SOC. PSYCHOL. 543, 543-62, 556 (1995); see also Kohlman, *Person or Position?*, *supra* note 19, at 153 (concluding from study controlled for race and other demographic factors that occupational status does not influence women's reporting patterns).

impact victim selection, according to Constance Thomasina Bails.<sup>37</sup>

In contrast, Gruber and Smith have stated that the severity of harassment is a stronger predictor of a woman's willingness to report an incident.<sup>38</sup> Unfortunately, their study of severity did not provide a racial analysis. It is thus an open question whether the disproportionate filing of sexual harassment complaints by Women of Color results from the endurance of more severe sexual harassment, which thereby compels formal resolution. Other preliminary studies suggest that Women of Color may be more vulnerable to sexual harassment victimization. In 1994, the Labor Institute issued a report in which it noted that Women of Color were more vulnerable to sexual harassment because of prevailing racial stereotypes.<sup>39</sup> Women of Color who are linguistic minorities and undocumented workers may also be targeted for sexual harassment because of their heightened vulnerability in the workforce.<sup>40</sup> One 1994 survey of female college and university faculty members also indicated that Women of Color were disproportionately targeted for sexual harassment, despite their making up a small percentage of the faculty.<sup>41</sup> The survey tallied the following rates of sexual harassment among the female faculty: African Americans, 16.2%; Whites, 15.4%; Native Americans, 14.6%; Latinas, 14%; and Asian Americans, 13.7%.<sup>42</sup>

Thus, while the existing social science literature does not provide absolute causal explanations for the racially-disproportionate filing statistics, the influence of race in the analysis of sexual harassment clearly warrants further research. Other hypotheses to explore include the premise that harassers may disproportionately target Women of Color due to their more precarious economic position as primary wage earners for their families.<sup>43</sup> This position may increase their reluctance to

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<sup>37</sup> Constance Thomasina Bails, *Females' Reactions to Sexual Harassment in the Workplace and the Impact of Race*, at iv (1994) (unpublished Ph.D. dissertation, Temple University) (on file with author).

<sup>38</sup> Gruber & Smith, *supra* note 36.

<sup>39</sup> SHARON SZYMANSKI & CYDNEY PULLMAN, *SEXUAL HARASSMENT AT WORK: A TRAINING WORKBOOK FOR WORKING PEOPLE* 45 (1994).

<sup>40</sup> See Ontiveros, *supra* note 15, at 818-19, 822-23 (describing women of color as likely targets of sexual harassment because they are least powerful participants in workforce and harasser may view them as more passive and less likely to complain; these concerns are magnified for immigrant women who fear deportation).

<sup>41</sup> JUDITH BERMAN BRANDENBURG, *CONFRONTING SEXUAL HARASSMENT: WHAT SCHOOLS AND COLLEGES CAN DO* 45 (1997) (describing study that surveyed 29,771 university and college faculty at various universities).

<sup>42</sup> See *id.* at 46.

<sup>43</sup> Irene Browne, *Introduction: Latinas and African American Women in the U.S. Labor*

terminate their employment despite the harassment.<sup>44</sup> Women of Color may also be more vulnerable if they form a disproportionate part of the contingent workforce without job protections. Similarly, if Women of Color are disproportionately present in traditionally male job settings, they may be more vulnerable since women in such settings consistently report higher rates of harassment.<sup>45</sup>

The racial disparity in sexual harassment complaint filing rates might also be attributed to racially skewed interactions with complaint handlers. For instance, a woman's interaction with her human resources department, by and large staffed by White women, may vary by race.<sup>46</sup> Specifically, White women's claims may be viewed as more credible and thus more likely to be resolved informally. In contrast, human resources departments may view the claims of Women of Color more suspiciously, thereby heightening the need for Women of Color to seek agency-based and judicial paths to justice.

In addition to exploring the role of the human resources department in the racial disparity of filing rates, future studies could also examine whether White women generally have greater access to White male defenders in the workplace. Such defenders may informally resolve the dispute. That avenue is not as accessible to Women of Color. For instance, in Celia Morris's interviews with sexually harassed women, several of the White women interviewed indicated that the sexual

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*Market*, in *LATINAS AND AFRICAN AMERICAN WOMEN AT WORK: RACE, GENDER AND ECONOMIC INEQUALITY* 1, 24 (Irene Browne ed., 1999) ("an increasing number of Latino and Latina and African American families are raised by single mothers").

<sup>44</sup> See Phoebe Morgan, *Risking Relationships: Understanding the Litigation Choices of Sexually Harassed Women*, 33 *LAW & SOC'Y. REV.* 67, 73-74 (1999) (theorizing in depth about process by which women arrive at decision to litigate their sexual harassment complaints; drawing upon actual words of 31 sexually harassed women to discover how they perceived their risks of litigation and options they considered and then to document how they arrived at their eventual decisions).

<sup>45</sup> See, e.g., Phyllis Kernoff Mansfield et al., *The Job Climate for Women in Traditionally Male Blue-Collar Occupations*, 25 *SEX ROLES* 53, 75-76 (1991) (describing survey of two groups of nontraditional female workers made up of 71 tradeswomen and 151 transit workers, along with traditional female workers employed as secretaries, and concluding that women in traditionally male occupations, like tradeswomen, were most likely to experience sexual harassment).

<sup>46</sup> The racial variation in interactions with human resources representatives could parallel the racial variation that has been observed in many provider-client relationships. See Pat K. Chew et al., *Culture and Race in Provider-Client Relationships*, *J. OF HEALTH & SOC. POL.* 26 (Univ. of Pittsburgh Sch. of Law Working Paper Series, Paper No. 21, 2005), available at <http://law.bepress.com/pittlwps/papers/art21> (detailing all studies that document impaired servicing of clients when providers are White and clients are non-White in myriad professional settings like education, medicine, and law).

harassment they experienced on the job ended when a White male workplace authority figure informally intervened on their behalf.<sup>47</sup> None of the Women of Color interviewed had such a defender in the workplace.<sup>48</sup>

Another theory to explore is whether White women are better able to terminate employment where the harasser is located and seek employment elsewhere. The presumption is that a higher percentage of White women have managerial and professional jobs and higher salaries. Thus, there are fewer barriers to obtaining other employment. A related theory that also surfaces in Celia Morris's collection of interviews is the notion that higher-ranking White women may be less inclined to file formal charges because they stand to lose professional prestige by doing so. At the same time, they may be able to use their power to make the internal complaint procedure more responsive to their concerns. While several White women interviewed indicated that they ultimately decided not to file a complaint due to concerns that doing so would bar their career advancement, none of the Women of Color interviewed by Morris discussed their claims in relation to their professional standings.<sup>49</sup>

In short, a fair number of factors, alone or in some combination, may account for the racial disparity in filing formal complaints. By stating each hypothesis in succession, I do not intend to suggest that only one factor accounts for the racial disparity. Rather, I listed each hypothesis to explain the backdrop of the research design I constructed to further investigate the interaction between race and sexual harassment reporting.

## II. THE CRF SEXUAL HARASSMENT SURVEY RESEARCH PROJECT

In June 2004, I mailed 1000 surveys to a population of women who believed they were sexually harassed.<sup>50</sup> The women were listed as clients of the Women's Rights at Work ("WRW") project of Citizen Action Center of New York.<sup>51</sup> WRW is an organization that conducts free monthly sexual harassment educational workshops in the New York

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<sup>47</sup> CELIA MORRIS, BEARING WITNESS: SEXUAL HARASSMENT AND BEYOND — EVERYWOMAN'S STORY (1994).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See *infra* Appendix A-1. Sexual Harassment Survey Instrument.

<sup>51</sup> See *infra* Appendix A-1. Sexual Harassment Survey Instrument.

area and operates an informational toll-free English and Spanish hotline.<sup>52</sup> WRW's free monthly forums provide an overview of state and federal laws protecting workers from sexual harassment and options for filing agency-based complaints. WRW was an ideal source of research subjects because it is one of the few regional and national nonprofit organizations that principally focuses on the issue of sexual harassment. WRW also provides the additional benefit of servicing many clients before they actually decide whether to officially report their claims. Having access to a client list of women who did and did not report their claims provided me with an opportunity to make race-based and class-based comparisons of what categories of women did and did not file complaints and under what conditions.

Because the group of WRW clients who volunteered to complete the mailed surveys constitutes a "nonrandom sample," rather than a group of research subjects randomly selected from the general population, there may be a question of how well the sample represents the general population.<sup>53</sup> Yet, the majority of sexual harassment studies are convenience samples<sup>54</sup> because they primarily rely upon readily-available college students as research subjects rather than a representative sample of interest.<sup>55</sup> In contrast, the WRW database has the advantage of closely reflecting the diverse general population of working women. Indeed, the resulting sample contains a rich diversity of women of different ages, occupations, income, family status, race, and

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<sup>52</sup> Women's Rights at Work Homepage, [http://www.citizenactionny.org/wrw/wrw\\_index.html](http://www.citizenactionny.org/wrw/wrw_index.html) (last visited Feb. 12, 2005).

<sup>53</sup> JULIAN L. SIMON & PAUL BURSTEIN, BASIC RESEARCH METHODS IN SOCIAL SCIENCE 119 (3d ed. 1985) ("Only a random-sampling process can guarantee you that the sample approaches a fair picture of some characteristic of the universe.").

<sup>54</sup> Despite the fact that the majority of sexual harassment studies use convenience samples, they still provide valuable information. Dr. Gregory M. Herek, Ph.D., *A Brief Introduction to Sampling*, 6, [http://psychology.ucdavis.edu/rainbow/html/fact\\_sample.html](http://psychology.ucdavis.edu/rainbow/html/fact_sample.html) (last modified Mar. 16, 2005). This is because a series of studies with nonprobability samples that all obtain similar results increases the likelihood that those results apply to the general population of interest. *Id.* (noting that convenience samples are useful for detecting relationships among different phenomena).

<sup>55</sup> See Theresa M. Beiner, *Sex, Science and Social Knowledge: The Implications of Social Science Research on Imputing Liability to Employers for Sexual Harassment*, 7 WM. & MARY J. WOMEN & L. 273, 292-93 (2001). In fact, the use of college students as research subjects is the predominant model throughout the social sciences. JULIAN L. SIMON, BASIC RESEARCH METHODS IN SOCIAL SCIENCE: THE ART OF EMPIRICAL INVESTIGATION 315 (2d ed. 1978) ("The most frequent compromise with randomness in the social sciences is the use of college students as the sampled universe when the researcher really would like to study the universe of people or when the entire United States is the 'target universe.'").

ethnicity.<sup>56</sup> Furthermore, unlike the majority of sexual harassment studies,<sup>57</sup> the WRW sample contains sufficient numbers of Women of Color to actually make statistically significant race-based comparisons.<sup>58</sup> Indeed, Women of Color were purposely overrepresented in the survey sample analysis in order to permit statistically useful data about any racial disparities. The oversampling of Women of Color did not bias the results inasmuch as the statistical calculations for White women and Women of Color were kept separate.<sup>59</sup> Nevertheless, without the benefit of an actual random sample from the general population, the survey sample may be statistically biased.<sup>60</sup> For instance, it may be possible that women motivated to contact WRW are also more predisposed to filing formal complaints than women in the general population. But because this study does not seek to measure the actual rate of filing complaints, the potential for such sample bias is less problematic. Even if we presume that such bias actually existed in the sample, it is still useful to observe that racial disparities in sexual harassment reporting occur even among a sample of women more particularly predisposed to filing complaints. In addition, there were no other obvious sources of bias among the women responding to the survey. Yet to be clear, because of the inability to draw a random sample from the general population of working women, the study can only examine the racial disparities in reporting among the survey population alone and not the reporting behaviors of the entire population of working women.

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<sup>56</sup> See *infra* Appendix B. Population Demographics.

<sup>57</sup> See Beiner, *supra* note 55, at 294 ("There is little research discussing the interaction of sexual harassment with race, ethnicity and socio-economic status."). In fact, few social science studies in general adequately incorporate racial diversity into their samples. See Lynn Weber Cannon et al., *Race and Class Bias in Research on Women: A Methodological Note* (Memphis State Univ. Ctr. for Research on Women, Research Paper No. 5, 1987) (discussing how inattention to race and class as critical dimensions in women's lives can produce biased research samples and lead to false generalizations about experience of all women).

<sup>58</sup> See *infra* Appendix C. Correlation Statistics.

<sup>59</sup> In contrast, when data from all subpopulations of interest are analyzed together for purposes of calculating estimates of the general population, oversampling of one subpopulation can result in sample bias. In such cases, the social scientist simply weights the sample to accord with subpopulation ratios in the general population. LESLIE KISH, *SURVEY SAMPLING* 424-25 (1995).

<sup>60</sup> A "biased" sample is technically defined as "one that is not drawn randomly and that therefore does not represent all parts of the universe. The sample is said to be biased in favor of any member of the universe who has more than a fair (or equal) chance of being picked for the sample." SIMON & BURSTEIN, *supra* note 53, at 111.

*A. The Survey Design and Methods*

I surveyed 120 women to determine their reasons for reporting or not reporting particular incidents of sexual harassment. I received one hundred and twenty completed, anonymous surveys after I mailed out 1000 blank surveys to women in WRW's database.<sup>61</sup> The post office returned 200 for bad addresses. This yielded a 15% response rate.<sup>62</sup> Of the 120 completed surveys, 50 were returned by self-identified Women of Color (42 Black, 5 Hispanic, 3 Asian), 59 White women, 4 respondents with no race indicated, and 7 who indicated "Other race." For purposes of the statistical analysis, I organized the respondents into three groups of women: White, Women of Color, and Other.<sup>63</sup> Responses from fifty

<sup>61</sup> See *infra* Appendix A-1. Sexual Harassment Survey Instrument.

<sup>62</sup> I calculated the response rate using the American Association for Public Opinion Research Response Rate 1 formula. See THE AM. ASSOC. FOR PUBLIC OPINION RES., STANDARD DEFINITIONS: FINAL DISPOSITIONS OF CASE CODES AND OUTCOME RATES FOR SURVEYS 28 (3d ed. 2004), available at [http://www.aapor.org/pdfs/standarddefs\\_ver3.pdf](http://www.aapor.org/pdfs/standarddefs_ver3.pdf). It should be noted that the AAPOR calculation of 15% is somewhat conservative because the 680 nonresponses counted as "eligible" in the formula may very well include a fair number of "not eligible" dispositions. This is because the WRW database is not regularly updated with revised client addresses and includes many clients who have only contacted the office once. Thus, in the highly mobile urban context that WRW services, it is quite likely that a fair number of surveys were left at addresses where clients no longer lived. *Id.* at 26. The traditional social science view is that the lower the response rate, the greater the sample bias. See FLOYD J. FOWLER, JR., SURVEY RESEARCH METHODS 46 (2002). While it is not uncommon for mail-in surveys to yield a return rate of anywhere between 5% and 95%, the concern is that the sample respondents may not adequately reflect the general population being researched. *Id.* at 41-42. This is because "people who have a particular interest in the subject matter or the research itself are more likely to return mail questionnaires than those who are less interested." *Id.* at 42. But because the aim of the research inquiry herein was to examine the reporting preferences of women who self-identified as sexual harassment victims, the traditional concern with sample bias was less salient. In addition, with a topic as sensitive as sexual harassment, studies of this type commonly proceed with low response rates. Richard D. Arvey & Marcie A. Cavanaugh, *Using Surveys to Assess the Prevalence of Sexual Harassment: Some Methodological Problems*, 51 J. SOC. ISSUES 39, 46 (1995). In fact, recent analyses of mail-in surveys generally have indicated that the typical response rate is actually 13-14%. Nancy Beth Jackson, *Opinions To Spare? Click Here*, N.Y. TIMES, July 3, 2003, at G1 (referring to observations of Charles Daviet, director of survey research for Consumers Union and veteran of 30 years of surveys). Furthermore, the traditional mechanisms for increasing response rates, such as providing monetary incentives and reminder letters, were not available in this research project, in order to maintain the anonymity of the respondents. The survey was sent directly from the nonprofit agency to its private list of clients, and no tracking devices were used to monitor which clients returned the surveys. Because of the sensitive nature of the topic, I thought it best to use this method to ensure the anonymity of the research subjects and encourage their participation.

<sup>63</sup> The relatively small numbers of Asian (3) and Latina (10) women who responded to the survey did not permit me to generate any statistically meaningful data about Asian and

Women of Color and sixty-three White women were analyzed. I coded four responses, from women who did not describe themselves as either White or Women of Color, as White women.<sup>64</sup> In addition, I created a third category for the analysis, to aggregate respondents whose racial identification responses were ambiguous. This included White women who described themselves as "Other." I included seven women in this outlier category. Respondents self-identified their race and/or ethnicity by checking all that applied from a list of ethnic categories (Hispanic/Latino, Arab, Jewish, East Indian, African, Caribbean, European, Other) and a list of racial categories (Caucasian/White, African American/Black, Asian, Native American, Multiracial, Other).

First, I examined the data for any racial disparities in the filing of formal harassment complaints. Thereafter, I looked for racial disparities in the myriad of factors thought to influence sexual harassment reporting. For the purpose of this inquiry into racial disparity, I treated the factors that influence sexual harassment reporting as dependent variables. I alternatively treated race, income, job prestige, and educational level as independent variables. Then I examined them for interactive effects with one another and examined their correlation with each dependent variable.

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Latina women specifically. While aggregating all non-White respondents together into a Women of Color category risks overgeneralizing and superimposing the particularities of Black women upon other Women of Color, it should be noted that the racial disparity in sexual harassment reporting is consistently evident for all groups of Women of Color in the survey population and in the larger examination of Equal Employment Opportunities Commission ("EEOC") charge statistics published in 2001. Accordingly, there is support for using the Women of Color category for the analysis rather than restricting the discussion to differences between White and Black women. The use of the Women of Color category in the study is thus meant to be a scholarly "strategic essentialist" use of the category to highlight the important commonality of distinction vis-à-vis White women. It is not one that disregards the material and contextual differences among ethnic groups. "Strategic essentialism" involves the choice a group can consciously make to refer to itself by a set of characteristics that are oversimplified and static and that gloss over the group's own internal diversity, but, in turn, serve to advance the group's ability to mobilize its members for some political purpose. See Gayatri Chakravorty Spivak, *Subaltern Studies: Deconstructing Historiography*, in *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* 197, 205 (1987) (describing strategic essentialism as "a strategic use of positivist essentialism in a scrupulously visible political interest").

<sup>64</sup> I decided to code four respondents who did not provide any racial or ethnic identity as White. I based this decision on the documented tendency of Whites to view their Whiteness as invisible and not a race at all. See, e.g., Bonnie Kae Grover, *Growing Up White in America?*, in *CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 34 (Richard Delgado & Jean Stefancic eds., 1997) ("White is transparent. That's the point of being the dominant race. Sure, the Whiteness is there, but you never think of it. If you're White, you never *have* to think of it.").



The survey tested 142 dependent variables.<sup>65</sup> These variables included survey questions hypothesized to relate to *not* formally reporting a sexual harassment incident and to questions hypothesized to be associated *with* formal incident reporting. Dependent variables relating to unreported incidents included, *inter alia*, the personal reasons a woman chose not to report, what the woman did instead, and the nature of the sexual harassment. Additionally, dependent variables relating to nonreporting included the woman's work relationship with the harasser and the harasser's gender, age, race, and ethnicity. Similarly, dependent variables relating to formally reported incidents included the nature of the sexual harassment, as well as the work relationship and the harasser's gender, age, race, and ethnicity. Moreover, dependent variables addressed the work relationship, gender, race, and ethnicity of the individual(s) to whom a woman chose to formally report the incident. I also asked women in this sample if they mentioned sexual harassment to a supervisor, a human resource representative, or a lawyer, regardless of whether the women ultimately filed formal complaints.

The survey also tested the effect of race and income on these variables. Each woman in this population was asked to reveal the amount of yearly income she personally contributed to her household and her total household income. The survey included seven income categories for both personal and household income. The survey asked women to describe their income as being under \$15,000 per year, between \$15,000 and \$24,999 per year, between \$25,000 and \$34,999 per year, between \$35,000 and \$49,000 per year, between \$50,000 and \$74,000 per year, between \$75,000 and \$125,000 per year, and over \$125,000 per year. Because of the inadequate number of responses for some of these categories, I combined the categories into two groups. The women making under \$49,000 per year formed the "lower" income class. The women making at least \$50,000 per year formed the "higher" income class. These groupings described both the independent variable of personal income and the independent variable of household income.

This study also assessed the effect of education. I divided women into two groups: those with a college degree and those without a college

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<sup>65</sup> See Tanya Katerí Hernández Faculty Page, Sexual Harassment Survey Data Set and Codes, <http://www.andromeda.rutgers.edu/~thernand> (click link for "Sexual Harassment Research"; then select "Sexual Harassment Survey Code Book") (last visited Nov. 9, 2005) (posting data set used for statistical analysis and explanation of complete coding rules for variables in data sets for purposes of future replication studies).

degree. Furthermore, the survey asked women for their job titles, listed in Appendix B, Table 3. I converted these answers into two classes: high prestige and low prestige.<sup>66</sup>

The survey asked all the women twenty-eight questions to determine why they did not file a formal harassment complaint if they had not done so. The survey defined "filing a complaint" as:

verbally or in writing reporting the harassment to any of the following entities: a supervisor, a human resources/personnel department of an employer, an employer-designated harassment officer, an employer-designated arbitrator, an employer-designated

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<sup>66</sup> I classified job titles as "high prestige" or "low prestige" using the Occupational Prestige Ratings as calculated by Hauser and Warren. See Robert M. Hauser & John Robert Warren, *Socioeconomic Indexes for Occupations: A Review, Update, and Critique*, in 27 SOCIOLOGICAL METHODOLOGY 177-298 (Adrian E. Raftery ed., 1997), available at <http://links.jstor.org> (search for "ti: 'Socioeconomic Indexes for Occupations'"; then follow hyperlink to article). As an example of how the Hauser & Warren index ranks several well-known occupations, according to the index, lawyers score 80.83, law teachers score 68.91, secretaries score 33.43, child care workers in private households score 22.97, and private household cleaners score 16.41. I chose the Hauser & Warren index because it attempts to correct for potentially inadequate universal composites of occupational prestige. *Id.* at 177. Most sociological research uses variations and updates of two major occupational prestige composites, first developed in 1961 and 1963. See Otis Dudley Duncan, *A Socioeconomic Index for All Occupations*, in OCCUPATIONS AND SOCIAL STATUS 109 (Albert J. Reiss, Jr. ed., 1961) (discussing NORC occupational prestige scores); John Robert Warren et al., *Choosing a Measure of Occupational Standing: How Useful Are Composite Measures in Analyses of Gender Inequality in Occupational Attainment?*, 27 SOC. METHODS & RES. 3, 6-9 (1998) (discussing methodology developed by Charles B. Nam to measure occupational socioeconomic status). These composites have been critiqued as being too heterogeneous to be useful in studies of occupational stratification generally and especially when gender is the object of study. See J.E. Mutchler & D.L. Potson, *Do Females Necessarily Have the Same Occupation Status Scores as Males?*, 12 SOC. SCI. RES. 353, 354 (1983) (explaining that women are not adequately served by traditional index formulations because they do not reflect how women tend to be concentrated in smaller number of occupations than men and are disproportionately represented in low-paying positions with fewer opportunities for advancement); Brian Powell & Jerry Jacobs, *Gender Differences in the Evaluation of Prestige*, 25 SOC. Q. 173, 178-80 (1984) (concluding that sex composition of occupations has significant effect on prestige of sex-atypical jobholders even after accounting for effects of perceived income and education); Warren et al., *supra*, at 3 (observing that women often have higher levels of education than men in same occupation, while men usually have higher earnings than women in same occupation, so that when traditional index is used, inaccurate assessments are made). The traditional index formats are also viewed as often inadequate for assessments of non-White workers. See N. Krieger et al., *Measuring Social Class in U.S. Public Health Research: Concepts, Methodologies, and Guidelines*, 18 ANN. REV. PUB. HEALTH 341, 351 (1997) (describing how non-White workers are more likely than Whites in same occupation to be exposed to carcinogens or other damaging conditions at work and are paid less for same work, even after work experience and educational attainment are taken into account; none of this is adequately reflected in traditional index composites of occupational prestige rankings).

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mediator, a union representative, the EEOC (Equal Employment Opportunities Commission), an EEO (Equal Employment Opportunity) office, a state or city human rights commission/division, the Worker's Compensation Board, or an attorney who filed a complaint on your behalf.

The survey asked respondents if family members discouraged them from reporting or if they feared ridicule. The survey also asked women who did not file a formal complaint what they did in lieu of filing. I analyzed nine dependent variables in this regard. These variables included, *inter alia*, whether or not the women simply ignored the harassment or transferred to another position.

The study also included other variables. Twenty-two dependent variables related to the nature of the sexual harassment. Numerous variables related to the woman's work relationship with the harasser and the harasser's gender, age, race, and ethnicity. Overall, race, income, education, and job status were tested as effects on ninety-two variables relating to unreported complaints.

The survey asked women who filed complaints fourteen questions about to whom they chose to report the incident. Specifically, the survey asked whether they reported the incident to supervisors, human resources representatives, individuals from a government agency, or some other individuals whom they thought would be helpful. It asked about the gender, race, and ethnicity of these individuals. It also asked whether the woman's company had a procedure in place for filing sexual harassment complaints. Moreover, the survey questioned whether the women left their workplaces due to the harassment.

The study assessed numerous variables relating to the relationship of the harasser to the woman and the harasser's age, gender, race, and ethnicity. Furthermore, I analyzed variables relating to the nature of the harassment. For example, the study asked questions concerning both physical and verbal abuse. Overall, sixty-four dependent variables related to the formal reporting of a sexual harassment incident. The study tested the effect of race, income, education, and job status on these variables.

I used Multinomial Logistic Regression to analyze the effect of race, income, education, and job status on the variables.<sup>67</sup> Multinomial Logistic Regression is useful to classify variables based on one or more predictor variable(s). Regression analysis in general simply seeks to

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<sup>67</sup> For this analysis, I used Multinomial Logistic Regression via the SPSS 12.0 program.

identify whether various issues are correlated. Identifying a correlation does not mean that one factor causes another. It simply means that a relationship exists between the two factors. Regression analysis identifies correlations from very complicated data sets by alternatively holding constant different sets of variables to examine how two selected variables co-vary.<sup>68</sup>

Using Multinomial Logistic Regression, I independently tested race, income, education, and job status on each dependent variable. I coded any unanswered questions in the survey as missing. Using model fitting statistics ensured that the data was appropriate for multinomial logistic regression. Model fitting criteria, including -2 Log Likelihood and Chi Square, were used for this purpose. I considered results to be significant when the probability was  $\bullet 0.05$ , indicating that the effect of race or income for a particular variable could only occur by chance no more than five out of 100 times.

#### B. General Trends in the Study Results

As a threshold matter, the racial disparity present in the reporting patterns was the very first indicator suggesting that race was relevant to the reporting decisions of sexually harassed women in the study. To be specific, 91.8% of Women of Color filed complaints and 8.2% did not. In contrast, 77% of White women filed complaints and 23% did not. Thus, despite the fact that White women outnumbered the Women of Color in my sample, just as they outnumber Women of Color in the labor market generally, they had lower rates of reporting.<sup>69</sup> In this respect, the survey further supported the racial disparity examined in my earlier analysis of complaint statistics from 1964 to 2000.<sup>70</sup> The racial disparity was not solely a binary contrast between the Black women and the White women in the study, as the following breakdown illustrates: 100% of Asian women reported (3 women total); 90.3% of Black women reported (28 women) versus 9.7% who did not report (3 women); 90.0% of Hispanic/Latina women (10 women) reported versus 9.1% who did not report (1 woman); 100% of multiracial women reported (1 woman); and 100% of "Other" reported (4 women).

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<sup>68</sup> For a straightforward and accessible explanation of regression analysis for a general readership, see STEVEN D. LEVITT & STEPHEN J. DUBNER, *FREAKONOMICS: A ROGUE ECONOMIST EXPLORES THE HIDDEN SIDE OF EVERYTHING* 161-63 (2005).

<sup>69</sup> Hernández, *supra* note 11, at 217 app. I (listing U.S. Bureau of Labor Statistics percentages for women in workforce according to race from 1992-1999).

<sup>70</sup> *Id.*

The study also revealed that, regardless of whether a formal complaint was filed, Women of Color were more likely to mention an incident of sexual harassment to a lawyer than were White woman ( $p = 0.02$ ). Race also plays a role in the relationship between the woman and her harasser. Women of Color who did not report an incident of sexual harassment were more likely to describe their harasser as a nonsupervisor than were White women ( $p \leq 0.02$ ).

The data also revealed racial differences in socioeconomic status. Women of Color were more likely to be low-income ( $p < 0.027$ ) for the household income category. Women of Color had household income levels of less than \$15,000 to \$49,000, 65.8% of the time versus 40% of the time for Whites. Women of Color had household incomes of \$50,000 or over 34.2% of the time versus 60% of the time for Whites. Personal income levels, alternatively, did not reach significance.<sup>71</sup>

The racial differences in socioeconomic status, in turn, correlated with group-based differences in reporting patterns. Specifically, the results of the Multinomial Logistic Regression analysis revealed that women with lower personal income failed to report incidents of sexual harassment because they did not think they would be believed ( $p < 0.03$ ). An interactive effect between race and income revealed that low-income Women of Color more commonly thought they would not be believed, compared to wealthier Women of Color or White women ( $p < 0.005$ ). These same women believed that they would lose their jobs and would be unable to find a similar job if they reported the harassment ( $p < 0.05$ ). This analysis also revealed that, after controlling for other variables, Women of Color with lower personal income and White women with higher personal income failed to report incidents of sexual harassment because they all believed that such behavior was common in the workplace, compared to high-income earning Women of Color and low-income earning White women ( $p < 0.005$ ). In short, a number of general trends in the data displayed racial variation in factors related to sexual harassment reporting. Yet, as the following section discusses, racial disparity was most salient in one particular area.

### III. KEY SURVEY FINDING FOR THE DEVELOPMENT OF SEXUAL HARASSMENT JURISPRUDENCE: THE ROLE OF THE INTERNAL

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<sup>71</sup> But, there was a trend showing that Women of Color had less personal income than Whites did. Women of Color made \$15,000 to \$49,999 78.6% of the time versus 60.5% of the time for Whites, and only 21% of Women of Color versus 39.5% of White women made \$50,000 to over \$125,000.

## COMPLAINTS PROCESS

*A. Survey Data on Racial Disparity in Reporting to Supervisors and Human Resources*

Among all of the racial disparities displayed in the data, the most notable was the difference in to whom Women of Color and White Women reported their complaints. As the data in Appendix C of this Article illustrates, the position, gender, and race of the individual to whom a woman reported harassment, and the woman's own race, significantly affected whether a woman reported harassment.<sup>72</sup> Women of Color were more than ten times less likely than White women to report an incident of sexual harassment to a supervisor.<sup>73</sup> Furthermore, only 48% of Women of Color reported to a supervisor of color, while 90% of White women reported to a supervisor of their own race ( $p \leq 0.006$  for race). Although it is not statistically significant, it is interesting to note that White women reported to a female supervisor more frequently than did Women of Color (35.9% versus 29.7%).

Women of Color were also less likely than White women to report a sexual harassment incident to a human resources representative. White women were five times more likely to report an incident to a human resources representative than were Women of Color.<sup>74</sup> Women of Color also were significantly less likely to work with a female human resources representative than a male representative ( $p = 0.005$ ). Women of Color reported to a female human resources representative only 41.9% of the time, compared to White women, who reported to a female human resources representative 79.3 % of the time. Additionally, although not statistically significant, this analysis revealed that Women of Color worked with a "human resources representative of color" only 46% of the time, whereas White women worked with a White human resources representative 62% of the time.

This racial disparity in reporting to human resources personnel takes on greater import when one also considers that White women were

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<sup>72</sup> All of the statistically significant quantitative data discussed in this section is presented in tabular form in *infra* Appendix C. Correlation Statistics, Table 1. The Effect of Race on Dependent Variables.

<sup>73</sup> Race is significant at the level where  $p = 0.04$  and  $(\exp)B$  is  $1.6 \times 10^8$  and  $3.2 \times 10^7$  for Women of Color and White women, respectively.

<sup>74</sup> Race is significant at the level where  $p = 0.006$  and  $(\exp)B$  is 9.3 and 45.0 for Women of Color and White women, respectively.

significantly more likely to answer “not applicable” to the survey question about whether they reported an incident to a human resources employee.<sup>75</sup> In effect, the White women in the sample actually had a statistically greater rate of lacking access to a human resources department. Consequently, the lower rates of reporting to human resources by Women of Color in the sample cannot be explained away as a manifestation of being located in work places without human resources departments.

Yet, the White women in the study were significantly more willing to report to a supervisor and human resources representative. In both contexts, White women in the study were more likely to interact with an individual of their same race than were Women of Color. Data from the U.S. Bureau of Labor Statistics suggests that such a pattern is not unique to the respondents surveyed. In 2004, 80.5% of human resource managers were White and 56.6% were women.<sup>76</sup> Human resource assistants for that same year were 66.2% White and 80.6% female.<sup>77</sup> Managers in all occupations were 79.9% White and 50.3% female.<sup>78</sup>

In short, the data suggests that race may influence a woman’s decision about to whom she reports her experiences of sexual harassment. It further suggests that sexual harassment is far from being a race-neutral subject. If the data from the study is at all indicative of general patterns in society, it suggests that the disproportionate ability of White women to report their sexual harassment claims to supervisors and human resources personnel of their own race and often of their same gender may significantly enhance their comfort and ability to report their claims early.<sup>79</sup> In contrast, Women of Color do not have the same access to human resource personnel of their same race. Instead, Women of Color disproportionately turn to the Equal Employment Opportunities Commission (“EEOC”) litigation context immediately after the harassment. Perhaps the predominance of White women in human resources departments influences the inclination of White women to report to them and the disinclination of Women of Color to not report to

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<sup>75</sup> This is correlated at the significance level of  $p < 0.006$  for 24% of White women versus 8% of Women of Color.

<sup>76</sup> U.S. BUREAU OF LABOR STATS., 2004 EMPLOYED PERSONS BY DETAILED OCCUPATION, SEX, RACE, AND HISPANIC OR LATINO ETHNICITY 210.

<sup>77</sup> *Id.* at 213.

<sup>78</sup> *Id.* at 210.

<sup>79</sup> *Cf.* Chew, *supra* note 46, at 26 (detailing many studies documenting impaired servicing of clients when providers are White and clients are non-White in myriad professional settings like education, medicine, and law).

them. To be sure, this context merits closer study.

*B. White Women and the Internal Complaints Process*

Ironically, the initial comfort White women may have in being able to report their sexual harassment incidents to White, female supervisors and human resources representatives may result in the claim being prematurely dissolved.<sup>80</sup> The sociological literature about the handling of internal discrimination complaints indicates that the internal complaints process is a black box.<sup>81</sup> Complaints enter the process and are mysteriously transformed into something else entirely. Sociologist Lauren Edelman's work on the "managerialization" of discrimination law is most informative in this respect.<sup>82</sup> In Edelman's study of interviews with internal complaint handlers at large employers (employing between 1000 and 5000 employees), she discovered that complaint handlers tend to subsume legal rights under managerial interests.<sup>83</sup> Human resources personnel and other internal complaint handlers were found to construct civil rights law as a diffuse standard of fairness, consistent with general norms of good management. As a result, although internal complaint handlers seek to resolve complaints to restore smooth employment relations, they tend to recast discrimination claims as typical managerial problems over personality conflicts.<sup>84</sup> Thus, they undermine the explicit enforcement of legal rights

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<sup>80</sup> David Lewin & Richard B. Peterson, *Behavioral Outcomes of Grievance Activity*, 38 INDUS. REL. 554 (1999) (documenting negative outcomes for employees who use grievance procedures).

<sup>81</sup> A "black box" is broadly defined as "anything that has mysterious or unknown internal functions or mechanisms," in addition to referring to "a usually complicated electronic device that functions and is packaged as a unit and whose internal mechanism is usually hidden from or mysterious to the user" and "a crashworthy device in aircraft for recording cockpit conversations and flight data." MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=black+box&x=5&y=7> (last visited Jan. 21, 2006).

<sup>82</sup> Lauren Edelman refers to the "managerialization of law" as "a process by which legal ideas are refigured by managerial ways of thinking as they flow across the boundaries of legal fields and into managerial and organizational fields." Lauren B. Edelman et al., *Diversity Rhetoric and the Managerialization of Law*, 106 AM. J. SOC. 1589, 1589 (describing ways in which managerialization of conception of diversity adds variety of nonlegal dimensions to diversity, such as personality traits to legally protected categories of sex and race, and thereby disassociates diversity from civil rights law).

<sup>83</sup> Lauren B. Edelman et al., *Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace*, 27 LAW & SOC'Y REV. 497, 515-19 (1993).

<sup>84</sup> *Id.* at 515.



by deemphasizing workplace discrimination.<sup>85</sup> “The legal right to a nondiscriminatory workplace in effect becomes a ‘right’ to complaint resolution.”<sup>86</sup>

In a more recent study of managerial responses to sexual harassment claims specifically, sociologist Anna-Maria Marshall found that employers engage in practices that discourage women from complaining.<sup>87</sup> Marshall surveyed 350 and interviewed twenty-five female staff members in administrative and clerical positions at a large Midwestern university. Her study revealed that supervisors often sided with the harasser in the grievance process rather than acting as a neutral arbiter.<sup>88</sup> In addition, supervisors sometimes inserted manufactured and nonexistent requirements into the complaint process to hinder the pursuit of claims.<sup>89</sup> Alternatively, they narrowly read harassment policies to avoid finding actual harassment.<sup>90</sup> The aforementioned reasons may explain why my follow-up survey to WRW research participants<sup>91</sup> regarding internal complaint procedures one year after the initial survey revealed that all but one of the White women who reported their claims internally felt dissatisfied with how the complaints were handled. Of the forty-one White women who returned the follow-up survey, 85% (N=35) reported their sexual harassment complaints to a human resources representative. Of these, 66% (N=23) indicated that the

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<sup>85</sup> See *id.* at 519 (“[T]he redefinition of legal issues in organizational terms tends to draw attention away both from violations of law and from the class basis of discrimination. Recasting legal issues in organizational terms deemphasizes and depoliticizes workplace discrimination.”).

<sup>86</sup> *Id.* at 529.

<sup>87</sup> See Anna-Maria Marshall, *Idle Rights: Employees’ Rights Consciousness and the Construction of Sexual Harassment Policies*, 39 LAW & SOC’Y REV. 83, 100 (2005).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See *infra* Appendix A-2. Sexual Harassment of Women & Reporting Preferences Survey for a follow-up survey mailed out June 2005 to 800 female clients of WRW sexual harassment outreach organization (with omission of additional 200 WRW client contacts whose initial surveys had been returned by post office for bad addresses back in June 2004). Of 800 mailed surveys, 37 were returned by the post office for bad addresses and 94 were completed and anonymously returned, yielding a 12% response rate to the survey. Forty-one were White women, 28 were Black women, 15 were Latinas, 5 were Asian women, 3 were multiracial women, and 2 were women who did not racially classify themselves. See also Tanya Kateri Hernández Faculty Page, Sexual Harassment of Women & Reporting Preferences Survey Data Set, <http://www.andromeda.rutgers.edu/~thernand> (click link for “Sexual Harassment Research”; then select “Sexual Harassment Survey Data Set,” using SPSS statistical software to read data) (last visited Nov. 9, 2005) (posting of data set for purposes of replication studies).

representative interaction discouraged them from filing a complaint with a government agency. In fact, only 61% (N=25) of all the White women surveyed filed a complaint with a government agency.

As with the initial survey, the follow-up survey results also demonstrated a racial disparity in sexual harassment reporting preferences. While 85% (N=35) of the White women surveyed reported their claims internally, only 61% (N=17) of Black women surveyed reported their claims internally. Unfortunately, because comparatively few Asian and Latina women responded to the follow-up survey, it was not possible to draw any statistically useful comparisons across Women of Color. But regardless of racial classification, the data evidenced a strong correlation between the decision to file a complaint with a government agency and the encouraging or discouraging interaction with internal complaint representatives like supervisors and human resources personnel.<sup>92</sup>

In short, White women's greater willingness to use internal complaint structures compared to Women of Color's willingness may allow management to disproportionately dissolve White women's claims before they even consider filing a charge with the EEOC. This, in turn, may also help explain the consistent racial disparity in the filing of claims with the EEOC. If White working women customarily engage management and human resources with their grievances, they will be more vulnerable to management pressure to recharacterize their experiences as non-civil rights harms. They will also be more vulnerable to being discouraged from filing a formal external complaint because of the disregard and humiliation they experience from the internal complaint process.<sup>93</sup> In other words, the disproportionate presence of Women of Color among the women who do file EEOC charges of sexual harassment may not only be a result of their "civil rights orientations" from being racialized and sexualized in the world.<sup>94</sup> Instead, it may also

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<sup>92</sup> See *infra* Appendix A-2. Sexual Harassment of Women & Reporting Preference Survey, Table 1. Correlation Matrix for Follow-Up Survey Questions (showing statistically significant correlations between survey questions 7, 8, and 9, which questioned whether woman filed complaint with government agency (question 7), whether interaction with supervisor encouraged or discouraged filing of complaint with government agency (question 8), and whether interaction with human resources representative encouraged or discouraged filing of complaint with government agency (question 9)).

<sup>93</sup> See John Douglas Winer, *Use of Employee Handbooks/Personnel Manuals When Litigating Sexual Harassment, Discrimination and Contract Claims*, in 650 PRACTICING L. INST. LITIG. AND ADMIN. PRAC. COURSE HANDBOOK SERIES 175, 181 (Mar.-Apr. 2001) (observing that in many internal complaint cases "the complaints are downplayed or ignored").

<sup>94</sup> Anna-Maria Marshall, *Closing the Gaps: Plaintiffs in Pivotal Sexual Harassment Cases*,

reflect the convergence of their disinclination to report internally with the pattern of White women being forestalled by human resources and management at the internal complaint stage.<sup>95</sup>

Unfortunately, the existing sociological literature cannot definitively conclude that White women's internal complaints are disproportionately redirected away from formal external complaint structures. Edelman's work on the managerialization of discrimination law and Marshall's study of managerial responses to sexual harassment claims are both highly informative. However, neither can be used to draw overarching conclusions about what generally happens to internal complaints of sexual harassment. Edelman's work focuses on managerial rhetoric and attitudes rather than on an empirical collection of what managers actually do with internal complaints. Marshall's study is similarly limited because the survey sample is made up of only university women in administrative and clerical jobs. Thus, it is not representative of the general population of working women. Similarly, the follow-up survey I distributed to WRW research participants in this Article was not drawn from a random sample of the general population. Hence, its findings are also merely suggestive. It is possible that the racial disparity in the use of internal complaint structures could be better explained by another factor. For instance, the disparity could instead indicate that such procedures are more effective for White women. Given the disproportionate presence of White women in the field of human resources, it is possible that their racial affinity with White female employees enables effective resolution of internal complaints.<sup>96</sup> Alternatively, White women may disproportionately work in positions that lend them greater credibility. Thus, they may experience greater ease in having the internal complaint process adequately respond to their complaints and thereby become less inclined to file formal legal charges of sexual harassment.

But despite the uncertainty of what actually does happen to the claims of White women who use the internal complaints black box, the survey data does concretely demonstrate that the White women surveyed report their sexual harassment incidents more frequently than the EEOC data

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23 LAW & SOC. INQUIRY 761, 776 n.24 (1998) (theorizing that Black women's "heightened consciousness around issues of race may have also made the law a more salient resource" in challenging their experiences of sexual harassment).

<sup>95</sup> *Id.*

<sup>96</sup> See *supra* notes 76-79 and accompanying text (detailing racial demography of human resources occupation).

would suggest.<sup>97</sup> They simply use internal grievance structures instead.<sup>98</sup> In contrast, Women of Color may be disinclined to use internal grievance structures that they may view as inherently biased.<sup>99</sup>

### C. *Women of Color and the Internal Complaints Process*

The reasons why Women of Color bypass the internal complaints process may be varied. In the follow-up survey I conducted, I provided two open-ended questions to query the women about their reasons for not mentioning the harassment to a supervisor or human resources representative.<sup>100</sup> Because very few respondents inserted written responses to those questions, I was unable to conduct a statistical analysis of the data. Of the Women of Color who did respond to the questions, their listed reasons all shared a common theme of distrusting internal complaints procedures. The reasons for not using the internal complaints process included: (1) fear of being blacklisted; (2) concern

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<sup>97</sup> The government tabulation of EEOC charge statistics represents the total number of charges filed under Title VII of the Civil Rights Act of 1964. It includes not only charges filed directly with the EEOC, but also those filed with state and local Fair Employment Practices agencies around the country that have a work sharing agreement with the EEOC. See EEOC, *Sexual Harassment Charges EEOC & FEPAs Combined: FY 1992–FY 2004*, <http://www.eeoc.gov/stats/harass.html> (last modified Jan. 27, 2005).

<sup>98</sup> At the same time, it should be noted that the White women in the survey population still reflect a pattern of underreporting sexual harassment in comparison to their presence in the female labor market. This occurs in the same ways that White women in the general population underreport. Specifically, the survey's definition of "filing a complaint" included the internal complaint grievance process that the White respondents disproportionately favored. As a result, it is interesting to note that the White women were still statistically underrepresented as sexual harassment complaint filers in comparison to Women of Color. This then suggests that the racial disparity in filing complaints is not completely explained by the racial divergence in the use of internal complaint procedures. For instance, what still remains to be explored is whether Women of Color are disproportionately targeted for sexual harassment or more disproportionately exposed to severer forms of sexual harassment. If so, they may be more frequently inclined to file formal complaints. See Hernández, *supra* note 11, at 185-94 (discussing racial disparity in filing of sexual harassment claims and ways that race may influence statistical disparity).

<sup>99</sup> Cf. Marshall, *supra* note 87, at 102 ("supervisors designated as complaint handlers can appear to be biased before they ever hear a complaint, thus compromising their ability to conduct an investigation or to solve problems . . . [because] the grievance procedure's capacity for protecting employee rights nevertheless depends on the vagaries of close organizational or personal ties between those employees and the complaint handlers").

<sup>100</sup> See *infra* Appendix A-2. Sexual Harassment of Women & Reporting Preferences Survey (showing that questions 3 and 5 were open-ended questions asking for description of reasons why respondent chose not to mention harassment to supervisor or human resources representative).

that a male-dominated workplace would prevent the complaint from being taken seriously; (3) concern that, because the harasser was the supervisor of a small workplace, the complaint would not be taken seriously; (4) the supervisors were just as harassing as the harasser; (5) fear of being fired; and (6) fear of a breach of confidentiality.

Suspicion of the internal complaint process was also palpable in a follow-up in-depth interview with one of my CRF sexual harassment study respondents. This individual case study is elucidating. To preserve her anonymity, I shall refer to the respondent by her self-chosen pseudonym, "Maria." Maria is a 24-year-old Latina with a college education, currently employed by a mid-sized financial institution with eight branches in the northeastern United States. She began her employment with the company three years ago as an Assistant Branch Manager. She was immediately exposed to sexual harassment by a male superior from another department. This is how Maria describes the harassment:

The Vice President of the I.T. department, Mr. X, would make little moaning noises whenever I walked in the room; at first, I ignored him. However, his remarks and actions grew more offensive and obvious when I began dating my boyfriend, who worked in X's department. X would make inappropriate jokes and would make gestures as if he was cupping my breasts when I walked down the hall. I later applied for a managerial position that reported directly to X (I did not want to work directly for him, but it was the only open position, and I needed the pay increase to take care of two disabled parents). X pulled me into his office and indicated that the job would require overnight trips with him to see ATM installation sights. X then said that we may be required to share a room or even a bed. I responded that I was offended, and if he tried to touch me, I would not be held accountable for my actions. Needless to say, I was not given the position. There was not a day that went by that X did not do or say something to me that was offensive. Two instances stick out in my mind. One day while discussing cell phones, he decided to show me and a colleague the camera function on his phone by taking a photograph of my breasts; when we yelled at him and told him to delete the picture, he laughed and left (and showed the cell photo to other employees). Later around Halloween, the branch staff was wearing costumes (I had cat ears on my head), X was waiting for me to be alone in the branch and walked up to me, stroked the tip of the cat ears and said "I just want to be able to tell people that I have touched your tips" and then

walked out. I felt like I was standing naked in the branch.

Yet, the company had a written sexual harassment policy and internal grievance procedure for investigating claims. Despite the unrelenting sexual harassment that Maria experienced over the course of three years, she did not report it to the human resources department. When asked why she chose not to report the harassment to human resources, Maria responded:

The HR department seemed very friendly with the VP that I was having problems with; the company is small enough and the atmosphere is so informal that it did not seem like any confidentiality would be maintained. The HR rep was witnessing the abusive environment first hand and did nothing about it. I felt that she was more concerned with protecting the company than helping employees. Since the HR function is not outsourced, I knew that she had a stake in the outcome of the claim, and frankly I knew that it would be swept under the rug because many women had complained before and nothing was done. Because [sic] there is no representation for minorities in my company; we either answer phones or clean the bathrooms, and I also felt that there was no one that understood where I was coming from as a woman of color. The face of the company is White and I was concerned with the power difference between a VP and me. I felt that an external complaint goes to an office whose goals are not the company [sic] but rather my well being and the societal well being of minorities. I knew that here it would get buried and dismissed as a "personality issue."

While Maria is only one Woman of Color among the countless number of women who experience sexual harassment daily, her narrative clearly reveals a racially influenced decision of whether to report to Human Resources. In addition, Maria also noted that, to her knowledge, no other Woman of Color had ever reported sexual harassment at the company. It was her understanding that they left the company instead "because they knew that the conditions would not get any better."<sup>101</sup> It is thus logical to conjecture that Women of Color in the general population may be similarly disinclined to trust internal complaint procedures.

Unfortunately, the disinclination to engage the internal complaints process now comes with a potential cost for women who bring their sexual harassment claims to court. Recent developments in Supreme

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<sup>101</sup> Interview with Maria, Sexual Harassment Study Respondent, in Newark, N.J. (May 31, 2005).

Court sexual harassment jurisprudence allow courts to limit the recovery for a plaintiff who does not reasonably avail herself of her employer's internal complaints processes. As the next section shall discuss, Women of Color in the general population may be adversely affected by these recent legal developments if they share the same disinclination to use internal complaints processes as the Women of Color in my research sample.

*D. The Legal Cost to Plaintiffs Who Bypass the Internal Complaints Process*

Recent Supreme Court cases accentuate the role of supervisors and human resources departments in employer sexual harassment policies and investigations in assessing employer liability. In the 1998 Supreme Court cases of *Burlington Industries v. Ellerth*<sup>102</sup> and *Faragher v. City of Boca Raton*,<sup>103</sup> the Court held that an employer can avoid liability for sexual harassment of its supervisory personnel if: (1) the employer exercised reasonable care to prevent and promptly correct any harassing behavior and (2) *the employee unreasonably failed to take advantage of the employer's anti-harassment procedures*, such as reporting the incident to a supervisor or human resources department.<sup>104</sup> Employers now have an affirmative defense when plaintiffs allege sexual harassment from a supervisor. This is directly connected to whether a sexual harassment victim is inclined to

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<sup>102</sup> 524 U.S. 742, 765 (1998). The case establishes a uniform standard for employer vicarious liability as a matter of federal law, thereby ending intercircuit ambiguity about the matter. In addition, it holds that plaintiff Kimberly Ellerth was entitled to a full trial on the issue of vicarious liability. Despite not suffering any tangible job consequences as a result of the sexual harassment, she could still seek recovery against her employer for the vicarious liability of her supervisor, without having to show the employer was negligent or otherwise at fault for the supervisor's actions. The employer could interpose an affirmative defense if it could show Ellerth failed to take advantage of corrective opportunities provided by her employer to reasonably prevent sexually harassing behavior in the workplace. *Id.*

<sup>103</sup> 524 U.S. 775, 807-08 (1998). The case establishes the same affirmative defense as in *Ellerth*, 524 U.S. 742, but it concludes that the defendant employer could not avail itself of the affirmative defense. This is because it had completely failed to disseminate its sexual harassment policy among its employees, officials made no attempt to keep track of the conduct of company supervisors, and the sexual harassment policy did not provide any alternative for registering complaints when the harasser was an actual supervisor designated for receiving such complaints. As matter of law, all of this could not meet the affirmative defense standard of taking reasonable care to prevent and correct promptly any sexually harassing behavior. *Id.*

<sup>104</sup> In addition, the Supreme Court has held that, in the punitive damages context, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good-faith efforts to comply with Title VII. *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 545 (1999).

report the incident internally.<sup>105</sup> As a consequence, racially-disparate inclinations to use internal reporting mechanisms could inadvertently lead to racial disparity in obtaining full compensation for sexual harassment. The district court cases that have followed the Supreme Court's creation of the affirmative defense have interpreted the defense in ways that significantly harm sexual harassment victims who do not use internal reporting structures.

For instance, legal scholar Theresa Beiner's study of post-*Ellerth/Faragher* district court cases notes that district courts "have deemed unreasonable as a matter of law plaintiffs' failure to apprise their employers of harassers' behaviors at the earliest opportunity."<sup>106</sup> The cases do not have judges assess the unreasonableness of internal reporting or the time interval for reporting in individual cases.<sup>107</sup> In fact, Beiner noted that courts have appeared skeptical of plaintiffs' reasons for not reporting harassment at the earliest opportunity and translated that defect into triggering the employer affirmative defense to liability.<sup>108</sup> Further, as a practical matter, courts have also equated the mere existence of an employer's antiharassment policy as insulation from

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<sup>105</sup> The affirmative defense is not available when a supervisor's sexual harassment culminates in a tangible employment action. See *Ellerth*, 524 U.S. at 702-03. In addition, employer liability for instances of sexual harassment by coworkers is judged by the different negligence standard of whether the employer knew or should have known of the harassment and did nothing to stop the conduct. See *id.* at 759.

<sup>106</sup> Theresa M. Beiner, *Using Evidence of Women's Stories in Sexual Harassment Cases*, 24 U. ARK. LITTLE ROCK L. REV. 117, 118 (2001).

<sup>107</sup> *Id.*; see also Louis P. DiLorenzo & Laura H. Harshbarger, *Employer Liability for Supervisor Harassment After Ellerth and Faragher*, 6 DUKE J. GENDER L. & POL'Y 3, 21 (1999) ("The early [post-*Ellerth/Faragher*] rulings suggest that a plaintiff will not be easily excused for failing to report."); Jill Kreisberg, Comment, *Employers and Employees Beware: The Duties Imposed by the Recent Supreme Court Decisions and Their Impact on Sexual Harassment Law*, 6 CARDOZO WOMEN'S L.J. 153, 178 (1999) (internal citations omitted) ("Courts are also looking at how the employee is reacting to any internal investigations or procedures to deal with any harassment in order to judge whether or not the employee is acting reasonably. This includes an analysis of how well the employee cooperates with the investigation process, as well as the employee's willingness to accept reasonable solutions offered by the employer that fall short of termination."); Linda Hamilton Krieger, *Employer Liability for Sexual Harassment — Normative, Descriptive, and Doctrinal Interactions: A Reply to Professors Beiner and Bisom-Rapp*, 24 U. ARK. LITTLE ROCK L. REV. 169, 175 (2001) (describing author's study of post-*Ellerth/Faragher* cases and how they reveal judiciary rigidly and narrowly construing Supreme Court's directive in ways that ensure employer's victory at summary judgment stage simply with establishment of internal reporting mechanism coupled with plaintiff's failure to report internally, despite empirical data indicating that few victims are inclined to lodge formal complaints).

<sup>108</sup> See Beiner, *supra* note 106, at 120.



liability.<sup>109</sup> Even more disturbing is Beiner's observation that courts have interpreted the affirmative defense as a complete defense to any liability.<sup>110</sup> To the courts, the affirmative defense warrants the entry of summary judgment or judgment as a matter of law, rather than simply a limitation on monetary damages.<sup>111</sup> Courts reach this conclusion despite the fact that both Supreme Court decisions state that the defense could be used to limit liability or damages.<sup>112</sup> Indeed, one commentator has explicitly noted that if an employee files a complaint with the EEOC before notifying the employer of the sexual harassment incident, the employee decreases the likelihood of recovering under Title VII of the Civil Rights Act of 1964.<sup>113</sup> The irony, of course, is that while the legal burden of proof for the affirmative defense is on the defendant employer, the district court cases have effectively placed the onus on plaintiff-employees to report harassment pursuant to internal employer policies.<sup>114</sup> EEOC guidelines state that an employee is reasonable in choosing not to use the employer's antiharassment policy where a "complaint mechanism entail[s] risk of retaliation."<sup>115</sup> However, many courts have held that fear of retaliation is often too generalized or unsubstantiated to excuse an employee's failure to report harassment early on.<sup>116</sup> These pro-employer interpretations of the *Ellerth/Faragher* decisions are further compounded by the tendency of courts to accept employer-created reporting mechanisms and antiharassment policies as valid.<sup>117</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 119.

<sup>113</sup> Ann M. Henry, Comment, *Employer and Employee Reasonableness Regarding Retaliation Under the Ellerth/Faragher Affirmative Defense*, 1999 U. CHI. LEGAL F. 553, 570 (1999).

<sup>114</sup> Beiner, *supra* note 106, at 122.

<sup>115</sup> EEOC, ENFORCEMENT GUIDANCE: VICARIOUS EMPLOYER LIABILITY FOR UNLAWFUL HARASSMENT BY SUPERVISORS (1999) [hereinafter ENFORCEMENT GUIDANCE], available at <http://www.eeoc.gov/policy/docs/harassment.html>. These EEOC guidelines also state that an employee would be reasonable in not using an internal employer reporting structure where "there were obstacles to complaints" and "the complaint mechanism was not effective." *Id.*

<sup>116</sup> Beiner, *supra* note 106, at 124; see also DiLorenzo & Harchbarger, *supra* note 107, at 21 (observing that district court cases view even threat of termination without more as insufficient to excuse employee from following employer's internal reporting procedures).

<sup>117</sup> See Susan Bisom-Rapp, *An Ounce of Prevention Is a Poor Substitute For a Pound of Cure: Confronting the Developing Jurisprudence of Education and Prevention in Employment Discrimination Law*, 22 BERKELEY J. EMP. & LAB. L. 1, 3 (2001) (demonstrating how employers use anti-discrimination training as mechanism for avoiding or limiting punitive damages).

Yet, it is often quite rational for plaintiffs to forego the use of an internal complaint process, given the general "absence of due process protections, the lack of the full panoply of remedies available in litigation, and the propensity of complaint handlers to recast complaints as managerial problems rather than instances of discrimination."<sup>118</sup> In fact, a 1992 survey of 9600 women found that at least 60% observed that sexual harassment complaints are either simply ignored by employers or result in token reprimands.<sup>119</sup> In turn, employees who file internal complaints receive less protection from retaliation than those employees who file a complaint directly with the EEOC.<sup>120</sup> Empirical studies indicate that when victims report incidents of sexual harassment, the

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and how courts' faith in anti-discrimination training set up by employers is misplaced and thus urging that employers should be required to demonstrate effectiveness of their programs).

<sup>118</sup> Lauren B. Edelman et al., *The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth*, 105 AM. J. SOC. 406, 448-49 (1999); see also KRISTIN BUMILLER, THE CIVIL RIGHTS SOCIETY 104-05 (1988) (concluding from series of in-depth interviews with victims of discrimination that most respondents felt that filing formal complaints might actually worsen their situation by provoking hostility); William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...*, 15 LAW & SOC'Y REV. 631, 635-36 (1980-81) (theorizing ways in which societal influences and social stratification affect ability of victim to shift from perceiving experience of legal harm (naming transformation) to acknowledging grievance exists (blaming transformation) to finally voicing grievance and formally asking for remedy (claiming transformation), all of which elucidates why only small fraction of injurious experiences ever mature into legal claims).

<sup>119</sup> See JULIE M. TAMMINEN, SEXUAL HARASSMENT IN THE WORKPLACE: MANAGING CORPORATE POLICY 175 (1994) (describing 1992 survey of 9600 readers of *Working Woman* magazine and of 106 personnel executives at Fortune 500 firms); see also Jennie Kihnley, *Unraveling the Ivory Fabric: Institutional Obstacles to the Handling of Sexual Harassment Complaints*, 25 LAW & SOC. INQUIRY 69, 70 (2000) (concluding that "internal grievance procedures are obstructed by an inherent conflict within the institution as it tries simultaneously to eliminate sexual harassment from the work and academic environment, and to insulate itself from liability . . . [thereby] systematically constrain[ing] the handling of sexual harassment complaints," based upon qualitative research at major public university system on west coast, in which 15 interviews with university personnel from eight different campuses were conducted); Winer, *supra* note 93, at 182 ("[T]he effectiveness of a human resources department can frequently be called into question by [sic] plaintiff in a sexual harassment or discrimination case").

<sup>120</sup> See Edward A. Marshall, *Excluding Participation in Internal Complaint Mechanisms from Absolute Retaliation Protection: Why Everyone, Including the Employer, Loses*, 5 EMP. RTS. & EMP. POL'Y J. 549, 551-52 (2001) (comparing ways in which EEOC provides greater protection against retaliation by virtue of retaliation clause in Title VII of Civil Rights Act of 1964, compared to diluted protection for those who file internal complaints and are only protected to extent their complaint is based "on good faith and reasonable belief in the unlawfulness of the practice"); see also *Clark County Sch. Dist. v. Breeden*, 532 U.S. 268 (2001) (holding that retaliation clause of Title VII provides employees with less protection when submitting complaints internally than when filing with EEOC).

reporting often triggers retaliation.<sup>121</sup> This is not so surprising when one considers that the internal complaint process provides limited confidentiality in order to facilitate the employer's investigation of the complaint.<sup>122</sup> To be precise, formal internal complaint procedures do not always encourage victims to come forward.<sup>123</sup> Unfortunately, this gendered workplace reality directly conflicts with the *Ellerth/Faragher* presumption that using internal complaints procedures is a sensible thing to do.

Simply stated, the *Ellerth/Faragher* decisions base the employer's affirmative defense to charges of vicarious liability for sexual harassment on whether a victim's behavior in utilizing a complaint mechanism to report or not report was reasonable.<sup>124</sup> Yet, lower court applications of the decisions generally have not examined reasonableness from the perspective of a sexual harassment victim, who may have rational reasons to distrust such internal complaints procedures.<sup>125</sup> All of this

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<sup>121</sup> See Louise F. Fitzgerald et al., *The (Un)reasonableness of Reporting: Antecedents and Consequences of Reporting Sexual Harassment*, 87 J. APP. PSYCHOL. 230, 237 (2002) (concluding that sexual harassment reporting is an organizational climate issue); see also Louise F. Fitzgerald et al., *Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, 51 J. SOC. ISSUES 117, 122-23 (1995) (listing numerous empirical studies demonstrating that retaliation often follows reporting of sexual harassment).

<sup>122</sup> See TAMMINEN, *supra* note 119, at 143-44 (describing that, because employers can only provide limited confidentiality in order to facilitate investigation process's search for witnesses and corroboration, some employees are likely to decline pursuing internal complaint).

<sup>123</sup> *Id.* at 125-26; see also Winer, *supra* note 93, at 181-82 (describing ways in which companies that require reporting to human resources departments may inadvertently discourage women from filing sexual harassment claims because "in many geographically decentralized companies there are no local human resources departments, so that an employee would be required to report sexual harassment/discrimination to a faceless person in corporate headquarters whom they have never met. In many companies, employees do not even know that there is a human resources department at corporate headquarters. If they are aware of the existence of a human resources department, employee department, employees will often think that the HR department handles only pay and vacation issues and there will not be a perception that human resources handles personnel issues. Even when a company has local human resources personnel, frequently they are lower level employees, often lower level than the victim himself/herself, and [sic] victim feels that the human resources personnel would not be capable of protecting them against a perpetrator who is higher up in management.").

<sup>124</sup> *Faragher v. City of Boca Raton*, 524 U.S. 775, 807-08 (1998); *Burlington Indus. v. Ellerth*, 524 U.S. 742, 765 (1998).

<sup>125</sup> See Kerri Lynn Bauchner, *From Pig in a Parlor to Boar in a Boardroom: Why Ellerth Isn't Working and How Other Ideological Models Can Help Reconceptualize the Law of Sexual Harassment*, 8 COLUM. J. GENDER & L. 303, 315-18 (1999) (arguing that holding in *Ellerth* has resulted in lower courts using literal and technical language to disregard sexual

makes the racial disparity in reporting preferences particularly worrisome. The survey respondents may track the general population of Women of Color who do not report their sexual harassment incidents to supervisors and human resources personnel as frequently as White women do. Unfortunately, this would mean that Women of Color will be more limited by the *Ellerth/Faragher* decisions than White women will be.

#### CONCLUSION

Because of the scarcity of intersectional analyses of sexual harassment issues,<sup>126</sup> Women of Color are unaware of their vulnerability to the *Ellerth/Faragher* affirmative defense limitation on damages and liability. The predominant sources of information about sexual harassment and filing claims generally fail to warn victims about the consequences of not filing internal complaints.<sup>127</sup> In addition, the burgeoning literature

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harassment and allowing corporation to focus solely on reasonableness of its own behavior and victim's behavior and not on unreasonableness of what victim of sexual harassment and gender discrimination has been made to endure).

<sup>126</sup> See Hernández, *supra* note 16.

<sup>127</sup> The following is a list of websites that provide sexual harassment advice but either do not advise viewers of the legal consequences of failing to follow internal complaint procedures or contain only vague implications: EQUAL RIGHTS ADVOCATES: SEXUAL HARASSMENT AT WORK (2005), available at <http://www.equalrights.org/publications/kyr/shwork.asp>; EQUAL RIGHTS ADVOCATES: TRADESWOMEN'S LEGAL RIGHTS (2005), available at <http://www.equalrights.org/publications/kyr/tradeswomen.asp>; U.S. DEP'T OF LABOR, CIVIL RIGHTS COMPLAINT PROCESS & PROCEDURES (2004), available at <http://web.grps.k12.mi.us/hr/labor/complaintprocedures.html>; Am. Fed'n of State, County, and Mun. Employees, AFL-CIO, Women's Rights Dep't, *Fact Sheet Sexual Harassment: It's About Power*, <http://www.afscme.org/wrkplace/wrfaq02.htm> (last visited Jan. 21, 2006); Feminist Majority Found., *911 For Women: What to Do if You or Someone You Know Is Sexually Harassed* (2001-2005), <http://www.feminist.org/911/harasswhatdo.html>; Nat'l Org. for Women, *What is Sexual Harassment?*, <http://www.now.org/issues/harass/what.html> (last visited Jan. 21, 2006); Fed. Women's Program, NRCS, U.S. Dep't of Agric., *Sexual Harassment: What Is It?*, <http://www.nrcs.usda.gov/intranet/FWP/sexhar.html> (last visited Jan. 21, 2006).

Even the EEOC's informational page for employees simply states "It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available." EEOC, *Sexual Harassment*, [http://www.eeoc.gov/types/sexual\\_harassment.html](http://www.eeoc.gov/types/sexual_harassment.html) (last modified Mar. 2, 2005). The only direct information that the EEOC provides regarding the consequences for an affirmative defense by the employer is embedded in a technical document directed at employers and not employees and not otherwise immediately accessible. See EEOC, ENFORCEMENT GUIDANCE, *supra* note 115.

The following are the few websites that do provide some limited information regarding the necessity of following the internal complaint procedure: WOMEN EMPLOYED,

criticizing the *Ellerth/Faragher* decisions fails to appreciate the racial dimension of the issue. Only a CRF analysis of sexual harassment reveals the salience of race to the presumed race-neutral context of reporting choices. Moreover, only after a CRF empirical inquiry is made does the import of the racial disparity become apparent.

In addition to aiding in the production of knowledge, CRF empirical inquiry can also enable a CRF-praxis intervention. Critical Race praxis examines the connection between theory and practical work aimed at transforming concrete institutions.<sup>128</sup> Frequently, Critical Race praxis “combines critical pragmatic analysis with political lawyering and community organizing to practice justice for racialized communities. Its central idea is racial justice as anti-subordination practice.”<sup>129</sup> Engaging in praxis can be “as varied as: assisting clients, drafting legislation, serving on Bar Association committees, designing innovative legal strategies, joining in practical coalitions, and mentoring a student or child.”<sup>130</sup>

A CRF praxis intervention in this case could take on any number of forms. Most pressing is the process of alerting Women of Color of the law. Those agencies that offer guidance must provide clear and unambiguous information about the legal consequences of failing to use internal complaint procedures. The agencies should also list the particular states in which the state fair employment laws provide more pro-plaintiff approaches than the federal *Ellerth/Faragher* decisions do.<sup>131</sup> At the same time, it is important that these agencies advise their clients of how the enforcers of internal complaint procedures may attempt to dissuade them from filing a complaint. Thereafter, CRF scholars and

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SEXUAL HARASSMENT AND YOUR RIGHTS ON THE JOB (2004); [http://www.womenemployed.org/docs/Sexual\\_Harassment.pdf](http://www.womenemployed.org/docs/Sexual_Harassment.pdf); Nat'l Women's Law Ctr., *Frequently Asked Questions About Sexual Harassment in the Workplace* (2000), <http://www.nwlc.org/details.cfm?id=504&section=employment>; Nolo Press, *Fighting Sexual Harassment* (2005), <http://www.nolo.com/article.cfm> (select “Rights and Disputes,” then select “Employee Rights,” then select “Your Rights Against Discrimination & Harassment”); Workplace Fairness, *Harassment: Sex* (2005), <http://www.workplacefairness.org/index.php?page=sex&agree=yes#31>.

<sup>128</sup> See CRITICAL RACE THEORY: THE CUTTING EDGE 591 (Richard Delgado & Jean Stefancic eds., 2d ed. 2000) (presenting collection of Critical Race Theory articles). CRF explicitly embraces critical race praxis. See Wing, *supra* note 2, at 6.

<sup>129</sup> ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 129 (1999).

<sup>130</sup> Wing, *supra* note 2, at 17.

<sup>131</sup> See *Dep't of Health Servs. v. Super. Ct. of Sacramento County*, 31 Cal. 4th 1026, 1048-50 (2003) (refusing to adopt federal *Ellerth/Faragher* defense to harassment claims under California Fair Employment and Housing Act).

others could join the efforts to re-orient and educate the judiciary about how to tailor the new *Ellerth/Faragher* rules in ways that do not further harm Women of Color.<sup>132</sup> Another praxis project could be helping the industry of human resources professionals learn how to make outreach efforts to employees of color and build employee confidence in viewing human resources personnel as neutral arbiters.<sup>133</sup> Many other CRF praxis interventions may be possible. But it is only now possible to begin conceiving of such interventions because a CRF empirical inquiry finally brought the problems to light.

In short, this sexual harassment case study has sought to demonstrate how empirical research can contribute much to the continued development of CRF analysis and praxis. Specifically, empirical research can contribute additional insights into the causation of racial and gender disparities. These insights may sometimes be beyond the reach of the traditional individual focus of legal analysis. A lack of such insights hinders the ability to develop effective CRF praxis antisubordination projects. For instance, analyzing individual cases of sexual harassment would be unlikely to uncover the particular vulnerabilities to the *Ellerth/Faragher* affirmative defense that the empirical study suggests Women of Color may have. In contrast, an empirical study of the aggregate patterns of women's reporting preferences is ideally suited to unearthing the potentially disturbing effects of the *Ellerth/Faragher* affirmative defense. To date, CRF scholarship has helped to address the myopia caused by legal analyses devoid of gender and race considerations. Empirical CRF research may, in turn, address any unintentional myopia that accompanies race and gender discussions based solely on individual case studies. As James Baldwin stated: "Not everything that is faced can be changed, but nothing can be changed until it is faced."<sup>134</sup> It is only by using every analytical tool possible that those in the struggle for gender and racial justice can try to make a difference. Empirical research is simply one additional tool for CRF scholars to consider as appropriate.

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<sup>132</sup> See Beiner, *supra* note 55 at 323-38 (proposing pro-plaintiff modifications to application of *Ellerth/Faragher* decisions).

<sup>133</sup> Studies show that when an employee perceives his or her employer's policies and procedures as fair, he or she is less inclined to take legal action against the organization. See Raymond L. Hogler et al., *Workplace Sexual Harassment Law: An Empirical Analysis of Organizational Justice and Legal Policy*, 14 J. MANAGERIAL ISSUES 234, 239 (2002).

<sup>134</sup> See source cited *supra* note 1.

## APPENDIX A-1. SEXUAL HARASSMENT SURVEY INSTRUMENT

1) Have you ever been exposed to unwanted sexual attention as an employee, a sexualized work environment, or unfair work conditions because you were a woman?

Yes \_\_\_\_ No \_\_\_\_

1a) What is the approximate total number of persons who have sexually harassed you during the course of your entire work history? \_\_\_\_\_

1b) Did you ever mention the sexual harassment to a supervisor?

Yes \_\_\_\_ No \_\_\_\_

1c) Did you ever mention the sexual harassment to a human resources employee?

Yes \_\_\_\_ No \_\_\_\_ Not Applicable \_\_\_\_

1d) Did you speak to a lawyer about it?

Yes \_\_\_\_ No \_\_\_\_

1e) Was the lawyer any of the following? [check all that apply]

- \_\_\_\_ friend
- \_\_\_\_ acquaintance
- \_\_\_\_ a paid consultation
- \_\_\_\_ a free consultation
- \_\_\_\_ part of a union referred service
- \_\_\_\_ other \_\_\_\_\_

For the purposes of this survey, **FILING A COMPLAINT MEANS** that you verbally or in writing reported the harassment to any of the following entities: a supervisor, a human resources/personnel department of an employer, an employer designated harassment officer, an employer designated arbitrator, an employer designated mediator, a union representative, the EEOC (Equal Employment Opportunities Commission), an EEO (Equal Employment Opportunity) office, a state or city human rights commission/division, the Worker's Compensation Board, or had an attorney file a claim on your behalf.

2) Did you ever lodge a verbal or written complaint or grievance regarding the sexual harassment you experienced in the workplace?

Yes \_\_\_\_ No \_\_\_\_

**I. UNREPORTED COMPLAINTS-- QUESTION SET:**

*If you filed a verbal or written complaint (as defined above) each time you experienced a sexual harassment experience or set of incidents committed by the same person, please SKIP questions 3-8, and go directly to question 9.*

Cont'd. **UNREPORTED COMPLAINTS - QUESTION SET:**

3) If there was a time you chose not to report a sexual harassment incident (or set of incidents caused by the same person) was it for any of the following reasons? *Please check all that apply and then circle the one option that was your primary reason.*

- ☐ I was not sure that the behavior could amount to a formal complaint
- ☐ I did not know who to tell
- ☐ I was afraid no one would believe me
- ☐ I was too embarrassed
- ☐ I did not want to get someone in trouble
- ☐ I did not want to look like a troublemaker
- ☐ I believed that such behavior is common at that workplace
- ☐ I believed that I could make harasser stop without further assistance
- ☐ I believed that I could make harasser stop because of my position or influence on the job
- ☐ concern that I would lose my job
- ☐ concern that I would lose my job and not be able to find similar job
- ☐ concern that I would be demoted, or transferred to another department, or be made subject to undesirable work conditions, or given a low-income performance evaluation, or denied a promotional opportunity
- ☐ concern that my employer would retaliate against me
- ☐ concern that work environment would be even more uncomfortable
- ☐ concern that the complaint process would be hard on my family
- ☐ concern that it would make the harassment worst
- ☐ concern that I would be become the target for ridicule
- ☐ concern that I would be less respected on the job or in my profession
- ☐ I was discouraged from filing a claim by my family or friends
- ☐ I was discouraged from filing a claim by my co-workers
- ☐ I was discouraged from filing a claim by my supervisor
- ☐ I was discouraged from filing a claim by the human resources/personnel department or by an employer designated harassment officer
- ☐ I was discouraged from filing a claim by a union representative
- ☐ I was discouraged from filing a claim by a government representative (like an EEOC officer, a Human Rights Commission officer, etc.)
- ☐ I was discouraged from filing a claim by an attorney I consulted
- ☐ I missed the deadline for filing a claim
- ☐ my employer was not legally subject to state or EEOC sexual harassment laws
- ☐ some other reason \_\_\_\_\_



4) If you chose not to file a sexual harassment complaint, did you instead do any of the following? *Please check all that apply.*

- ☐ ignored it
- ☐ told harasser to stop harassing me
- ☐ told my supervisor
- ☐ told the harasser's supervisor
- ☐ obtained transfer to another position or location to avoid the harasser
- ☐ sought different job duties to avoid harasser
- ☐ used sick days and/or vacation time to avoid the harasser
- ☐ terminated employment
- ☐ some other action \_\_\_\_\_

Cont'd. UNREPORTED COMPLAINTS - QUESTION SET:

For Questions 5 – 8, if you have been harassed by more than one harasser during your work history, please respond with respect to your **most severe** experience of sexual harassment (or set of experiences caused by the same person) for which you did not file a complaint as defined on the first page of this survey.

5) What was the nature of your sexual harassment experience (or set of experiences caused by the same person) for which you did not file a complaint? (If you have had multiple experiences of sexual harassment over time, please refer to the **most severe** experience of sexual harassment). Please check all that apply.

- ☐ harasser raped or sexually assaulted me
- ☐ harasser threatened me with violence
- ☐ harasser displayed offensive material at work (like poster, graffiti or porn)
- ☐ harasser threatened to terminate my employment
- ☐ harasser threatened to demote me
- ☐ harasser touched me or brushed up against me inappropriately
- ☐ harasser touched himself inappropriately in front of me
- ☐ harasser was directly verbally abusive
- ☐ harasser was indirectly verbally abusive (by making offensive comments to another in my presence)
- ☐ harasser's verbal abuse was sexual in nature
- ☐ harasser's verbal abuse was racial in nature
- ☐ harasser made offensive sexual commentary (jokes, stories, comments about my body, appearance or personal life, asking or telling about sexual fantasies/preferences/history)
- ☐ harasser spread rumors about my sex life
- ☐ harasser made offensive sexual stares
- ☐ harasser made unwanted sexual advances
- ☐ harasser sent me inappropriate notes, letters or emails
- ☐ harasser followed me or stalked me
- ☐ harasser turned up at places outside of work to harass me
- ☐ harasser phoned me at home to harass me
- ☐ harasser gave or sent me inappropriate or unwanted gifts
- ☐ I was subjected to unfair work conditions because I was a woman
- ☐ other conduct \_\_\_\_\_

5a) Who were you being harassed by at that time?

Supervisor ☐ Co-Worker ☐ Customer/Client ☐ Salesperson ☐

Business Associate of my Employer ☐ Worker/Rep of another organization ☐

Other ☐

6) What was the gender of your harasser in the incident described above?

Male ☐ Female ☐

7) What was the approximate age of your harasser at the time? \_\_\_\_\_

Cont'd. **UNREPORTED COMPLAINTS - QUESTION SET:**

8) What did you think the race and/or ethnicity of your harasser was? Check all that apply

<u>Ethnicity</u>	<u>Race</u>
<input type="checkbox"/> Hispanic/Latino	<input type="checkbox"/> Caucasian/White
<input type="checkbox"/> Arab	<input type="checkbox"/> African American/Black
<input type="checkbox"/> Jewish	<input type="checkbox"/> Asian
<input type="checkbox"/> East Indian	<input type="checkbox"/> Native American
<input type="checkbox"/> African	<input type="checkbox"/> Multi-racial
<input type="checkbox"/> Caribbean	<input type="checkbox"/> Other
<input type="checkbox"/> European	<input type="checkbox"/> Don't Know
<input type="checkbox"/> Other	
<input type="checkbox"/> Don't Know	

**II. FILED COMPLAINTS—QUESTION SET:**

*If you have never filed a sexual harassment complaint as defined on the first page of this survey, please SKIP questions 9 – 33, and go directly to question 34.*

For Questions 9 – 33, please respond with respect to your most severe sexual harassment complaint, if you have filed multiple sexual harassment complaints over the years.

9) If you have filed a sexual harassment complaint, what was the approximate date you filed? (If you have filed multiple sexual harassment complaints over the years simply indicate the approximate date of the most severe sexual harassment complaint).

Month \_\_\_\_\_ Year \_\_\_\_\_

10) With what authority did you file that complaint? Please check all that apply.

☐ my supervisor  
☐ the human resources/personnel department of my employer or  
an employer designated harassment officer  
☐ my employer's approved arbitrator  
☐ my employer's approved mediator  
☐ my union representative  
☐ the EEOC (Equal Employment Opportunities Commission)  
☐ the EEO (Equal Employment Opportunity office)  
☐ a state agency (such as a state Division of Human Rights or Civil Rights)  
☐ a city agency (such as a city Division/Commission of Human Rights)  
☐ the Worker's Compensation Board  
☐ the National Labor Relations Board  
☐ an attorney filed a complaint on my behalf with the following authority  
\_\_\_\_\_  
☐ an attorney filed a tort suit in court

\_\_\_ Other authority \_\_\_\_\_

Cont'd. **FILED COMPLAINTS – QUESTION SET:**

11) Did your employer at that time have established procedures for filing a sexual harassment complaint? Yes \_\_\_ No \_\_\_ Don't Know \_\_\_

12) Did you leave your job as a direct or indirect result of the sexual harassment?

Yes \_\_\_ No \_\_\_

12a) I left by quitting

Yes \_\_\_ No \_\_\_

12b) I left because I was fired

Yes \_\_\_ No \_\_\_

12c) I left because the work conditions forced me out

Yes \_\_\_ No \_\_\_

13) Who were you being harassed by at that time?

Supervisor \_\_\_ Co-Worker \_\_\_ Customer \_\_\_ Salesperson \_\_\_

Business Associate of my Employer \_\_\_ Other \_\_\_\_\_

14) What was the gender of the harasser? \_\_\_ Male \_\_\_ Female

15) What was the approximate age of the harasser at the time of the harassment? \_\_\_\_\_

16) What did you think the race or ethnicity of the harasser was at that time? *Check all that apply*

**Ethnicity**

\_\_\_ Hispanic/Latino

\_\_\_ Arab

\_\_\_ Jewish

\_\_\_ East Indian

\_\_\_ African

\_\_\_ Caribbean

\_\_\_ European

\_\_\_ Other

\_\_\_ Don't Know

**Race**

\_\_\_ Caucasian/White

\_\_\_ African American/Black

\_\_\_ Asian

\_\_\_ Native American

\_\_\_ Multi-racial

\_\_\_ Other

\_\_\_ Don't Know

17) What was the nature of your sexual harassment experience for which you did file a complaint? *(If you have filed multiple sexual harassment complaints please refer to the **most severe complaint of sexual harassment**). Please check all that apply.*

\_\_\_ harasser raped or sexually assaulted me

\_\_\_ harasser threatened me with violence

\_\_\_ harasser displayed offensive material at work (like poster, graffiti or porn)

\_\_\_ harasser threatened to terminate my employment

\_\_\_ harasser threatened to demote me

\_\_\_ harasser touched me or brushed up against me inappropriately

\_\_\_ harasser touched himself inappropriately in front of me

\_\_\_ harasser was directly verbally abusive

\_\_\_ harasser was indirectly verbally abusive (by making offensive comments to another in my presence)

☐ harasser's verbal abuse was sexual in nature

☐ harasser's verbal abuse was racial in nature

Cont'd. **FILED COMPLAINTS – QUESTION SET:**

☐ harasser made offensive sexual commentary (jokes, stories, comments about my body, appearance or personal life, asking or telling about sexual fantasies/preferences/history)

☐ harasser spread rumors about my sex life

☐ harasser made offensive sexual stares

☐ harasser made unwanted sexual advances

☐ harasser sent me inappropriate notes, letters or emails

☐ harasser followed me or stalked me

☐ harasser turned up at places outside of work to harass me

☐ harasser phoned me at home to harass me

☐ harasser gave or sent me inappropriate or unwanted gifts

☐ I was subjected to unfair work conditions because I was a woman

☐ other conduct \_\_\_\_\_

18) Did you report that experience of sexual harassment to a supervisor?

Yes \_\_\_\_ No \_\_\_\_

19) What was the gender of the supervisor? Female \_\_\_\_ Male \_\_\_\_

20) What did you think the race or ethnicity of the supervisor was? Check all that apply

Ethnicity

☐ Hispanic/Latino

☐ Arab

☐ Jewish

☐ East Indian

☐ African

☐ Caribbean

☐ European

☐ Other

☐ Don't Know

Race

☐ Caucasian/White

☐ African American/Black

☐ Asian

☐ Native American

☐ Multi-racial

☐ Other

☐ Don't Know

21) Was the supervisor able to resolve the sexual harassment problem?

Yes \_\_\_\_ No \_\_\_\_ Partially \_\_\_\_ Still Pending \_\_\_\_

22) Was someone else able to assist you resolve the sexual harassment problem?

Yes \_\_\_\_ No \_\_\_\_ Partially \_\_\_\_

23) If so, who was that person?

Another Supervisor \_\_\_\_ Co-Worker \_\_\_\_ Higher-Ranking Co-Worker \_\_\_\_

Other \_\_\_\_

24) What was the gender of that person? Female \_\_\_\_ Male \_\_\_\_

Cont'd. **FILED COMPLAINTS – QUESTION SET:**

25) What did you think was the race and/or ethnicity of that person? *Check all that apply.*

<u>Ethnicity</u>	<u>Race</u>
<input type="checkbox"/> Hispanic/Latino	<input type="checkbox"/> Caucasian/White
<input type="checkbox"/> Arab	<input type="checkbox"/> African American/Black
<input type="checkbox"/> Jewish	<input type="checkbox"/> Asian
<input type="checkbox"/> East Indian	<input type="checkbox"/> Native American
<input type="checkbox"/> African	<input type="checkbox"/> Multi-racial
<input type="checkbox"/> Caribbean	<input type="checkbox"/> Other
<input type="checkbox"/> European	<input type="checkbox"/> Don't Know
<input type="checkbox"/> Other	
<input type="checkbox"/> Don't Know	

26) Did you mention that incident of sexual harassment to a human resources/personnel employee or employer designated harassment officer?

Yes \_\_\_\_ No \_\_\_\_ Not Applicable \_\_\_\_

27) What was the gender of the human resources/personnel employee or employer designated harassment officer?

Female \_\_\_\_ Male \_\_\_\_ Not Applicable \_\_\_\_

28) What did you think was the race or ethnicity of the human resources/personnel employee or employer designated harassment officer? *Check all that apply.*

<u>Ethnicity</u>	<u>Race</u>
<input type="checkbox"/> Hispanic/Latino	<input type="checkbox"/> Caucasian/White
<input type="checkbox"/> Arab	<input type="checkbox"/> African American/Black
<input type="checkbox"/> Jewish	<input type="checkbox"/> Asian
<input type="checkbox"/> East Indian	<input type="checkbox"/> Native American
<input type="checkbox"/> African	<input type="checkbox"/> Multi-racial
<input type="checkbox"/> Caribbean	<input type="checkbox"/> Other
<input type="checkbox"/> European	<input type="checkbox"/> Don't Know
<input type="checkbox"/> Other	
<input type="checkbox"/> Don't Know	

29) Was the human resources/personnel employee or employer designated harassment officer able to resolve the sexual harassment complaint?

Yes \_\_\_\_ No \_\_\_\_ Partially \_\_\_\_ Still Pending \_\_\_\_

30) Did you report the incident to a government agency representative (like the EEOC/Equal Employment Opportunity Commission, the New Jersey Division of Civil Rights, New York Division of Human Rights, a city commission of human rights etc.)?

Yes \_\_\_\_ No \_\_\_\_

31) What was the gender of the government agency representative?

Female \_\_\_\_ Male \_\_\_\_

Cont'd. **FILED COMPLAINTS – QUESTION SET:**32) What did you think was the race and/or ethnicity of the government agency representative? *Check all that apply.***Ethnicity**

☐ Hispanic/Latino  
☐ Arab  
☐ Jewish  
☐ East Indian  
☐ African  
☐ Caribbean  
☐ European  
☐ Other  
☐ Don't Know

**Race**

☐ Caucasian/White  
☐ African American/Black  
☐ Asian  
☐ Native American  
☐ Multi-racial  
☐ Other  
☐ Don't Know

33) Was the government agency representative able to resolve the sexual harassment complaint? Yes \_\_\_\_ No \_\_\_\_ Partially \_\_\_\_ Still Pending \_\_\_\_

**III. DEMOGRAPHIC DATA QUESTION SET:**

The following questions are for the purpose of examining whether people with different backgrounds have similar experiences in reporting sexual harassment incidents.

34) What was your age at the time of the harassment you describe in this survey?

14-17 \_\_\_\_ 18-24 \_\_\_\_ 25-34 \_\_\_\_ 35-44 \_\_\_\_ 45-54 \_\_\_\_

55-64 \_\_\_\_ 65 or over \_\_\_\_

35) What race and/or ethnicity do you consider yourself? *Please check all that apply.***Ethnicity**

☐ Hispanic/Latino  
☐ Arab  
☐ Jewish  
☐ East Indian  
☐ African  
☐ Caribbean  
☐ European  
☐ Other  
☐ Don't Know

**Race**

☐ Caucasian/White  
☐ African American/Black  
☐ Asian  
☐ Native American  
☐ Multi-racial  
☐ Other  
☐ Don't Know

36) What is your current marital status?

Never married \_\_\_\_ Married \_\_\_\_ Separated/Divorced \_\_\_\_ Other \_\_\_\_

37) Do you have any children? Yes \_\_\_\_ No \_\_\_\_

Cont'd. **DEMOGRAPHIC DATA QUESTION SET:**

38) If yes, how many children in each age group do you financially support?

0-5 \_\_\_\_ 6-12 \_\_\_\_ 13-18 \_\_\_\_ Over 18 \_\_\_\_

39) What is the highest level of education you have completed?

Some high school \_\_\_\_ High school diploma (or GED) \_\_\_\_

Some college \_\_\_\_ College degree \_\_\_\_ Graduate or professional degree \_\_\_\_

40) Are you presently employed? Yes \_\_\_\_ No \_\_\_\_

41) If yes, are you employed full or part time? Full time \_\_\_\_ Part time \_\_\_\_

42) What is your present occupation/job title? \_\_\_\_\_

43) How long have you been employed in this job? \_\_\_\_\_

44) What was your occupation/job title at the time of the harassment described in this survey? \_\_\_\_\_

45) Are you presently a student? Yes \_\_\_\_ No \_\_\_\_

44a) Full time \_\_\_\_ or Part-Time \_\_\_\_

46) Approximately how much do you individually make in a year before taxes?

Under \$15,000 \_\_\_\_ \$15,000-\$24,999 \_\_\_\_ \$25,000-\$34,999 \_\_\_\_

\$35,000-\$49,999 \_\_\_\_ \$50,000-\$74,999 \_\_\_\_ \$75,000-\$125,000 \_\_\_\_

over \$125,000 \_\_\_\_

47) Including everyone in your household, what is the total amount earned and/or received from support payments in a year before taxes?

Under \$15,000 \_\_\_\_ \$15,000-\$24,999 \_\_\_\_ \$25,000-\$34,999 \_\_\_\_

\$35,000-\$49,999 \_\_\_\_ \$50,000-\$74,999 \_\_\_\_ \$75,000-\$125,000 \_\_\_\_

over \$125,000 \_\_\_\_

Thanks again for your help with this important research!



## APPENDIX A-2. FOLLOW-UP SURVEY

**Sexual Harassment of Women & Reporting Preference Survey (Follow-Up Survey)**

1. Have you ever been exposed to unwanted sexual attention as an employee, a sexualized work environment, or unfair work conditions because you were a woman?

Yes \_\_\_\_ No \_\_\_\_

2. Did you ever mention the sexual harassment to a supervisor?

Yes \_\_\_\_ No \_\_\_\_

3. If you chose not to mention the sexual harassment to a supervisor, what were your reasons for not mentioning the harassment? [Feel free to attach additional pages if you wish to comment further.]

4. Did you ever mention the sexual harassment to a human resources employee, personnel department, or employee relations department?

Yes \_\_\_\_ No \_\_\_\_

5. If you chose not to mention the sexual harassment to a human resources employee, or personnel department, or employee relations department, what were your reasons for not mentioning the sexual harassment? [Feel free to attach additional pages if you wish to comment further.]

6. If you did choose to mention the sexual harassment to a supervisor, human resources employee, personnel department, or employee relations department, were you satisfied with how they handled the matter?

Yes \_\_\_\_ No \_\_\_\_

7. Did you file a sexual harassment charge with a government agency (like the EEOC Equal Employment Opportunities Commission, or a state or city human rights agency)?

Yes \_\_\_\_ No \_\_\_\_

8. Did your interaction with a supervisor encourage or discourage you from filing a formal complaint of sexual harassment with a government agency?

Encourage \_\_\_\_ Discourage \_\_\_\_

9. Did your interaction with human resources, or personnel or employee relations, encourage or discourage you from filing a formal complaint with a government agency?

Encourage \_\_\_\_ Discourage \_\_\_\_

10. What is your race or ethnicity?

- \_\_\_\_ White
- \_\_\_\_ Black/ African-American
- \_\_\_\_ Hispanic/Latino
- \_\_\_\_ Asian/Pacific Islander
- \_\_\_\_ Native American
- \_\_\_\_ Other

11. Did you fill out a previous Sexual Harassment Survey in 2004, sent out by WRW and Professor Hernandez in the Summer of 2004?

Yes \_\_\_\_\_ No \_\_\_\_\_ Don't Remember \_\_\_\_\_

Table 1. Correlation Matrix for Follow-up Survey Questions

Q2 vs. Q4	ChiSq $p$ : < 0.001	Fisher $p$ : < 0.001
Q2 vs. Q6	ChiSq $p$ : 0.405	Fisher $p$ : 0.190
Q2 vs. Q7	ChiSq $p$ : 0.198	Fisher $p$ : 0.158
Q2 vs. Q8	ChiSq $p$ : 0.984	Fisher $p$ : 1.000
Q2 vs. Q9	ChiSq $p$ : 0.482	Fisher $p$ : 0.475
Q2 vs. Q11	ChiSq $p$ : 0.432	Fisher $p$ : 0.325
Q4 vs. Q6	ChiSq $p$ : 0.486	Fisher $p$ : 0.224
Q4 vs. Q7	ChiSq $p$ : 0.395	Fisher $p$ : 0.305
Q4 vs. Q8	ChiSq $p$ : 0.678	Fisher $p$ : 0.545
Q4 vs. Q9	ChiSq $p$ : 0.799	Fisher $p$ : 0.703
Q4 vs. Q11	ChiSq $p$ : 0.759	Fisher $p$ : 0.744
Q6 vs. Q7	ChiSq $p$ : 0.253	Fisher $p$ : 0.185
Q6 vs. Q8	ChiSq $p$ : 0.926	Fisher $p$ : 1.000
Q6 vs. Q9	ChiSq $p$ : 0.499	Fisher $p$ : 0.546
Q6 vs. Q11	ChiSq $p$ : 0.866	Fisher $p$ : 0.584
<b>Q7 vs. Q8</b>	<b>ChiSq <math>p</math>: 0.047</b>	<b>Fisher <math>p</math>: 0.044</b>
<b>Q7 vs. Q9</b>	<b>ChiSq <math>p</math>: 0.032</b>	<b>Fisher <math>p</math>: 0.026</b>
Q7 vs. Q11	ChiSq $p$ : 0.061	Fisher $p$ : 0.053
Q8 vs. Q9	ChiSq $p$ : < 0.001	Fisher $p$ : < 0.001
Q8 vs. Q11	ChiSq $p$ : 0.650	Fisher $p$ : 0.567
Q9 vs. Q11	ChiSq $p$ : 0.961	Fisher $p$ : 1.000

APPENDIX B. POPULATION DEMOGRAPHICS

Table 1. Summary Statistics

Demographic	(N)	Percentage of population (N= 120)
<u>Race</u>		
Women of Color	50	41.7%
Black	42	35.0%
Asian	3	2.5%
Hispanic	5	4.1%
White	63	52.5%
Other	7	5.8%
Missing Cases	0	0%
Individual Income		
Under 15K to over 49K	69	57.5%
50K to over 125K	35	29.2%
Missing Cases	16	13.3%
Household Income		
Under 15K to over 49K	46	38.3%
50K to over 125K	43	35.8%
Missing Cases	31	25.8%
Job Prestige		
Low Prestige	55	45.8%
High Prestige	55	45.8%
Missing Cases	10	8.3%
Educational Level		
College Degree	72	60.0%
No College Degree	44	36.7%
Missing Cases	4	3.3%
Age at Time of Harassment		
14-17	2	1.7%
18-24	15	12.5%
25-34	43	35.8%
35-44	34	28.3%
45-54	17	14.2%
55-64	1	0.8%
65 and over	1	0.8%

Missing cases	7	5.8%
Marital Status		
Never Married	57	47.5%
Married	27	22.5%
Separated/Divorced	20	16.7%
Other	8	6.7%
Missing cases	8	6.7%
Children		
Yes	48	40%
No	69	57.5%
Missing Cases	3	2.5%

Table 2. Population Demographics Categorized by Race

Race	Demographic	Frequency/Percentage of Racial Group
Women of Color	No College Degree	21(N)/44.7%
	College Degree	2(N)/55.3%
White	No College Degree	21(N)/33.9%
	College Degree	41(N)/66.1%
Other	No College Degree	2(N) 28.6%
	College Degree	5(N)/71.4%
Women of Color	High Prestige	17(N)/37%
	Low Prestige	29(N)/63%
White	High Prestige	35(N)/60.3%
	Low Prestige	23(N)/39.7%
Other	High Prestige	3(N)/50%
	Low Prestige	3(N)/50%
Women of Color	Individual — under 15K to over 49K	35(N)/79.5%
	Individual — 50K to over 125K	9(N)/20.5%
White	Individual — under 15K to over 49K	30(N)/56.6%
	Individual — 50K to over 125K	23(N)/43.4%
Other	Individual — under 15K to over 49K	4(N)/57.1%
	Individual — 50K to over 125K	3(N)/42.9%
Women of Color	Household — under 15K to over 49K	27(N)/67.5%
	Household — 50K to over 125K	13(N)/32.5%
White	Household — under 15K to over 49K	17(N)/40.5%
	Household — 50K to over 125K	25(N)/59.5%
Other	Household — under 15K to over 49K	2(N)/28.6%
	Household — 50K to over 125K	5(N)/71.4%

Table 3. Occupations

Job Title	Total
Accountant	2
Actress	1
Administrative Assistant	11
Agent	2
Architect	1
Assistant	1
Gardener Assistant	1
Bar Supervisor	1
Bookkeeper	3
Borough Director	1
Broker	1
Bus Driver	1
Car Salesperson	1
Carpenter	1
Cashier	4
CEO	1
Childcare	1
City Inspector	1
Civil Servant	1
Computer Programmer	1
Cook	1
Coordinator	1
Correction Officer	1
Court Supervisor	1
Custodial Supervisor	1
Dental Assistant	2
Director	2
Dispatcher	1
Duplicate Specialist	1
Educator	1
Executive Assistant	2
Fashion Designer	1
Financial Analyst	2
Fire Medic	1
Firefighter	2
Food Coordinator	1
General Manager	1
Graphic	1
Housekeeper	1
Lab Technician	1

Laborer	1
Leasing Agent	1
Letter Carrier	4
Life Guard	1
Manager	1
Managing Editor	1
Marketing Associate	1
Marketing Assistant	1
Meat Wrapper	1
Microbiologist	1
Office Assistant	1
Office Manager	2
Operations Manager	1
Organist	1
Payroll Manager	1
Photographer	1
Physical Aide	1
Police Officer	1
Product Development Manager	1
Product Manager	1
Production Analyst	1
Production Coordinator	1
Psychologist	1
Run Production Line	1
Receptionist	1
RN	1
Sales Assistant	1
Sales Executive	1
Security Guard	4
Service Manager	1
Service Representative	1
Statewide Coordinator	1
Store Manager	1
Tailor	1
Teacher	3
Teacher/Auditor	1
Telephone Operator	1
Waitress	1
Welder	1
Total	120



Figure 1. Population Racial Demographics

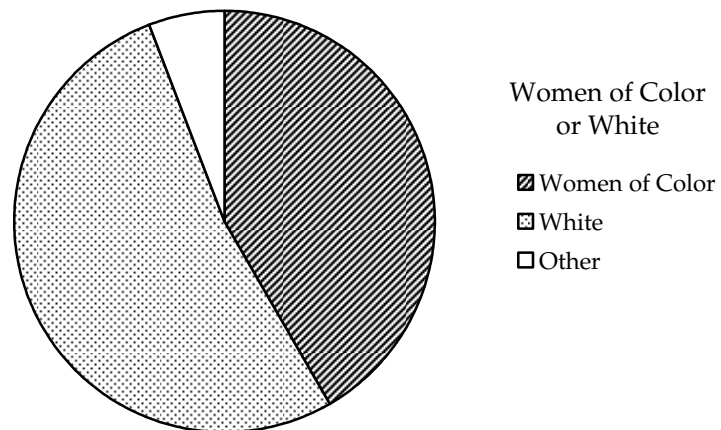


Figure 2. Individual Household Income

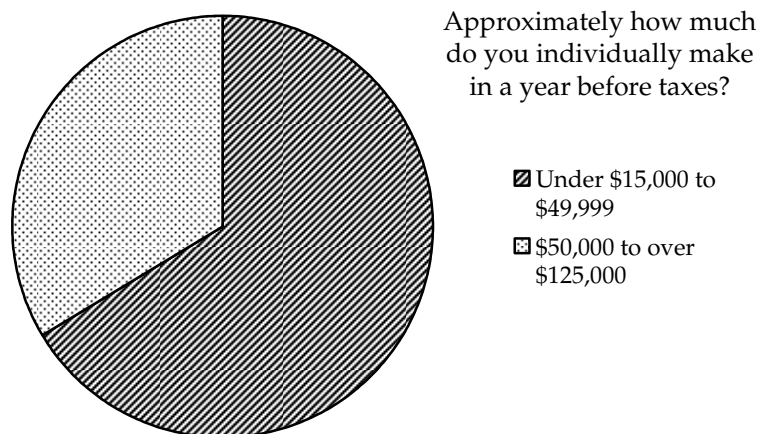


Figure 3. Household Income

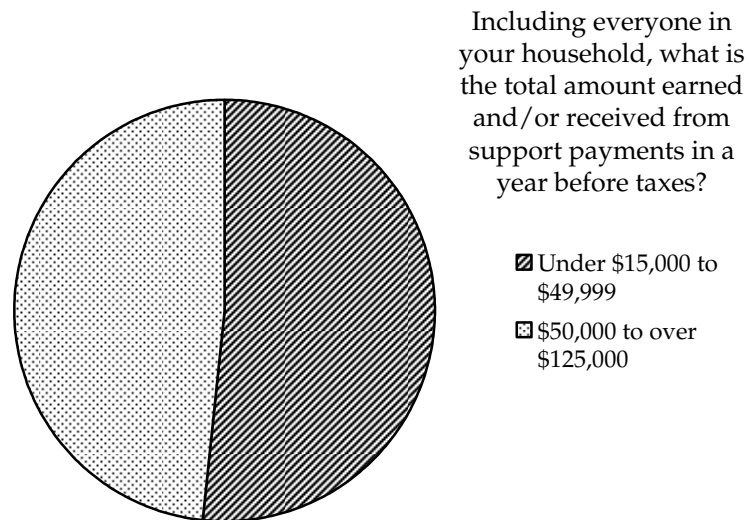


Figure 4. Job Prestige

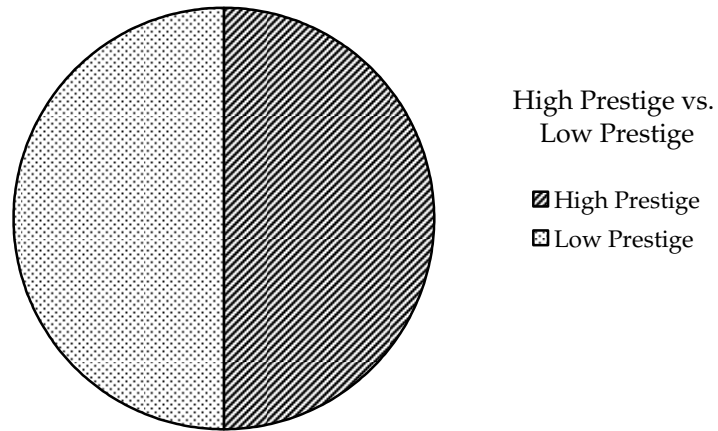


Figure 5. Educational Level

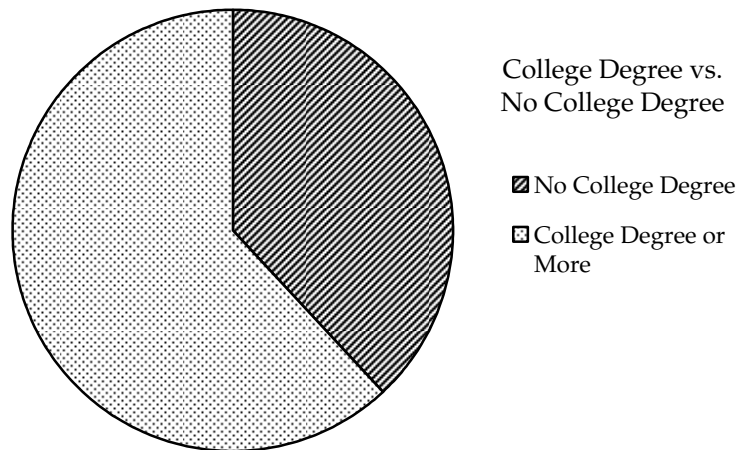


Figure 6. Race and Job Prestige

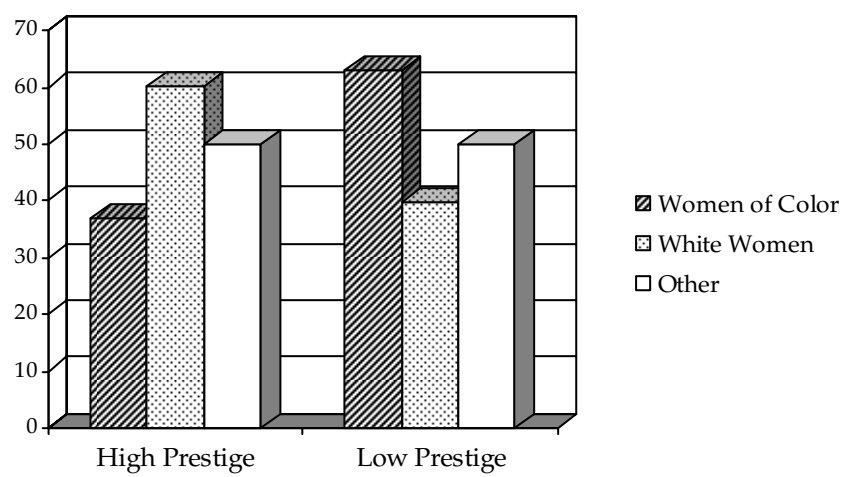


Figure 7. Race and Individual Income

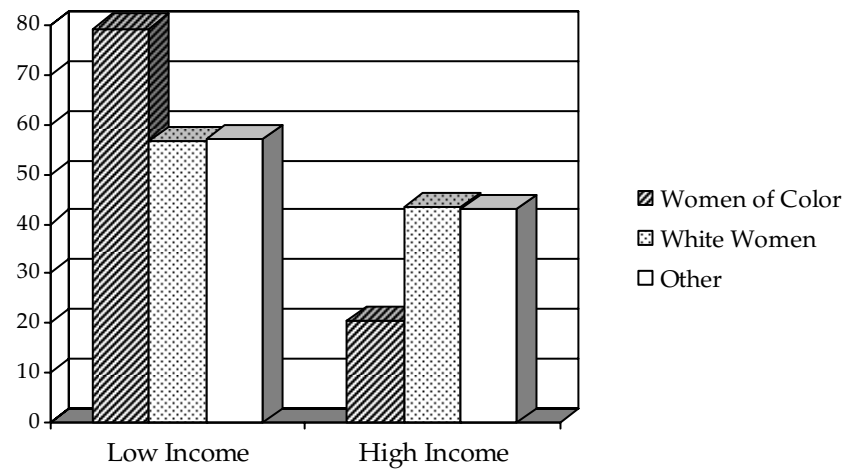


Figure 8. Race and Educational Level

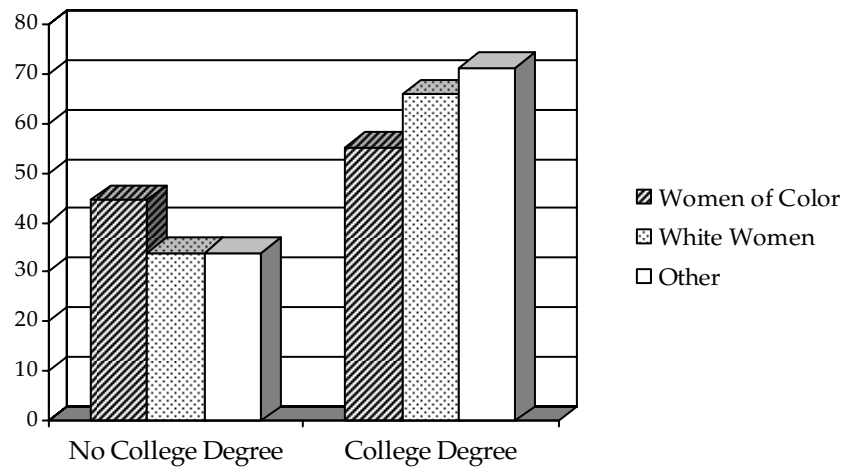
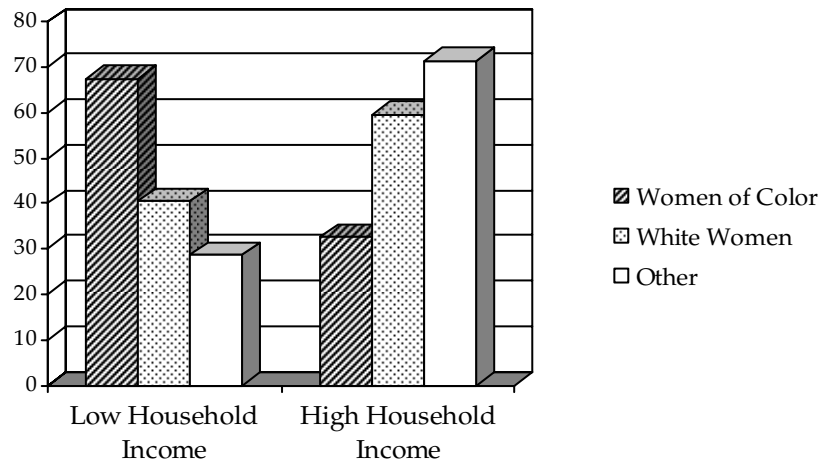




Figure 9. Race and Household Income



## APPENDIX C. CORRELATION STATISTICS

Table 1. The Effect of Race on Dependent Variables

Race	$\chi^2$	(N) Women of Color		(N) White	
Reasons for not reporting a harassment incident					
Concern that I would lose my job	6.117*	(11)	42.3%	(22)	64.7%
Lawyer was other than listed	9.737*	(11)	26.2%	(4)	9.5%
Race of Harasser (nonreported incidents)					
Black	4.604*	(5)	27.6%	(2)	5.9%
White	7.075**	(10)	55.6%	(29)	87.9%
Ethnicity of Harasser					
African	3.865*	(4)	20.2%	(1)	3.2%
European	4.391*	(4)	20.2%	(15)	48.4%
Age of Harasser					
45-54	6.346*	(4)	18.2%	(15)	42.1%
Reported incident to supervisor	6.364*	(31)	79.5%	(38)	95.0%
Race of supervisor	23.424**				
White		(14)	48.3%	(36)	89.7%
Other than White		(15)	51.7%	(3)	10.3%
Failed to report incident to human resources	9.678*	(5)	12.8%	(1)	2.4%
Gender of human resources person	11.664*				
Male		(17)	54.8%	(5)	17.2%
Female		(12)	41.9%	(23)	79.3%
Race of Harasser					
White	16.235**	(15)	46.9%	(35)	89.7%
Black	18.002**	(13)	89.7%	(1)	2.6%
Ethnicity of Harasser					
African	10.267*	(4)	19.2%	(1)	0.0%
European	7.252*	(4)	11.5%	(14)	41.7%
Nature of Harassment					
Subjected to unfair working conditions because of gender	7.914*	(9)	20.0%	(21)	48.8%

\* $p < 0.05$ \*\* $p < 0.001$

Table 2. The Effect of Income on Dependent Variables

Income	$\chi^2$	(N) Low Income		(N) High Income	
Reasons for not reporting					
Afraid no one would believe me	4.957*	(17)	48.6%	(3)	11.6%
Type of Lawyer with whom incident was discussed					
Lawyer was union-referred	9.474**	(8)	15.1%	(0)	0.0%
Age of Harasser					
25-34	4.822*	(5)	16.7%	(0)	0.0%
Race of Harasser					
Black	4.948*	(5)	19.2%	(0)	0.0%
Don't Know	4.913*	(1)	3.8%	(4)	28.6%
Ethnicity of Harasser					
Jewish	7.805**	(1)	3.4%	(5)	35.7%
Nature of Harassment					
Harassed me outside of work	5.556*	(4)	19.0%	(0)	0.0%
Gave me inappropriate gifts	4.737*	(0)	0.0%	(3)	15.8%
Touched himself inappropriately	4.382*	(10)	29.4%	(1)	5.9%
Unwanted sexual advances	5.360*	(37)	57.4%	(9)	31.0%
Rape or sexual assault	3.655	(12)	22.8%	(2)	6.7%
	$(p < 0.056)$				
Complaint Authority					
EEOC	5.282*	(24)	47.1%	(6)	22.4%
Race of person who helped women with harassment incident					
Black	4.425*	(5)	38.5%	(1)	6.7%
White	6.198*	(7)	53.8%	(14)	93.3%
Ethnicity of person who helped women with harassment incident					
European	5.824*	(1)	5.9%	(6)	40.0%
Race of Harasser					
White	5.808*	(15)	52.7%	(28)	80.0%
Black	6.764**	(10)	34.5%	(3)	8.6%
Ethnicity of Harasser					
European	4.867*	(5)	17.2%	(13)	43.3%

\* $p < 0.05$

$**p < 0.01$

Table 3. The Effect of Job Prestige on Dependent Variables

<b>Job Prestige</b>	<b><math>\chi^2</math></b>	<b>High Prestige</b>		<b>Low Prestige</b>	
Reasons for not reporting					
Concern would lose job and not find similar one	5.811*	(13)	36.1%	(2)	9.1%
Discouraged by human resources	3.995*	(4)	11.1%	(0)	0.0%
Age of Harasser					
Over 65	6.825*	(0)	0.0%	(2)	10.5%
Race of Harasser					
Black	5.025*	(1)	3.2%	(4)	25.0%
Don't Know	4.594*	(5)	16.7%	(0)	0.0%
Ethnicity of Harasser					
East Indian	4.485*	(0)	0.0%	(2)	12.5%
Job Position of Harasser					
Business Associate of my employer	4.128*	(0)	0.0%	(2)	6.2%
Complaint Authority					
A city agency	5.340*	(6)	11.3%	(0)	0.0%
Nature of Harassment					
Indirect Verbal Abuse	3.997*	(18)	32.7%	(17)	54.8%
Gave me inappropriate Gifts	4.119*	(0)	0.0%	(2)	6.5%
Gender of Supervisor					
Male	4.863*	(24)	49.0%	(7)	24.1%

\* $p < 0.05$ \*\* $p < 0.01$ 

(percent responding "yes")

Table 4. The Effect of Educational Level on Dependent Variables

<b>Educational Level</b>	<b><math>\chi^2</math></b>	<b>(N)No College Degree</b>		<b>(N) College Degree</b>	
Ethnicity of Harasser					
European	7.092**	(2)	12.5%	(16)	50.0%
Type of Lawyer with whom incident was discussed					
Lawyer consultation was free	5.997*	(14)	42.4%	(34)	60.7%
Lawyer was other than one listed	10.232**	(11)	33.3%	(7)	12.5%
Nature of Harassment					
Verbal harassment, racial in nature	5.409*	(0)	0.0%	(5)	13.9%
Offensive sexual stares	3.669*	(5)	20.8%	(16)	44.4%
Stalked or followed me	4.441*	(7)	29.2%	(3)	8.3%
Spread rumors about my sex life	4.282*	(10)	30.3%	(7)	12.3%
Manner of Dealing with harassment					
Obtained transfer to another position or location	3.813*	(5)	23.8%	(2)	5.7%

\* $p < 0.05$ \*\* $p < 0.01$