

# Three Ways to Spot a Sexual Harasser at Work

## Research reveals red flags that indicate predisposition to predatory behavior

By Wendy L. Patrick, Ph.D.

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Each high profile sexual harassment case that makes the news also reveals warning signs that could have predicted predatory behavior. Because history repeats itself, past behavior is important to predict future behavior. Yet so are statements and expressed beliefs that reveal views about women. Here are three red flags that may reveal a sexual harasser in the work place.

### **Detecting the Dark Triad: Pairing Personality with Harassment Proclivity**

Narcissistic, self-focus is often linked with selfish behavior that discounts the impact on others. Research indicates that such behavior, in addition to related “Dark Triad” traits, is linked with sexual harassment as well.

Research by Zeiglar-Hill et al. (2016) reveals that dark triad traits (narcissism, psychopathy, and Machiavellianism) are positively linked with sexual harassment proclivity in both men and women.[i] They suggested that sexual harassment might be a manipulative mating strategy that Dark Triad individuals might employ in connection with other behaviors such as infidelity, mate poaching, and sexual coercion.

Although they found a correlation, Zeiglar-Hill et al. noted that their research did not support a conclusion that Dark Triad traits predispose individuals to engage in sexual harassment. They raise the possibility that both sexual harassment and Dark Triad traits are influenced through an independent variable.

### **Perceiving Misperception: Predators Overestimate Victim Receptivity**

Sexual harassment is not only about sex; it is also about power. Harassment can be in pursuit of sexual arousal, or sexual abuse—in the form of humiliating, dominating, or intimidating the victim. Research demonstrates that power also produces misperception of victim receptivity.

As I describe in a past column entitled “Sexual Harassment is in the Eye of the Beholder,”[ii] sexual harassment may be in the eye of the perpetrator. Believe it or not, some harassers are unaware of the inappropriateness of their conduct. Research by Kunstman and Manor (2010) entitled “Sexual Overperception: Power, Mating Motives, and Biases in Social Judgment,”

reveals that some people in power direct sexual behavior toward subordinates because they overperceive receptivity.[iii] They explain that overperception is one way in which power can lead to sexual harassment.

Unfortunately, power imbalance negatively impacts victim options. Many victims feel powerless due to anxiety over job loss, negative performance reviews, reputational damage, as well as unwillingness to create “drama” in the workplace. Their failure to call out inappropriate behavior can cause it to continue.

You can spot superiors who repeatedly compliment subordinates on their body, for example, despite their targets displaying visible signs of discomfort such as shifting posture, downcast eyes, or traumatic expressions. The inability of perpetrators to distinguish distress from interest facilitates sexually harassing behavior.

### **Observing Objectification and Dehumanization**

Dehumanizing women through objectification is positively correlated with male rape proclivity. Research by Rudman and Mescher entitled “Of Animals and Objects: Men’s Implicit Dehumanization of Women and Likelihood of Sexual Aggression,” (2017) tested the relationship between two types of dehumanization of women: objectification and animalization, and male sexual aggression.[iv]

In one study, they found men who automatically associated women with primitive constructs such as animals and instinct to be more willing to rape and sexually harass women, as well as to view female rape victims negatively. In a second study, they found that “men who automatically associated women with animals (e.g., animals, paw, snout) more than with humans” demonstrated a higher degree of rape proclivity.

In addition, they noted that “automatically objectifying women by associating them with objects, tools, and things was also positively correlated with men’s rape proclivity.” In combination, their research concluded that “men who implicitly dehumanize women (as either animals or objects) are also likely to sexually victimize them.”

Dehumanizing words and behavior are often painfully evident through jokes and comments made both in the workplace and perhaps more frequently after hours at happy hour or other work-related social functions where they are overheard, and sadly underreported. Yet these beliefs are critical to spotting sexual harassers.

### **Stop Sexual Harassment Before it Becomes Sexual Assault**

In one of my previous columns, “Stop Sexual Harassment: From the Boardroom to the Bedroom,” I discuss how sexual harassment can lead to sexual assault.[v] Discussing “50 Shades of Red” flags and how actions speak louder than words—but words lead to actions, I discuss how sexual harassers often probe boundaries with words. Unfortunately, some harassers proceed to violate boundaries both verbally and physically when they perceive victim receptivity—and even when they don’t.

The progressive nature of sexual harassment should motivate us to focus on education and prevention, before conduct crosses the line from crass and crude, to criminal.

[i] Virgil Zeigler-Hill, Avi Besser, Judith Morag, and W. Keith Campbell, “The Dark Triad and sexual harassment proclivity,” *Personality and Individual Differences* 89 (2016) 47–54.

[ii] <https://www.psychologytoday.com/blog/why-bad-looks-good/201703/sexual-ha...>

[iii]. Jonathan W. Kunstman and Jon K. Maner, “Sexual Overperception: Power, Mating Motives, and Biases in Social Judgment,” *Journal of Personality and Social Psychology* 100, no. 2 (2010): 282–294.

[iv] Laurie A. Rudman and Kris Mescher, “Of Animals and Objects: Men’s Implicit Dehumanization of Women and Likelihood of Sexual Aggression,” *Personality and Social Psychology Bulletin* 38, iss. 6 (2017), 734 – 746.

[v] <https://www.psychologytoday.com/blog/why-bad-looks-good/201604/stop-sexu...>

# **Sexual Harassment at Work: Why Bystanders Fail to Intervene**

## **Gender and objectification of women impact sexual harassment reporting.**

By Wendy L. Patrick, Ph.D.

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### **The Insidious Normalization of Sexual Harassment in the Workplace**

Disgraced Hollywood mogul Harvey Weinstein is just the latest example of how power imbalance between sexual harassment victims and abusers contribute to a culture of silence. Although billed as the “worst kept secret” in Hollywood, previous attempts to document the allegations were unsuccessful due to the reluctance of victims to speak publically.[i]

A culture of silence can produce a culture of complacency when it comes to tolerating sexually harassing behavior. Whether a harasser is creating a toxic workplace or pitching quid pro quo arrangements, seeking to trade career advancement opportunities for sexual favors, there are red flags. Usually plenty of them. Unfortunately, harassers are often protected by a culture of inaction.

### **Calling Out Bystander Non-Intervention: Naming and Shaming**

At some point after each high profile case of sexual harassment, the focus shifts from the perpetrator to his or her colleagues and co-workers, in order to determine who knew what when. We wonder whether a harasser was surrounded by enablers who contributed to a false belief in the appropriateness or normalization of the harassing behavior, which in turn caused it to continue unabated.

Bystander intervention is of critical importance when a harasser holds a position of prominence, because victims are far more reluctant to come forward within a relationship of power imbalance. Yet bystanders often fail to intervene. Here are some of the reasons why.

### **Objectification of Women Normalizes Harassing Behavior**

Research on exposure to objectifying media (media that depicts treating women as objects) may explain the lukewarm response some individuals exhibit to the plight of sexual harassment victims. A study by Galdi et al. (2017) entitled “Defending the Victim of Sexual Harassment” found that media exposure to sexual harassment portrayals can normalize inappropriate behavior and reduce the likelihood of intervening on behalf of a sexual harassment victim.[ii]

Specifically, they found that study participants who viewed objectified television portrayals of women (versus a control video) were less likely to intervene when observing a job interview of a female applicant via electronic chat when the interviewer began to engage in harassing behavior.

They concluded that objectification of women may normalize inappropriate and unethical behavior, reduce the perception of sexual harassment, and delay assistance to sexual harassment victims.

### **Men and Women View Harassment Differently**

Research by Dillon et al. (2015) revealed that gender is another factor that impacts whether individuals view workplace conduct as sexual harassment.[iii] They exposed study participants to five vignettes using gender neutral names depicting possible workplace sexual harassment, as well as the scenario of a supervisor coming into the office of an employee and stating: “If you spend the night with me, then I will give you a promotion.”

They found that women were more uncomfortable with scenarios depicting possible sexual harassment, and more likely to perceive a depiction of quid pro quo sexual harassment situation as threatening, rather than a social exchange, as compared to males.

### **The False Belief that Beautiful is Good**

Sometimes, bystander perception is fueled by the respective levels of attractiveness of the perpetrator and the victim. A study by Herrera et al. (2016) aptly entitled “Is the beautiful always so good?” examined how physical attractiveness impacts perceptions of harassment. They discovered that to an outside observer reading a scenario where a male employee harassed a female employee, the scenario was more likely to be viewed as sexual harassment when the female employee was attractive.[iv]

The study also noted that as a result of “beautiful is good” stereotypical thinking, behavior is less likely to be viewed as sexual harassment when committed by an attractive perpetrator, due to the predisposition to view attractive people as having positive qualities.

### **If You See Something, Say Something: Recognize and Report**

Through education and empowerment of victims and witnesses, we strive to eliminate sexual harassment in the workplace through increased reporting. Bystander intervention means that victims do not need to suffer in silence. Recognizing sexual harassment is the first step, but reporting it is the goal so that history does not repeat itself.

### **References**

[i] <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>

[ii] Silvia Galdi, Anne Maass, and Mara Cadinu, "Defending the Victim of Sexual Harassment: The Influence of Civil Courage and Media Exposure," *Psychology of Women Quarterly* 41, no. 3 (2017) 338-351.

[iii] Haley M. Dillon, Lora E. Adair, Gary L. Brase, "A threatening exchange: Gender and life history strategy predict perceptions and reasoning about sexual harassment," *Personality and Individual Differences* 72 (2015) 195–199.

[iv] Antonio Herrera, M. Carmen Herrera, and Francisca Exposito, "Is the beautiful always so good? Influence of physical attractiveness on the social perception of sexual harassment," *International Journal of Social Psychology* 31, no. 2 (2016): 224-253.

# **Sexual Harassment Victims Suffer in Silence: Here's Why**

## **Sexual harassment victims quit bosses not jobs, and suffer the consequences**

By Wendy L. Patrick, Ph.D.

Psychology Today; Posted Oct 14, 2017 at <https://www.psychologytoday.com/us/blog/why-bad-looks-good/201710/sexual-harassment-victims-suffer-in-silence-here-s-why>

Demonstrating safety in numbers, a steady stream of victims have bravely come forward to accuse Harvey Weinstein of abusive behavior ranging from sexual harassment to sexual assault. Amidst a chorus of inquiries about why they did not come forward earlier, many have explained the reasons for the delay. Among the variety of explanations are some common themes: fear of retaliation, loss of career prospects, damage to their reputation, and conflicting emotions about a man many of them viewed as a friend and mentor—at least until unwanted sexual advances were made.

Sexual harassment is an invisible epidemic because it is severely underreported. Having spent years prosecuting sex crimes, I can share that both research and practice demonstrates that particularly when the suspect and victim are well acquainted, delayed disclosure is closer to the rule than the exception. This is true in some cases even when the victim does not fear the loss of his or her career. Feelings of confusion, guilt, shame, and divided loyalties often result in an unwillingness to report the exploitive behavior immediately after the incident, if at all.

Research corroborates the fact that victims are less likely to report sexual assault when they have a close relationship, either personal or professional, with the perpetrator. A study by Bicanic et al. entitled “Predictors of delayed disclosure of rape in female adolescents and young adults,” (2015) found that victims who delayed disclosure of rape were less likely to report the crime to law enforcement or use medical services than victims who disclosed earlier.[i] They also identified several factors that affected victim disclosure. They found delayed disclosure to be more common among adolescents than young adults, victims who were threatened, penetrated versus assaulted, and victims who were close with their assailant.

Yet the reluctance to report acquaintance abuse does not end in young adulthood—particularly when the abuse occurs in the workplace. Cases like Harvey Weinstein’s reveal that the reluctance to report abuse by a colleague or especially a superior remains a significant problem.

As victims suffer in silence, the toxic workplace environment takes its physical, emotional, and often financial toll—in terms of absenteeism, and eventually attrition, which can impact future career prospects.

## **Negative Career Consequences: Sexual Harassment Victims Don't Quit Jobs They Quit Bosses**

Some people walk away from even lucrative jobs to escape sexual harassment in the workplace. Yet research reveals that leaving a job to avoid further on the job harassment can adversely affect a career.

Research by Heather McLaughlin et al. (2017) entitled “The Economic and Career Effects of Sexual Harassment On Working Women” reveals that in the workplace, sexual harassment contributes to financial difficulties, primarily by instigating a job change.[ii] They note that while some women report harassment, many choose to just leave the jobs instead to escape the harassment, which can have a significant impact on a woman’s career attainment. They note that other women leave due to frustration due to an employer displaying an inadequate response to having reported the harassment.

McLaughlin et al. discuss prior research indicating that sexual harassment has a negative impact on both physical and mental health, including depression that can last up to a decade. They also note that harassment can create self-doubt and anger, which in turn could adversely affect future employment, and that sexual harassment leads to absenteeism, withdrawal, and reduced job satisfaction, and can adversely affect relationships with co-workers.

Interestingly, McLaughlin et al. also found that women in their study who were not direct targets of harassment were ostracized by coworkers for challenging workplace misogyny—a finding with significant application in the modern workplace.

### **Safety in Numbers**

The failure to report sexual harassment, while arguably the norm, continues to be a significant problem with long ranging negative consequences. Hopefully, the public discussion of this critical societal issue that accompanies each high profile sexual harassment case that makes news will empower more victims to come forward, inspire companies to re-examine workplace culture, and increase perception of the red flags that can help employers and employees alike identify problem employees before another victim is claimed.

[i] Iva A. E. Bicanic, Lieve M. Hehenkam<sup>1</sup>, Elise M. van de Putte, Arjen J. van Wijk, and Ad de Jongh, “Predictors of delayed disclosure of rape in female adolescents and young adults,” *European Journal of Psychotraumatology* 6: 25883, 2015.

[ii] Heather McLaughlin, Christopher Uggen, and Amy Blackstone, “The Economic and Career Effects of Sexual Harassment on Working Women,” *Gender & Society* 31, Issue 3, 333 – 358, 2017.

# Confidentiality

**Informal Advice**

**Confidential**

**Assisted Resolution**

**Need to Know Basis**

**Formal Complaint  
and Hearing**

**Confidentiality and  
Anonymity Not Guaranteed**

**Filing of a  
Request for  
Assisted  
Resolution  
Form**

**Filing of a  
Complaint  
under EDR  
Policy Form**

# Discrimination

Discrimination is actions or behavior directed at an Employee based upon the Employee's race, sex, gender, or other protected characteristics as detailed in the EDR Policy. Discrimination often arises as an adverse employment related action that negatively affects an Employee.

# Harassment

Harassment is a form of discrimination and is unwelcome conduct that can include physical, verbal, non-verbal, or psychological behavior that interferes with work performance or creates a hostile or offensive work environment.

## Types of Misconduct

# Bullying

Bullying includes repeated mistreatment involving abusive conduct that is threatening, oppressive, or intimidating, and interferes with an individual's ability to do one's job.

# Retaliation

Retaliation includes unwarranted reprimands; unfair downgrading of personnel evaluations; transfers to less desirable positions; verbal, physical, or psychological abuse; and altered or less convenient work schedules, due to the reporting of misconduct.

# Workplace Misconduct Inquiries and Complaints in the Ninth Circuit

## OPTIONS

## WHO TO CONTACT

### Informal Advice

Confidential advice and guidance  
on workplace issues

- **Ninth Circuit Director  
of Workplace Relations:**  
\*Marc Theriault, 415-355-8970
- **Ethics Advice:**  
Judge Murguia, 602-322-7580

### Assisted Resolution

Interactive, flexible process that  
may include voluntary mediation

- **Ninth Circuit Director  
of Workplace Relations:**  
\*Marc Theriault, 415-355-8970

### Formal Complaint



- and/or -



Under Ninth Circuit  
Employee Dispute  
Resolution Policy  
(for complaint against  
employee or judge)

Under Judicial  
Conduct & Disability  
Act (for complaint  
against a judge)

- **Ninth Circuit Director  
of Workplace Relations:**  
\*Marc Theriault, 415-355-8970

\*Marc Theriault is only serving as interim Director of Workplace Relations pending the recruitment of a full-time DWR.



## Update from the Ninth Circuit WORKPLACE ENVIRONMENT COMMITTEE

JULY 2018

In December 2017, Chief Judge Sidney R. Thomas appointed the Ninth Circuit Workplace Environment Committee to review and revise policies and procedures to promote and safeguard a healthy working environment throughout the circuit.

Committee members are Circuit Judge M. Margaret McKeown, chair; Chief District Judge Virginia A. Phillips of the Central District of California; Senior District Judge Charles R. Breyer of the Northern District of California; Magistrate Judge Candy W. Dale of the District of Idaho; and employment and mediation specialist Abby Silverman. Court of Appeals Clerk of Court Molly Dwyer, Circuit Executive Elizabeth A. “Libby” Smith, Deputy Circuit Executive Marc Theriault, and law clerk Megan Larkin serve on the Committee as staff.

Recognizing the importance of obtaining feedback to guide its work, the Committee immediately engaged in an extensive outreach effort. This effort included sending a questionnaire to thousands of current and former employees and law clerks; conducting small focus group sessions in multiple cities; having confidential conversations with individuals on request; and making a Committee email address publicly available for additional comments. The Committee also reached out to law school deans, and to a group of concerned law clerks from around the country, to assist in developing plans to improve the law clerk and extern experience.

The Committee’s outreach effort has led to significant changes in the policies, procedures, practices, and resources available to all employees in the Ninth Circuit. Highlights include:

- **Creation of the new Director of Workplace Relations position, the first of its kind in the federal judiciary.** The most requested recommendation from current and former employees was for a clearly identified, independent person of high stature to whom individuals can report misconduct as well as other concerns. The Director of Workplace Relations will oversee workplace misconduct issues throughout the circuit, be available to offer confidential advice to employees at an early stage, and will assist in guiding employees through the Employment Dispute Resolution (EDR) process.

- **Revised Employment Dispute Resolution Policy for the Ninth Circuit.** The Committee received feedback that the EDR policies were confusing, the process unwieldy, and the timelines restrictive for employees. In response to these concerns, the Committee rewrote the EDR Policy in plain language, included a flowchart to assist in understanding the process, and extended the time to report misconduct from 30 days to 180 days.
- **Revised Confidentiality Policy.** The model confidentiality policy has been revised and simplified to clarify that the reporting of misconduct is an exception to chambers confidentiality requirements.
- **Improved Orientation and other resources for law clerks.** Beginning in September 2018, law clerk orientation programs will be expanded to include an improved training on workplace policies, reporting procedures, and resources available to law clerks. To further this effort, the Committee has created a suggested Chambers Checklist for in-chambers orientation and will launch a special law clerk portal on the court's intranet site.
- **Uniform New Hire Procedures.** All new employees will receive uniform new hire materials that include an explanation of circuit policies and procedures.
- **Exit Questionnaires for Departing Employees.** To increase opportunities to provide feedback and provide an ongoing mechanism to monitor the workplace environment throughout the circuit, all departing employees will receive an anonymous exit questionnaire, with copies of the responses going to the Director of Workplace Relations.
- **Training and Education.** A key aspect to the successful implementation of these new policies and practices is training and education. Committee members have been meeting with judges and employees to highlight questionnaire results and the impact of the revised policies. Starting with the Ninth Circuit Judicial Conference and moving forward, additional workplace training opportunities will be made available to judges, law clerks, court unit executives, and employees throughout the circuit.

Ensuring a healthy and productive workplace for all employees is, and will continue to be, the highest priority in the Ninth Circuit. The Committee welcomes your suggestions: [ninth\\_circuit\\_workplace\\_policies\\_committee@ce9.uscourts.gov](mailto:ninth_circuit_workplace_policies_committee@ce9.uscourts.gov) 

## **Congratulations and best wishes as you begin the wonderful experience of clerking!**

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