JEAN JEW'S CASE:
RESISTING SEXUAL HARASSMENT IN THE
ACADEMY

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JEAN JEW'S CASE: RESISTING SEXUAL HARASSMENT IN THE ACADEMY

by Martha Chamallas*

The claim of sexual harassment is nearly twenty years old. From the first cases brought in the mid-1970s¹ to the recurring headline-making controversies of the present -- Hill/Thomas, Tailhook, Packwood -- sexual harassment claims have generated heated debate about the validity of women's interpretations of their

* Professor of Law, University of Iowa. This essay is based on a combination of personal recollection and facts from the public record. I was a member of the Jean Jew Justice Committee in 1990 and a member of the Council on the Status of Women from 1987-1991. I am grateful to Jean Jew, Sue Buckley, Nancy Hauserman and Peter Shane for agreeing to review the essay for factual accuracy. The opinions expressed in this reflection are, however, solely my own.

experiences and the credibility of women's accounts of injury.² Like most legal claims, the courts have repeatedly been called upon to refine the cause of action, to resolve ambiguities in the definition of harassment and uncertainties about the limits of the law. In its recent unanimous decision in Harris v. Forklift Systems, Inc.,³ the United States Supreme Court reinforced the right of sexual harassment plaintiffs to bring suits not only for economic injury, but for noneconomic injury stemming from sexually hostile or abusive working environments.⁴ The Court

2. I discuss the extensive literature on sexual harassment and the major trends in the legal doctrine in Martha Chamallas, Writing About Sexual Harassment: A Guide to the Literature, 4 UCLA Women's L. J. 201 (1994).


4. Since its first sexual harassment decision in Meritor Bank v. Vinson, 477 U.S. 57 (1986), the Court has recognized two types of sexual harassment -- quid pro quo and hostile or offensive working environment. In quid pro quo cases, the harassment is directly linked to the grant or denial of an economic benefit. EEOC Guidelines provide for liability when "submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment [or] . . .is used as a basis for employment decisions affecting such individual." 29 C.F.R. Section 1604.11(a)(1)(2) (1993). Hostile work environment occurs when the harassing conduct of a supervisor, co-employee or third party (e.g., client or customer) "has the purpose or effect of unreasonably
also clarified the elements of the abusive work environment claim, ending a divisive split in the circuits.\textsuperscript{5} The law of sexual harassment has now matured to a point in which it is difficult for defendants to claim a lack of understanding of their legal responsibilities.

However, I doubt whether the new Supreme Court precedent will lessen the intensity with which sexual harassment controversies are fought. Even when people agree upon basic principles, there can be sharp disagreement in concrete cases -- disagreement about who is telling the truth, disagreement about who deserves to be sanctioned and disagreement about the appropriate role of the employer in preventing or rectifying the harassment.

Moreover, the refined legal doctrine does not address what has been called the second injury, the

\textsuperscript{5} Most importantly, the Court refused to require plaintiffs to prove that they had suffered severe psychological harm as a required element of the claim. Harris v. Forklift Systems, Inc., 62 U.S.L.W. 4004, 4005 (Nov.9, 1993).
injury sexual harassment victims experience when they bring their claims to court. The harsh treatment of Anita Hill as a complaining witness before the Senate Judiciary Committee was but a dramatic example of the cruelty of sexual harassment disputes. The strategy of discrediting the plaintiff is a staple in sexual harassment litigation. Despite attempts to focus the legal inquiry on the actions of the defendant, rather than on the behavior of the plaintiff, lawyers know that they must warn prospective sexual harassment plaintiffs that they too will be put on trial.

The question that often plagues feminist lawyers is whether faith in the law is warranted. Given what we have learned about sexual harassment litigation, are women foolish to sue their employers for sexual harassment? Will the trial be as bad or even worse than the abuse the plaintiff suffered at work? Are women victimized by sexual harassment doomed to be falsely constructed during the course of the litigation either as helpless victims or vindictive liars?

The case that has been the most influential in my own thinking -- the lawsuit Professor Jean Jew brought
against the University of Iowa -- teaches me a host of potentially conflicting lessons. Sometimes I consider Jew's case to be a complete victory -- she won in the courts, she changed public opinion in our community, all the while insisting that she should not be forced to get a new job to find a more hospitable environment. Sometimes, however, I consider Jew's case as a warning that legal claims of sexual harassment offer only very limited prospects for social transformation. Jew's victory was exacted at an extremely high cost: Jew fought the University for more than a decade and was treated cruelly by a liberal institution which professed a commitment to sexual and racial equality. As she acknowledged,6 Jew's public stance was made possible only because she was relatively privileged in terms of education, economic and social position and had no partner or child who might also suffer from the stress and ostracism that comes with such a lawsuit. I also regard Jew's case as special, in the sense that certain important factors combined to overcome the

formidable institutional resistance to her claims -- factors that are not likely to be present in many cases.

This essay chronicles Jean Jew's struggle to have the University acknowledge that she had been treated unfairly. As a matter of legal doctrine, Jew's case is significant because it is one of only a few cases in which a faculty member has successfully argued that her academic department constituted a hostile working environment.\(^7\) It is significant as a case study of gender hostility in a predominantly male working group of elite professionals in which the harassment was ever bit as virulent as that which occurs in factories and construction sites.\(^8\) It is significant as a painful yet powerful demonstration of how race and sex

\(^7\) See also King v. Bd. of Regents, 898 F.2d 533 (7th Cir. 1990).

discrimination intersect to create distinctive burdens for women of color. Finally, it is significant for what it reveals for feminists about the interplay between law, litigation and grassroots political activism.

Harassment and Discrimination

Jean Jew is a research scientist. She grew up in New Orleans and went to undergraduate and medical school at Tulane University. She is first generation Chinese American. Those who know Jew often describe her as serious, hard working and very devoted to her career. In 1973, shortly after receiving her M.D., she came to the University of Iowa as a post-graduate associate in the department of anatomy. She was 24 years old. A year later she was put on the tenure track. At that time she was the only woman in a faculty position in a basic science department in the College of Medicine.

Jew came to Iowa as part of a research team from Tulane. Her mentor was Terence Williams, who was recruited to head Iowa's department of anatomy. At Tulane, Jew had already worked extensively with
Williams in the field of the nervous system and electromicroscopy. Before the Tulane group ever arrived, the anatomy department at Iowa was factionalized and morale was poor.\footnote{9} Tensions exacerbated after Williams became department head. Some of the older faculty in particular did not like Williams and the way he ran the department. Faculty members complained that he would not tolerate disagreement with his views and there was fear that he would try to get rid of people who were not on his side.

Jew suffered from her association with Williams. Beginning in her first year and lasting for thirteen years thereafter, Jew was the subject of rumors that she and Williams were having a sexual relationship and that Jew had been given preferential treatment in the department because of the relationship. The campaign of sexual libel was extensive, reaching students throughout the College, as well as staff and faculty in other parts of the University. There was even gossip

about the alleged relationship at national and international meetings of anatomists and neuroscientists. Throughout this time, Jew insisted that her relationship with Williams was professional and friendly only. Despite the persistence of the rumors, Jew did not distance herself from Williams; she continued to socialize with him and his wife and to collaborate with Williams on a number of research projects. Before the trial, the conventional wisdom on campus was that the rumors must be true because so many people believed they were true.

At times, the comments about Jew turned vicious. For many people the startling aspect of her case was the crude treatment of Jew by some of the male faculty in her department. She was called a "stupid slut," a "dumb bitch," a "whore" and a "chink," sometimes even to her face.10 She was the subject of sexually denigrating graffiti and cartoons which intermittently appeared in the men’s room and on a bulletin board outside the office of a faculty member. She was also

10. Plaintiff’s Memorandum In Opposition to Defendants’ Motion for Summary Judgment, Civil Action No. 86-169-D-2 at 5-6.
defamed in an anonymous letter sent to a male colleague describing Jew in racist, lewd terms ("Chinese pussy"). 11

The situation reached a critical point when Jew came up for promotion to full professor. Two months earlier, Williams had been pressured to resign as head of the department; his supporters were now in the minority among senior faculty. The vote was five to three against Jew's promotion. Two of those voting with the majority were the same faculty members who had made sexual slurs about Jew. One of these men repeated his slander of Jew to another full professor on the very day of the vote, referring to her as a "whore." 12 One of the others voting against Jew complained that she had received professional advantages denied to him, and a fourth person in the majority remarked during the discussion on Jew that "women and blacks have it made." 13 The stated reason for the denial of promotion was that Jew had not established independence

11. Id.
in her research, making it clear that her longstanding collaboration with Williams had been costly to her career.

Administrative Inaction

Jew first took her complaints of sex discrimination to various administrators in the College of Medicine and to the central administration of the University. Before the promotion denial, the Vice-President of Academic Affairs -- the only woman ever to have served in such a high capacity in the University -- told Jew that nothing could be done and that Jew would only make things worse for herself by pursuing a complaint. At that time the Dean of the College of Medicine told Jew that a single woman in a small town such as Iowa City had to realize that she lived in a "goldfish bowl environment."14 After she was denied promotion, Jew filed a formal complaint and hired Carolyn Chalmers as her lawyer. Chalmers was a partner in a large firm in Minneapolis who had gained a reputation as a successful feminist litigator by

winning a class action on behalf of women faculty against the University of Minnesota.

In hopes of avoiding litigation, the sides agreed to convene a panel of faculty members to investigate Jew's sexual harassment complaint. Each of the three panel members was approved by both parties. The panel was chaired by Nancy Hauserman, a lawyer on the faculty of the College of Business who had been active in several women's organizations on campus and had been called upon frequently to serve as a representative of women's interests on university committees. The other two panel members were male faculty members from the College of Medicine. The hearings conducted by the panel were quite formal: the testimony of witnesses was sworn and transcribed. The panel's report concluded that Jew had been defamed and harassed because of her sex and recommended that immediate administrative action be taken on her behalf.

At this point, the University dug in its heels. It never implemented the panel report,¹⁵ never took

¹⁵. The only step the University took in response to the panel report was to hire a handwriting analyst several months after the report was issued to examine the
steps to repair Jew’s reputation, and allowed the case slowly to proceed to trial, a process that took six years.\textsuperscript{16} In the meantime, Jew became very active in women’s groups on campus. She worked with a diverse group of faculty and staff studying affirmative action in Colleges outside of her own and was elected to be Chair of the Council on the Status of Women. When Jew’s cases for libel and sexual harassment finally came to trial, there was a group of women at the University who respected Jew, believed her account and were prepared to watch the cases closely.

\textbf{The Trials}

The federal trial lasted for 12 days, held mainly

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anonymous graffiti and notes. The analyst determined that the handwriting sample of someone who was not a faculty member was the most likely match to the anonymous writings and asked for more samples from the individual. The University did not supply the samples until three years later. \textit{Jew}, 749 F. Supp. at 956.
\end{flushright}

\textsuperscript{16} The first judicial rulings in the Jew litigation came from the state courts. Two years after filing her complaint, Jew won the right from the Iowa Supreme Court to pursue a state civil rights claim. \textit{Jew v. University of Iowa}, 398 N.W. 2d 861 (Iowa 1987). The court rejected the University’s contention that public employees should be restricted to appealing only under the terms of the Iowa administrative procedure act.
during November of 1989. The case was tried before Judge Harold Vietor, sitting without a jury. Because the trial was in Des Moines, one hundred miles from campus, there were few University people in attendance. On some days, a representative from the Council on the Status of Women or from the AAUP\(^{17}\) would be present to hear testimony. A female administrator whose primary responsibility was overseeing nonacademic staff was designated by the University to be the "client" for purposes of the trial and to attend all court sessions. The University was officially represented by two lawyers from the Office of Attorney General. The newspaper coverage was not very extensive -- the Des Moines Register carried a few stories, but the Iowa City paper claimed it did not have the resources to have someone cover the story.

\(^{17}\) The AAUP’s involvement in the Jew litigation was marginal and ambivalent. The AAUP group on campus had been actively involved in a prior tenure dispute involving a male faculty member of the anatomy department who had claimed that Williams had treated him unfairly and had argued that Jew had received preferential treatment. Only when Jew won her case in federal court did some AAUP members urge the University to drop the appeal and publicly criticize the University’s handling of the case. See Ekhard Ziegler, Public image, The Daily Iowan, Nov. 7, 1990 (letter to editor by AAUP President).
The litigation strategy of the University was to discredit Jew by trying to show that she had indeed been sleeping with Williams and that the rumors had a basis in fact. The theory of defendant’s case was that Jew had incited or provoked the harassment and that the response to Jew did not amount to a sexually hostile environment. Largely outside the public eye, the lawyers representing the University played hard ball. The litigators demonstrated little concern for how their trial strategies might undermine the University’s stated position of promoting the advancement of women and condemning racist behavior on campus. The effect was very intimidating to those observers, like myself, who followed the legal developments.

In a variety of ways, those defending the University alerted faculty and staff that the only institutionally loyal course of action was to take sides against Jew in the litigation. By a written memorandum, a lawyer from the central administration instructed the medical faculty not to speak to anyone about the case.¹⁸ Persons who appeared on the

¹⁸. Memorandum from Julia Mears, Nov. 9, 1989.
plaintiff's potential witness list were called by counsel from the Attorney General's office and asked sharp questions about the substance of their testimony.

The University went on the offensive at trial, beyond denying that the particular incidents Jew alleged had ever occurred. At trial Jew was asked whether she had ever had a sexual relationship with Williams. When she responded negatively, the University tried to impeach her testimony by introducing medical records from her gynecologist showing that Jew had been using birth control pills during the period in question. Over the plaintiff's objection, the judge allowed University counsel to ask Jew why she was on the pill. Presumably to cast aspersions on Jew's character, in a written brief to the court, the University stated that Jew's sister, who was also employed by the anatomy department, had once been a Playboy bunny19 and referred to Jew as a "claimant without a conscience."20


20. Id. at 35.
Before the opinion was handed down in the federal case, Jew’s state defamation claim against Professor Robert Tomanek was tried before a jury in Iowa City. Although the University was not a defendant in this action, it paid the legal fees and ultimately the entire damage award for Tomanek. Like the defense in federal court, the strategy in state court evidenced no regard for what an all-out battle against Jew might mean for other women at the University or for the reputation of the University. For example, the defendant challenged a prospective juror for cause simply because she had taken a Women’s Studies course. The defendant disputed the testimony of a woman who had served as Associate Dean for the College of Liberal Arts who stated that the personal vilification of Jew violated several University policies. Through the testimony of the former Vice President for Academic Affairs and a University lawyer, the defendant took the position that even sexual and racial slurs fell within the bounds of academic freedom because they were made
in the context of a intradepartmental dispute.21

In the federal harassment case, the truth of the allegations about any sexual relationship between Jew and Williams was arguably only indirectly relevant, as evidence that Jew's own conduct somehow provoked or incited the harassment. In the libel case, however, truth was a clear defense and the defendant again set out to show that the rumors were true. The defendant produced a witness who claimed she saw Williams having sex with a woman in the library in the department of anatomy. She assumed that the woman was Jew because, she stated, the woman had "yellow legs." To show that the witness's testimony was distorted by racial stereotypes, Jew's attorney conducted an experiment for the jury -- asking them to compare her bare "white" legs to that of her client's.

The defense strategy in the state trial also sought to deploy the sexual stereotype that all close interactions between men and women must have a sexual dimension. At one point, Tomanek's counsel asked a

21. See Monica Seigel, UI administrator takes the stand, The Iowa City Press-Citizen, June 12, 1990 at 1A.
witness whether he knew of any other male/female research team in the department besides Jew and Williams with such a long history of collaboration. The witness could think of only one other team, which happened to be a husband/wife team. The insinuation carried an ominous message for junior women faculty trying to establish a record of research, especially since there were no other women in Jew's specialty whom she could have chosen as a collaborator.\(^{22}\)

Legal Victories

Jew's first major victory came from the state jury which held Tomanek liable for both compensatory and punitive damages.\(^{23}\) The trial and its outcome were covered extensively by the local newspaper\(^ {24}\) and the

\(^{22}\) One other female junior faculty member in the department had collaborated on research projects for a time with a senior male faculty member. However, she was denied tenure in 1983, the same year Jew was denied promotion.


\(^{24}\) See Monica Seigel, Defamation trial arguments end, The Iowa City Press-Citizen, June 13, 1990 at 1A.
campus newspaper, the Daily Iowan.25 Each day a contingent of faculty and staff supporting Jew attended the trial, became familiar with the incidents and discussed the implications of the defense strategy for their professional lives at the University.

Shortly after the start of the fall semester in 1990, Vietor issued his opinion in the federal case. The 20-page ruling was as favorable to Jew as possible: Vietor found that Jew had been subject to sexual harassment, that the harassment was serious, and that the University had failed in its duty to take prompt remedial action. These findings entitled Jew to affirmative relief from the sexually hostile working environment, including ordering the distribution of the court’s opinion and the faculty panel’s report to top University officials, all College of Medicine department heads, and all faculty and staff in the

department of anatomy.\textsuperscript{26} Vietor also determined that the harassment of Jew had impermissibly tainted the decision not to promote her seven years earlier and that she was qualified for promotion.\textsuperscript{27} He took the relatively novel step of ordering her retroactive promotion to full professor,\textsuperscript{28} along with lost back pay. The issue of attorney's fees was reserved for a subsequent hearing in which the court would determine the amount Chalmers was entitled to recover for her representation of the prevailing party in a Title VII suit.

After all the years of speculation and rumors, Vietor issued the simple finding that "[t]here had never been a romantic or sexual relationship between

\textsuperscript{26} \textit{Jew}, 749 F. Supp. at 963.
\textsuperscript{27} \textit{Id.} at 960-61.
\textsuperscript{28} \textit{Id.} at 763. Not many courts have ordered that academics who win discrimination suits are entitled to tenure or promotion. The more typical remedy is to order that a fair procedure be followed. In Jew's case, however, the judge believed that it would be extremely difficult, seven years after the fact, to structure a fair promotion review. The court was also clearly of the view that the University had failed to prove that Jew's record was inadequate to justify the promotion, thus failing to meet its burden of proof under \textit{Price Waterhouse v. Hopkins}, 490 U.S. 228 (1989).
Dr. Jew and Dr. Williams." He also dispatched the University's provocation defense by finding that "Dr. Jew did not, by word or deed, invite the type of comments made about her and Dr. Williams. . . . Indeed Dr. Jew had conducted herself throughout her employment at the University as a serious and committed teacher, scholar and member of the academic community."  

In addition to clearing Jew's name, Vietor's opinion contained a thorough and detailed account of the incidents that formed the basis of Jew's claim of a hostile work environment. In clear, dispassionate prose, Vietor's narrative painted a vivid picture of the cruel and unprofessional way some of Jew's colleagues treated her, a picture that shocked many who thought that doctors and professors did not act this way. He also had little positive to say about the University's handling of Jew's complaint; his understated comment that the University's response was "ambivalent at best" would later be quoted


30. Id. at 951.

31. Id. at 959.
repeatedly to pressure the University to change its course of action.

Perhaps the most important legal aspect of Vietor’s opinion was his analysis of the sex-based nature of the hostility directed at Jew. The University had taken the position that Jew’s harassment was not really sexual in nature. The central problem according to the University was the animosity toward Williams. The University claimed that Jew suffered not because she was a woman but because of her political alignment with the detested department head. Vietor rejected this argument, reasoning that among the faculty who supported Williams, only Jew was accused of using sex to further her career. The men on the "wrong side" in the department did not have their reputations similarly damaged nor their achievements diminished. Vietor also stated that the rumors about Williams and Jew did not have the same effect for


The libel portrayed Jew as trying to use sex, rather than merit, to get ahead. Although the rumors similarly charged Williams with being unethical, his competency as a researcher was never questioned. No one asserted that it was really Jew’s talent that made their joint projects successful. Vietor’s complicated and nuanced assessment of the effect of the rumors and harassing statements refuted the University’s argument that life in the department of anatomy was equally bad for men and women. It also saved a classic case of sexual libel from being classified as having no connection to sexual harassment.

The Jean Jew Justice Committee

Initially there was only moderate publicity on the ruling. Various newspapers in the state carried stories announcing and describing the judgment, but there were no editorials or in-depth coverage. Privately, individuals and groups of faculty and staff urged University administrators to put an end to the matter and not to pursue an appeal. By this time, the

34. Id.

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two top administrators, the President and Vice President for Academic Affairs, who were relatively new on the job, professed an inability to stop the ongoing litigation.

The University's action that provided the impetus for political mobilization on behalf of Jew was its decision to appeal the case to the Eighth Circuit Court of Appeals. In an official statement by the Board of Regents, the University claimed that Vietor's order violated the free speech rights of male faculty and put the University in the position of "policing the statements and behavior of faculty members in ways that appear inconsistent with academic life and constitutional protections." 35

35. Iowa City Press Citizen, October 13, 1990. The free speech argument was on very shaky ground legally. The United States Supreme Court had consistently ruled that libel was not protected by the first amendment and had done so recently in a case involving criticism of the conduct of a high school teacher. Milkovitch v. Lorain Journal Co., 110 S. Ct. 2695 (1990). The University perhaps could have had a stronger case if it had only challenged the propriety of Vietor's ordering a retroactive promotion. However, even if it prevailed on this issue, Jew would still have been entitled to a sizable award for attorney's fees as the prevailing party on the claims of a discriminatory denial of promotion and a sexually hostile working environment. If the University wished to escape paying Jew's attorney, it had
Immediately after the public announcement of the appeal, the Jean Jew Justice Committee was formed. The core group included leaders in feminist activist and academic groups and men and women who either knew Jew personally or had followed the case. By word of mouth, the group grew into a diverse coalition of people intent on getting the University to drop the appeal; it took as its primary mission the job of informing the University community and the state about the facts of the case. The group quickly conducted a fundraising effort which brought in more than enough money to pay for mailing and advertising costs. In retrospect, the most important action taken by the Justice Committee was the distribution of a copy of Judge Vietor's opinion to every faculty member in the University.

The impact of the mailing was profound. Later that week, over 200 people signed a full page ad in the Daily Iowan urging people to judge the facts for themselves by reading Vietor's opinion.\textsuperscript{36} Many of

\textsuperscript{36} The Daily Iowan, Oct. 17, 1990 at 12A.
those signing the ad had never before been associated with feminist causes and it was becoming clear that the outrage over the University’s response reached beyond the political left. For the next several weeks, the newspapers in the state finally began to comment on the case. All the editorials were critical of the University; many expressed scorn and disbelief at the University’s refusal to give up. One columnist, who styles himself "the old reporter," had particularly harsh words for the University and speculated that the press had been reluctant to cover the story sufficiently before this time because the behavior in the anatomy department was too disgusting to report in a "family newspaper" such as the Des Moines Register. The sentiment in the University began to shift radically; the view that the University was on the wrong side gained widespread support.

Individual departments and the Faculty Council passed


resolutions condemning the appeal; eighteen members of the math faculty wrote a letter to the Daily Iowan calling for the University to drop the appeal and issue an apology.39

The Settlement

Only hours before a public forum scheduled by the Justice Committee to mark one month since the filing of the appeal, the case was settled. The lawyers from the Attorney General's office were supplanted in the last round of negotiations by private counsel representing the President of the Board of Regents. The settlement gave Jew everything she won in the district court and fully compensated her attorney for her multi-year representation. Jew was retroactively promoted to full professor, given backpay, and an amount to cover the yet-unpaid judgment in the state libel action and settlement of the pending state civil rights action (for a total of $176,000). Of most importance to a financially strapped University and state government, under the terms of the settlement, Chalmers was paid

$895,000 in attorney's fees. The terms of the settlement were public,\(^\text{40}\) in contrast to many discrimination settlements in which the plaintiff gives up the right to disclose the contents of the parties' agreement. \(^\text{41}\) It was clear that Jew had won; the settlement did not require her to compromise on any of her initial demands.\(^\text{42}\)

Beyond the specific litigation demands, however, it was considerably less clear what Jew had won from the University of Iowa. The President of the University issued a formal statement, stating that "Dr. Jew deserves our apologies and our respect for her


\(\text{\footnotesize 41. For a discussion of confidentiality clauses in sexual harassment settlements, see Barbara Lindemann & David D. Kadue, Sexual Harassment in Employment Law 644-45 (1992).}\)

\(\text{\footnotesize 42. Jew did agree to settle her pending state civil rights claim against the University for $40,000. See Jean Jew, UI reach settlement, The Daily Iowan, Nov. 19, 1990.}\)
stand."43 He did not, however, embrace her publicly in any other way and delegated to others the responsibility for implementing that part of the court order requiring the University to create an environment in the department that was free of sexual hostility. No disciplinary proceedings were instituted against Tomanek and the University refused Jew’s request to transfer his tenure line outside the department of anatomy. Judge Vietor declined to act on a motion by the University to have the court declare the University in compliance. Over eighteen months after the settlement, the University sought the advice of a special committee of three persons outside the University to advise it on whether the University had taken "all reasonable steps" to comply with the court order and to finally resolve the case. The committee issued a lengthy report including suggestions for further monitoring of the department of anatomy and the creation of new structures both within the College of Medicine and the University at large. It did not,

43. See Andy Brownstein & Diana Wallace, UI, Regents put case to rest, The Daily Iowan, Nov. 13, 1990 at 1A.
however, express any opinion as to whether the University had complied with the court mandate. This aspect of the litigation continues.

Explaining the University’s Resistance: Stereotypes, Tokenism and Perspective

A case as painful and prolonged and politically significant as Jew’s deserves to be examined closely for what it reveals about the conditions under which such events can occur and the importance of law and litigation to feminists. Like most institutions worried about their public images, the University of Iowa was not inclined to reflect publicly on what had happened and simply wanted to put the case behind it. The public statements of University officials spoke of healing, rather than assessing. The Vice President for Academic Affairs boldly and naively pronounced that he could guarantee that nothing like this would ever happen again.44 Jew also stated her desire to get back to work, in what she hoped would be an improved

44. See Linda Hartmann, UI Jew settle suit, The Iowa City Press-Citizen, Nov. 13, 1990 at 1A.
environment.\footnote{See Marge Gasnick, \textit{UI must promote professor}, The Iowa-City Press Citizen, Aug. 29, 1990 at 1A.}

Now that over three years have passed since Jew’s victories in court and the University’s capitulation, I find myself constructing a guardedly optimistic appraisal of the case. In retrospect, I think that the University’s resistance to Jew’s claim -- and perhaps even the callousness of its defense -- was predictable given the dominant attitudes and structural conditions at the College of Medicine and in the larger University community. I now regard Jew’s victory as extraordinary. The lesson that stays with me is that it takes both legal action and direct political agitation to sustain even limited victories in this highly contested area of women’s rights to dignity and economic parity.

Why did the University oppose Jew’s complaint of sex discrimination? As simple as it sounds, I believe that several of the key people at the University who opposed Jew’s claim -- men and women -- did so because they believed that Jew was lying and unscrupulous and
did not deserve to be supported in any way by the University. They believed the rumors about the sexual relationship and were even willing to come to the aid of crude professors like Tomanek, simply to show that the University would not give into bad women.

The deeper question, of course, is why these administrators and others would believe rumors that failed to persuade the faculty panel members, the jury or the federal court judge. In my view, the rumor campaign against Jew was as successful and as persistent as it was because it tapped into a complex of deep-seated and harmful stereotypes about professional women and about Asian academics in U.S. universities. In contrast to the official factfinders who were constrained to base their judgment only on the evidence presented, many persons in the University community making less considered judgments were apt to be influenced by stereotypes.

The false narrative constructed about Jew was a familiar one that was believable in part because of its familiarity. Jew was portrayed as a cold, conniving woman whose success was due to her sexual relationship
with a man in power, rather than her achievements as a teacher and researcher. The narrative drew on both sexual and racial stereotypes. It confirmed the story that women sleep their way to the top; that women are not really good at science and if they achieve in this area, it must be due to the talent of men; that women of color are promiscuous; and that Asians overachieve in their jobs, but are not truly talented or creative.

As Vietor's opinion recognized, it was no fortuity that the vilification of Jean Jew took a sexualized form. The opponents of Jew circulated rumors accusing her of "physically using her sex as a tool for gaining favor, influence and power . . ."\textsuperscript{46} Vietor pointed out how attacks on Jew were cast in sexual terms, while criticism of Williams, as department head, were regarded as political or professional.\textsuperscript{47} This aspect of the Jew litigation demonstrates how sexual harassment can reduce professional woman to sexual objects, diverting attention from women in their role as workers.

\textsuperscript{46} Jew, 749 F. Supp. at 958.

\textsuperscript{47} Id.
To the community beyond the College of Medicine, the racial dimensions of Jew's harassment were not as prominent as the sexual component. Only after Vietor's opinion was disseminated, for example, did many people learn for the first time that Jew was Chinese and that her ethnicity was also the subject of her opponents' ridicule and abuse.\textsuperscript{48} It is telling, however, that the sexual attacks on Jew were often also racial in nature (e.g.,"Chinese pussy"). Jew's harassment took on a specific sexualized and racialized form because she was a Chinese woman. It is impossible to understand the nature of her sexual harassment apart from her position as a racial minority in a predominantly white department. Her case exemplifies what Kimberle Crenshaw has described as the "dual vulnerability" of women of

\textsuperscript{48} The traditional structure of Title VII cases may also have contributed to the erasure of race in this litigation. As a practical matter, Jew was forced to choose whether to litigate the case as a case of racial or sexual harassment and she chose the latter. As yet, there is no distinctive cause of action under Title VII designed for women of color, such as Jew, who are subjected to racist and sexist behavior. See Kimberle Crenshaw, \textit{Demarginalizing the Intersection of Race and Sex, A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics}, 1989 U. Chi. Legal F. 139.
color in the workplace. For Jew, the dynamics of racism and sexism in her department intersected to produce a distinctive type of harassment that cannot simply be labeled either sexual or racial.

The University's litigation strategy traded on these racial and sexual stereotypes by depicting Jew as an unworthy plaintiff, while at the same time attempting to discount the sexually and racially specific nature of the harassment. The defense proceeded on the assumption that the harassment of Jew would not be actionable, if the rumors about the sexual relationship between Jew and Williams were true. Implicit in the defense theory was that Jew forfeited her right to work in a nonhostile environment because she did not act like a respectable woman. The University's attempt to defeat her claim by proving that her conduct incited the harassment, however,

49. See Kimberle Crenshaw, Race, Gender, and Sexual Harassment, 65 So. Cal.L. Rev. 1467, 1467-68 (1992). Crenshaw describes the inseparability of race and sex as meaning that "our experiences of racism are shaped by our gender, and our experiences of sexism are often shaped by our race." Id.
lacked substantial legal support. Although Judge Vietor found as a matter of fact that there had been no sexual relationship, the finding was not essential to his legal conclusion that Jew had been sexually harassed. The law requires only that the conduct be unwelcome and sufficiently severe or pervasive to create a hostile or abusive environment. The defense strategy of portraying Jew as a bad girl, unworthy of legal protection responded more to conventional notions of morality than to the strict legal requirements of the cause of action.

I also regard it as critically important that

50. Generally an employee's conduct toward the harasser is admissible to show that the alleged harassment was not unwelcome. Plaintiff's workplace conduct with third parties has sometimes been admissible to show that plaintiff herself engaged in the kind of crude behavior that is the subject of the lawsuit. See Barbara Lindemann & David D. Kadue, Sexual Harassment in Employment Law 541-542 (1992). The University in Jew, however, made no claim that Jew ever engaged in crude behavior at work or acted in a way that led her opponents to believe that their harassing comments were welcome.

51. Harris v. Forklift Systems, Inc., 62 U.S.L.W. 4004, 4005 (Nov. 11, 1993). The Eighth Circuit has since has made it clear that a plaintiff's sexual behavior outside the workplace does not give co-workers the right to taunt her sexually at work. See Burns v. McGregor, 989 F.2d 959 (8th Cir. 1993) (plaintiff's posing nude for a biker magazine does not justify harassment).
Jean Jew was a token woman in the College of Medicine. I use the term "token" here in the sense that Rosabeth Moss Kanter and other social scientists who have examined structural barriers to equality use the term — to mean a woman (or member of a minority group) who is the only woman or one of only a few women at her level in an organization. When women are rare in an organization, stereotyping is more likely to occur. In highly imbalanced settings like the College of Medicine, the numerical "many" dominate the few and are able to typecast women workers and reduce their chances for advancement. Jew was cast into the role trap of "seductress," which Kanter describes as a common fate.


for young attractive token women.\textsuperscript{54} Writing in 1977, the time period during which Jew was the only woman in a tenure track position in her department, Kanter explained how such token women are often taken under the wing of a powerful man in the group. This close alliance often becomes the subject of resentment by other men and the token woman risks being treated as a "whore" and as a sexual object, simply because she is a rarity in the group.\textsuperscript{55}

The rarity of women professors at the College of Medicine also meant that Jew’s promotion would be judged entirely by a group of men. By pointing out this structural feature, I am not assuming that if any woman had voted on Jew’s promotion, the result necessarily would have been different. Women in male-dominated environments often do not resist the status quo and certainly some women at the University at Iowa went along with and helped to construct the University’s defense. However, the total absence of women in the decisionmaking process at the College of

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\textsuperscript{54} Kanter, \textit{supra} note 52 at 234-35.

\textsuperscript{55} Kanter, \textit{supra} note 52 at 234.
Medicine made it more likely that the sexist stereotypes about Jew would play a role. I doubt whether many men in the department empathized with Jew, or feared that the kind of rumors that were going around about Jew might some day be directed at them and damage their careers. The role trap into which Jew was cast did not have a male counterpart.

Beyond the stereotyping and structural features that sustained people's belief in the rumors, another factor that may help to explain the University's resistance is choice of perspective. The Administration approached the situation in the department of anatomy from a male-centered perspective, treating the problem from the beginning as managing competition among the men -- the men who supported Williams and the men who were against Williams. In this narrative, Jean Jew was invisible, or at best a minor player.\(^56\) The administration responded to Jew's

\(^{56}\) A stark example of Jew's marginality was reflected in the opening statement for the defendant at the state libel trial. Tomanek's lawyer told the jury that Jew was only a "subpart" of a larger personnel conflict and tried to diminish the personal harm to Jew by focusing on the problems of decentralized administration in a large university.
complaint of denial of promotion and sexual harassment as if it were a sideshow, one more manifestation of the personnel problems in the anatomy department. The main focus was on what should be done about Williams.

When the University lawyers argued that this case had nothing to do with sex -- despite the repeated sexual slurs and the mistreatment of the sole woman professor -- I believe they were sincere. The tragedy of the case is that the University never seemed to care much about losing the talents of Jean Jew, despite her dazzlingly promising early career and despite the institutional protestations of a commitment to affirmative action. By taking Williams as its central focus, the University failed to understand the environment at the department of anatomy from Jew's perspective, from a woman's perspective. Even at the last stages of the case when the University announced its grounds for appeal, it expressed concern only for the free speech rights of the male faculty members who had abused Jew. 57 This "academic freedom" argument

miraculously turned the victimizers into the victims and was the product of a partial male-centered viewpoint -- the viewpoint of those who judge rather than are judged. The erasure of Jew as the real party in interest, coupled with the denial that this case was really about sex discrimination and sexual harassment, made it easier for the University to play hard ball and to deploy offensive stereotypes that the liberal administration would not have used in everyday discourse.

Understanding the Victory: Feminism, Authority and Political Mobilization

Given this strong resistance, how did Jean Jew finally get the University to back down? I doubt that Jew changed many minds at the College of Medicine, the central administration of the University or the Attorney General’s office. However, it is clear that Jew was victorious in that she forced the University to settle on her terms. Although Jew would likely have prevailed on appeal, her victory was greater because she finally got the University to recognize her power
and her injury, and not simply to abide grudgingly with the terms of a court order.

A complicated set of factors combined to overcome the University’s resistance. First, there was the importance of legal feminism. The cause of action for sexual harassment -- particularly the recognition of a sexually hostile enviroment -- had been created in the late 1970s by feminist activists and scholars. It is one of the few legal harms that derives from the experiences of women. Although men can be sexually harassed, the meaning of harassment is largely shaped from women’s claims and the chances of being harassed are greatly magnified for women. Jew also benefited from the research of social scientists like Kanter whose work has had an impact on legal doctrine. A key precedent relied on in the Jew litigation was Price Waterhouse v. Hopkins.58 In that case, another token woman, Ann Hopkins, had been denied promotion by colleagues in her accounting firm who made sexist

comments about her during the deliberation process. In holding that the treatment of Hopkins violated Title VII, the Supreme Court was influenced by testimony about stereotyping and tokenism given by a social psychologist from Kanter's structuralist school.

Second, and more specific to Jew's case, was that she had the benefit of a talented feminist lawyer who displayed extraordinary dedication to her case. Even though Chalmers and her firm were ultimately compensated for the years of litigation, few lawyers would be permitted by their firms to take such risky cases because only the winning party recovers attorney's fees and there is no possibility of obtaining punitive damages.59 The relationship that developed between Jew and Chalmers was a rare one and exceeded the normal professional connection: Chalmers

59. At the time Jew v. University of Iowa was tried, sex discrimination plaintiffs could not recover either compensatory or punitive damages under Title VII. Because Jew's claim for backpay was not very large, her case held little prospect of profit for her as a litigant. The Civil Rights Act of 1991, signed into law shortly after the Hill/Thomas hearings, now allows sex discrimination plaintiffs to recover compensatory and punitive damages up to a maximum of between $50,000 and $300,000, depending on the size of the employer. 42 U.S.C. § 1981 (1988 E. Supp. III 1991).
maintained close contact with Jew for the entire period in which she represented her, even when little was happening in the case. Jew was also an unusual client: she developed a sophisticated knowledge of law and evidence and learned a great deal about the workings of the University bureaucracy through her work on the Council on the Status of Women. Most importantly, she built a network of support through her efforts on behalf of other women.60

Third, because Jew's was a case of sexual slander, it could also be understood within a conservative framework and thus even persons unsympathetic to feminist claims could believe that Jew had been wronged. Particularly in the defamation action, Jew was portrayed as a chaste woman plaintiff who was injured by the immoral action of a male defendant. Long before sexual harassment was recognized as a legal harm, female plaintiffs in tort actions had been able to recover for false imputations of unchastity, even

60. Jew built her network slowly and indirectly. She was careful not to impose on her colleagues on the Council. I recall that I worked with her for several months on a report on the College of Pharmacy before she even mentioned the existence of her case to me.
without the ordinary requirement of proof of special damages. The harm originally recognized in such cases was the loss of value of the woman as a potential wife. Jew was able to use the antiquated tort claim to vindicate her interest in sex equity in the workplace. At the same time, she established herself as an injured party in the eyes of traditionalists who did not believe that it was proper to treat women in that way.

Fourth, the University was unable to maintain the credibility of its position in face of the authoritative narrative written by Judge Vietor. It was not simply that Vietor ruled in favor of Jew, although certainly the threat of a huge award for attorney’s fees was formidable. The University and the state had already spent enormous sums on the litigation and were prepared to spend more on a costly appeal. The importance of Vietor’s opinion was that it gave a compelling account of what happened, detailed enough and clear enough to give readers a feel for the situation as he perceived it. It was a well-written narrative as well as a judicial opinion. As a white

male federal judge who was not labeled as a liberal, Vietor's opinion was particularly credible. It carried more weight than either the judgment of the faculty panel or the state jury.

Fifth, and most importantly, was the political pressure exerted by the Jean Jew Justice Committee. The mere issuance of Vietor's opinion did not have an immediate impact. For over two months, there was no public outcry and little media interest. Instead, it was the publicity campaign of the Jean Jew Justice Committee that activated the opinion and gave political momentum to the case. Vietor's words spoke for themselves only after the wider public actually read portions of the opinion and the case became a serious topic of media attention. Both the authoritative narrative and the political mobilization were essential ingredients in getting the University to change its course. For Jew and for many others on campus, it was an exhausting -- even if ultimately triumphant -- effort.

Finally, Jew was fortunate in that she did not have to confront a series of news stories or other
publicity contesting Vietor's narrative. One article in the Daily Iowan with the headline "UI harassment case has deep, colorful history," written during the pendency of the appeal focused on Williams's bad history as department head and restated the rumors of sexual favoritism, with no mention of Vietor's factual finding that there had never been a sexual relationship. This story, however, was not taken up by the other papers which generally stuck to Vietor's account. At this time, there were no publicists for the University position. A campaign of counter-publicity which could have diffused the momentum of the Justice Committee never materialized.

* * *

Jean Jew's case had a radicalizing and dispiriting effect on me. I still find it hard to believe that the University contested Jew's claim that she was unfairly denied a promotion, even though it conceded that at least one of the men sitting in judgment had called her sexually derogatory names. Whatever else the case

might come to mean, the fierceness with which the University defended its indefensible position was a graphic demonstration that sexual harassment victims have a lot to lose simply by invoking the legal process. The privileges of education, rank, or social position did not protect Jew from a scripted defense that called her character into question and invaded her privacy.

Taking the long view, however, Jean Jew's case is remarkable for what it reveals about the importance of incursions of feminism into the law in the last two decades. When Jew first came to Iowa in 1973 and first suffered harm from her colleagues' cruel treatment, no court had yet granted recovery to a sexual harassment victim. 63 When Jew first complained to the central administration at Iowa in 1979, there were no federal guidelines defining harassment and no national policy

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63. The first major victory came in 1976 in Williams v. Saxbe, 413 F.Supp. 654 (D.D.C. 1976) in which the court held that plaintiff could establish a violation if she could prove that her supervisor fired her because she rejected his sexual advances.
condemning the practice.\textsuperscript{64} When Jew first filed suit in 1985, there was no Supreme Court opinion recognizing hostile environment claims.\textsuperscript{65} Only the cumulative efforts of many plaintiffs like Jew made it possible for Jew to articulate her harm as a legal injury and to secure a legal judgment. The irony of Jew's long ordeal is that it took almost that long for the law to catch up with her injury.

\textsuperscript{64} During the Carter administration in 1980 the E.E.O.C. first issued guidelines defining sexual harassment as a form of sex discrimination under Title VII. 29 C.F.R. Section 1604.11 (1985).

\textsuperscript{65} In 1986, the Supreme Court decided its first sexual harassment case, holding that plaintiffs could recover in hostile environment suits even if they could prove no direct economic harm. Meritor Bank, FSB v. Vinson, 477 U.S. 57 (1986).