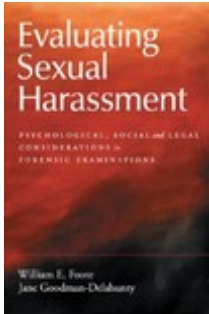


What You Shouldn't Do at the Office

A Review of



Evaluating Sexual Harassment: Psychological, Social, and Legal Considerations in Forensic Examinations

by William E. Foote
Jane Goodman-Delahunty
Washington, DC: American Psychological Association, 2005. 242 pp. 1-59147-101-X. \$49.95

Reviewed by
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☞ A few decades ago, forensic psychologists were generalists. Most would evaluate almost any kind of forensic case, ranging from child custody to insanity to personal injury. In fact, a few decades ago, the only forensic psychology texts available were those surveying the entire field, such as Blau's (1984); Shapiro's (1984); Grisso's (1986), or Melton, Petrila, Poythress, and Slobogin's (1987).

☞ As forensic psychology has matured, it has branched into numerous subspecialties. Most forensic practitioners now limit themselves to one or a few specialty areas. This specialization is necessary to keep up with the burgeoning literature. This increasing specialization is reflected in the variety of recent texts that, instead of broadly reviewing all of forensic psychology, focus closely on a particular subspecialty. One can now read a book entirely on evaluations regarding termination of parental rights (Dyer, 1999), child custody (Benjamin & Gollan, 2003), the validity of a confession or of a Miranda rights waiver (DeClue, in press), or emotional damages associated with personal injury (Greenberg & Shuman, 2001). Foote and Goodman-Delahunty's book, *Evaluating Sexual Harassment*, falls within this movement toward increasing specialization.

☞ In sexual harassment cases, psychologists are most frequently retained as evaluators of psychological damages, determining the emotional effects of a plaintiff's work situation on the plaintiff. These cases are particularly difficult, given the frequent disputes over the facts. As Foote and Goodman-Delahunty note, "Credibility determinations are pivotal and often reduce to the problem of *he said/she said*" (p. 57). In other forms of evaluations in which psychologists assess emotional damages, such as auto accident cases, the factual basis of the event itself is clear. An auto accident involving the plaintiff and defendant occurred, even if there is a dispute about who is liable or the extent of damages. In sexual harassment cases, the factual basis of the alleged sexual harassment is frequently contested. Was the plaintiff actually harassed? Did the defendant perform unwanted sexual advances? Create a hostile work environment? Offer a quid pro quo of job enhancement for sexual favors? If alleged, any of these may be

under dispute, and there may be no witnesses other than the plaintiff and defendant.

☞ Foote and Goodman-Delahunty examine these difficult cases from a number of perspectives. They spend considerable time reviewing the case and statutory law foundations in sexual harassment cases. Although forensic psychologists are not expected to be lawyers, Foote and Goodman-Delahunty make a valid point: "In any forensic work, psychologists require an understanding of the underlying legal principles and law in the area in which they practice" (p. 47, citing Melton, Petrila, Poythress, & Slobogin, 1997). Consequently, the authors review the subtleties of sexual harassment law, such as the reasonable-person standard, totality-of-circumstances test, affirmative defenses by the employer, causation of harm, make-whole relief, and compensatory and punitive damages, among others. They bring the reader up to speed on the legal issues that arise in sexual harassment cases.

☞ Foote and Goodman-Delahunty lucidly discuss a much misunderstood issue: the reasonable-person standard. They note that many evaluators mistakenly believe that this issue can be decided by an evaluation of whether the plaintiff is reasonable. In contrast, they state that

The inquiry into this issue does not center on the plaintiff. Even if a psychological evaluation indicates that the plaintiff suffers from a disorder that afflicts only a small percentage of the population, the issue is not resolved legally, as the issue is not how reasonable or normative the plaintiff is, but how the community standard is applied to the plaintiff's circumstances. (p. 111)

☞ Foote and Goodman-Delahunty have an excellent chapter reviewing the critical issues in damages evaluations. They suggest that the plaintiff's adjustment be evaluated with consideration to three periods: before the harassment, during the harassment, and after the termination of the harassment. They note that prior life stressors, early childhood experiences of trauma, prior psychopathology, and concurrent stressors are all grist for the evaluation. It is the evaluator's job to determine whether any of these nonharassment factors can account for any adjustment difficulties or symptom patterns. They indicate, quite accurately, that the timing of any symptoms or adjustment difficulties can be critical in reaching any conclusion regarding causation.

☞ As useful as the review of the law and research literature in *Evaluating Sexual Harassment* is, the sample reports in the appendixes are perhaps the most helpful aspect of the book. It is fine to suggest that research findings be integrated into one's report, but it is extremely difficult in practice to unite nomothetic research and idiographic clinical findings in one report. The sample reports, however, do exactly that. The reports provide excellent examples of directly answering psycholegal questions to assist the court, teasing out alternative explanations for symptoms and acknowledging the limits of knowledge where appropriate.

☞ One area that could have warranted more extensive coverage is testimony. In fact, testimony issues in sexual harassment cases could warrant an entire chapter in a book such as this. For example, Foote

and Goodman-Delahunty indicate that some courts have admitted testimony regarding profiles of sexual harassers, presumably in an effort to establish in the liability phase of the trial that the alleged harasser is the type of person who would have performed the alleged harassment. Foote and Goodman-Delahunty do not address the reliability of such harasser profiles. Do the authors believe that such profiles meet *Daubert* standards for admissibility? What are the error rates associated with such profiles? Are base rates of occurrence known for the various characteristics associated with harassers among both known harassers and known nonharassers?

☞ An additional testimony issue given only scant coverage is how to handle questions regarding what facts the evaluator can assume. It is not uncommon for a mental health expert, in depositions in harassment cases, to be questioned regarding what facts concerning the work situation the expert is assuming to have occurred. It would have been helpful to know Foote and Goodman-Delahunty's opinion on this matter. Do they believe that an evaluator can or should make at least some minimal assumptions about facts? If not, how can an evaluator conclude that the specific work situation caused emotional injury? How might they handle deposition questions along these lines?

☞ Overall, *Evaluating Sexual Harassment* is a valuable contribution to the forensic psychology literature. Foote and Goodman-Delahunty provide comprehensive coverage of a rapidly evolving specialty. The reader will finish their book with an enhanced understanding of the legal foundations and social science research in the area, as well as seeing how such knowledge is put to use in clear, lucid sample reports.

References

- Benjamin, G. A. H., & Gollan, J. K. (2003). *Family evaluation in custody litigation*. Washington, DC: American Psychological Association.
- Blau, T. H. (1984). *The psychologist as expert witness*. New York: Wiley.
- DeClue, G. (in press) *Interrogations and confessions: A manual for practice*. Sarasota, FL: Professional Resource Press.
- Dyer, F. J. (1999). *Psychological consultation in parental rights cases*. New York: Guilford Press.
- Greenberg, S. A., & Shuman, D. W. (2001). *The practice of civil forensic psychology*. Washington, DC: American Psychological Association.
- Grisso, T. (1986). *Evaluating competencies*. New York: Plenum Press.
- Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (1987). *Psychological evaluations for the courts*. New York: Guilford Press.
- Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (1997). *Psychological evaluations for the courts* (2nd ed.) New York: Guilford Press.
- Shapiro, D. (1984). *Psychological evaluation and expert testimony*. New York: Van Nostrand-Reinhold.
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