Jew v. University of Iowa: Title VII and Racialized Sexual Harassment

Dayle Chung[*]

Abstract:

Professor Jean Jew successfully waged a landmark gender discrimination lawsuit in federal district court after her colleagues targeted her with racialized and sexually explicit rumors. The case expanded the scope of sexual harassment jurisprudence, which had previously been limited to cases concerning sexual advances. This Article engages in an intersectional analysis of the racialized sexual harassment Jew experienced. This Article also examines the organizing efforts of the faculty-led Jean Jew Justice Committee (JJJC), which mobilized in support of Jew's lawsuit and connected the case to a broader struggle for equity within the university at large. The district court decision provided a platform on which the JJJC galvanized the university community to collectively influence the course of the litigation, demonstrating the interplay between litigation and community mobilization.

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[*] I am grateful to Professor Mary Lui for her years of invaluable support and guidance; Dr. Jean Jew and Carolyn Chalmers for their courageous efforts for justice and for generously sharing their stories; Professors Martha Chamallas, Nancy Hauserman, Adrien K. Wing, Cecilia Ridgeway, Sally Kenney, Florence Boos, Florence Babb, Victoria S. Lim, and Michael Chibnik, and Dr. Raul Moarquech Ferrera-Balanquet for recounting their experiences; Professors Michael Wishnie, Robert S. Chang, and Joanne Meyerowitz for their guidance and feedback; John Nann for tremendously helpful research support; Anna Tunnicliff, Janet Weaver, and the Iowa Women's Archives staff for providing copies of numerous critical archival sources; the Asian American Law Journal editors for their substantial contributions to an earlier draft of this Article; and *The Journal of Gender, Race & Justice* editors, particularly Lucas Miller and Sydney Erickson, for their excellent editorial work.

I. INTRODUCTION

On October 26, 1988, University of Iowa President Hunter Rawlings pledged in a meeting with women's advocacy groups to make a renewed commitment to the hiring and support of women faculty in light of "disproportionate resignations among women and minority faculty and staff members."[1] At the time, the University was vigorously defending itself in U.S. District Court against the sexual harassment claim filed by Dr. Jean Jew, a Chinese American professor in the College of Medicine's Anatomy Department. Despite the University's professed commitment to equal opportunity, the Court found that Jew had experienced sex discrimination under Title VII and that the University had knowledge of yet failed to adequately respond to the harassment that spanned over a decade.[2]

Jew v. University of Iowa represents one of the first instances of a successful federal hostile work environment harassment claim by an Asian American plaintiff. Despite the central role of race in the harassment, it was largely absent from the legal record and public discussion of the case. In defending the University, the Iowa Attorney General's Office legitimized and reproduced the slander Jew experienced, erasing her positionality as an Asian American woman and the racialized gender discrimination she experienced. An analysis of Jew's experience solely on the axis of gender would also flatten the complexity of the harassment she endured.[3]

From her initial days at the University in 1973 until Jew filed her lawsuit in the mid-1980s, Jew endured racially demeaning, misogynistic epithets and accusations of sexual promiscuity by her colleagues. Jew disclosed her

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[1] Jay Casini, *Rawlings Praises Women's Groups*, DAILY IOWAN, Oct. 27, 1988, at 1A.

[2] Jew v. Univ. of Iowa, 749 F. Supp. 946, 958–60 (S.D. Iowa 1990).

[3] *See* Kimberlé Crenshaw, *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, 140 (1989) (arguing that the dominant practice in antidiscrimination law of treating race and gender as mutually exclusive erases the multidimensionality of Black women's experiences).

harassment to several administrators, turning to legal recourse only after they failed to respond to her allegations. While the University claimed to support equal opportunity, it obstructed Jew's efforts to achieve justice and equity and instead aligned itself with her colleagues who had harassed her. Jew argued for legal recognition of her harassment while pushing to make legal recourse more accessible for future plaintiffs seeking discrimination claims. In a searing criticism of the University's inaction, Judge Harold Vietor authored a district court opinion that recognized Jew's novel hostile work environment harassment claim as an actionable sex discrimination claim under Title VII.[4]

Beyond the important legal outcomes, Jew's case was significant due to the extensive mobilization around the case that connected the more narrowly focused litigation to broader institutional inequities. A group of faculty members formed the Jean Jew Justice Committee (JJJC) to publicly pressure the University to drop its appeal of the district court's decision. The district court decision focused on rectifying the damage done to Jew in response to her individual discrimination claim. However, the JJJC more expansively framed the University's opposition to Jew's claims as one instance within an institutional history of denying equal opportunity to women, people of color, and other marginalized groups at the University.

Jew is one of a number of women of color who established the foundation of sexual harassment law, yet her case has generally escaped the attention of historians. Though some scholars have deftly applied an intersectional analysis to Jew's case based on racialized gender stereotypes historically imposed on Asian American women, historians have yet to place Jew's case within the broader context of sexual harassment litigation brought by women of color in the 1970s and 1980s.[5]

Part II details the harassment of Jew and the landscape of sexual harassment law leading up to *Jew v. University of Iowa*. Part III demonstrates the way in which the University's litigation strategy not only legitimized but also echoed the slanderous comments that Jew's colleagues directed against her as it denied the discrimination she experienced. Part IV discusses Jew and her counsel's legal strategy, whereby they challenged not only limitations on what courts recognized as legally actionable hostile work environment harassment claims but also practical barriers to litigation for future plaintiffs. Following the district court's ruling in Jew's favor, the University appealed.

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[4] *See* 42 U.S.C. § 2000e; *Jew*, 749 F. Supp. at 958–60.

[5] See generally Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER, RACE & JUST. 177 (1997), for a discussion of Jew's case as an example of "racialized sexual harassment" experienced by Asian Pacific American women. See generally Ruth Colker, *Whores, Fags, Dumb-Ass Women, Surly Blacks, and Competent Heterosexual White Men: The Sexual and Racial Morality Underlying Anti-Discrimination Doctrine*, 7 YALE J.L. & FEMINISM 195 (1995) for a discussion of Jew's case in the context of anti-discrimination doctrine more broadly.

Part V details how faculty-led organizing efforts through the Jean Jew Justice Committee (JJJC) used the district court decision as a platform to pressure the University to drop its appeal. The JJJC-led activism also allowed members of the University community who were not directly involved in the litigation to weigh in on the lawmaking process and vocalize their grievances with the University. Part VI examines the impact of the *Jew* case within and beyond the University community, arguing that *Jew* expanded the scope of hostile work environment jurisprudence that had previously treated unwelcome sexual advances as a necessary component of any hostile work environment claim. The Article concludes with an intersectional analysis of Jew's experience.

II. HISTORICAL BACKGROUND

A. Antagonistic Coworkers, an Apathetic University, and Fettered Career Advancement

Dr. Jean Jew arrived at the University of Iowa in 1973 as a postgraduate associate.[6] That year, the University appointed Jew's research supervisor at Tulane University, Dr. Terence Williams, as Chair of the Anatomy Department, and Jew and two other colleagues joined Williams at the University.[7] In 1974, Jew received a faculty appointment to Assistant Professor.[8]

The harassment began almost immediately. From 1973 to 1986, anatomy professor Robert Tomanek and Jew's other colleagues spread false rumors about an affair between Jew and Williams that pervaded the University community and broader academic circles.[9] Sexually suggestive cartoons referring to Jew and Williams appeared outside an anatomy laboratory from 1973 to 1980.[10] Administrators received anonymous letters attacking Jew's moral and professional integrity.[11] Jew's colleagues referred to her with racially and sexually derogatory labels including "Chinese pussy" and "Terry's 'chink.'"[12]

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[6] *Jew*, 749 F. Supp. at 947.

[7] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment at 3, Jew v. Univ. of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2) (on file with University of Iowa Libraries, Iowa Women's Archives).

[8] *Jew*, 749 F. Supp. at 947.

[9] *Id.* at 949; Telephone Interview with Nancy Hauserman, Emeritus Professor, Univ. of Iowa (Nov. 25, 2020) (on file with author) [hereinafter Telephone Interview with Hauserman].

[10] *Jew*, 749 F. Supp. at 949.

[11] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 6, 19.

[12] *Id.* at 20.

The University granted Jew tenure and promoted her to Associate Professor in 1979.[13] That January, Jew's colleague Professor William Kaelber targeted her in a drunken outburst, calling her a "slut," "bitch," and "whore" as she walked down the department hallway.[14] Following this episode, Jew submitted a complaint to the Dean of the College of Medicine, John Eckstein, identifying the incident as one event within "a pattern of sexual harassment in attempts to discredit [her] professional and personal reputation."[15] Jew met with Eckstein and Vice President for Academic Affairs, May Brodbeck, to detail the harassment she had experienced, though Eckstein told Jew that "there was nothing that could be done."[16] As a suggested remedy, Eckstein advised Williams to merely "leave doors open when he was working in the laboratory with a young woman."[17]

Unsurprisingly, the problems with Jew's working environment persisted. In 1982, "[e]xplicit sex-based graffiti" about Jew appeared on the wall of the Anatomy Department men's restroom.[18] In 1983, as a prerequisite for promotions, administrators required Jew to pursue a line of work entirely different from that to which she had devoted her career—and produce the same record of achievement.[19] This requirement entertained the legitimacy of unsupported accusations that Jew's professional success was attributable to an inappropriate relationship with her supervisor. It also imposed a near-impossible standard of work solely on Jew in a field where collaborative work on research was essential for success.

On November 1, 1983, the Anatomy Department faculty denied Jew's promotion to full professor.[20] That same day, a sexually explicit limerick suggesting a relationship between Jew and Williams appeared on the wall of the department's men's restroom.[21] Jew brought this incident to the attention of University Vice President Richard Remington, who acknowledged the harassment but failed to institute any remedies.[22] Following this, Jew retained Carolyn Chalmers as her counsel, sending a letter to Vice President

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[13] *Jew*, 749 F. Supp. at 947.

[14] *Id.* at 949.

[15] *Id.* at 959.

[16] *Id.*; Andy Brownstein & Diana Wallace, *UI, Regents Liable in Sexual Harassment Case*, DAILY IOWAN, Aug. 29, 1990, at 1A.

[17] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 9.

[18] *Jew*, 749 F. Supp. at 950.

[19] Videoconference Interview with Jean Jew, Emeritus Professor, Univ. of Iowa, & Carolyn Chalmers, Couns. For Jean Jew (Feb. 12, 2021) (on file with author) [hereinafter Videoconference Interview with Jew & Chalmers].

[20] *Jew*, 749 F. Supp. at 950–55.

[21] *Id.* at 950.

[22] *Id.* at 954.

Remington on January 12, 1984 and demanding an investigation and corrective action.[23] Following eight months of negotiation, the University appointed an investigative panel composed of Professors Nancy Hauserman, Hansjoerg Kolder, and Mark Stewart.[24] From August to September 1984, the panel conducted numerous interviews with students and faculty from within and outside of the University.[25] The panel released a report on November 27, 1984, finding that Jew had been harassed and defamed, and that "[i]t does not appear that any of the administrators took any steps to improve the situation."[26]

Despite receiving clear recommendations from the panel, the University refused to take substantive action to address the harassment, instead encouraging Jew to drop the claims and sign a confidentiality agreement to preclude her from discussing the case.[27] In October 1985, Jew filed both a state lawsuit against the University and Board of Regents alleging that the harassment constituted a violation of the Iowa Civil Rights Act, in addition to a defamation lawsuit against Tomanek.[28] Jew later filed a federal lawsuit against the University under Title VII.[29]

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[23] Letter from Carolyn Chalmers, Couns. to Jean Jew, to Richard D. Remington, Vice President for Acad. Affs., Univ. of Iowa (Jan. 12, 1984) (on file with University of Iowa Libraries, Iowa Women's Archives); *Jew*, 749 F. Supp. at 954; CAROLYN CHALMERS, THEY DON'T WANT HER THERE: FIGHTING SEXUAL AND RACIAL HARASSMENT IN THE AMERICAN UNIVERSITY 29 (2022); *see* Affidavit and Application for Fees and Other Expenses at 32–33, Jew v. Univ. of Iowa, 749 F. Supp. (S.D. Iowa 1990) (No. 86-169-D2) (on file with University of Iowa Libraries, Iowa Women's Archives). Chalmers had represented numerous women faculty and workers who filed sex discrimination claims under the Rajender Consent Decree, which "established a claims procedure for women faculty with sex discrimination in employment claims" at the University of Minnesota after Dr. Shymala Rajender filed a lawsuit alleging that the University discriminated against her on the basis of sex and national origin. *Id.* at 33; *see* Rajender v. Univ. of Minn., 546 F. Supp. 158, 170 (D. Minn. 1982) (entering a Consent Decree permanently enjoining the University of Minnesota from discriminating on the basis of sex with respect to the terms and conditions of employment for all academic non-student employees, among other requirements). From 1978 to 1984, Chalmers, as second-chair to her partner Kathleen Graham, also represented claimants in a sex discrimination class action lawsuit on behalf of approximately 1000 non-union workers against Jostens, Inc. Affidavit and Application for Fees and Other Expenses, *supra* note 23.

[24] *Jew*, 749 F. Supp. at 955.

[25] CHALMERS, *supra* note 23, at 31; Telephone Interview with Hauserman, *supra* note 9.

[26] Letter from Nancy R. Hauserman, Hansjoerg E. Kolder, & Mark A. Stewart, Professors, Univ. of Iowa, to Richard Remington, Vice President for Acad. Affs., Univ. of Iowa 4 (Nov. 27, 1984) (on file with University of Iowa Libraries, Iowa Women's Archives) [hereinafter Panel Report].

[27] CHALMERS, *supra* note 23, at 42.

[28] *Id.* at 58.

[29] Jew v. Univ. of Iowa, 749 F. Supp. 946, 947 (S.D. Iowa 1990).

B. The Landscape of Sexual Harassment Law

With the passage of Title VII of the Civil Rights Act of 1964, Congress made it "an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[30] Yet it was not until September 1979—eight months after Jew's first internal sexual harassment complaint—that feminist scholar Catharine MacKinnon established a framework for understanding sexual harassment as a form of sex discrimination.[31] At this point, "sexual harassment of women in employment ha[d] provided explicit grounds for legal action in only a handful of cases."[32]

MacKinnon organized sexual harassment into two categories: quid pro quo harassment and harassment as a "persistent *condition of work*."[33] Quid pro quo harassment occurs when "submission to or rejection of [unwelcome sexual] conduct by an individual is used as the basis for employment decisions affecting such individual."[34] MacKinnon described "condition of work" harassment as "the situation in which sexual harassment simply makes the work environment unbearable," due to being "constantly felt or pinched, visually undressed and stared at, surreptitiously kissed, commented upon, manipulated into being found alone, and generally taken advantage of at work."[35] Harassment as a "condition of work" eventually became "more commonly known as 'hostile work environment' sexual harassment."[36]

In 1980, the Equal Employment Opportunity Commission (EEOC) revised its Guidelines on Sexual Harassment, prohibiting both quid pro quo and hostile work environment sexual harassment.[37] Federal appellate courts also held in the early 1980s that sexual harassment violates Title VII even

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[30] 42 U.S.C. § 2000e-2(a)(1). By using "sex" and "gender" virtually interchangeably, the Supreme Court in *Price Waterhouse v. Hopkins* interpreted Title VII to prohibit gender-based discrimination as well as sex-based discrimination. 490 U.S. 228, 239 (1989) ("Congress' intent to forbid employers to take *gender* into account in making employment decisions appears on the face of the statute.") (emphasis added). The Court found that gender-based stereotyping constitutes differential treatment "'because of' sex." *Id.* at 239–41.

[31] *See generally* CATHARINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION (1979) (establishing a framework to help illustrate sexual harassment as a form of sex discrimination).

[32] *Id.* at 3.

[33] *Id.* at 32 (emphasis in original).

[34] 29 C.F.R. § 1604.11(a)(2) (2022).

[35] MACKINNON, *supra* note 31, at 40.

[36] Daniel Hemel & Dorothy S. Lund, *Sexual Harassment and Corporate Law*, 118 COLUM. L. REV. 1583, 1596 (2018).

[37] 29 C.F.R. § 1604.11 (1980).

when it does not lead to a loss of tangible benefits.[38] However, the Supreme Court did not recognize a claim of hostile work environment harassment as sex discrimination under Title VII until *Meritor Savings Bank, FSB v. Vinson* in 1986.[39] Moreover, sexual harassment cases leading up to Jew's case largely involved direct, unwelcome interactions initiated by the harasser.[40] However, Jew argued for recognition of a novel form of harassment—the spreading of rumors and sexually degrading remarks that did not necessarily involve direct interactions between the harassers and the victims.[41]

Although Jew experienced both gender and race discrimination, Title VII cases brought on multiple axes of discrimination were rare at the time of her lawsuit.[42] It would not be until the Ninth Circuit's 1994 decision in *Lam v. University of Hawai'i* that a federal court recognized that "when a plaintiff is claiming race *and* sex bias, it is necessary to determine whether the employer discriminates on the basis of that *combination* of factors, not just whether it discriminates against people of the same race or of the same sex."[43] Accordingly, the decision to focus solely on gender by Jew's legal team was strategic: Chalmers writes,

> Because we believed women faculty of all races and national origins were subjected to sex discrimination in the College of Medicine, and because Title VII law at that time favored a single-axis claim, we decided to allege sex discrimination. We compressed Jean's multidimensional humanity into a

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[38] *See, e.g.*, Bundy v. Jackson, 641 F.2d 934, 948 (D.C. Cir. 1981) (finding that "sexual harassment, even if it does not result in loss of tangible job benefits, is illegal sex discrimination"); Henson v. City of Dundee, 682 F.2d 897, 901 (11th Cir. 1982) (finding that "under certain circumstances the creation of an offensive or hostile work environment due to sexual harassment can violate Title VII irrespective of whether the complainant suffers tangible job detriment").

[39] 477 U.S. 57, 66 (1986) ("Since the Guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.").

[40] *See* Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1686, 1688, 1746–47 (1998).

[41] *See* Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 7; Videoconference Interview with Jew & Chalmers, *supra* note 19.

[42] *See* Kathryn Abrams, *Title VII and the Complex Female Subject*, 92 MICH. L. REV. 2479, 2498 (1994).

[43] 40 F.3d 1551, 1562 (9th Cir. 1994) (emphasis added). Had the *Lam* decision come earlier, the legal strategy that Chalmers and Jew pursued could have accounted for the injuries resulting from discrimination on the basis of race, national origin, *and* sex. CHALMERS, *supra* note 23, at 57. In addition, a review of federal employment discrimination cases between 1965 and 1999 decided by U.S. district and circuit courts showed that plaintiffs who made intersectional claims were only half as likely to win in court compared to plaintiffs who alleged a single basis of discrimination. Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 L. & SOC'Y REV. 991, 992 (2011). In the 1970s and 1980s, when Jew brought her lawsuit, less than ten percent of equal employment opportunity cases dealt with intersectional claims. *Id.* at 1008.

> single dimension. The law as we understood it forced us to work with only a portion of the reality of Jean's experience.[44]

While Jew's team strategically decentralized race in the litigation to strengthen her case, the University argued that both Jew's race and her gender played no role in the gendered and racialized treatment by her colleagues.[45]

III. THE UNIVERSITY'S DEFENSE: ATTEMPTS TO LEGITIMIZE HARASSMENT

In the federal Title VII case, the state Attorney General's Office represented the University.[46] The defense interpreted the slander Jew experienced as appropriate professional criticism of her and her supervisor, Anatomy Department Chair Terence Williams.[47] This legal strategy collapsed both Jew and Williams into one entity, erasing the racialized and gendered harassment Jew had experienced. The defendants legitimized the unfounded rumors about Jew, thus providing university and state backing for the slander that contended that Jew's professional advancement was a result of an alleged affair with Williams.[48] The defense also ignored the racially derogatory slurs directed at Jew and described the harassment as merely "a condemnation of the administration of the anatomy department," which "has not yet been recognized as sex discrimination."[49] Thus, in denying that Jew had experienced harassment, the defense strategy ultimately erased her positionality as a Chinese American woman.

Both Tomanek's and the University's defense strategies were grounded in racial ignorance and stereotypes.[50] Both defense teams relied on the testimony of former Anatomy Department employee Jane McCutcheon as the only witness who claimed to provide direct evidence of Jew's and William's alleged relationship. McCutcheon testified in both trials that she saw Williams and Jew in a "compromising position" while lying down on a table together in the anatomy library in 1978.[51] While McCutcheon never saw Jew's face, she claimed she surmised the woman she saw was Jew based on

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[44] CHALMERS, *supra* note 23, at 57.

[45] Memorandum in Support of Defendants' Motion for Summary Judgment at 11, Jew v. Univ. of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2) (on file with University of Iowa Libraries, Iowa Women's Archives).

[46] *Jew*, 749 F. Supp. at 947.

[47] *See* Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 17.

[48] *See, e.g.*, *id.* at 15, 18.

[49] *Id.* at 11.

[50] CHALMERS, *supra* note 23, at 36, 109–10, 143.

[51] Diana Wallace, *Jury Finds Tomanek Guilty of Slandering Female Colleague*, DAILY IOWAN, June 14, 1990, at A1; CHALMERS, *supra* note 23, at 36, 109–10.

the color of her legs as well as McCutcheon's knowledge that Jew was "Oriental."[52]

McCutcheon had previously recounted the same story to the faculty panel that investigated Jew's case in 1984.[53] While the comment's absurdity demonstrated to the panel that the story was at least a partial fabrication, academics both within and outside of the University accepted this story as conclusive proof of the affair's existence.[54] The grievance panel also interviewed graduate students from other universities, and this "was a story we heard from almost everyone we interviewed," said investigative panel chairperson Professor Nancy Hauserman.[55] Professor Sally Kenney recalls that during Tomanek's defamation trial, Jew's lawyer Carolyn Chalmers displayed her skin tone to the jury and compared it with Jew's to show the impossibility of identifying Jew from her legs alone.[56]

In the defamation trial, Tomanek relied on McCutcheon's story as evidence of the existence of an affair between Jew and Williams. In so doing, he utilized a racially ignorant account as a central piece of evidence for his defense while ironically denying that Jew had experienced racial or gender discrimination.[57] To bolster McCutcheon's testimony, the defense team compiled an extensive cohort of witnesses to testify to the existence of the alleged affair. The *Iowa City Press-Citizen* reported that out of nearly 40 witnesses who appeared in Tomanek's nearly two-week defamation trial, the witnesses who testified to the existence of an affair had never witnessed Jew and Williams engage in sexual or romantic activity.[58] They admitted that "their perceptions of an affair came mostly from stories they heard about it."[59] McCutcheon's narrative provided the only direct "evidence" of these rumors.[60] Tomanek thus attempted to contest the defamation charges by reproducing the slander that had led to the claims against him.[61]

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[52] CHALMERS, *supra* note 23, at 36, 109–10.

[53] Telephone Interview with Hauserman, *supra* note 9.

[54] *See id.*

[55] *Id.*

[56] Videoconference Interview with Sally Kenney, Former Professor, Univ. of Iowa (Dec. 7, 2020) (on file with author) [hereinafter Videoconference Interview with Kenney]; *see* CHALMERS, *supra* note 23, at 144–45.

[57] *See* CHALMERS, *supra* note 23, at 144–45.

[58] *See* Monica Seigel, *Jury Weighs Evidence in Defamation Trial*, IOWA CITY PRESS-CITIZEN, June 13, 1990, at 1B; Monica Seigel, *Witnesses: We Believed Rumor*, IOWA CITY PRESS-CITIZEN, June 7, 1990, at 4A.

[59] Seigel, *Witnesses: We Believed Rumor*, *supra* note 58.

[60] *See* CHALMERS, *supra* note 23, at 143.

[61] *See* Seigel, *Witnesses: We Believed Rumor*, *supra* note 58.

Tomanek was a critical figure in both trials—for the federal Title VII case against the University and the state defamation case—because of his persistent slander of Jew and Williams.[62] The University also paid Tom Diehl, one of Tomanek's lawyers in the state defamation case, to sit in the courtroom during the federal trial and observe the proceedings.[63] Tomanek could provide no concrete evidence to provide any factual support for his slander of Jew, and an investigative panel comprised of respected academics selected by the University itself had supported Jew's claims and condemned both Tomanek and the University.[64] In spite of this, "[n]o public resources were spared to coordinate Tomanek's and the [U]niversity's defenses," Chalmers writes.[65]

By limiting the scope of the behavior in question and focusing solely on a fraction of Tomanek's remarks, the University neglected to acknowledge the widespread circulation of the slander and the full extent of the treatment that Jew experienced. In support of its motion for summary judgment, the University minimized Jew's harassment spanning over a decade to merely "five isolated remarks" wherein Tomanek told other members of the Anatomy Department that Jew and Williams were having an affair.[66] On the contrary, Tomanek disseminated slander about Jew that pervaded her professional networks and damaged her reputation.[67] The rumored affair between Jew and Williams circulated throughout the broader university and to larger academic communities.[68] This "was a rumor that floated all over the world," said Professor Hauserman, who chaired the internal faculty panel that investigated Jew's claims.[69] People avoided making eye contact with Jew in the hallways, and even those who eventually became supportive of her cause were hesitant to initially support her.[70] "I was just astounded during the course of the trial . . . to find out how widespread the gossip and the stories were. It was common fodder at cocktail parties," Jew said.[71]

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[62] *See* CHALMERS, *supra* note 23, at 113, 133.

[63] *Id.* at 114.

[64] Panel Report, *supra* note 26, at 3–4.

[65] CHALMERS, *supra* note 23, at 114.

[66] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 14–15 (emphasis removed).

[67] *See* Brownstein & Wallace, *supra* note 16.

[68] Telephone Interview with Hauserman, *supra* note 9.

[69] *Id.*

[70] Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* Videoconference Interview with Kenney, *supra* note 56.

[71] Videoconference Interview with Jew & Chalmers, *supra* note 19.

Jew countered the defense team's deliberate underestimation of the damage done toward her.[72] The plaintiff's response to the defendants' motion for summary judgment, filed on September 11, 1989, argued:

> Robert Tomanek made in excess of 33 statements about Dr. Jew in the workplace which were demeaning and harassing. . . . William Kaelber openly yelled obscenities at and about Plaintiff in the hallway of the Department of Anatomy. . . . Obscene graffiti referring to Plaintiff repeatedly appeared on the wall of the men's room in the Department of Anatomy. . . . An anonymous note referring to [P]laintiff as "Chinese pussy" was sent to one of Plaintiff's colleagues in the Anatomy Department.[73]

Jew and her legal team thus directly challenged the defense team's characterization of Tomanek's remarks as "isolated."[74] The plaintiff's legal strategy placed Tomanek's comments within the context of an environment where Jew's colleagues depicted her as a racially sexualized object in cartoons, graffiti, limericks, letters, and other correspondence either scattered in public spaces or sent directly to faculty and administrators.[75]

The defense also erased Jew's positionality by presenting the harassment she experienced as merely collateral damage of her colleagues' legitimate complaints about the management of the Anatomy Department.[76] As legal scholar Martha Chamallas argues, "[t]he central problem according to the University was the animosity toward Williams."[77] Indeed, the defendants' 1989 memorandum in support of summary judgment argued, "[i]t is apparent that Williams' relationship with plaintiff affected his exercise of judgment while head of the anatomy department. As a result, faculty members complained about Williams informally and through formal grievances. The by-product was that faculty also voiced concerns about plaintiff."[78] By labeling the harassment of Jew as merely an incidental result of complaints about Williams, the University's defense strategy centered Williams as the

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[72] *See* Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 1.

[73] *Id.* at 19.

[74] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 14 (emphasis removed).

[75] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 19.

[76] *See* Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 26.

[77] Martha Chamallas, *Jean Jew's Case: Resisting Sexual Harassment in the Academy*, 6 YALE J.L. & FEMINISM 71, 80 (1994).

[78] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 26 (emphasis in original).

primary target of faculty attacks and thus erased the explicitly racialized and gendered harassment Jew experienced.[79] The University defense team argued, "[n]one of the five comments by Robert Tomanek singled out plaintiff. None of the comments was based on her sex."[80] Although Jew's colleagues targeted her with comments demeaning her based on her gender and race, the defense team spuriously argued that these comments not only were legitimate professional criticisms but also were directed as much towards Williams as they were towards Jew.[81]

The defense team also depicted Jew as the beneficiary of departmental power dynamics, labeling Jew's harassers as the victims of unjustified favoritism of Jew.[82] Defendants wrote: "Terry Williams recruited plaintiff to the University. While he was department head, her career soared. Plaintiff was rapidly promoted; and she received a substantially higher salary than her peers. But when Williams resigned as department head in 1983, plaintiff's career stalled."[83] The defense thus accepted the premise of the rumors that Jew was undeserving of her achievements.[84] Rather than entertain the possibility that Williams' leadership protected Jew from baseless attacks on her credentials, the defense used Jew's hindered advancement in Williams' absence as evidence that her accomplishments were undeserved.[85]

Similarly to the defense strategy in the defamation case, the University's defense team not only aimed to legitimize the rumors of Jew and Williams' alleged affair but also replicated the slander of Jew.[86] In its motion for summary judgment, the University remarked upon Jew's and Williams' "extraordinary relationship" in a blatant attempt to lend credence to the affair allegations.[87] At trial, the defense requested Jew's gynecological records (and asked for a physical examination of Jew).[88] The University "argued that [her] use of birth control pills in the 1970s suggested a sexual relationship between her and Williams, despite medical records confirming they were prescribed to control heavy menstrual bleeding."[89] When questioning witnesses, they

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[79] *See id.*

[80] *Id.* at 15 (emphasis in original).

[81] *Id.* at 16.

[82] *See id.* at 3.

[83] *Id.* at 3–4.

[84] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 3–4.

[85] *See id.*

[86] *See id.* at 18; *see* CHALMERS, *supra* note 23, at 140.

[87] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 4.

[88] CHALMERS, supra note 23, at 66–67.

[89] *Id.* at 66–67, 105; Chamallas, *supra* note 77, at 77.

repeated the slurs used against Jew and asked them if they observed any conduct that supported the veracity of these slurs.[90] The defense thus not only argued that the slander that attributed Jew's professional advancement solely to an affair was truthful, but also echoed this racialized, misogynistic slander in the courtroom.[91]

Attempting to undermine Jew's claims of harm, one of the elements of a defamation claim, the University capitalized on Jew's success, using her perseverance as evidence that her discrimination claim was unsupported.[92] In its memorandum in support of summary judgment, the defense wrote that Jew "never missed a day of work because of sexual discrimination or hostility," she never discussed the existence of a sexually harassing atmosphere with her sister Evelyn, and she complained to Williams only once of harassment.[93] The defense claimed that the fact that she continued to demonstrate commitment to her professional advancement provided evidence that the harassment was not serious enough to warrant legal remedy.[94] In the memorandum, the defense wrote, "Defendants respectfully submit that plaintiff is a claimant without a conscience. She will file as many different claims, couched in as many different ways, as courts will allow."[95] In the eyes of the University and the Board of Regents, perseverance was a moral fault.[96]

During the defense's closing argument in Tomanek's defamation trial, his attorney Chuck Traw stated, "[a]s you decide what the truth is, please remember Dr. Tomanek's reputation. This is his town. This is his university."[97] Despite the fact that Tomanek had spent years fabricating and disseminating rumors to tarnish Jew's reputation, he asked the jury to preserve his.[98] Through litigation, Jew and Chalmers worked to demonstrate that the University belonged as much to Jew as it did to Tomanek. "We were told time and time again . . . 'you don't have a case . . . it's not sexual harassment' . . . at the time the acting [University] president said . . . 'there's not a court or a jury in Iowa that's gonna find this is sexual harassment,'" Jew

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[90] CHALMERS, *supra* note 23, at 66.

[91] *See id.* at 66–67.

[92] *See* Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 15.

[93] *Id.* at 15–16.

[94] *See id.*

[95] *Id.* at 35.

[96] *See id.*

[97] CHALMERS, *supra* note 23, at 149.

[98] *Id.* at 151.

said.[99] The University and its lawyers "probably figured we would go away," Chalmers said.[100] "They certainly underestimated us."[101]

IV. THE PLAINTIFF'S CASE

Jew and Chalmers not only challenged limitations on what courts recognized as legally cognizable hostile work environment harassment under Title VII;[102] they also paved the way for future sexual harassment plaintiffs to seek legal recourse.[103]

A. Expanding Hostile Work Environment Harassment

In one of their initial meetings, Jew mentioned to Chalmers a *New York Times* article published in August 1975 detailing the Cornell Human Affairs Program's publication of a questionnaire on sexual harassment.[104] The article listed the various forms of harassment that women experienced in the workplace—including "leering and ogling of a woman's body," "continually brushing against a woman's body," "forcing a woman to submit to squeezing or pinching," "outright sexual propositions, backed by threat of losing a job," and "forced sexual relations."[105] Like the examples MacKinnon would eventually provide in *Sexual Harassment of Working Women* in 1979, these forms of harassment reflected the legal standard at the time that recognized sexual harassment primarily as unwanted, direct sexual advances.[106] Yet Jew recognized that the sexual slander and derogatory comments that attributed her achievements to an invented extramarital relationship also constituted harassment.[107]

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[99] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[100] *Id.*

[101] *Id.*

[102] *See* Martha Chamallas, *Afterword* to CAROLYN CHALMERS, THEY DON'T WANT HER THERE: FIGHTING SEXUAL AND RACIAL HARASSMENT IN THE AMERICAN UNIVERSITY 199 (2022).

[103] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[104] *Id.*

[105] Enid Nemy, *Women Begin to Speak Out Against Sexual Harassment at Work*, N.Y. TIMES, Aug. 19, 1975, at 38.

[106] *See* Schultz, *supra* note 40, at 1703–04. Anita Hill's testimony to the Senate Judiciary Committee in 1991, where she claimed that then-U.S. Supreme Court nominee Clarence Thomas had sexually harassed her, was crucial in bringing the topic of sexual harassment into the national public consciousness. *See* Carrie N. Baker, *Race, Class, and Sexual Harassment in the 1970s*, 30 FEMINIST STUD. 7, 22–23 (2004). Though Hill never brought a Title VII complaint, the details of the allegations—which consisted of direct sexual advances and unsolicited conversations about sexual topics—reinforced what Professor Vicki Schultz calls the sexual desire-dominance paradigm. *See* Schultz, *supra* note 40, at 1692–93.

[107] *See* Jew v. Univ. of Iowa, 749 F. Supp. 946, 947, 951 (S.D. Iowa 1990) (reasoning that what Jew experienced was harassment).

Jew and Chalmers initially decided to pursue recourse internally through the University "because the risks . . . were so great of starting legal action," Chalmers said.[108] Losing in court would significantly damage Jew's reputation, which had already suffered more than a decade of attacks. It was only when the University failed to take action in response to the panel report that Jew and Chalmers decided to pursue legal means.[109] As Hauserman recalls, "after spending all this money to pay us and put [the panel] together, they still weren't inclined to do anything."[110]

In 1985, Jew filed both a state defamation claim against Tomanek and a lawsuit against the University of Iowa in state court in Johnson County under the state's Civil Rights Act.[111] Unlike Title VII, the Iowa Civil Rights Act permitted damages for emotional pain and suffering, as well as trial by jury.[112] However, the University claimed that since Jew was a state employee, her claims were reviewable under the Iowa Administrative Procedure Act and should be adjudicated through the University's administrative processes, rather than in court.[113] Citing this provision, the University made a special appearance asking the court to dismiss the case in January.[114]

The court agreed with the University that Jew had forfeited her discrimination claim under the Iowa Civil Rights Act by not bringing claims to her employer under the Iowa Administrative Procedure Act.[115] The court could only evaluate the employer's adherence to administrative procedures.[116] Jew appealed the case to the Iowa Supreme Court yet filed a separate federal lawsuit under Title VII prior to the Iowa Supreme Court's ruling in Jew's

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[108] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[109] *See* CHALMERS, *supra* note 23, at 43, 53.

[110] Telephone Interview with Hauserman, *supra* note 9. See generally CHALMERS, *supra* note 23, at 40, for a list of the steps that the panel recommended the university take: issue a statement from the President condemning sexual harassment, defending Jew's innocence, and making clear to the Anatomy Department that no further harassment would be tolerated; take immediate steps to determine the author(s) of the graffiti and anonymous letters; implement a customized promotion process for Jew subject to strict oversight by administrators; and conduct "individual conferences" with Tomanek and Kaelber to order them to stop harassing Jew and learn the consequences if they continued.

[111] CHALMERS, *supra* note 23, at 58, 133.

[112] *Id.* at 58.

[113] CHALMERS, *supra* note 23, at 60; Videoconference Interview with Jew & Chalmers, *supra* note 19.

[114] *See* CHALMERS, *supra* note 23, at 59–60. See Jew v. Univ. of Iowa, 398 N.W.2d 861, 862 (Iowa 1987), where the Iowa Supreme Court summarized when later overturning the state district court decision, "[t]he district court concluded that the offending conduct was 'agency action' as defined in Iowa Code section 17A.2(9) (1985) and that the exclusive means for challenging such administrative action is a petition for judicial review under Iowa Code section 17A.19 (1985)."

[115] CHALMERS, *supra* note 23, at 61.

[116] *Id.* at 60.

favor.[117] She continued to pursue the state defamation claim against Tomanek.[118]

Determined to eradicate the barriers that had impeded her state lawsuit, Jew lobbied the state legislature to revise Iowa's Administrative Procedure Act.[119] Following her efforts, on August 1, 1986, the legislature passed an amendment to the act, allowing state employees to pursue civil rights claims in state court.[120] Though seemingly insignificant and innocuous, the Administrative Procedure Act had posed a significant barrier to the pursuit of discrimination claims under state law.[121] In January 1987, the Iowa Supreme Court overturned the lower court's decision, further solidifying Jew's right to seek recourse under the state civil rights law, stating that "agency employees should enjoy the same right to pursue matured statutory causes of action as other employees."[122] While the Iowa Supreme Court's decision eventually validated Jew's individual right to pursue litigation, Jew's successful lobbying efforts ensured that Iowa state law would not foreclose future similar civil rights lawsuits brought by state employees.[123]

In the 1989 federal trial, Jew and Chalmers focused on the widespread nature of the rumors to argue that the sexual slander—although not made directly to Jew—nevertheless had a detrimental impact on her reputation and career.[124] The University argued in its briefing that the "conduct of which plaintiff complains was neither frequent enough, nor direct enough, nor offensive enough to materially alter the conditions of her work environment."[125] Jew's response in opposition to the Defendants' motion for summary judgment countered this characterization:

> The vilification against Dr. Jew was particularly offensive because it went to the heart of her professional reputation.

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[117] *Id.* at 62.

[118] Videoconference Interview with Jew & Chalmers, *supra* note 19; CHALMERS, *supra* note 23, at 63.

[119] CHALMERS, *supra* note 23, at 62–63.

[120] *Id.* at 62; *see* 1986 Iowa Acts 486, ch. 125, § 263; *see also* IOWA CODE § 216.16 (2022) (stating the updated cause of action for discriminatory acts by the State).

[121] Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* CHALMERS, *supra* note 23, at 61–62.

[122] Jew v. Univ. of Iowa, 398 N.W.2d 861, 864 (Iowa 1987).

[123] *See* Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* CHALMERS, *supra* note 23, at 60–62.

[124] CHALMERS, *supra* note 23, at 128. See generally *id.* at 55, where Chalmers wrote that the Supreme Court's decision in *Hishon v. King & Spalding*, 467 U.S. 69, 71 (1984) (holding that promotion to partnership in a law firm was an employment decision covered by Title VII) was favorable to Jew's case because of the similarity between law partnership promotions and faculty promotions.

[125] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45.

> It accused her of having secured professional accomplishments by trading sex. In an academic environment, where success is largely dependent upon subjective opinion, reputation and collegiality, these remarks are especially damaging.[126]

Indeed, the attacks on Jew's reputation led to concrete professional setbacks. In the spring of 1987, the department ended Jew's assignment as director of the neuroanatomy course, reduced Jew's teaching assignment to "a quarter of the [neuroanatomy] lectures she had given previously," "halved [h]er time overseeing students in the laboratory," excluded her from meetings for the neuroanatomy course, and "removed [Jew] from the departmental appointments committee."[127] Jew's legal team also called a psychiatrist to the stand who testified that Jew was suffering from clinical depression resulting from stress in her work environment and had expressed suicidal ideation.[128]

Unlike the defamation lawsuit, which aimed to prove Tomanek's individual liability in spreading false and injurious rumors, the federal lawsuit set out to demonstrate the University violated Title VII by failing to take appropriate corrective action in response to Jew's claims.[129] In the defamation case, Chalmers called to the stand several non-faculty employees within the department including the office secretary, Tomanek's lab assistant, and a former graduate student in the Anatomy Department.[130] Each testified to the fact that Tomanek approached them unprompted to spread the lie that Jew was having an affair with Williams, even though, as Tomanek testified during the federal trial, he had never witnessed any evidence of an intimate relationship.[131] Several faculty members also testified to the fact that faculty from other universities had asked them about the affair at national and international academic conferences.[132] In the federal case, to demonstrate the University's liability in neglecting to respond to Jew's harassment claims, an affirmative action officer from Kansas State University provided testimony that the University of Iowa's response to the faculty panel's report was noncompliant with federal regulations.[133] A scientist from the University of

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[126] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 20.

[127] CHALMERS, *supra* note 23, at 68.

[128] Monica Seigel, *UI Professor Takes Stand in Own Defense*, IOWA CITY PRESS-CITIZEN, June 6, 1990, at 1A.

[129] Videoconference Interview with Carolyn Chalmers, Counsel for Jean Jew (Apr. 2, 2021) (on file with author) [hereinafter Videoconference Interview with Chalmers]; CHALMERS, *supra* note 23, at 62.

[130] CHALMERS, *supra* note 23, at 90–92, 94, 140.

[131] *Id.* at 112; Videoconference Interview with Chalmers, *supra* note 129.

[132] Videoconference Interview with Chalmers, *supra* note 129.

[133] *Id.*

California also reviewed Jew's resume and explained why the caliber of her accomplishments exceeded those of others in the department who had received promotions.[134] To respond to the University's defense's strategy, Jew was compelled to not only prove the harm caused by the slander enacted against her but also defend her reputation against attacks by both her colleagues and the University's legal team.[135]

Jew thus pushed against the limitations of MacKinnon's early framework, which conceptualized harassment primarily as unwanted sexual advances, by articulating the ways in which slander had caused Jew severe professional and emotional damage.[136] It was the first time a federal court found rumors about a plaintiff to be an actionable form of hostile work environment harassment.[137] The ruling affirmed Jew's right to legally defend her career, integrity, and reputation against harassment that targeted her but occurred largely outside of her presence.[138]

B. Addressing Economic Barriers to Litigation

Jew and Chalmers's commitment to a prolonged legal battle would not have been possible for most plaintiffs and their legal teams.[139] "It is important to emphasize the significance that having access to legal help like Carolyn . . . to have lawyers who have commitment is just so important . . . . At the time it was not clear at all that the law firm would ever be reimbursed for its hours," Jew said.[140] As stated in her affidavit filed as part of Jew's application for fees, Susan Buckley—Director of the Women's Resource and Action Center and one of the JJJC organizers—highlighted the dearth of legal representation in Iowa at the time for plaintiffs filing discrimination claims: "[t]here were simply no good choices in the Iowa City legal community for women to be represented in civil rights disputes with the University of Iowa."[141] With the support of her team including attorneys Bob Zeglovitch and Susan Robiner, Chalmers declined opportunities to work on other cases

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[134] *Id.*

[135] *See* CHALMERS, *supra* note 23, at 66–67.

[136] Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* MACKINNON, *supra* note 31, at 32.

[137] Katherine E. Johnson, *Rumor Has It: The Future of Title VII's Inclusion of Sexual Rumors as Sexual Harassment*, 90 UMKC L. REV. 723, 725 (2022); *accord.* Chad W. King, *Sex, Love Letters, and Vicious Rumors: Anticipating New Situations Creating Sexually Hostile Work Environments*, 9 BYU J. PUB. L. 341, 351–52 (1995).

[138] *See* CHALMERS, *supra* note 23, at 128–29.

[139] *See* Elizabeth Kristen et al., Essay, *Workplace Violence and Harassment of Low-Wage Workers*, 36 BERKELEY J. EMP. & LAB. L. 169, 180 (2015) (describing the logistical barriers that prevent low-wage workers from pursuing legal remedies for harassment).

[140] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[141] Affidavit of Susan Buckley at 2, Jew v. Univ. of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D2) (on file with University of Iowa Libraries, Iowa Women's Archive).

while the University dragged its feet in recognizing the legitimacy of Jew's harassment claims.[142]

On November 15, 1990, Jew and the University finalized the terms of a settlement agreement, which included the University's withdrawal of the appeal.[143] Jew received "$176,000, including $50,000 in back pay and $126,000 in damages."[144] Chalmers also successfully argued for the payment of legal fees expended over the seven-year litigation—a conflict extended by the University's refusal to engage in settlement discussions—"all at a cost to the Iowa taxpayers," Chalmers wrote in the October 11, 1990 application for fees and expenses.[145] Buckley's affidavit was one of 24 written by attorneys, law professors, state commissioners, and nationally recognized civil rights lawyers testifying to, among other things, the legal team's expertise, the difficulty and riskiness of the case, and the appropriateness of the hourly rates and time spent on the case.[146]

Chalmers wrote that had the University acted in November 1984 to implement the recommendations of the faculty panel report that found that Jew's colleagues had harassed and defamed her, the attorney's fees for the case would have amounted to $3,945.[147] "Even after four years of litigation," Chalmers wrote, "had the University responded to plaintiff's settlement initiatives in February or even August 1989 . . . plaintiff's attorneys' fees and disbursements would have been less than one-half of what they are today."[148] By October 11, 1990, Jew's litigation had amounted to over 4500 hours of attorney time, legal staff time, and substantial related expenses. This totaled to approximately $547,436 in fees for federal court, $188,010 in fees for the state court defamation action against Tomanek, $41,500 in fees for the state court Iowa Civil Rights Act lawsuit against the University, as well as $108,977 for reimbursement of disbursements, for a grand total of $885,923.[149] The settlement agreement awarded Jew's legal team $895,000.[150] Cognizant of the prohibitive nature of these fees for future plaintiffs, Chalmers argued for a 100 percent fee enhancement that would encourage firms such as Chalmers's to accept civil rights matters on a contingent fee basis.[151] Chalmers wrote:

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[142] *See* CHALMERS, *supra* note 23, at 71, 136.

[143] *See id.* at 183.

[144] *Jean Jew, UI Reach Settlement*, DAILY IOWAN, Nov. 19, 1990, at 1A.

[145] Affidavit and Application for Fees and Other Expenses, *supra* note 23, at 2.

[146] CHALMERS, *supra* note 23, at 168.

[147] *Id.* at 170.

[148] Affidavit and Application for Fees and Other Expenses, *supra* note 23, at 3.

[149] *Id.* at 13.

[150] CHALMERS, *supra* note 23, at 183–84.

[151] *See* Affidavit and Application for Fees and Other Expenses, *supra* note 23, at 43–44.

> A [fee] enhancement is necessary if a firm like ours is to have any encouragement to undertake a case like this again . . . . Now that the intransigence of the University has brought the attorney's fee issue to the public forum, it is my earnest hope that this Court's decision will give future Dr. Jews throughout the country the keys to the courthouse door.[152]

Jew and Chalmers faced institutional intransigence in the face of explicit evidence supporting Jew's sexual harassment claim, legal technicalities that deprived Jew of her right to recourse under the state civil rights law, and the combined efforts and resources of the University and state Attorney General's Office.[153] Rather than address solely Jew's individual harms and set important legal precedent, Jew and Chalmers directed their legal strategy toward expanding access for future sexual harassment plaintiffs to pursue their claims in court.[154] On August 28, 1990, the U.S. District Court for the Southern District of Iowa issued its decision in favor of Professor Jean Jew, ruling that Jew had experienced hostile work environment sexual harassment.[155] The opinion criticized the University's inaction despite both Jew's multiple appeals to University administrators for redress as well as the 1984 faculty investigative panel's report that found conclusive evidence of harassment—"there was no convincing reason offered by the University for why corrective measures were not taken."[156] The district court decisively denied the veracity of the rumored extramarital affair between Jew and Williams that had severely undermined Jew's legitimacy as a scholar.[157] The court ordered Jew's promotion to full professor with full back pay starting from July 1, 1984.[158]

V. THE JEAN JEW JUSTICE COMMITTEE

The University of Iowa and the state Board of Regents appealed the district court decision to the Eighth Circuit Court of Appeals in October 1990, claiming that the court had inappropriately interfered in the meritocratic tenure review process.[159] They argued that the actions the court

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[152] *Id.* at 46.

[153] *See* Jew v. Univ. of Iowa, 749 F. Supp. 946, 959–60 (S.D. Iowa 1990); *see also* CHALMERS, *supra* note 23, at 59–60.

[154] Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* CHALMERS, *supra* note 23, at 62.

[155] *Jew*, 749 F. Supp. at 958.

[156] *Id.* at 959–60.

[157] *Id.* at 948–49.

[158] *Id.* at 963.

[159] *See* Andy Brownstein, *Regents: 1st Amendment Behind Appeal*, DAILY IOWAN, Oct. 15, 1990, at 1A.

had deemed harassment constituted the mere exercise of the anatomy professors' right to academic freedom and free speech.[160] In an official statement released on October 12, 1990, the Board of Regents justified its decision to appeal the district court ruling, describing the judge's overturning of a faculty vote that denied Jew's promotion as "extremely disturbing" for its denial of academic freedom and the free speech rights of university professors.[161] The statement argued that the district court decision violated the First Amendment's guarantee of "the free exchange of ideas and views."[162] This statement attempted to imbue the University's defense of harassment with constitutional legitimacy, reaffirming arguments introduced in its district court filings that the harassment of Jew was merely "critical commentary" protected by the First Amendment.[163]

Several months earlier on January 9, 1990, the Supreme Court had issued a unanimous decision in *University of Pennsylvania v. EEOC*, ruling that there is no common law privilege or First Amendment right to "academic freedom;" protecting universities from disclosing relevant documents in tenure discrimination cases.[164] The plaintiff in this case was another Chinese American professor, Rosalie Tung, who had filed a Title VII discrimination claim against the University of Pennsylvania after being denied tenure in a case of quid pro quo sexual harassment.[165] Although *University of Pennsylvania* concerned the disclosure of confidential tenure review materials, here, the University of Iowa adopted a similar reliance on academic freedom to protect itself against claims of discrimination and sexual harassment.[166]

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[160] *Id.*

[161] *See id.*

[162] *Id.*

[163] *See id.; see* Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 17.

[164] 493 U.S. 182, 182 (1990).

[165] *Id.* at 185.

[166] In addition to covering the legal fees for Professor Robert Tomanek's defense at his defamation trial (as well as the $35,000 in damages ordered when the jury found him guilty), the University argued that the harassment of Jew constituted free speech. CHALMERS, *supra* note 23, at 114–15; Lou Ortiz, *U of I Argues 'Free Speech' in Bias Suit*, DES MOINES REG., Nov. 21, 1989, at M1. University President Richard Remington testified at trial that there were few restrictions on the ways in which faculty members could voice their criticisms of the department. Monica Seigel, *UI Administrator Takes the Stand*, IOWA CITY PRESS-CITIZEN, June 12, 1990, at 1A. At trial, Tomanek's lawyers also asked every juror during voir dire whether they had any connection with the Women's Studies program at the university, attempting to eliminate anyone from the jury who responded affirmatively. Videoconference Interview with Martha Chamallas, Former Professor, Univ. of Iowa (Nov. 13, 2020) (on file with author) [hereinafter Videoconference Interview with Chamallas]. While Tomanek's defense team and the university professed their support for academic freedom in defense of harassment, the defense strategy hypocritically exhibited a targeted bias against the academic work of certain scholars. *See id.*; *see also* Jew v. Univ. of Iowa, 749 F. Supp. 946, 961 (S.D. Iowa 1990); *see generally* Cho, *supra* note 5, at 208–11 (discussing Jew's and Tung's experiences of "racialized sexual harassment").

A. JJJC Strategy: Community Mobilization in Opposition to the Appeal

The University's appeal prompted several faculty members to form the Jean Jew Justice Committee (JJJC) with the goal of compelling the University to drop the appeal.[167] The organizers of the committee included professors Martha Chamallas, Cecilia Ridgeway, Nancy Hauserman, Sue Buckley, Margery Wolf, and Peter Shane, who were involved in Women's Studies and various feminist groups on campus.[168] The JJJC soon gained the support of many other faculty who attended meetings and lent their support to the committee's various actions.[169] The motivation behind the JJJC's formation extended beyond the anger of a few faculty members in response to the University's appeal.[170] The faculty organizers saw the Jew case as another example of the University's state-sanctioned efforts to deny equal opportunity and fair treatment to women and people of color while supporting those in power who acted as gatekeepers of academic exclusivity.[171] As Chamallas later wrote, Tomanek and the University thus "took the position that even sexual and racial slurs fell within the bounds of academic freedom because they were made in context of an intra-departmental dispute."[172] The University administrators said they were "committed to diversity [and] equal opportunity, and yet they're taking this very contrary stance in litigation," Chamallas said.[173]

While the JJJC was composed primarily of white women affiliated with the Women's Studies department, the Women's Resource and Action Center, and the Council on the Status of Women, the committee's efforts focused attention on the lack of access to educational and professional opportunities for students, faculty, and staff of color more generally.[174] The JJJC used the legal ruling in favor of Jew as a platform to address inequity within the University community more broadly.[175] At the same time, the committee's effective mobilization was possible only because of the legitimacy that the

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[167] Chamallas, *supra* note 77, at 81–82.

[168] *See* CHALMERS, *supra* note 23, at 170, 183; *see also* Videoconference Interview with Chamallas, *supra* note 166.

[169] *See* Jean Jew Justice Comm. Roster and Supporters, 1990 (on file with University of Iowa Libraries, Iowa Women's Archives).

[170] *See, e.g.*, Linda Hartmann, *Faculty Raps UI*, IOWA CITY PRESS-CITIZEN, Nov. 10, 1990, at 1A; Videoconference Interview with Florence Boos, Professor, Univ. of Iowa (Nov. 20, 2020) (on file with author) [hereinafter Videoconference Interview with Boos].

[171] *See* Videoconference Interview with Boos, *supra* note 170.

[172] Chamallas, *supra* note 77, at 78.

[173] Videoconference Interview with Chamallas, *supra* note 166.

[174] *Id.*; *see* Letter from Jean Jew Justice Comm., to local newspapers (on file with University of Iowa Libraries, Iowa Women's Archives).

[175] *See* Videoconference Interview with Chamallas, *supra* note 166.

district court ruling gave to Jew's sexual harassment claims.[176] Prior to the court's ruling, many in the University—even those who would become Jew's most vocal supporters—treated Jew's claims less seriously given the widespread belief that the fabricated rumors about an affair were true.[177]

The JJJC took several main actions to achieve its goal of pressuring the University to drop the appeal.[178] The committee made photocopies of the district court opinion and sent one to each faculty member,[179] inviting faculty to read for themselves the court's admonishment of the University's indifference to Jew's harassment.[180] Although the court's remedies addressed Jew's individual claims, the decision—and its exposure of the University's inaction to address discrimination—was relevant to the University community at large.[181]

The committee also placed a full-page advertisement in the University newspaper on October 17, 1990, criticizing the University's continual defense of sexual harassment in court and urging the University community to read the district court opinion.[182] "Instead of defending harassment in court, the University of Iowa should be leading the effort to eliminate harassment in the community in which we all work and live," the advertisement read.[183] "Sadly, in this case, the University's actions speak much louder than words."[184] While only a small group of faculty were initially involved in the JJJC's strategic discussions, 227 faculty, staff, and students signed the advertisement in support of Jean Jew and the committee's efforts to protest the University's appeal.[185] Anthropology professor and former chair of the Women's Studies program, Florence Babb, explained the widespread support for the case: "[t]here was a real sense of shock that the sexism and racism could be quite so blatant and threatening to a faculty member on the campus."[186]

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[176] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[177] *See* Videoconference Interview with Kenney, *supra* note 56.

[178] *See* Videoconference Interview with Chamallas, *supra* note 166.

[179] *Id.*

[180] Jean Jew Justice Committee Roster and Supporters, 1990 (on file with University of Iowa Libraries, Iowa Women's Archives); E-mail from Martha Chamallas, Former Professor, Univ. of Iowa, to author (Jan. 16, 2021, 08:04 EST) (on file with author); Chamallas, *supra* note 77, at 82.

[181] *See* Lyle Muller, *U of I Staffers Cite Unfair Practices*, GAZETTE (Cedar Rapids, Iowa), Nov. 17, 1990, at 1B; *see also* Affidavit of Susan Buckley, *supra* note 141, at 3.

[182] *See* Jean Jew Just. Comm., *Do You Know the Facts?*, DAILY IOWAN, Oct. 17, 1990, at 12A.

[183] *Id.*

[184] *Id.*

[185] *Id.*

[186] Videoconference Interview with Florence Babb, Former Professor, Univ. of Iowa (Nov. 20, 2020) (on file with author) [hereinafter Videoconference Interview with Babb].

The JJJC also sent a press packet to the major newspapers in the area to publicize the University's refusal to address Jew's claims, gather a wider base of public support for Jew, and facilitate discourse on the University's inaction in response to discrimination more generally.[187] Several of these newspapers' editorial boards subsequently published editorials supporting Jew and urging the University to drop its appeal.[188] An October 31, 1990 editorial published in *The Des Moines Register* wrote that "an appeal would almost certainly be a waste of time and money, and it would send the message that such behavior could somehow be justified, or excused."[189] Another article published on October 27, 1990 in *The Gazette* described growing pressure on the University by faculty members to settle Jew's case, citing a letter written by 18 members of the mathematics department urging the University to drop the appeal, and reporting that the president of the Faculty Senate and Council considered the case an "embarrassment."[190] It was only after the court decision and the University's appeal that many media outlets began to pay significant attention to the case, though they focused largely on public outrage against the University's decision to appeal rather than on Jew's experience of sexual harassment.[191]

The publicity surrounding the case also sparked discussion about University inaction in response to faculty grievances in general.[192] An opinion piece published by reporter James Flansburg in *The Des Moines Register* on November 22, 1990 criticized the University for "dealing with only the Jean Jew symptom but not the cause."[193] Flansburg wrote that he met with five officers in the University of Iowa's chapter of the American Association of University Professors who revealed that the Jew case was one out of several unresolved faculty grievance cases where University administrators allegedly failed to grant faculty members due process.[194] In an article published in the *Iowa City Press-Citizen*, professors criticized University administrators for the way in which they handled "several faculty grievances over pay, tenure denial and other matters," several of which were "potentially as explosive" as Jew's

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[187] *See* Videoconference Interview with Chamallas, *supra* note 166.

[188] *See, e.g.*, Editorial, *Sexual Harassment: A Costly Lesson for Iowa*, DES MOINES REG., Nov. 15, 1990, at 10A; Editorial, *Our View: Going the Right Way*, IOWA CITY PRESS-CITIZEN, Nov. 15, 1990, at 7A; *see also* Chamallas, *supra* note 77, at 82.

[189] Editorial, *Sordid Episode at U of I: Delay Justice No Longer*, DES MOINES REG., Oct. 31, 1990, at 8A.

[190] Lyle Muller, *Settlement of Discrimination Case Urged by U of I Faculty*, GAZETTE (Cedar Rapids, Iowa), Oct. 27, 1990, at 1B.

[191] *See, e.g.*, *Sexual Harassment: A Costly Lesson for Iowa*, *supra* note 188.

[192] *See* James Flansburg, Opinion, *Grievances at the U of I*, DES MOINES REG., Nov. 22, 1990, at 13A.

[193] *Id.*

[194] *Id.*

case.[195] "[Jew's] is not a unique case," said biochemistry professor emeritus George Kalnitsky, as quoted in a *Des Moines Register* article.[196] Music professor Ed Kottick stated, "[w]e're seeing faculty members whose careers are being ruined, whose morale is zero and whose family lives are in shambles, whose jobs are made almost impossible for really no good reasons and for which remedies seem readily available and it's not being done."[197] Professor Kalnitsky criticized University administrators: "[t]hey stonewall . . . . They put you off. They don't answer the questions. Progress has been glacial."[198]

This publicization of the case through the news media also expanded the platform on which various groups—including faculty, staff, and students—could vocalize grievances against the University that extended beyond Jew's individual experience and the issue of sexual harassment.[199] The cover letter to the press packet that the JJJC distributed to newspapers also stated that "the Jean Jew case has threatened and demoralized a broad cross-section of the [U]niversity community (faculty, staff and students) who worry that they, too, could be isolated and demeaned because of their 'differences,' whether of race, gender, sexual or political orientation."[200] An article published in *The Gazette* on November 17, 1990 reported the results of a new survey of staff at the University, revealing that "[o]ne of five professional and staff employees at the University of Iowa believes he or she is being treated unfairly at work."[201] In addition to sexual harassment, which the article cited as a particularly prominent issue especially "because of the case of anatomy professor Dr. Jean Jew," the article mentioned other instances of unfair treatment.[202] These included higher salaries for male faculty and staff compared to women with the same level of education, health and safety problems in the workplace, failure to recruit and retain staff from "traditionally disadvantaged groups," and merely a five percent representation of people of color among the overall staff population.[203]

The JJJC also attended the Way Up VIII annual statewide conference for women in higher education to "provide information to participants about Jew's sexual harassment case against the University of Iowa and Board of

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[195] Hartmann, *supra* note 170; *see also* Charles Bullard, *U of I Has Yet to Resolve 5 Faculty Grievances*, DES MOINES REG., Nov. 14, 1990, at 1A.

[196] Bullard, *supra* note 195.

[197] *Id.*

[198] Hartmann, supra note 170.

[199] *See id.*

[200] Letter from Jean Jew Just. Comm., to local newspapers 5 (on file with University of Iowa Libraries, Iowa Women's Archives).

[201] Muller, *supra* note 181.

[202] *Id.*

[203] *Id.*

Regents.'"[204] Their discussion of the case at the conference showed how the issues raised by the litigation were not isolated to the University, but that "continuation of the case hurts the university's reputation and abdicates the regents' responsibility to provide ethical and humane direction for higher education in Iowa" more broadly.[205] This strategy implicitly recognized that the rumors about Jew had reached outside the walls of the University, so the activist response had to as well.[206]

The impact of the JJJC's efforts on the legal case was "huge," said Chalmers, "but it was only possible because of [the district court's] decision. Had they tried to mobilize faculty without that authoritative decision that the rumors were untrue . . . it would have been very harmful for our case . . . . It would have opened up the megaphone for the defendants" to argue that the rumors were true.[207] Despite the limitations of the legal ruling, the court's decision also provided a platform for the JJJC to publicly denounce the University.[208] "That group of supportive women really did not come together until the last few years of litigation. Most of that time nobody knew anything because I didn't tell anybody about this," Jew said.[209] However, as discussed further below, by compelling the University to drop its appeal of the district court decision, the JJJC engaged members of the community to interact with and influence the judicial process even though they did not participate directly in the litigation.[210] The JJJC shaped public understanding and garnered collective endorsement of the ruling, imbuing the decision with power and meaning beyond the relief it granted Jew as an individual.[211]

B. The Roots of JJJC Activism

A history of University activism also enabled the JJJC to capitalize on networks that had formed during anti-war protests and the women's rights movement then coalesced around the fight for affirmative action.[212] "We were activists in the anti-war movement. These were movement techniques that we brought into the academy that informed our research and informed

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[204] *Case Brings Protest: Jew Committee to Visit Conference*, IOWA CITY PRESS-CITIZEN, Nov. 8, 1990, at 2B.

[205] *Id.*

[206] *See id.*

[207] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[208] *Id.*

[209] *Id.*

[210] *See* Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2743 (2014).

[211] *See* Jean Jew Just. Comm., *supra* note 182.

[212] *See* Videoconference Interview with Chamallas, *supra* note 166.

our activism on campus issues," Chamallas said.[213] According to anthropology professor and former chair of the Women's Studies department Florence Babb, "Iowa City was a hotbed of feminist activity and radicalism in the 1980s and 1990s."[214] As Babb said, "There was just a strong sense of consciousness around race and gender on campus . . . . We had one of the earliest strongest initiatives around gender studies and women's studies and developed one of the first half dozen Ph.D. programs in women's studies in the country."[215] The activism was thus "something that feminist faculty at the University of Iowa had been doing for quite some time. The Jean Jew case was just particularly dramatic," Chamallas said.[216]

For example, prior to the formation of the JJJC, the Council on the Status of Women had formed an ad hoc affirmative action group in the 1980s directed at pressuring certain departments to adopt affirmative action procedures to hire more women and people of color.[217] In addition to encouraging departments to produce and disclose their affirmative action plans, the committee regularly released an annual report that showed whether these departments were achieving their diversity and inclusion goals.[218] A June 8, 1987 article in *The Daily Iowan* published the results of the report, demonstrating that the University's affirmative action efforts "to hire and retain women and minorities" for both faculty and staff positions were "seriously flawed."[219] Psychology professor and head of the committee Ursula Delworth described the situation as one of "benign neglect."[220] The report revealed that from 1980 to 1986, the percentage of women tenure-track faculty decreased slightly (15.95% to 15.70% of all positions at the University), whereas the percentage of "minorities" within tenure-track faculty increased from 7.32% to only 8.21%.[221]

C. Reckoning with Race

Primarily white women faculty in the Women's Studies program led the JJJC's efforts. However, faculty, students, and staff of color who were not in positions of influence to inform the JJJC's strategy supported Jew's legal battle due to an identification with her struggle against racial

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[213] *Id.*

[214] Videoconference Interview with Babb, *supra* note 186.

[215] *Id.*

[216] *See* Videoconference Interview with Chamallas, *supra* note 166.

[217] *Id.*

[218] *Id.*

[219] Phil Thomas, *Subcommittee Reports Flaws in Affirmative Action Hiring*, DAILY IOWAN, June 8, 1987, at 3A.

[220] *Id.*

[221] *Id.*

discrimination.[222] Raul Moarquech Ferrara-Balanquet, who was a student at the University's College of Liberal Arts and Sciences, signed the JJJC's October 17, 1990 *Daily Iowan* advertisement in support of Jew because of the connection between Jew's case and systemic discrimination against people of color at the School of Medicine.[223] "You cannot imagine how many Latinx and Chicanx medical students were denied graduation after their 8 years at school," he wrote.[224] Ferrara-Balanquet also recognized the way in which rumors about Jew's alleged affair with Williams perpetuated "colonial stereotypes about Asian women."[225] Chinese American Professor of Internal Medicine Victoria Lim also signed the petition. "I felt she was attacked viciously," Lim said. [226] Though she had never experienced explicit anti-Asian slurs like Jew did while at the University, Lim had been denied leadership positions and administrator roles at various institutions, including the University of Iowa, circumstances she believed were a result of her race.[227]

The JJJC's wide-reaching activism provided a mechanism by which University community members who were not involved in the litigation to influence the formal lawmaking process, a relationship that can be understood through Lani Guinier and Gerald Torres's framework of demosprudence, or "the study of the dynamic equilibrium of power between lawmaking and social movements."[228] As discussed above, the plaintiff's strategy focused solely on the gender discrimination Jew experienced given the limitations of sexual harassment jurisprudence that made a successful intersectional claim unlikely.[229] However, the JJJC's activism also allowed people of color who did not actively participate in the litigation to publicly indicate support for the ruling in Jew's favor. The JJJC-organized actions provided them with the opportunity to leverage their collective power to influence the formal lawmaking process by forcing a powerful institution—the University—to drop its appeal so the *Jew* opinion would remain settled law.[230] Those within the community who related to Jew's experience with discrimination thus imbued the district court opinion with racial meaning at a time when litigators and federal courts were not ready to adequately address

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[222] *See* Jean Jew Just. Comm., *supra* note 182.

[223] E-mail from Raul Moarquech Ferrera-Balanquet to author (Jan. 13, 2021, 15:32) (on file with author).

[224] *Id.*

[225] *Id.*

[226] E-mail from Victoria S. Lim to author (Jan. 20, 2021, 23:50) (on file with author).

[227] *Id.*

[228] Guinier & Torres, *supra* note 210, at 2749; *see* Jean Jew Just. Comm., *supra* note 182; *see* CHALMERS, *supra* note 23, at 171.

[229] *See* CHALMERS, *supra* note 23, at 57.

[230] *See* Jean Jew Just. Comm., *supra* note 182.

intersectional claims.[231] The JJJC's activism demonstrates the importance of social activism in connecting one claim—given a spotlight through litigation—to a broader institutional denial of rights, acting to "monitor the translation function of law, by telling stories that provide a bridge . . . linking lived experience to an imagined alternative."[232]

By distributing paper copies of the district court's opinion to all University faculty, the JJJC ensured that the impact of litigation reached beyond the courtroom walls. Judge Vietor stated in no uncertain terms: "There has never been a romantic or sexual relationship between Dr. Jew and Dr. Williams";[233] "Plaintiff has proved that her employer knew or should have known of the harassment, and failed to take proper remedial action";[234] "in November of 1983 Dr. Jew was qualified for promotion to full professor."[235] The court described in detail the harassment Jew experienced and the University's failure to respond, rejecting the years of rumors that had damaged Jew's professional reputation. As Guinier and Torres argue, "[s]ocial movements influence lawmaking, which then shapes the agenda of the social movement."[236] The court's opinion—accessible to the University community due to the JJJC's efforts—placed judicial power behind the activism of students and other members of the community who may not have been able to bring litigation against a powerful, resource-backed institution.[237]

While the JJJC's efforts allowed people of color within the University community to participate in the activism around Jew's case, the JJJC strategy focused exclusively on the gendered nature of her harassment.[238] Sociology professor Cecilia Ridgeway shared that the committee always recognized that there was a racial element to the harassment of Jean Jew; however, there never "was any mobilization on those lines."[239]

Yet the JJJC's emphasis on gender over race should not be understood as solely an issue of expediency or a predetermined mirroring of the exclusivity in the broader women's liberation movement. Drawing on

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[231] *See* Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin*, 37 B.C. L. REV. 771, 806 (1996) ("In the years since the enactment of Title VII, Asian women have not had a great deal of success with their intersectional claims . . . .").

[232] Guinier & Torres, *supra* note 210, at 2758 (citing Robert M. Cover, *The Supreme Court, 1982 Term – Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 19 (1983)).

[233] Jew v. Univ. of Iowa, 749 F. Supp. 946, 948–49 (S.D. Iowa 1990).

[234] *Id.* at 959.

[235] *Id.* at 961.

[236] Guinier & Torres, *supra* note 210, at 2758.

[237] *See* Videoconference Interview with Jew & Chalmers, *supra* note 19.

[238] *See* Videoconference Interview with Cecilia Ridgeway, Former Professor, Univ. of Iowa (Dec. 23, 2020) (on file with author).

[239] *Id.*

Victoria Hesford's problematization of the idea that the whiteness and racism of the women's liberation movement was inevitable, it is more useful to analyze the circumstances that led activists to singularly focus on gender as the strategy by which to fight institutional complicity in discrimination and harassment.[240] The JJJC's activism must be considered within the context of institutional backlash against affirmative action efforts, which circumscribed these activists' ability to build a multiracial coalition and approach the Jew case with an intersectional lens.[241] Largely because of institutional barriers, the University of Iowa was predominantly white—with few faculty of color, even fewer women of color faculty, and hardly any tenured women of color professors,[242] outspoken activism around issues of race would have been professionally risky for faculty of color. According to the University's 1990–1991 Affirmative Action Plan, as of October 1, 1990, out of a total of 1953 full-time and part-time tenured and non-tenured faculty members, people of color[243] held only 159 tenure track faculty positions.[244] This figure was not segregated by gender and includes non-tenured faculty, indicating that the number of women of color faculty who held tenure—and therefore had the ability to speak out about discrimination without fear of retribution—was even less significant.[245] In fact, as professor Nancy Hauserman observed in an October 1988 *Daily Iowan* article, in 1988, the University faculty had only five Black women professors out of 1567 tenure-track faculty.[246] The numbers of Asian American women on the faculty at the time is unknown.[247]

The tensions between Women's Studies and other departments like African American Studies and Ethnic Studies exemplified the "false tension between feminist and antiracist movements."[248] Though many of the faculty who galvanized around Jew's cause were also involved in anti-racist work and affirmative action efforts, these institutional affirmative action categories remained separated into women *and* minorities.[249] Law school professor

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[240] VICTORIA HESFORD, FEELING WOMEN'S LIBERATION 2 (2013).

[241] *See* Videoconference Interview with Boos, *supra* note 170.

[242] *See* Susan L. Mask, *The University of Iowa Affirmative Action Plan, 1990-1991*, UNIVERSITY OF IOWA 8 (1990).

[243] The report uses the term "minority groups," which refers to "American Indian," "Black," "Asian," and "Hispanic" individuals. *Id.*

[244] *Id.*

[245] *See id.*

[246] Suzanne McBride, *UI Cites Priorities in Child Care, Affirmative Action, Academics*, DAILY IOWAN, Oct. 27, 1988, at 1A.

[247] *See id.*

[248] Kimberlé Crenshaw, Opinion, *We Still Haven't Learned from Anita Hill's Testimony*, N.Y. TIMES (Sept. 27, 2018), https://www.nytimes.com/2018/09/27/opinion/anita-hill-clarence-thomas-brett-kavanaugh-christine-ford.html [https://perma.cc/3FHK-9EDJ].

[249] *See* Mask, *supra* note 242, at 6.

Adrien K. Wing was one of fewer than ten Black women professors when she joined the University in 1987.[250] She noted she "never ever thought" to be associated with the Women's Studies program, the Council on the Status of Women, or other similar feminist groups because of how white-dominated these spaces were.[251] Though Wing was selected to serve on a hiring committee as part of the Women's Studies department's initiative to "diversify" the faculty, she stated that she soon realized that the department was "not serious" about these efforts.[252] "I believe I was the only woman of color on the committee because they didn't have any women of color in women's studies," she said.[253] The lack of intentional discussion and consideration of race precluded meaningful intersectional and multiracial organizing alongside the few women of color faculty at the University at the time of the JJJC's formation.[254]

Jew was not alone in challenging the narrow definition of sexual harassment in the workplace.[255] She was one of numerous women of color who, along with working-class women, pushed the courts to recognize sexual harassment under antidiscrimination law throughout the 1970s and 1980s. [256] As Carrie N. Baker argues, the perception that sexual harassment is a white middle-class women's issue has obscured the historical contributions of others:

> African American women brought most of the early precedent-setting sexual harassment cases, including the first successful Title VII cases in the federal district court (Dianne Williams), the federal courts of appeals (Paulette Barnes), and the Supreme Court (Mechelle Vinson), and the first successful cases involving harassment of a student (Pamela Price), coworker harassment (Willie Ruth Hawkins), and hostile environment harassment at the appellate level (Sandra Bundy).[257]

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[250] Videoconference Interview with Adrien K. Wing, Bessie Dutton Murray Professor, Univ. of Iowa Coll. of L. (Dec. 2, 2020) (on file with author).

[251] *Id.*

[252] *Id.*

[253] *Id.*

[254] *See* Mask, *supra* note 242, at 6.

[255] *See* Baker, *supra* note 106, at 10.

[256] *See id.* at 7–8; Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre)History*, 95 B.U. L. REV. 713, 725 (2015); *see generally* Esther Ngan-Ling Chow, *The Development of Feminist Consciousness Among Asian American Women*, 1 GENDER & SOC'Y 284 (1987) (discussing how Asian American women who began organizing formally around women's issues in the early 1970s were excluded from white middle-class feminist groups and from the historical narrative on women's liberation).

[257] Baker, *supra* note 106, at 10.

Even before the courts began to recognize sexual harassment as sex discrimination under Title VII, Black feminist leaders who had been active in the Civil Rights Movement pushed for recognition of gender equality as a civil rights priority and facilitated coalition building between the civil rights and women's rights movements.[258]

Though discussions of *Meritor Sav. Bank, FSB v. Vinson* rarely acknowledge Mechelle Vinson's race, racialized gender stereotypes were at issue in the litigation, similar to the *Jew* case. Vinson's attorney countered the defendants' characterization of Vinson as a "temptress, a seductress, a lascivious woman who dresses provocatively and who is sexually obsessed," a characterization rooted in stereotypes of Black women as hypersexualized.[259] Similarly, Jew believed that "there was, and maybe still is, the stereotype of the submissive Asian female . . . an exotic handmaiden . . . and I think that played into [the harassment] a lot."[260] Though much of the media coverage neglected to mention her race, a profile of Jew published the year following the district court opinion on April 4, 1991 states that "[a]s an American of Chinese ancestry, Jew said she is not a stranger to harassment and discrimination. She often encountered and fought racial discrimination growing up in the South."[261] Jew's quotation states, "[g]rowing up in a system like that prepares you for discrimination. It makes you accept it more readily because you've put up with it all your life, but it does give you strength."[262] While her identity as a Chinese American woman made her a target for her colleagues who harassed her based on her gender and her race, her life experiences with discrimination also showed the ways in which the struggle for racial and gender inequality were necessarily intertwined.[263]

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[258] Mayeri, *supra* note 256, at 722.

[259] Baker, *supra* note 106, at 11–12.

[260] Videoconference Interview with Jew & Chalmers, *supra* note 19; Julie Yuki Ralston, *Geishas, Gays and Grunts: What the Exploitation of Asian Pacific Women Reveals About Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members*, 16 MINN. J.L. & INEQ. 661, 684–86 (1998) (discussing the stereotypical depiction of Asian Pacific woman as the polar opposite of the white Military Man, the former intent to serve the latter who serves as a benchmark for American masculinity); *see also* MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 206 (Asian Women United of Cal., ed., 1989) (describing the "myth of the 'erotic Oriental' and her objectification as a sexual mannequin"); Cho, *supra* note 5, at 191 (describing racialized gender stereotypes of Asian Pacific American women as passive, submissive, exotic, and hyper-eroticized, resulting in greater exposure to harassment).

[261] Julie Creswell, *Jean Jew: After the Battle*, DAILY IOWAN, Apr. 4, 1991, at 1A.

[262] *Id.*

[263] From 1992 to 1999, women of color filed sexual harassment charges at disproportionately higher rates than white woman. Tanya Katerí Hernández, *Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race*, 4 J. GENDER, RACE & JUST. 183, 188 n.22 (2001). Professor Tanya Katerí Hernández argues that this disparity was primarily due to racially gendered stereotypes, which led to more severe harassment and a higher rate of harassment for women of color. *Id.* at 184, 194.

Jew herself did not become involved in women's groups such as the Council on the Status of Women until the late 1980s, in the final years of the litigation.[264] An October 10, 1988 *Daily Iowan* article quoted Jew's commentary on the UI Council on the Status of Women's progress on affirmative action efforts: "[w]hat we've found is that the problems faced by women and minorities in the workplace—although unique to the individual—are not so different that we can not form some way of presenting them in general terms to show they are universal."[265] It was, thus, only in the last few years of litigation that the JJJC came to fruition and that Jew and Chalmer's efforts converged with the committee's.[266] While Jew had worked externally to the University to push for fairer legal processes for state employees to pursue discrimination claims, she also joined University faculty efforts to push for greater opportunities for women and other underrepresented groups within the University.[267]

VI. THE AFTERMATH: THE IMPACT OF JEAN JEW'S LEGAL BATTLE

A. Within the University: Fragmented Progress

On November 12, 1990, the University of Iowa announced that it had reached a settlement agreement with Dr. Jean Jew.[268] *The Daily Iowan* reported that at a public meeting, Vice President Peter Nathan read the announcement to a full lecture hall of more than 100 people, and "the statement of settlement was met with cheers, applause and teary eyes," as well as a standing ovation.[269] University of Iowa President Hunter Rawlings apologized to Jew for the University's actions, stating that "[t]his university must not only provide a hostility-free environment for Dr. Jew, but must continue to demonstrate that it will not tolerate any form of harassment of its members."[270] Jew reminded the crowd of plaintiffs who may not be as fortunate as herself, saying "that she had tenure, a good salary and no family to worry about. Others aren't in as good a position to bring a long lawsuit."[271] On November 16, 1990, Jew and the University of Iowa signed final

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[264] Videoconference Interview with Chalmers, *supra* note 129.

[265] Diana Wallace, *UI Women's Subcommittee Reports on Minority Progress*, DAILY IOWAN, Oct. 4, 1988, at 1A.

[266] *See* Videoconference Interview with Jew & Chalmers, *supra* note 19; *see* CHALMERS, *supra* note 23, at 170.

[267] *See* CHALMERS, *supra* note 23, at 170.

[268] Andy Brownstein & Diana Wallace, *UI, Regents Put Case to Rest*, DAILY IOWAN, Nov. 13, 1990, at 1A.

[269] *Id.*

[270] Linda Hartmann, *UI, Jew Settle Suit*, IOWA CITY PRESS-CITIZEN, Nov. 13, 1990, at 1A.

[271] *Id.*

settlement papers. Jew received $176,000, including $50,000 in back pay and $126,000 in damages, with Chalmers receiving $895,000 in attorney's fees.[272]

That same week, the University of Iowa administration released a more detailed procedure for filing sexual harassment complaints, but it did not acknowledge the way in which Jew's case exposed the institutional failures that made these policy improvements necessary.[273] When the faculty grievance panel for Jew's case convened in 1984, the University had no sexual harassment policy.[274] A letter published by Affirmative Action Director Susan Mask and University President Hunter Rawlings on the day of the settlement announcement stated, "[i]t is an irony of circumstance that we are presenting these procedures at a time when some members of our community are questioning the University's sincerity on matters related to sexual harassment."[275] University failed to take responsibility for the widespread disillusionment with its ability to respond adequately to sexual harassment cases like Jew's, showing amnesia regarding its hostile stance towards Jew's claims.[276] The denial of a connection between Jew's case and criticisms of the University's response to sexual harassment generally implied that Rawlings's apology was intended for Jew's case alone.[277] Thus, an early prediction by a leading organizer of the JJJC that "the University [would] not credit the Jew decision as the force behind any future policy/structural change" had been realized.[278]

Despite the University's resistance towards enacting structural improvements to combat and prevent sexual harassment and discrimination, the favorable legal outcome gave rise to positive changes.[279] In her affidavit filed in the district court, former Director of the Women's Resource and Action Center and key member of the JJJC, Sue Buckley, commented on the impact of Jew's victory:

> [T]he decision has been tremendously significant for the women in the University community . . . Jean Jew has been the only visible, successful court challenge to the institution's treatment of women and as a result has added significantly to the empowerment, self-esteem and dignity of women in the community. In many women's eyes, Jean's

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[272] *Jean Jew, UI Reach Settlement*, *supra* note 144.

[273] *See* Beth Chacey, *UI Outlines Detailed Policy on Filing Harassment Complaints*, DAILY IOWAN, Nov. 12, 1990, at 3A.

[274] CHALMERS, *supra* note 23, at 29.

[275] Chacey, *supra* note 273.

[276] *See id.*

[277] *See id.*

[278] Affidavit of Susan Buckley, *supra* note 141, at 3.

[279] *See id.*

> insistence on fair and just treatment in a seemingly impenetrable bureaucracy and hostile environment has made her success an inspiration to women in this community to speak up and out regarding their own victimization by the University.[280]

The case also had more tangible outcomes—the University's Affirmative Action office credited Jew's case with an increase in community awareness of sexual harassment that would help prevent future incidents of harassment.[281] A May 1, 1991 article published in the *Iowa City Press-Citizen* reported that "[s]exual harassment has been a widely-discussed issue since many on campus criticized the [U]niversity's handling of a case in the anatomy department."[282] Director of Affirmative Action Susan Mask commented, "[t]he increased awareness of the issue and stepped-up training and information will help prevent more incidents."[283] In 1991 (the year after the district court decision), the office received "12 formal complaints and 13 inquiries about filing complaints."[284] Though this indicated only incremental progress, the numbers represented a slight increase in reports of sexual harassment compared to 1990, when "the office heard eight formal complaints and had nine inquiries."[285]

Yet justice for Jew remained elusive. Jew wrote in a February 21, 1991 letter to the JJJC about the minimal improvements she experienced: "unspoken support from many of the graduate students, who no longer avoid[ed] speaking to [her] in the hallways," as well as recognition from women faculty and staff who "attribute[d] specific improvements in their working conditions and opportunities for job advancement in the College to the outcome of [her] case."[286] However, Jew also acknowledged, "[i]t is difficult for me to say that I see objective evidence of improvement in the departmental environment."[287] The Plaintiff's Response to Defendants' Application for Compliance, filed seven months after the settlement, revealed continued University defiance of the court order.[288] The University still had

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[280] *Id.*

[281] Linda Hartmann, *Sexual Harassment Complaints Increase*, IOWA CITY PRESS-CITIZEN, May 1, 1991, at 1B.

[282] *Id.*

[283] *Id.*

[284] *Id.*

[285] *Id.*

[286] Letter from Jean Jew, Emeritus Professor, Univ. of Iowa, to Jean Jew Justice Committee 3 (Feb. 21, 1991) (on file with University of Iowa Libraries, Iowa Women's Archives).

[287] *Id.*

[288] Plaintiff's Response to Defendants' Application for Determination of Compliance at 11–13, Jew v. Univ. of Iowa, 749 F. Supp. 946 (S.D. Iowa 1990) (No. 86-169-D-2).

not changed computer records to reflect Jew's promotion.[289] It held only one optional 1.5-hour-long sexual harassment training session for Anatomy Department faculty.[290] Professors Tomanek and Frank Longo had arrived late and left early to the training, despite the civil judgment against Professor Tomanek for defaming Jew and the district court's finding that Professor Longo had demonstrated "sexual bias" during Jew's promotion evaluation process.[291] Additionally, more sexually explicit graffiti appeared in the Anatomy Department men's room.[292]

Nearly a year after the settlement with the University, many of the problems that the JJJC had identified as barriers to equal opportunity for women and people of color at the University remained. For example, according to the 1991–1992 Affirmative Action Report, the Anatomy Department was one of 32 departments within the University that had "no goals set for the hiring of women."[293] The JJJC and other faculty groups also continued their advocacy even after the settlement.[294] Florence Boos, a member of the Faculty Welfare Committee who participated in the activism related to Jew's case, challenged the University's efforts to eliminate female faculty-headed programs in the School of Library Sciences and the Dental School, departments that:

> were almost exclusively female . . . . From [the University's] point of view, they got rid of them because they weren't intellectually necessary . . . . But our view was structural—that they were just trying to get rid of women, and the university was denying these women the right to appropriate training.[295]

The Iowa State Board of Regents voted on April 15, 1992 to close the all-women Department of Dental Hygiene, after which the dental hygiene faculty members announced that they planned to file sex discrimination charges, claiming that gender bias motivated the decision to eliminate the program.[296]

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[289] *Id.*

[290] *Id.*

[291] *Id.* at 2–6.

[292] *Id.* at 6–7.

[293] Susan L. Mask, *The University of Iowa Affirmative Action Plan, 1991-1992* UNIV. OF IOWA 34 (1991).

[294] *See* Jean Jew Just. Comm., *Dear University Staff, Faculty, and Students*, DAILY IOWAN, Apr. 19, 1991, at 11A.

[295] Videoconference Interview with Boos, *supra* note 170; *see also* Ann Riley, *Program Cut Not Affected by Bias, Says UI President*, DAILY IOWAN, Apr. 28, 1992, at 1A.

[296] Riley, *supra* note 295.

On April 19, 1991, the JJJC published an advertisement in *The Daily Iowan* applauding the efforts of the Office of Affirmative Action in drafting interim procedures for reporting and handling sexual harassment complaints.[297] However, the JJJC also suggested revisions to address the concerns of the Staff Council, the Faculty Council, the Council on the Status of Women, and the Faculty Welfare Committee.[298] The JJJC put forward various propositions, including allowing a judicial panel, rather than one administrator, to make decisions regarding formal action in response to sexual harassment.[299] The JJJC also urged the University to specify the possible range of actions to be taken if a person is found guilty of sexual harassment.[300]

The faculty who had mobilized in support of Jew also institutionalized permanent changes.[301] In 1992, the UI Council on the Status of Women created the Jean Y. Jew Women's Rights Award.[302] The award is presented annually "to a UI student, faculty or staff member who has worked hard supporting women's issues," according to Dee Casteel, chairwoman of the award's original selection committee.[303] "Naming the award after Jean Jew is significant," Casteel said.[304] "We feel very strongly about her struggle in dealing with the harassment she had to endure. . . . She is a great symbol of hope. The fact that she won shows you can make a difference."[305] To Jew, the award was "sort of like a thorn" in the administration's side, that ensures "every year . . . that the administration is never permitted to forget about it."[306]

Yet the award's focus primarily on women's rights to the exclusion of any substantive acknowledgment of racial justice oversimplifies the complexity of Jew's legacy.[307] The webpage for the 1994 awardee, former Assistant Provost and Assistant Dean with the Office of the Provost Dr. Nancy "Rusty" Barceló, describes how Barceló, as a master's student,

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[297] Jean Jew Just. Comm., *Dear University Staff, Faculty, and Students*, *supra* note 294.

[298] *Id.*

[299] *Id.*

[300] *Id.*

[301] *See* Chamallas, *supra* note 77, at 82 (discussing the impact of the JJJC on public sentiment about the Jew case); Affidavit of Sue Buckley, *supra* note 141, at 3.

[302] Sara Epstein, *Jean Jew Award Lauds Women's Rights Battle*, DAILY IOWAN, Jan. 22, 1993, at 3A.

[303] *Id.*

[304] *Id.*

[305] *Id.*

[306] Videoconference Interview with Jew & Chalmers, *supra* note 19.

[307] *See Jean Jew Award*, UNIV. OF IOWA, COUNCIL ON THE STATUS OF WOMEN, https://csw.uiowa.edu/jean-jew-award [https://perma.cc/8SMZ-PHUF] (detailing the establishment and criteria of the Jean Y. Jew Women's Rights Award).

founded what became the Latino Native American Cultural Center and traveled throughout the Midwest to recruit other students of color to attend the University.[308] Aside from this acknowledgment of Dr. Barceló's work, the award's narrow aim of celebrating individuals with "a strong record of support for women's rights" implies that Jew's battle was significant only for its interrogation of gender—not racial—inequality at the University.[309] The limited number of awardees of color also sends the message that there have been few women of color on campus who deserve recognition for their contributions to women's rights since 1994. The establishment of a University award that celebrates the advancement of women allows the University to associate itself with the concept of gender equality without any obligation to address inequities. The University can thus pay lip service to the ideals for which Jew fought and celebrate advocates of equity within its community without taking concrete steps to ensure equal opportunity itself.

B. Beyond the University: A New Wave of Sexual Harassment Complaints & Litigation

Jew's case also had a state-wide impact.[310] In a March 10, 1992 letter to the editor published in the *Iowa City Press-Citizen*, Ray Haines, a member of the Iowa City Human Rights Commission, argued that Jew's case contributed to the increase in sexual harassment complaints statewide.[311] Iowans had closely followed Jew's case for years, with several newspapers covering both Tomanek's trial and the federal trial as they progressed.[312] The case also inspired the Iowa Senate's approval of a state sexual harassment bill that would prohibit not only sexual harassment "in all state government institutions, including prisons, hospitals, and universities," but also "sexually suggestive objects or pictures in the workplace," a clear reference to the graffiti and sexually explicit cartoons about Jew that her colleagues had posted in Anatomy Department spaces.[313]

Jew was also the earliest case in which a federal court found that rumors constituted hostile work environment sexual harassment. This ruling expanded the scope of hostile work environment jurisprudence, which treated direct, unwelcome sexual conduct—primarily in the form of sexual

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[308] *Nancy Barceló: 1994 Awardee*, UNIV. OF IOWA, COUNCIL ON THE STATUS OF WOMEN, https://csw.uiowa.edu/people/nancy-barcelo [https://perma.cc/5YTA-R6N9].

[309] *Jean Jew Award*, *supra* note 307.

[310] *See* Ray Haines, Letter to the Editor, *Editorial Missed Local Side*, IOWA CITY PRESS-CITIZEN, Mar. 10, 1992, at 5A.

[311] *Id.*

[312] *The Daily Iowan* and the *Iowa City Press-Citizen* were a couple of the newspapers that covered Jew's case. *See, e.g.*, Seigel, *supra* note 166; Wallace, *supra* note 51.

[313] Editorial, *Harassment Move a Plus*, IOWA CITY PRESS-CITIZEN, Feb. 28, 1992, at 5A.

advances—as a necessary aspect of legally actionable sexual harassment.[314] As Professor Vicki Schultz argues, this "sexual desire-dominance paradigm" defined "unwanted heterosexual sexual advances as the core conduct that constitutes sex-based harassment."[315] The Supreme Court first recognized sexual harassment as a form of sex discrimination under Title VII in *Meritor Savings Bank, FSB v. Vinson*, nearly a decade after lower courts first began recognizing the legitimacy of sexual harassment claims under Title VII.[316] In *Meritor*, the Court found that "the language of Title VII is not limited to 'economic' or 'tangible' discrimination," thus declaring hostile work environment sexual harassment as actionable under Title VII so long as the harassment is "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'"[317] The Court also quoted the EEOC Guidelines, stating that "the trier of fact must determine the existence of sexual harassment in light of 'the record as a whole' and 'the totality of circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred.'"[318] However, the opinion also reinforced the sexual desire-dominance paradigm. The case involved allegations of direct sexual advances including demands for sexual favors and assault. Writing for the Court, Justice Rehnquist also implied that any act of sexual harassment would necessarily entail sexual advances: "[t]he gravamen of *any* sexual harassment claim is that the alleged sexual advances were 'unwelcome.'"[319]

Jew pushed federal courts away from a reliance on the sexual desire paradigm in adjudicating sexual harassment cases. Subsequent federal appellate courts cited to *Jew* in support of decisions stating that rumors that attributed an individual's professional success to an alleged relationship with a supervisor could constitute sex discrimination under Title VII. In *Spain v. Gallegos*, the Third Circuit found that the plaintiff "offered evidence that she suffered intentional discrimination because of sex" and that she was "subjected to a sexually hostile work environment in the form of rumors among her colleagues that she was involved in a sexual relationship with her

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[314] *See* Johnson, *supra* note 137; Schultz, *supra* note 40.

[315] Schultz, *supra* note 40, at 1692.

[316] 477 U.S. 57, 66 (1986); *see* Williams v. Saxbe, 413 F. Supp. 654 (D.D.C. 1976) (finding that retaliation by an employer against an employee who refused his sexual advances constitutes sex discrimination under Title VII); DeNeen L. Brown, *She Said Her Boss Raped Her in a Bank Vault. Her Sexual Harassment Case Would Make Legal History*, WASH. POST (Oct. 13, 2017, 11:17 AM), https://www.washingtonpost.com/news/retropolis/wp/2017/10/13/she-said-her-boss-raped-her-in-a-bank-vault-her-sexual-harassment-case-would-make-legal-history [https://perma.cc/79U6-9BTM].

[317] 477 U.S. 57 at 64, 67.

[318] *Id.* at 69 (quoting 29 C.F.R. § 1604.11(b) (1985)).

[319] *Id.* at 68 (quoting 29 C.F.R. § 1604.11(a) (1985)) (emphasis added).

superior."[320] Citing to *Jew* as "the only reported case dealing with circumstances similar to those [in *Spain*]," the Court stated that although the plaintiff's claims were atypical, "an employee can demonstrate that there is a sexually hostile work environment without proving blatant sexual misconduct."[321] Similarly, *McDonnell v. Cisneros* involved sexual harassment and retaliation claims by a woman and her more senior male colleague—both were subjected to unsubstantiated sexual misconduct charges based on rumors that the woman received preferential treatment from the man in exchange for sexual favors.[322] In *McDonnell*, the Seventh Circuit wrote that:

> Unfounded accusations that a woman worker is a "whore," a siren, carrying on with her coworkers, a Circe, "sleeping her way to the top," and so forth are capable of making the workplace unbearable for the woman verbally so harassed, and since these are accusations based on the fact that she is a woman, they could constitute a form of sexual harassment.[323]

Though opinions issued prior to *Jew* discuss the conceptual possibility of valid sex discrimination claims in the absence of sexual advances, the circumstances at issue in these cases involved unwelcome sexual conduct that fell within the sexual desire-dominance paradigm.[324] *Jew* was novel in that the conduct that the district court deemed harassment consisted not of sexual advances nor direct interactions of a sexual nature. Instead, the case involved "sexual discrimination against [Jew], in large measure manifested by, and resulting from, false rumors that she gained favor with her department head by engaging in a sexual relationship with him."[325] In fact, the Defendants unsuccessfully attempted to undercut Jew's sex discrimination claim by highlighting the ways in which the conduct that Jew alleged to be harassment fell outside the prevailing paradigm, arguing, "[t]his is <u>not</u> a case about offensive touching, obscenities, or use of epithets."[326] However, the district

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[320] 26 F.3d 439, 449, 451 (3d Cir. 1994).

[321] *Id.* at 447, 450.

[322] 84 F.3d 256 (7th Cir. 1996).

[323] *Id.* at 259–60; *see also* Smith v. First Union Nat'l Bank, 202 F.3d 234, 242 (4th Cir. 2000) ("A work environment consumed by remarks that intimidate, ridicule, and maliciously demean the status of women can create an environment that is as hostile as an environment that contains unwanted sexual advances.").

[324] *See, e.g.*, Hall v. Gus Constr. Co., 842 F.2d 1010, 1012 (8th Cir. 1988) (discussing verbal sexual abuse and unwanted sexual touching); McKinney v. Dole, 765 F.2d 1129, 1131–32 (D.C. Cir. 1985) (discussing physically aggressive though not explicitly sexual act); Hicks v. Gates Rubber Co., 833 F.2d 1406, 1410 (10th Cir. 1987) (discussing unwanted sexual touching).

[325] Jew v. Univ. of Iowa, 749 F. Supp. 946, 947 (S.D. Iowa 1990).

[326] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 14 (emphasis in original).

court recognized the rumors that targeted Jew as discrimination, for "[w]ere Dr. Jew not a woman, it would not likely have been rumored that Dr. Jew gained favor with the Department Head by a sexual relationship with him."[327]

Jew laid the foundation for legal recognition of sexual harassment in the absence of demonstrated sexual desire by focusing on the impact that the harassing conduct had on Jew and thus establishing the relative unimportance of the harassers' identities. The district court found that *Jew* had experienced hostile work environment sexual harassment due to rumors that attacked her professional integrity—despite the absence of sexual advances. In *Oncale v. Sundowner Offshore Services, Inc.*, the Supreme Court considered whether workplace harassment could violate Title VII "when the harasser and the harassed employee are of the same sex."[328] The court found that plaintiffs can bring valid sex discrimination claims even when the harassing conduct was not motivated by sexual desire. Some legal scholars have argued that the *Oncale* ruling reinforced the sexual desire paradigm and that Courts following *Oncale* have conflated a harassment's sexual orientation with sexual desire.[329] However, *Jew* was an important precursor to the *Oncale* finding that "harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex."[330] The district court did not rule in favor of Jew because of the gender, sexual orientation, or sexual desire of those who harassed her, but because the rumors her colleagues spread undermined her qualifications and merit and "suggested that her professional accomplishments rested on sexual achievements rather than achievements of merit."[331] As Judge Vietor wrote in the opinion, "[s]imilarly situated males were not so harassed."[332] The district court in *Jew* rejected the defense's argument that since "the objectionable speech came from a peer of plaintiff;

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[327] *Jew*, 749 F. Supp. at 958, 959 ("[T]he situation was not merely one of idle gossip about an alleged office romance. The rumor was that a faculty member was sleeping with her department chairman to advance her professional position.").

[328] 523 U.S. 75, 76, 80 (1998).

[329] Courts have relied on the *Oncale* opinion to expand Title VII protections to sexual orientation and gender identity. *See* Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75 (1998); *see also* Patrick Berning-O'Neill, *"A Reasonably Comparable Evil": Expanding Intersectional Claims under Title VII Using Existing Precedent*, 24 U. PA. J. CONST. L. 907, 908 (2022). However, legal scholars have argued that the *Oncale* ruling reinforced the "sexual desire paradigm" and thus disadvantages LGBTQ+ employees by suggesting that the alleged harasser's sexual orientation is relevant to a sex discrimination claim (suggesting a court could infer a plaintiff alleging same-sex harassment experienced discrimination "if there were credible evidence that the harasser was homosexual"). *See, e.g.*, Kimberly D. Bailey, *Male Same-Sex "Horseplay": The Epicenter of Sexual Harassment?* 73 FLA. L. REV. 95, 110 (2021); Brenda D. Alzadon et al., *Sexual Harassment*, 1 GEO. J. GENDER & L. 583, 596–97 (2000). Additionally, plaintiffs alleging same-sex harassment have been most successful when arguing their harassment was motivated by sexual desire. Jessica A. Clarke, *Inferring Desire*, 63 DUKE L.J. 525, 538 (2013).

[330] *Oncale,* 523 U.S. at 80; *Jew*, 749 F. Supp. at 958.

[331] *Jew*, 749 F. Supp. at 958; *see also* Johnson, *supra* note 137, at 732, 734.

[332] *Jew*, 749 F. Supp. at 958.

a person without a supervisory position," the harassment of Jew was not legally actionable.[333] The court's opinion thus laid the foundation for the *Oncale* ruling that Title VII's prohibition of sexual harassment "must extend to sexual harassment of any kind that meets the statutory requirements," regardless of the identity of the harassers and whether desire motivated their actions.[334]

VII. INTERSECTIONALITY IN TITLE VII: LOOKING FORWARD

For more than a decade between Jew's initial letter to Dean Eckstein in 1979 detailing her experience of sexual harassment to the early 1990s when the University refused to move Robert Tomanek to a different department, Jew faced institutional intransigence, brazen denials of justice, and continuing sexual harassment at the hands of her colleagues.[335] Jew pursued legal recourse at a time when the courts did not recognize her experience as sexual harassment. Forced to seek various avenues for justice, Jew filed a defamation suit against Tomanek and two separate lawsuits against the University and the state Board of Regents, lobbying for changes in state legislation, and expanding access for future plaintiffs. While Jew first sought remedies within the University, it would take the full force of a federal district court decision, as well as the efforts of a faculty committee that galvanized the University to support Jew, to compel the state-supported University to acknowledge the legitimacy of her claims.

The fact that Jew did not bring an intersectional discrimination claim due to the absence of legal precedents should not preclude an analysis of the ways in which Jew's colleagues denigrated her due to her sex and race. A failure to address the racial dynamics of Jew's experiences leaves the University of Iowa's legal attempts to deny the complexity of Jew's experiences of racialized sexual harassment unaddressed. The court's consideration of only sexual advances when evaluating hostile work environment harassment claims "obscures a full view of the conditions of the workplace," similarly to how ignoring race discrimination when present in sex discrimination cases minimizes the full extent of the harm.[336] As Schultz argues, "[w]hen severed from a larger pattern of discriminatory conduct, sexual advances or ridicule can appear insufficiently severe or pervasive to be actionable."[337] As considering only explicit sexual advances would have ignored the crux of Jew's sexual harassment complaints, acknowledging only the gender

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[333] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 20 (emphasis in original).

[334] *Oncale*, 523 U.S. at 80.

[335] *See generally Jew*, 749 F. Supp. at 947–57; *see also* Plaintiff's Response to Defendants' Application for Determination of Compliance, *supra* note 288, at 5.

[336] Schultz, *supra* note 40, at 1689–90.

[337] *Id.* at 1690.

discrimination in cases with clear racial discrimination similarly fails the requirement for a court to consider the totality of the circumstances when evaluating a hostile work environment claim.[338]

An intersectional analysis of Jew's case is important because courts are still hesitant to conclude that rumors about a woman's alleged promiscuity with male colleagues or supervisors constitute discrimination under Title VII. This reluctance persists despite the fact that these rumors draw on "negative stereotypes that a woman must use her sexuality rather than her merit to succeed,"[339] and that "women do not have the necessary qualifications or traits for leadership."[340] Though in *Jew* the defense argued that the rumors about Jew were "directed as much to a man . . . as they were to her," a recognition of the racialized nature of the rumors and epithets as well as the historical sexualization of Asian American women and women of color makes this argument seem even more disingenuous.[341] Racially derogatory labels (like "Chinese pussy" and "Terry's 'chink'"—with which Jew's colleagues labeled her), examined alongside the rumors about Jew's alleged affair and thus undeserved professional advancement, clearly show that Jew, not her supervisor, was the target of the harassment.[342] Thus, for plaintiffs who bring race and sex discrimination claims based on rumors, intersectional arguments may provide a stronger rebuttal to claims that rumors were not discrimination because they affected both the harasser and the person being harassed.

Though some federal courts have recognized intersectional discrimination claims under Title VII,[343] there remains a dearth of intersectional case law.[344] As Professor Jamillah Bowman Williams argues,

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[338] *See* Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 69 (1986).

[339] Johnson, *supra* note 137, at 732.

[340] *Id.* at 734; *see* Duncan v. Manager, Dep't of Safety, 397 F.3d 1300, 1305 (10th Cir. 2005). Duncan was repeatedly subjected to rumors that she was engaging in sexual relationships with her supervisor and fellow officers, in addition to unwanted touching, sexual comments, and threatening anonymous letters—"[t]he author of the letters threatened to rape and kill [Duncan] before cutting up her body and scattering the pieces around the city." *Id.* at 1305.

[341] Memorandum in Support of Defendants' Motion for Summary Judgment, *supra* note 45, at 16.

[342] Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, *supra* note 7, at 20.

[343] *See, e.g.*, Jeffers v. Thompson, 264 F. Supp. 2d 314, 326 (D. Md. 2003); *see also* Catharine A. MacKinnon, *Intersectionality as Method: A Note*, 38 SIGNS: J. WOMEN CULTURE & SOC'Y 1019, 1020 (2013) (quoting *Jeffers*' discussion of how "sex and race can 'fuse inextricably' so that '[m]ade flesh in a person, they indivisibly intermingle'" (quoting *Jeffers,* 264 F. Supp. 2d at 326)).

[344] Mayeri, *supra* note 256, at 730. In 2009, a jury in a federal trial found for the defendant on all counts after plaintiff Tametra Moore, a Black woman, filed a lawsuit claiming sexual harassment, racial harassment, and retaliation after being subjected to a repeated racially and sexually vulgar comments by her supervisor. *See* Kate Sablosky Elengold, *Clustered Bias*, 96 N.C.

intersectional Title VII claims are often unsuccessful because courts consider racial discrimination claims and sex discrimination claims separately rather than evaluating the cumulative effect of all discriminatory acts.[345] Bowman writes that courts may be less likely to find intersectional plaintiffs credible because "if a person alleges too many discrimination claims based on multiple characteristics, it is more likely that the claims lack merit."[346] Particularly for Asian American women, "the type of hypersexualization, exoticization, and subordination" they experience "falls outside of the formally protected classifications under civil rights laws."[347]

To consider the totality of circumstances in a sex discrimination case is to consider all of the ways in which a person is denied the opportunity to succeed in the workplace.[348] This demands a recognition of both explicit and implicit sexual misconduct, both race-based and sex-based discrimination, and discrimination that cannot be neatly categorized as one or the other. Understanding the historical discrimination against women of color is essential for recognizing the way in which rumors about a woman engaging in a romantic or sexual relationship with a male colleague that are grounded in racialized and gendered stereotypes can constitute discrimination under Title VII.[349]

Judicial decisions that acknowledge the numerous ways in which discrimination manifests in the workplace are only one piece of ensuring equal access to opportunity. The vast majority of those who experience harassment and discrimination will not bring forward discrimination claims.[350] There are many who have remained silent due to a lack of financial means, inadequate knowledge of the legal system, reputational risk, and many

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L. REV. 457, 458–60 (2018). *See also* Jamillah Bowman Williams, *Maximizing #MeToo: Intersectionality & the Movement*, 62 B.C. L. REV. 1797, 1823 (2021) (discussing *EEOC v. Champion Int'l Corp.*, No. 93 C 20279, 1995 WL 488333 (N.D. Ill. 1995) and *Vigil v. City of Las Cruces*, 113 F.3d 1247, No. 96-2059, 1997 WL 265095 (10th Cir. May 20, 1997) (unpublished table decision)).

345 *See* Williams, *supra* note 344, at 1823–25.

346 *Id.* at 1824.

347 Shoba Sivaprasad Wadhia & Margaret Hu, *Decitizenizing Asian Pacific American Women*, 93 UNIV. COLO. L. REV. 325, 356 (2022).

348 *See* Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81–82 (1998) ("The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed."); Schultz, *supra* note 40, at 1748 ("[S]exual misconduct may be only one . . . manifestation of a larger pattern of nonsexual harassment and discrimination . . . ").

349 *See* Wei, *supra* note 231, at 801 (examining the historical roots of stereotypical perceptions of Asian American women).

350 Yuki Noguchi, *Sexual Harassment Cases Often Rejected by Courts*, NPR (Nov. 28, 2017, 7:28 AM), https://www.npr.org/2017/11/28/565743374/sexual-harassment-cases-often-rejected-by-courts [https://perma.cc/9ZXJ-UKAX].

other barriers.[351] For example, low-wage workers are particularly vulnerable to abuse, and many immigrant workers do not and cannot seek legal recourse due to language barriers and fear of retaliation.[352] Oftentimes, those most vulnerable to harassment are those least likely to seek legal help.[353] Federal and state laws must protect workers against discrimination, particularly where sexual harassment frequently occurs and where workers are less likely to seek redress, including the restaurant and service, agricultural, and domestic and home care industries.

Workplaces must create clear procedures for reporting acts of discrimination so that all employees understand both what constitutes discrimination as well as the process for filing complaints. The process must center the needs of the workers and must make clear that workers will not be retaliated against for making complaints. The JJJC's recommended revisions to the University's sexual harassment procedures as published in the *Daily Iowan* on April 19, 1991 were a step in the right direction, including recommendations for increased transparency about harassment complaints and clearly stated options for filing complaints.[354] However, these recommendations focused solely on sexual harassment, and it is important to recognize the many ways in which discrimination occurs in the workplace.

A meaningful inquiry into sexual harassment law requires acknowledgement of the contributions of women of color like Jean Jew who fought at the forefront of legal battles. Despite the risk of retaliation, irreparable damage to their professional careers and reputations, and continuous institutional disavowal of responsibility for their experiences, these women demanded recognition and justice in the courts and before the wider public. Yet the full measure of justice demands more than legal victories. Behind every discrimination claim are numerous other individuals with similar grievances who did not have the opportunity or resources to bring these claims to court. It is the responsibility of institutions and the people in positions of authority within them to eradicate discrimination and provide equal opportunities for success, and if they fail to do so, the courts must hold them accountable.

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[351] *See, e.g.*, Leticia M. Saucedo, *Critical Race Theory and the Low-Wage Workplace: The Story of Janitorial Services in California*, 66 ST. LOUIS UNIV. L. J. 739, 741 (2022); Kristen et al., *supra* note 139, at 171.

[352] Kristen et al., *supra* note 139, at 180, 186–89.

[353] *See id.* at 171; *see also* Saucedo, *supra* note 351.

[354] *See* Jean Jew Just. Comm., *supra* note 294.