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Is this Injury Reasonable? Do Psychological Injury Expectations Affect Mock Jurors’ Legal Decisions in a Sexual Harassment Case?

Jonathan P. Vallano, Ryan J. Winter and Steve D. Charman

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The experiments examined the viability of a proposed decision-making process to explain how jurors’ expectations for a sexual harassment complainant’s psychological injury affect their legal decisions. Two experiments provided undergraduate mock jurors with a sexual harassment allegation that manipulated their range of expectations for reasonable psychological injuries (mild vs. mild to severe) and the severity of the complainant’s alleged psychological injury (from minimal to extreme). Experiment 1 (N = 295) found that participants expecting mild injuries found the complainant’s psychological injury allegations to be less reasonable and credible than participants expecting mild to severe injuries. Experiment 2 (N = 202) investigated whether these expectations influenced liability and compensatory damage decisions. As the injury increased from minimal to moderate severity, participants expecting mild injuries found less liability, whereas participants expecting mild to severe injuries found significantly more liability. Both expectations and injury severity independently impacted damage decisions, but not in an interactive fashion. We discuss the applicability of the proposed decision-making process to explain legal decisions in sexual harassment cases.

Key words: expectations; juror decision-making; outcome severity; psychological injury; social judgment theory.

Jurors do not enter the courtroom as blank slates. Rather, jurors’ attitudes and experiences provide them with generic knowledge (also known as schemas; Alba & Hasher, 1983) that affect their perceptions of trial evidence. For jurors, generic knowledge takes the form of “legal schemas,” or mental representations of the typical crime (V.L. Smith, 1991). These legal schemas allow jurors to formulate expectations, or beliefs about what they will encounter in the future (Olson, Roese, & Zanna, 1996). In civil cases, jurors’ legal expectations likely involve the typical conduct and consequences that the complainant and defendant will present at trial.

Expectations are an important area of study because jurors likely access these pre-existing beliefs to evaluate the quality of trial evidence (Robbennolt & Studebaker, 2003). As schemas and expectations aid information processing by “filling in the gaps,” jurors may especially draw upon their expectations when evaluating evidence not easily amenable to direct observation. In civil cases, this evidence often comes in the form of psychological injury.

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Complainants suffer psychological injuries in a wide variety of civil cases, often leading to the diagnosis of anxiety and depressive disorders (Foote & Goodman-Delahunty, 2005). Certain civil cases (e.g., sexual harassment) almost exclusively involve psychological injury, as this is the primary form of injury experienced by the complainant (Cass, Levett, & Kovera, 2010). In fact, even mild forms of sexual harassment (e.g., a hostile work environment) can result in mild, “garden variety” injuries such as embarrassment and humiliation, or severe injuries, such as major depressive disorder and post-traumatic stress disorder (Foote & Goodman-Delahunty, 2005; Kovera & Cass, 2002). As a result, it is reasonable for jurors to expect that the complainant may suffer a range of psychological injuries from sexually harassing conduct.

Although civil jurors’ psychological injury expectations have received little attention from psycholegal researchers, these expectations probably affect how jurors perceive injury evidence presented at trial. Instead of investigating whether jurors expect (or do not expect) the complainant to suffer psychological injury, this study aims to augment our understanding examining the specific content of jurors’ expectations. Jurors who expect psychological injury to reasonably result from the defendant’s conduct may not expect just any degree of psychological injury – some may expect mild injuries, while others may expect mild to severe injuries. Thus, the study takes a unique approach by manipulating the range of psychological injuries participants expect may reasonably result in a sexual harassment case. We propose that when evaluating the complainant’s actual psychological injury claim, jurors initially access their range of expectations for reasonable injuries. Jurors then compare these ranges to the complainant’s actual injury allegations to determine its veracity. Specifically, jurors will ask themselves: “Based on the typical case (my expectations), are the complainant’s injuries a reasonable result of the defendant’s conduct?” If “yes”, jurors should judge the complainant’s injuries as credible, leading to more complainant verdicts. If “no”, jurors should be skeptical of the complainant’s injuries, leading to more defense verdicts.

**Legal Schemas and Expectations**

Research supports the notion that jurors have well-developed legal schemas. In fact, multiple schemas exist in criminal cases involving insanity (Skeem & Golding, 2001), murder (Wiener, Richmond, Seib, Rauch, & Hackney, 2002), rape (Ryan, 1988), assault, burglary, and kidnapping (V.L. Smith, 1991). Legal schemas also exist in civil cases involving car accidents, medical malpractice, slip and fall (Hart, Evans, Wissler, Feehan, & Saks, 1997), and most relevant to the present experiments, sexual harassment (Huntley & Costanzo, 2003; Popovich, Jolton, Mastangelo, & Everton, 1995). Popovich et al. (1995) examined participants’ expectations via their descriptions of the typical sexual harassment scenario and revealed the existence of multiple harassment scripts. The most prominent script, labeled “blatant harassment,” involved unwanted advances from a male superior to a female subordinate. Approximately one quarter of participants’ harassment scripts included an emotional response by the victim, ostensibly referring to the victim’s pain and suffering. Although Popovich et al. (1995) established that many participants’ harassment scripts contain psychological injury, they did not examine the content of these expectations, or how these scripts affected legal decisions.

The law is often unclear and inconsistent regarding how and whether expectations should impact upon jurors’ legal
judgments (see Rose & Diamond, 2008). Although jurors are often permitted to view the evidence in light of their observations and experience, they are often prohibited from using their prior experiences when making legal judgments (V.L. Smith, 1993). However, research clearly demonstrates that jurors’ schemas and expectations affect legal decisions (V.L. Smith, 1991; V.L. Smith & Studebaker, 1996). For example, V.L. Smith (1991; Study 2) varied the number of typical features contained within different criminal scenarios (e.g., a robbery), as determined by the frequency of participants’ self-reported features. Although each scenario equally met the legal requirements for criminal wrongdoing, participants returned more guilty verdicts when the scenarios contained more typical (schematically common) than atypical features.

Legal schemas similarly influence jurors’ liability and damage decisions in civil cases (Hart et al., 1997), including sexual harassment (Huntley & Costanzo, 2003). Huntley and Costanzo (2003) found that prototypic story themes distinguished between pro-plaintiff and pro-defense jurors. For example, pro-plaintiff jurors were more likely to characterize the plaintiff as a “capable employee of good character,” while pro-defendant jurors were more likely to characterize the defendant as “oversensitive” (p. 35). Likewise, Hart et al. (1997; Study 2) examined the effects of mock jurors’ prior beliefs about physical injuries on compensatory damage decisions. Hart and colleagues presented participants with two civil cases (a car accident and slip and fall) paired with either a typical or atypical injury (whiplash or bone fracture, respectively). Results indicated that the atypical conditions (e.g., a car accident resulting in a fractured arm) produced larger, more wide-ranging pain and suffering awards than the typical conditions (e.g., a car accident resulting in whiplash). Because Hart et al. examined

pre-existing beliefs about physical injury severity, it remains unknown whether beliefs about psychological injury severity will similarly affect jurors’ decisions in sexual harassment cases.

Outcome Severity
Tortious conduct can produce a range of outcomes, including physical injury (e.g., broken bones), psychological injury (e.g., emotional distress), or both physical and psychological injury. Despite the prevalence of civil claims involving psychological injury, research has largely studied the effects of physical injury severity on negligence decisions (Greene, Johns, & Smith, 2001; Woody, 2008). In most civil cases, the severity of the complainant’s injuries should exert little (if any) effect on liability decisions, as injury severity does not directly speak to the defendant’s negligence (Greene, Johns, & Bowman, 1999). However, research often finds that severe physical injuries produce more findings of negligence than mild physical injuries (Bornstein, 1998; Greene et al., 1999; Robbennolt, 2000). Unlike liability judgments, injury severity should influence compensatory damage awards – jurors should award larger sums of money to return more severely injured complainants back to their pre-injury state. Consistent with legal requirements, physical injury severity is often positively related to damage decisions (Feigenson, Park, & Salovey, 2001; Wissler, Evans, Hart, Morry, & Saks, 1997), exerting a stronger impact on damage than negligence decisions (Robbennolt, 2000).

Despite the positive relationship between physical injury severity and negligence decisions, there are reasons to predict a non-linear relationship between psychological injury severity and sexual harassment decisions. Sexual harassment involves a specific type of conduct (hostile environment or quid pro quo), both of which
primarily result in psychological injury (Cass et al., 2010). Compared with physical injuries, psychological injuries do not easily lend themselves to objective evidence (i.e., an X-ray) that is clearly visible to the jury. As a result, psychological injuries may induce a higher level of juror skepticism, as sexual harassment complainants are often perceived as having questionable credibility (O’Connor, Gutek, Stockdale, Geer, & Melancon, 2004; O’Donohue & Bowers, 2006; O’Donohue & O’Hare, 1997; Stockdale, O’Connor, Gutek, & Geer, 2002). This skepticism may be heightened as psychological injury claims increase in severity. More severe injuries may facilitate an anti-plaintiff bias (see Feigenson, Park, & Salovey 1997), possibly because these injuries fall outside the range of jurors’ expectations for reasonable injury claims.

The Proposed Decision-Making Process

The reviewed literature strongly suggests that jurors’ expectations and the severity of the complainant’s psychological injuries will independently affect legal decisions. However, it remains unclear how the match (or mismatch) between jurors’ expectations and the complainant’s alleged injuries may affect legal judgments. The present study attempts to fill this important gap in the literature by applying a rarely used approach to study the effects of jurors’ legal expectations. This approach recognizes that jurors may access a range of expectations for reasonable psychological injuries, believing that some degrees of injury (but not others) will reasonably result in civil cases. Whether the complainant’s injury claim falls within jurors’ range of reasonable (or unreasonable) injuries will affect their legal judgments.

Social judgment theory (SJT: M. Sherif & Hovland, 1961; C. Sherif, Sherif, & Neberghall, 1965), a theory describing attitude change, provides support for the notion that jurors accept and/or reject a range of positions on a given subject (SJT refers to these ranges as latitudes). Where a message falls within these pre-existing ranges of acceptability determines whether the message is persuasive. Messages considered acceptable by the recipient fall within the latitude of acceptance and are most likely to facilitate persuasion. Messages considered unacceptable by the recipient fall within the latitude of rejection and are less likely to facilitate persuasion (Eagly & Telaak, 1972). Messages where the recipient has no pre-existing opinion fall within the latitude of non-commitment and may or may not produce attitude change. SJT makes no specific claim regarding whether messages falling within the latitude of non-commitment will be persuasive (see O’Keefe, 1990).

The social judgment approach is particularly applicable to predicting jurors’ perceptions of evidence that ranges on a continuum (e.g., psychological injuries – from mild to severe). Regarding psychological injury evidence, this approach directly supports the proposed decision-making process, which assumes that: (1) jurors have differing ranges of expectations for psychological injuries and will find several gradations of injury severity to be reasonable and/or unreasonable, and (2) the location of the actual injuries among these ranges will dictate its effect on legal judgments. Thus, injuries within jurors’ range of reasonableness (the latitude of acceptance) will be considered more credible and favor the complainant, while injuries outside jurors’ range of reasonableness (the latitude of rejection) will be considered less credible and favor the defendant.

To assess the effects of participants’ range of expectations for differing degrees of psychological injury severity on sexual harassment decisions, we provided participants with an Equal Employment Opportunity Commission (EEOC) investigation
report. This report initially contained expert testimony from a therapist that manipulated participants’ range of expectations. Specifically, the testimony induced some participants to expect that only mild injuries typically result in a sexual harassment case, and induced other participants to expect that mild to severe injuries typically result. Following the therapist’s testimony, the complainant alleged suffering from differing degrees of psychological injury (minimal, mild, moderate, severe, or extreme).

Experiment 1 – Purpose and Hypotheses

Experiment 1 sought initially to examine the viability of the proposed decision-making process. Specifically, does participants’ range of expectations for reasonable psychological injuries affect their reasonableness judgments for the complainant’s actual injury claim? We initially examined reasonableness judgments because reasonableness is central to jurors’ sexual harassment decisions, which require that they evaluate the conduct as a “reasonable person in similar circumstances” (Wiener, Winter, Rogers, & Arnot, 2004). Additionally, reasonableness judgments should be directly impacted by these expectations, giving promise to the possibility that these ranges also influence liability and damage decisions.

To determine whether each injury severity allegation was considered a reasonable result of the harassing conduct, we employed a 50% threshold often used in social judgment research (C. Sherif et al., 1965). That is, we considered an injury severity allegation to be reasonable if over 50% of participants believed it was reasonable. We predicted that participants expecting mild injuries would find fewer of the five injury severity allegations to be reasonable (and find the injury claims to be less credible) than participants expecting mild to severe injuries. We further predicted participants’ differing expectations would produce different reasonableness patterns: participants expecting mild injuries should perceive the injury allegations as unreasonable earlier on the injury severity continuum than participants expecting mild to severe injuries. Moreover, allegations of increasing severity should lower perceived complainant credibility, thereby reducing reasonableness judgments.

Experiment 1

Method

Participants

Participants included 316 undergraduates recruited from the psychology subject pool at a southeastern university in the USA. Twelve participants did not meet jury eligibility requirements (at least 18 years old and a US citizen) and nine participants did not pay adequate attention to the case. The final sample consisted of 295 participants. One hundred seventy-nine females (61%) and 115 males (39%) ranged from 18 to 40 years of age (mean age = 19.91). One hundred eighty-nine were Hispanic (64%), 56 were Caucasian (19%), 26 were African American (9%), four were Asian (1%), and 11 were listed as Other (4%). Nine participants (3%) did not report all demographic information.

Materials and Procedure

Design. Experiment 1 employed a 2 (Injury Expectation: mild vs. mild to severe) × 5 (injury severity: minimal vs. mild vs. moderate vs. severe vs. extreme) between-participants design. We included gender in the design because gender often affects perceptions in sexual harassment studies (females are often more likely to perceive sexual harassment than males; Blumenthal, 1998; Rotundo, Nguyen, & Sackett, 2001). We also included ethnicity in the design due to the largely Hispanic sample and possibility of ethnicity effects (Gowen &
Zimmerman, 1996; Shupe, Cortina, Ramos, Fitzgerald, & Salisbury, 2002).

Investigation report. Upon entering the laboratory, participants were randomly assigned to one of 10 versions of an investigation report, adapted from Stewart v. Cartessa Corp. (1990). The investigation report chronicled the initial stages of a hypothetical EEOC investigation of hostile environment sexual harassment at the workplace. Testimony was provided by a therapist and a complainant, and was ambiguous with regard to liability.¹

The investigation report initially described the sexual harassment allegations, consisting of unwanted sexual advances by a male employee towards a female co-worker. Next, participants read testimony from a court-appointed therapist.² The therapist described the typical psychological injuries that harassment victims commonly suffer from due to a hostile work environment (the injury expectation manipulation). For participants expecting mild injuries, the therapist described “garden variety” injuries such as embarrassment or humiliation (Kovera & Cass, 2002), adding that only mild injuries (but not severe injuries) typically result from a hostile work environment. For participants expecting mild to severe injuries, the therapist described psychological disorders such as depression and post-traumatic stress disorder (Foote & Goodman-Delahunty, 2005), adding that either mild or severe injuries typically result from a hostile work environment. For participants expecting mild to severe injuries, the therapist described psychological disorders such as depression and post-traumatic stress disorder (Foote & Goodman-Delahunty, 2005), adding that either mild or severe injuries typically result from a hostile work environment. Following the therapist’s testimony, the complainant’s testimony described the alleged harassing conduct and the psychological injuries she claimed to have suffered. In several paragraphs, the complainant described psychological symptoms varying in amount, frequency, and duration (the injury severity manipulation).

Reasonableness questionnaire. Participants then completed a reasonableness questionnaire (RQ), which assessed the primary dependent measures. The RQ measured injury reasonableness dichotomously by asking participants whether the psychological injuries alleged by the complainant were reasonable, followed by a continuous measure (1 = not reasonable, 9 = very reasonable). The RQ also measured perceived complainant credibility by separately asking participants how likely the complainant was lying and exaggerating her injuries (1 = not likely, 9 = very likely).

Manipulation checks. Participants then completed a case facts questionnaire, which contained five true/false questions to ensure that participants paid adequate attention to the investigation report. Next, participants completed a psychological injury questionnaire (PIQ) and rated the severity level of the most severe psychological injury the therapist stated may result in most harassment cases (the injury expectation manipulation check), and the severity of psychological injury alleged by the complainant (the injury severity manipulation check). Finally, participants provided demographic information, were debriefed, and given course credit.

Results
Manipulation Checks and Preliminary Analyses
Injury expectation. We conducted an independent-samples t-test to determine whether participants’ injury expectations affected their ratings of the most severe psychological injury the therapist stated typically results in sexual harassment cases (1 = not severe, 9 = very severe). Participants correctly identified whether the therapist’s testimony primarily described mild or severe psychological injuries, t(292) = 15.18, p < .001, as participants expecting mild to severe injuries rated the expert’s description as
significantly more severe \((M = 7.70, SD = 1.38)\) than participants expecting mild injuries \((M = 4.80, SD = 1.85)\). Thus, the injury expectation manipulation had the desired effect.

**Injury severity.** We conducted a one-way analysis of variance (ANOVA) to determine whether injury severity affected participants’ ratings of the severity of psychological injury the complainant alleged in her testimony \((1 = not \text{ severe}, 9 = very \text{ severe})\). Results indicated that participants perceived differences between the five injury severity allegations, \(F(4, 290) = 55.50, p < .001\). Tukey Honesty Significant Differences (HSD) post-hoc tests indicated that participants presented with extreme injury rated the allegations as more severe \((M = 8.12, SD = 0.84)\) than participants presented with moderate injury \((M = 6.33, SD = 1.74)\), participants presented with moderate injury rated the allegations as more severe than participants presented with mild injury \((M = 5.54, SD = 1.99)\), and participants presented with mild injury rated the allegations as more severe than participants presented with minimal injury \((M = 4.50, SD = 1.72)\). No significant differences emerged between the extreme and severe injury conditions \((M = 7.73, SD = 1.16)\). Thus, participants perceived differences between the injury severity allegations.

**Gender and ethnicity effects.** We found no significant gender or ethnicity effects (assessed by a dummy coded variable distinguishing between Hispanics vs. Non-Hispanics) when including these variables in the primary analyses for Experiment 1 or 2. Therefore, we collapsed across these variables for all subsequent analyses.

**Reasonableness Judgments**

We examined the dichotomous reasonableness measure and employed the 50% threshold, hypothesizing that participants expecting mild injuries would find fewer injury severity allegations to be reasonable than participants expecting mild to severe injuries. These differences were predicted to be most evident for the more severe injury allegations. The data supported these predictions. Participants expecting mild injuries considered only the less severe injury allegations (minimal and mild) to be reasonable. The moderate, severe, and extreme allegations were considered unreasonable by these participants (Table 1). A different pattern emerged for participants expecting mild to severe injuries: Four of the five injury allegations were considered reasonable, with only the extreme injury allegation considered unreasonable. Thus, participants with differing ranges of expectations exhibited different patterns of reasonableness judgments, particularly as the allegations became more severe.

<table>
<thead>
<tr>
<th>Expectation</th>
<th>Mild</th>
<th></th>
<th>Severe</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Injury</td>
<td>Yes (%)</td>
<td>No (%)</td>
<td>M (SD)</td>
<td>Yes (%)</td>
</tr>
<tr>
<td>Minimal</td>
<td>19 (63)</td>
<td>11 (37)</td>
<td>5.07 (1.91)</td>
<td>19 (70)</td>
</tr>
<tr>
<td>Mild</td>
<td>17 (55)</td>
<td>14 (45)</td>
<td>4.65 (1.85)</td>
<td>20 (67)</td>
</tr>
<tr>
<td>Moderate</td>
<td>11 (39)</td>
<td>17 (61)</td>
<td>4.43 (1.62)</td>
<td>18 (62)</td>
</tr>
<tr>
<td>Severe</td>
<td>8 (26)</td>
<td>23 (74)</td>
<td>3.94 (1.48)</td>
<td>16 (52)</td>
</tr>
<tr>
<td>Extreme</td>
<td>3 (11)</td>
<td>25 (89)</td>
<td>3.21 (1.29)</td>
<td>12 (40)</td>
</tr>
<tr>
<td>Total</td>
<td>58 (39)</td>
<td>90 (61)</td>
<td>4.26 (0.16)</td>
<td>85 (58)</td>
</tr>
</tbody>
</table>
Credibility

Next, we examined whether perceptions of the complainant’s credibility (measured via lying and exaggeration) varied by participants’ range of expectations. Because participants’ lying and exaggeration ratings were significantly correlated \((r = .74, p < .01)\), we conducted an injury expectation \(\times\) injury severity ANOVA on a combined credibility variable \((2 = \text{not likely to be lying/exaggerating}, 18 = \text{very likely to be lying/exaggerating})\). This analysis produced a significant main effect for injury expectation, \(F(1, 284) = 8.76, p < .05, \eta^2 = .03\). Participants expecting mild injuries perceived the complainant as less credible \((M = 12.65, SD = 3.62)\) than participants expecting mild to severe injuries \((M = 11.44, SD = 3.90)\). An injury severity main effect also emerged, \(F(4, 284) = 5.51, p < .001, \eta^2 = .07\). Tukey HSD post-hoc tests indicated that participants perceived the complainant as less credible when she alleged extreme \((M = 13.26, SD = 3.44)\), severe \((M = 12.58, SD = 4.21)\), moderate \((M = 12.21, SD = 3.62)\), or mild injury \((M = 11.87, SD = 3.45)\) than when she alleged minimal injury \((M = 10.26, SD = 3.69)\). The injury severity \(\times\) injury expectation interaction was not significant.

Mediation Analyses

The above findings give support to our hypothesis that more severe injury allegations lowered perceived complainant credibility, resulting in lowered judgments of injury reasonableness. We assessed for this possible mediation by conducting a series of bivariate regressions recommended by various researchers (Kenny, 2011; MacKinnon, Lockwood, Hoffman, West, & Sheets, 2002), followed by Sobel’s test.

Bivariate regression analyses indicated that injury severity significantly predicted reasonableness judgments, \(\beta = -.20, t(288) = 3.53, p < .001\), and credibility ratings, \(\beta = .29, t(292) = 4.35, p < .001\). A multiple regression including injury severity and credibility as predictor variables indicated that credibility significantly predicted reasonableness judgments, \(\beta = -.67, t(291) = 14.24, p < .001\). Unlike the initial bivariate regression, injury severity no longer significantly predicted reasonableness judgments, \(\beta = -.06, t(291) = .94, p = .35\). Sobel’s test indicated a significant reduction in the predictive value of injury severity, \(z = -4.38, p < .001\), indicating that perceived complainant credibility mediated the relationship between injury severity and reasonableness judgments. The valence of the beta values supported our hypothesis that more severe injury allegations lowered perceived complainant credibility, which in turn, reduced reasonableness judgments.

Discussion

The results from Experiment 1 provide initial support for the proposed decision-making process. Participants’ manipulated ranges of expectations for reasonable psychological injuries differentially affected their reasonableness judgments for the complainant’s actual injury claim. Participants expecting mild injuries considered fewer injury severity allegations to be reasonable (only the minimal and mild allegations) than participants expecting mild to severe injuries (the minimal–severe allegations were all considered reasonable). Thus, the more severe injury allegations (moderate and severe) were perceived differently depending upon participants’ range of expectations. Expectations additionally influenced perceived complainant credibility: participants expecting mild injuries found the complainant’s injury claims to be less credible than participants expecting mild to severe injuries (the minimal–severe allegations were all considered reasonable). These results, along with mediation analyses, supported our proposed decision-making process: participants perceived the complainant’s injury allegations to be less credible as they increased in severity,
resulting in decreased judgments of injury reasonableness. Experiment 2 sought to test the viability of our proposed decision-making process when applied to participants’ liability and damage decisions. Thus, we used the results obtained in Experiment 1 to guide our predictions in Experiment 2. Because participants expecting mild injuries considered only the minimal injury allegation to be reasonable, they should render more pro-complainant decisions until the allegations cross the minimal injury threshold (and become moderate or extreme). Because participants expecting mild to severe injuries considered the minimal and moderate injury allegations to be reasonable, they should render more pro-complainant decisions until the allegations cross the moderate injury threshold (and become extreme).

Of particular interest is the moderate injury allegation. Unlike the minimal and extreme allegations which both expectation groups perceived similarly in Experiment 1, participants expecting mild injuries perceived the moderate allegation as unreasonable, whereas participants expecting mild to severe injuries perceived this allegation as reasonable. It follows that when presented with the moderate injury allegation, participants expecting mild injuries should render fewer pro-complainant decisions than those expecting mild to severe injuries. We also assessed the effects of our variables on credibility judgments and for possible mediation.

Experiment 2

Method

Participants

Participants included 207 undergraduates recruited from the psychology subject pool at a southeastern university. Because five participants did not pay adequate attention to the case facts, the final participant sample consisted of 202 participants. One hundred thirty-six females (67%) and 65 males (33%) ranged from 18 to 46 years of age (mean age = 22.22). One hundred twenty-five were Hispanic (62%), 34 were Caucasian (17%), 24 were African American (12%), 5 were Asian (3%), and 14 were listed as Other (6%). One participant did not report any demographic information.

Materials and Procedure

Design. Experiment 2 employed a 2 (Injury Expectation: mild vs. mild to severe) × 3 (injury severity: minimal vs. moderate vs. extreme) between-subjects design. We included only the minimal, moderate, and extreme injury allegations because they allowed for a sufficient, yet more succinct, evaluation of the proposed decision-making process. All remaining study materials and procedures were nearly identical to those used in Experiment 1; we highlight any significant deviations in the following section.

Sexual harassment questionnaire. Participants received one of six versions of the investigation report. We replaced the RQ with a sexual harassment questionnaire (SHQ). The SHQ initially provided participants with legal instructions for hostile environment sexual harassment derived from case law (e.g., Meritor Savings Bank v. Vinson, 1986) and used in previous research (Wiener & Hurt, 2000). Participants then rendered a dichotomous and continuous liability judgment (1 = not liable, 9 = very liable). Regardless of participants’ liability decisions, all were given the opportunity to award compensatory damages. Participants could award from $0 to $300,000 in economic damages, and from $0 to $600,000 in non-economic damages. These awards were summed to create a total compensatory damage award. After making legal decisions, participants rated the complainant’s credibility, completed
the case facts questionnaire, followed by the PIQ (containing the manipulation checks).

**Results**

**Manipulation Checks**

*Injury expectation.* Once again, the expectation manipulation was successful. An independent-samples $t$-test indicated that participants in the different expectation conditions correctly identified whether the therapist’s testimony primarily described either mild or severe psychological injury, $t(200) = 10.88$, $p < .001$. That is, participants expecting mild to severe injuries rated the injury description as more severe ($M = 7.56$, $SD = 1.51$) than participants expecting mild injuries ($M = 4.89$, $SD = 1.97$).

*Injury severity.* The injury severity manipulation was also successful. A one-way ANOVA revealed that participants perceived differences between the three injury severity allegations, $F(2, 199) = 37.40$, $p < .001$. Tukey HSD post-hoc tests indicated that participants presented with extreme injury rated the allegations as more severe ($M = 8.09$, $SD = 1.71$) than participants presented with moderate injury ($M = 6.68$, $SD = 1.62$), and participants presented with moderate injury rated the allegations as more severe than participants presented with minimal injury ($M = 5.48$, $SD = 1.89$).

**Liability Determinations**

Frequency analyses on the dichotomous liability measure indicated that 143 participants found the defendant liable (71%), while 59 participants found the defendant not liable (29%). We predicted that (1) participants expecting mild injuries would find less liability than participants expecting mild to severe injuries when presented with the moderate injury allegation, and (2) differing ranges of expectations would produce different liability patterns as the injury allegations increased in severity. We assessed these hypotheses by conducting a 2 (Injury Expectation: mild vs. mild to severe) × 3 (injury severity: minimal vs. moderate vs. extreme) ANOVA on the continuous liability measure (1 = *not liable*, 9 = *very liable*; Table 2) to obtain a more precise assessment regarding the effect of our manipulations. No main effects emerged from this analysis.

Turning to our hypotheses, the injury expectation × injury severity ANOVA produced a significant interaction, $F(2, 201) = 4.79$, $p < .05$, $\eta^2 = .05$. Simple effects tests revealed significance for the moderate injury allegation, $F(2,

| Injuy | Expectation | M (SD) | | Expectation | M (SD) |
|-------|-------------|--------| |-----------|--------|
| Minimal | Mild | Yes (%) | No (%) | $6.06 (1.85)$ | Severe | Yes (%) | No (%) | $5.17 (2.40)^{a, b}$ |
|        | Moderate | 21 (62) | 13 (38) | $5.50 (2.06)^c$ |          | 29 (83) | 6 (17) | $6.57 (2.02)^{a, c}$ |
|        | Extreme | 20 (65) | 11 (35) | $5.42 (1.95)$ |          | 25 (71) | 10 (29) | $6.34 (1.94)^b$ |
|        | Total | 66 (68) | 31 (32) | $5.66 (1.96)$ |          | 77 (73) | 28 (27) | $6.03 (2.20)$ |

*Note.* Dichotomous judgments represent participants’ yes/no response to “In your opinion, did Webster prove her claim of hostile work environment sexual harassment?” Continuous judgments were made on 9-point scales (1 = *not liable*, 9 = *very liable*). Means followed by the same superscript letter significantly differ at $p < .05$ in the Tukey HSD comparison.
Supporting hypothesis (1), participants expecting mild injuries found less liability ($M = 5.50, SD = 2.06$) than participants expecting mild to severe injuries ($M = 6.57, SD = 2.02$). Further, participants’ expectations did not significantly affect their liability decisions when presented with minimal or extreme injury. Simple effects tests also reached significance for the mild to severe expectation condition, $F(2, 196) = 4.71, p < .05$. Follow-up independent-samples $t$-tests indicated that participants expecting mild to severe injuries found more liability when the injury allegations increased from minimal ($M = 5.17, SD = 2.40$) to moderate ($M = 6.57, SD = 2.02$), $t(196) = 2.64, p < .05$. These participants also found significantly more liability when the allegations increased from minimal to extreme ($M = 6.34, SD = 1.94$), $t(196) = 2.25, p < .05$. Liability judgments did not significantly change (but slightly decreased) when the allegations increased from moderate to extreme. Although simple effects tests were not significant for the mild expectation condition, liability judgments decreased from the minimal to moderate allegation. These data provide mixed support for prediction (2): Differing expectations produced different patterns of liability judgments as the injury allegations became more severe, but more severe injuries did not significantly decrease liability judgments instead they leveled off.

**Damage Determinations**

Thus far, it appears that participants’ expectations affected their liability judgments. However, some interesting questions remain: Did participants’ expectations affect damage awards in a similar manner? Did participants expecting mild injuries award fewer damages than participants expecting mild to severe injuries as the allegations became more severe?

For the purposes of ecological validity, we conducted analyses only on participants who found the defendant liable ($n = 143$) and logarithmically transformed damage awards by converting all $0$ dollar awards to $1$ (for participants who found liability but did not award damages) to lessen the influence of outliers and create a more normal distribution (see Cather, Greene, & Durham, 1996). We conducted a $2$ (Injury Expectation: mild vs. mild to severe) $\times 3$ (injury severity: minimal vs. moderate vs. extreme) univariate ANOVA on log-transformed economic, non-economic, and total compensatory damage awards (Table 3).

A $2 \times 3$ ANOVA on compensatory damage awards produced a marginally significant main effect for injury expectation on

<table>
<thead>
<tr>
<th>Damages</th>
<th>Injury</th>
<th>M Log (Raw)</th>
<th>SD Log (Raw)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Economic</strong></td>
<td>Minimal</td>
<td>3.68a ($34,927)</td>
<td>1.63 ($41,604)</td>
</tr>
<tr>
<td></td>
<td>Moderate</td>
<td>4.10 ($51,920)</td>
<td>1.33 ($62,680)</td>
</tr>
<tr>
<td></td>
<td>Extreme</td>
<td>4.51a ($71,966)</td>
<td>1.09 ($48,375)</td>
</tr>
<tr>
<td><strong>Non-Economic</strong></td>
<td>Minimal</td>
<td>3.70b ($45,970)</td>
<td>1.67 ($63,438)</td>
</tr>
<tr>
<td></td>
<td>Moderate</td>
<td>4.22 ($54,980)</td>
<td>1.22 ($54,669)</td>
</tr>
<tr>
<td></td>
<td>Extreme</td>
<td>4.45b ($78,752)</td>
<td>1.15 ($64,282)</td>
</tr>
<tr>
<td><strong>Total Compensatory</strong></td>
<td>Minimal</td>
<td>4.36c ($80,585)</td>
<td>1.16 ($91,544)</td>
</tr>
<tr>
<td></td>
<td>Moderate</td>
<td>4.41d ($93,900)</td>
<td>1.40 ($83,153)</td>
</tr>
<tr>
<td></td>
<td>Extreme</td>
<td>4.98c,d ($154,718)</td>
<td>0.59 ($103,915)</td>
</tr>
</tbody>
</table>

*Note.* The means represent log-transformed and raw data for participants who found the defendant liable. Total compensatory damage awards ranged from $1$ to $900,000$. Means sharing the same superscript letter differ at $p < .05$ in the Tukey HSD comparison.
economic damage awards, \( F(2, 137) = 2.78, \ p = .09 \), and non-economic damage awards, \( F(2, 137) = 3.49, \ p = .06 \). This analysis did produce a significant main effect for injury expectation on total compensatory damage awards, \( F(2, 137) = 4.54, \ p < .05, \ \eta^2 = .03 \), with participants expecting mild injuries awarding less damages (\( M = 4.35, \ SD = 1.20 \)) than participants expecting mild to severe injuries (\( M = 4.76, \ SD = 1.10 \)). In addition, a main effect for injury severity emerged, \( F(2, 137) = 3.97, \ p < .05, \ \eta^2 = .04 \) (economic), \( F(2, 137) = 3.33, \ p < .05, \ \eta^2 = .06 \) (non-economic), \( F(2, 137) = 4.28, \ p < .05, \ \eta^2 = .06 \) (total compensatory). Tukey HSD post-hoc tests indicated that participants awarded more economic and non-economic damages when presented with extreme compared with minimal injury. As no significant interaction emerged, more severe injuries increased damage awards independent of expectations.

**Credibility**

Because the lying and exaggeration measures were again highly correlated (\( r = .78, \ p < .01 \)), we conducted a 2 (Injury Expectation: mild vs. mild to severe) \( \times 3 \) (injury severity: minimal vs. moderate vs. extreme) ANOVA on the combined credibility measure. This analysis produced a main effect for injury severity, \( F(2, 195) = 4.25, \ p < .05, \ \eta^2 = .04 \). Tukey HSD post-hoc tests indicated that participants found the complainant to be less credible when presented with extreme (\( M = 12.23, \ SD = 4.09 \)) compared to minimal injury (\( M = 10.30, \ SD = 4.19 \)). However, no significant injury expectation main effect or interaction emerged. Therefore, participants’ expectations did not affect credibility judgments, even as the injuries increased in severity.

**Mediation Analyses**

As injury severity did not predict liability judgments,\(^5\) we did not assess whether credibility mediated this relationship. Therefore, we conducted mediation analyses on participants who found the defendant liable to determine whether perceived complainant credibility mediated the relationship between injury severity and compensatory damage awards. Bivariate regressions indicated that injury severity significantly predicted total compensatory damage awards, \( \beta = .16, \ t(141) = 2.67, \ p < .05 \). Injury severity also significantly predicted perceived complainant credibility, \( \beta = .46, \ t(140) = 2.59, \ p < .01 \). A multiple regression including injury severity and credibility revealed that both variables significantly predicted total compensatory damage awards, \( \beta = .16, \ t(139) = 3.69, \ p < .001 \) (injury severity), \( \beta = -.11, \ t(140) = 4.33, \ p < .001 \) (credibility). These results, combined with a non-significant Sobel’s test, indicated that credibility partially mediated the injury severity–total compensatory damage relationship. The valence of the beta values indicated that participants perceived the injury allegations to be less credible as they increased in severity, leading to lower damage awards.

**Discussion**

Data from Experiment 2 lend partial support for applying the proposed decision-making process to legal judgments in sexual harassment cases. Just as participants’ ranges of expectations influenced reasonableness judgments in Experiment 1, these expectations similarly influenced liability judgments in Experiment 2. Recall that in Experiment 1, the moderate injury allegation was considered unreasonable by participants expecting mild injuries, but considered reasonable by participants expecting mild to severe injuries. Thus, when presented with moderate injury, participants expecting mild injuries should find less liability than participants expecting mild to severe injuries. As reasonableness
judgments for the minimal and severe injury allegations did not differ by expectation condition in Experiment 1, expectations should not differentially impact liability judgments in Experiment 2. This is exactly what occurred.

That the pattern of liability judgments differed by expectation condition is also consistent with the proposed decision-making process, largely derived from SJT. When the injury allegations fell within participants’ range of reasonableness (i.e., the latitude of acceptance), we replicated the positive injury severity–liability relationship often found in previous research (Bornstein, 1998; Robbennolt, 2000). When the allegations increased from minimal to moderate severity for participants expecting mild to severe injuries, we found this positive relationship. Yet when the allegations increased from moderate to extreme severity, we no longer found this positive relationship, as extreme injuries fell outside their range of reasonableness (i.e., the latitude of rejection). No injury severity effect emerged for participants expecting mild injuries, as only one injury allegation (minimal injury) fell within these participants’ range of reasonableness.

Not all data were unequivocally consistent with the proposed decision-making process. More severe injuries did not significantly reduce liability decisions in either expectation condition, even when the injuries became unreasonable. Instead, liability judgments leveled off at different points on the injury severity continuum depending upon participants’ expectations. Moreover, the perceived credibility of the complainant’s injury allegations did not mediate the injury severity–liability relationship.

An important contribution of Experiment 2 is the investigation of oft-unstudied factors that influence compensatory damage awards, an area sparsely investigated by sexual harassment research. Consistent with the proposed decision-making process, participants’ expectations affected their compensatory damage awards. Participants expecting mild injuries awarded less total compensatory damages than participants expecting mild to severe injuries. Also consistent with predictions was the integral role of perceived complainant credibility: more severe injuries reduced credibility judgments of the complainant’s injury claim, reducing total compensatory damage awards. Inconsistent with the proposed decision-making process, injury severity did not moderate the effect of expectations on damage decisions. As the severity of the complainant’s psychological injury increased, compensatory damage awards increased, even for participants expecting mild injuries. This relationship conforms to legal requirements instructing jurors to make compensatory damage awards commensurate to the severity of the complainant’s injuries (Wissler et al., 1997), and extends the positive physical injury–compensatory damage relationship (Greene et al., 1999; Robbennolt, 2000) to psychological injuries.

**General Discussion**

Experiment 1 provided initial evidence that participants accessed a range of expectations and compared them with the complainant’s actual injury allegations to determine their veracity. As more severe injury allegations generally fell within most participants’ range of unreasonable injuries, they were less likely to perceive these injury claims as credible. This finding was particularly true for participants expecting mild injuries, as they more quickly considered severe injury allegations to be unreasonable. Experiment 2 found that consistent with the proposed decision-making process, participants’ differing expectations resulted in different liability patterns. As the injury allegations increased from minimal to moderate severity, participants expecting mild injuries found
less liability, whereas participants expecting mild to severe injuries found significantly more liability. Further, participants expecting mild injuries found less liability than participants expecting mild to severe injuries when presented with the moderate injury allegation. However, liability judgments did not significantly decrease when becoming more severe (and instead leveled off). Moreover, perceived complainant credibility did not mediate the injury severity–liability relationship.

Although expectations and injury severity independently affected compensatory damage awards, expectations did not moderate the effects of injury severity on compensatory damage awards. Specifically, more severe (and unreasonable) injuries did not reduce damage awards, particularly for those participants expecting mild psychological injuries. As a result, the proposed decision-making appears more applicable to liability than damage decisions. We offer that this is because damage determinations are not governed by the same rules and decision processes as liability judgments. We also offer that the initial act of determining liability may have affected all subsequent decisions, rendering participants’ expectations irrelevant when determining damages. When awarding damages, participants who found liability would be more likely to deem the injury allegations as reasonable compared with those who did not find liability, leaving the only relevant consideration to be injury severity. Thus, the act of finding liability may have effectively dampened the impact of expectations on damage awards, because the injuries were already deemed to be reasonable and credible.

**Expectations**

The present study adds to a growing literature showing that jurors’ expectations affect their legal judgments (Hart et al., 1997; V.L. Smith, 1991). Consistent with social psychological research, even general expectations about a category (e.g., the typical harassment victim) affect subsequent judgments of a specific category member (e.g., the harassment complainant; Bless & Wanke, 2000; Lamberti, Chasteen, Payne, & Shaffer, 2004). These general expectations may favor the complainant or defendant, depending upon the content of their expectations (e.g., the type of story they create; Huntley & Costanzo, 2003).

The observed effects of participants’ expectations on their liability judgments appear to conflict with Bornstein (1998). Bornstein manipulated physical injury severity and whether participants could award damages in a medical malpractice case. Because injury severity impacted liability judgments only when participants could award damages, Bornstein concluded that pre-existing injury beliefs did not affect their legal decisions. These seemingly discrepant results are the likely byproduct of different manipulations and stimuli. First, Bornstein did not manipulate mock jurors’ expectations. Second, jurors may have underdeveloped schemas in medical malpractice cases (see Hart et al., 1997), thus reducing their effect on legal decisions.

Although finding that expectations impact upon civil judgments may appear well-established and intuitive, our research is the first to shed light on the specific content and effects of jurors’ psychological injury expectations. Even more importantly, our approach to the study of expectations significantly enhances our understanding of these effects. Specifically, the present research investigated the effects of jurors’ differing ranges of expectations, an approach rarely undertaken in civil research. Instead of assuming that all jurors either expect (or do not expect) any form of psychological injury to reasonably result from the defendant’s conduct, our approach examined the more realistic notion that jurors expect a certain range of
psychological injuries to reasonably result, but not others. This approach is advantageous because it allows for a more detailed assessment regarding the degree of injury severity jurors believe will reasonably result in sexual harassment cases, and at what point injury claims become unreasonable (and less credible). Instead of measuring participants’ pre-existing expectations, manipulating participants’ ranges of expectations allowed us to make causal determinations about these ranges and their resulting effects on civil judgments. Moreover, finding support for the proposed decision-making process provides a much needed theoretically based explanation for previous research finding that expectations affect legal judgments.

**Injury Severity**

Few published research studies have examined how the nature and extent of psychological injury evidence affects juror decision-making in civil claims (see Bornstein, 2008). This issue is particularly germane to sexual harassment cases, which primarily involve psychological injury evidence (Cass et al., 2010). Despite legal requirements that focus liability judgments on the defendant’s conduct (A.C. Smith & Greene, 2005) and sexual harassment law which de-emphasizes the role of psychological injury severity when making liability decisions (*Harris v. Forklift Systems*, 1993), this research illustrates that psychological injury severity affects liability judgments. Unlike previous research displaying a positive outcome severity–legal decision relationship by manipulating two injury severity levels (mild vs. severe; V.L. Greene et al., 1999), the present experiments manipulated three injury severity levels to assess for possible non-linear relationships. In fact, a non-linear relationship between injury severity and liability emerged: more severe injuries did not always increase the likelihood of pro-complainant decisions, likely because the injury was considered an unreasonable result of the harassment.

Unlike participants’ liability judgments, a positive relationship did emerge between psychological injury severity and compensatory damage awards. This result is consistent with legal instructions and outcome severity research (Feigenson et al., 1997, 2001; A.C. Smith & Greene, 2005; Wissler et al., 1997; Woody, 2008). However, this result is inconsistent with the proposed decision-making process: More severe injury allegations did not significantly reduce compensatory damage awards, particularly for participants expecting mild injuries. There is precedent for “atypical” injuries increasing damage awards, possibility due to increased award variability (Hart et al., 1997). As typicality may not be synonymous with reasonableness, future research should distinguish between these constructs and their effects on legal decisions.

**Credibility**

Consistent with sexual harassment research (O’Connor et al., 2004) and the proposed decision-making process, this research illustrates the importance of perceived complainant credibility in sexual harassment claims. In both experiments, more severe injury allegations corresponded with reduced complainant credibility, resulting in less favorable legal judgments for the complainant. In Experiment 1, participants perceived more severe injury claims as less credible, and as a result, the complainant’s injuries as less reasonable. In Experiment 2, more severe injuries reduced credibility, thereby lessening the size of total compensatory damage awards. These findings suggest that legal officials should consider expanding credibility assessments beyond the complainant’s expertness and trustworthiness (Oskamp & Schultz, 2005) to encompass an additional prong: the perceived reasonableness of the complainant’s injury allegations.
Implications

Psychological injury evidence is often adduced in civil trials, and jurors' expectations for this evidence are a core decision point when making legal decisions. Results from this research provide a theoretically supported explanation indicating that jurors' ranges of reasonableness expectations affect their perceptions of the complainant's actual injuries. This approach suggests that instead of solely examining whether jurors expect any psychological injury, legal representatives should further examine jurors' range of reasonableness expectations for the type and severity of injury. Although more severe injuries generally produce more favorable pro-complainant judgments, our results suggest that complainants should proceed with caution: severe injuries perceived as unreasonable can decrease the likelihood of pro-complainant decisions by harming their credibility. As more severe injury allegations (e.g., psychological disorders) allow the defense to challenge the credibility of these claims (see Kovera & Cass, 2002), complainants should be particularly cautious when adducing extremely serious mental injuries with little objective proof.

Our data further imply that providing jurors with mental health information (e.g., the typical injuries experienced by sexual harassment victims) can shape jurors' injury expectations. Similar to attitudes, mental health testimony may even lead some jurors to formulate these injury expectations “on the spot” (Schwartz, 2007). Because mental health testimony affected jurors' expectations for psychological injury, attorneys may possibly influence jurors' injury expectations by introducing this information during voir dire. At minimum, legal representatives would be wise to probe jurors' ranges of expectations for reasonable psychological injuries, as this may even subtly influence what jurors find reasonable at trial.

Limitations

Because this research sought to explain the interaction between rarely studied psychological variables from a theoretical perspective, we strived for enhanced experimental control and internal validity. This approach is recommended by Kerr and Bray (2005), who stated that this emphasis is “particularly desirable when the primary research objectives are to test a hypothesis of a psychological theory or model” (p. 330). Thus, our initial examination of basic psychological processes (expectations) in the context of juror decision-making necessitated an enhanced focus on internal validity, resulting in unavoidable external validity deficits. Namely, the EEOC report was brief and did not contain all testimony commonly presented in a sexual harassment trial. Specifically, testimony from a court-appointed expert is uncommon, as well as testimony about the typical psychological injuries that may result to the victim. We acknowledge that this brief report containing only this testimony may have increased the salience, and thus the impact, of our manipulations. We argue that this is a necessary limitation to initially test the efficacy of the proposed decision-making process and recommend that future studies replicate these effects using more complex and ecologically valid stimulus materials.

Summary

Our data support the viability of the proposed decision-making process to explain how expectations and psychological injury severity influence jurors' civil judgments. To render legal judgments, participants accessed their expectations and compared them with the complainant's injuries. If jurors expected an injury to reasonably result from the defendant's conduct, they were more likely to render pro-complainant judgments. If jurors did not expect an injury to reasonably result,
they were more likely to render pro-
defendant judgments, particularly by indu-
cing skepticism over the alleged injuries.

Notes
1. Pilot testing using the Webster case sum-
mary established similar percentages of liable and not liable verdicts.
2. Although uncommon in sexual harassment cases, we employed a court-appointed therapist to ensure that participants perceived this testimony as reliable and credible.
3. This cap is based on the Civil Rights Act of 1991, which limits compensatory damage awards in sexual harassment cases to $300,000.
4. Tukey HSD tests further indicated that participants awarded more total compensatory damages in the extreme than in the moderate condition.
5. We did not conduct mediation analyses on liability judgments because injury severity did not significantly predict liability judgments, $\beta = .08$, $t(200) = 0.87$, $p = .39$.

References


*Stewart v. Cartessa Corp.*, 771 F. Supp. 876 (6th Cir. 1990)


