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**The Employee Rights Advocacy  
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**- Mahatma Gandhi**

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# A Forensic Psychologist's Report In A Sexual Harassment, Hostile Work Environment And Retaliation Case

*Stephen Reich, Ph.D.*

On September 24, 2007, I interviewed Ms. Rebecca White for a psychological evaluation and report. She was referred by her attorney and NELA member, Peter G. Eikenberry, of The Law Firm of Peter G. Eikenberry, New York, NY, for a psychological evaluation in the context of her litigation against Charlie's Supermarkets where she alleged sexual harassment, a hostile work environment and retaliation.

The following is based upon the psychological evaluation of Rebecca White.

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## **The Facts of the Case**

In June 2002, at the age of 25, Ms. Rebecca White was hired as a part-time checkout person at one of Charlie's Supermarkets, located in White Plains, NY. She was promoted, in January 2003, to full-time bookkeeper, and in June 2003, to floor manager/part-time bookkeeper. She reports being forced to have sex with one of her supervisors, Scott Dillard, for the better part of 2003. Mr. Dillard claims that the sexual activity was consensual. Ms. White claims that after November 2003, when she refused to continue having sex with Mr. Dillard, he and Ms. White's immediate supervisor, Heidi Thomas, acted with hostility toward her and, twice in 2004, wrote her up for supposed offenses. In April 2004, Ms. White quit under what she felt was the extreme duress of the performance warnings, plus silent treatment from her colleagues, her boss and Mr. Dillard laughing at her in the workplace, and the final straw of learning that Mr. Dillard was telling others about his sexual encounters with her.

Ms. White reports that beginning in the fall of 2003 and continuing through April 2004, she experienced crying jags, persistent fatigue, breathing difficulty, headaches, nightmares, sleep problems, digestive problems, and stomachaches. She went to see her gynecologist for persistent urinary tract infections. She then sought therapy from a social worker, Janice Hall, in January 2004, whom she had seen for therapy two years earlier, regarding splitting up with her fiancé. The social worker's notes show that when Ms. White came to see her, the problem that she was presented with was that her relationship with her boyfriend was at risk, because of her sexual relationship with Mr. Dillard. Only after three months of therapy did Ms. White tell her therapist that Mr. Dillard was sexually harassing her.

Ms. White saw Ms. Hall two more times after her separation from Charlie's Supermarkets. Soon thereafter, and within a month of leaving Charlie's Supermarkets, Ms. White broke up with her boyfriend. A week later, she took an overdose of Valium and had to be rushed to an emergency room to have her stomach pumped out. She was released with the understanding that she would return to treatment with Ms. Hall. She saw Ms. Hall for another three months, at which point her health insurer refused to pay for further coverage on the grounds that she had exhausted the maximum yearly visits allowed. Ms. Hall's psychotherapy records reflect that for approximately nine months after the termination, Ms. White continued to suffer headaches, nightmares, stomachaches and crying jags. She withdrew socially, and

was particularly fearful of returning to work and encountering further sexual harassment. Only in October 2004 was Ms. White able to return to work, obtaining a job as a part-time bookkeeper.

Ms. White had a troubled childhood. Her parents divorced when she was four years old. Ms. White and her brothers lived with their mother, but her mother was physically abusive and overly critical toward her. Her mother eventually moved away, leaving the children with their father.

During childhood, Ms. White was repeatedly sexually molested by an older male cousin. Ms. White was afraid to tell anyone about the molestation, and the sexual abuse continued for a number of years. Through much of her teenage years, Ms. White suffered from a number of psychosomatic, traumatic stress-related conditions, including migraines and gastrointestinal complaints. However, she reports that by 19 she was feeling better and the symptoms had receded. Her father had remarried, and she had developed a strong relationship with her stepmother. She completed two years of community college. She had a two-year relationship with her fiancé, Mr. Dillard's friend, but he was controlling and manipulative, and she ended the engagement.

### Issues In The Case

Ms. Rebecca White alleged in her factual statement of what happened to her during her employment at Charlie's Supermarkets that she was the victim of sexual harassment and was coerced into having a sexual relationship, including sexual intercourse and the performance of oral sex upon one of her supervisors, Scott Dillard, for most of 2003. Mr. Dillard stated that the sexual activity with Ms. White was consensual in nature. The issue of whether or not there were numerous acts of sexual intercourse and numerous acts wherein Ms. White performed oral sex upon Mr. Dillard are not in issue.

An essential psychological question in this case is why Ms. White would have engaged in sexual activity, on the job, with Mr. Dillard. Ms. White's childhood was extremely troubled. Her parents

divorced when she was four years old, and she then lived, with her brothers, with their mother. Unfortunately, her mother was physically abusive to her and was also psychologically and emotionally abusive. Ms. White stated that her mother's criticism of her as a child was both relentless and cruel. She stated she felt her mother was constantly "putting me down."

Her mother eventually moved away and Ms. Rebecca White and her brothers then lived with their father. The most damaging and longstanding abuse of her childhood, which lasted several years, was repeated sexual molestation of Ms. White by an older male cousin. Ms. White said that she was so traumatized by the sexual molestation and so frightened by what was happening to her, for years on end, that she did not tell anyone about the sexual molestation. She stated that during her adolescence, she experienced numerous psychosomatic stress reactions including gastrointestinal disorders and migraine headaches.

Rebecca White stated during the evaluation that she felt she had no options when Scott Dillard began to press her for sexual favors and to "come on to me." She stated that Scott Dillard knew a great deal about her prior to her employment with Charlie's Supermarkets. She said that he was extremely friendly with her ex-fiancé and also said that her ex-fiancé had told Scott Dillard that she was "great in bed." She said Mr. Dillard was also aware of the fact that she had had an extremely troubled childhood, and that he knew there had been major issues of abuse by a cousin, although he may not have known every detail.

Rebecca White was not abused only once in her childhood. Rather, she was abused by her mother and by her male cousin on so many occasions that her entire childhood was characterized by, indeed permanently stained by the chronicity of abuse. Thus Rebecca White, as a child and as an adolescent, suffered from a complex Post Traumatic Stress Disorder. This is profoundly more serious than a single event which produces the symptomatology of a Post Traumatic Stress Disorder (e.g., McLean, Toner, & Jackson, 2006; Roth, Newman, Pelcovitz, Van der

Kolk, & Mandel, 1997). For example, an individual who is a passenger in a terrible automobile accident and suffers major injuries has had a single traumatic event which elicits symptomatology. The same is true of an individual who was on a low floor of the World Trade Center on September 11, 2001 and fortunately was able to exit the building and live. These individuals absorbed one major blow. However, the concept of a complex Post Traumatic Stress Disorder more specifically describes individuals who are prisoners of war and abused in that context (for example Senator John McCain in Vietnam), or concentration camp survivors during the Holocaust. The concept of a complex Post Traumatic Stress Disorder is widely used in the professional literature concerning Post Traumatic Stress Disorder. It is very useful because it denotes the severe psychological damage that occurs as a result of prolonged, repeated, psychological trauma.

It is important to note that an individual can develop several Post Traumatic Stress Disorder reactions in a lifetime. Obviously a person can be involved in more than one automobile accident or exposed to several traumatic injuries at different times. This is exactly what happened to Rebecca White. In her childhood, she was exposed to chronic abuse, both by her mother and an older male cousin. As a result of those multiple, complex traumas, she developed Post Traumatic Stress Disorder symptomatology. Fortunately, as she matured, the symptomatology of those childhood traumas abated. She developed a strong relationship with her stepmother, after her father remarried, and with insight and growing maturity, became a well-functioning young woman. She completed two years of community college and was able to be in a two-year relationship with a fiancé. Because she was a stronger woman at that time, she was able to recognize that her fiancé was controlling and manipulative, and thus, with the help of psychotherapy, ended her engagement. Ending an engagement takes psychological strength. The Post Traumatic Stress Disorder symptomatology which emerged as a result of her employment with Charlie's Supermarkets is thus the result of exposure to a

completely different set of traumas, at a different point in time. The symptomatology which resulted from the alleged sexual harassment and hostile work environment in Charlie's Supermarkets is not a continuation of the symptomatology of her childhood.

Victims of traumatic events frequently report loss of personal control, social withdrawal and the loss of meaning in their lives (Figley, 1988; Van der Kolk, 1987). These researchers reported that victims of traumatic events present with the following symptomatology: sleep disturbance, intrusive memories, flashbacks and hypervigilance. Other common symptoms include nightmares or bad dreams, work performance issues, crying jags, and persistent hopelessness. These stress reactions to traumatic injury happen to most victims of such trauma. The symptomatology which results is unrelated to "personal weakness" or "characterological weakness." It is my professional finding that Rebecca White DOES NOT suffer from a personality disorder and did not engage in sexual conduct with Scott Dillard because of a personality disorder, such as a seductive style or a masochistic character disorder. Rather, her symptomatology represents normal biological responses also known as the "fight, flight or freeze response" to a traumatic event (e.g., Petty, Kramer, Wu, & Davis, 1997; Van der Kolk, 1988).

Health issues such as chronic pain, gastrointestinal and gynecological problems, including urinary tract infections, and depression, trouble sleeping, exhaustion, and severe headaches, are well documented in such cases of chronic traumatic stress (e.g., Bergman & Brismar, 1991; Delvaux, Denis, Allemand, & French Club of Digestive Motility, 1997; Goldberg, Newman, *et al.*, 2000; Pachas, & Keith, 1999; Spertus, Burns, Glenn, Lofland, & McCracken, 1999; Walker *et al.*, 1999). Ms. White reported many of these symptoms including persistent fatigue, headaches, sleep problems, digestive issues, and stomach pain. Her emotional pain became so great that she reported making a suicide gesture and overdosing with Valium. The overdose of Valium was so serious that she was taken to a hospital emergency room and had her stomach pumped.

The ongoing research of Martin Seligman in the area of learned helplessness is critical to understanding Ms. White. Seligman's model of learned helplessness is a well-accepted and established principle in psychology. His research has demonstrated that random and inescapable traumatic stimulation, both in animals and humans, is extremely difficult to unlearn (Maier, & Seligman, 1976; Seligman, & Maier, 1967). When an individual is exposed to chronic extended traumatic stimulation of an extremely painful nature, either physically or emotionally, that individual loses hope that his or her own actions are able to influence or modify particular situations in daily life in an adaptive manner. Seligman stated that if an individual, by virtue of repeated trauma, begins to assume that others have excessive personal control over him or her, then the feeling of learned helplessness will be of a long lasting nature. The concept of learned helplessness thus explains why many women and men in domestically violent situations continue to stay in their home and interact and live with the perpetrators of hostile action against them. This also explains why children and adults, who are victims of sexual assault, remain silent and do not retaliate against the perpetrator. The concept of learned helplessness explains why Rebecca White became passive in her interaction with Scott Dillard and engaged in repeated sexual contact with Mr. Dillard and did nothing, at that time, to report him.

A victim of such chronic, repeated trauma, who develops learned helplessness, begins to feel that there is nothing that they can do to stop the unpleasant event from happening. Because they feel so helpless, they react with frustration, anger, anxiety, guilt, depression and despair (e.g., Van der Kolk, 1987). The "motivation" to change things in a positive direction declines and the cycle of helplessness continues. The Seligman research thus demonstrates that an individual will remain passive in the face of unpleasant, harmful, or damaging situations, even when the individual does, in fact, have the power to change his or her circumstances. The secondary depression which exists in Rebecca White's case is a function of her perceived lack of control over her own life.

Rebecca White's passivity began when she was a child. She had no power to stop an abusive mother, and in fact, was ultimately abandoned by her mother. Her father failed to protect her from years of abusive molestation by a family member. It does not take a child psychologist or child psychiatrist to see that a daughter is deeply unhappy and troubled, and to gently draw out the reasons for depression in the child. Her father may not have physically abandoned her, but, most assuredly, he was not there when most needed to protect her.

Rebecca White stated that Scott Dillard clearly told her that she owed her position and promotion to him, and therefore, "owed him" something in return (her sexual favors). When Rebecca White attempted to discuss her employment difficulties in relation to Scott Dillard with her immediate supervisor, Heidi Thomas, her attempts to discuss Mr. Dillard's behavior were turned aside. Ms. White stated that Ms. Thomas told her, "That's how Scotty is. You've got to learn how to deal with him." She said that Ms. Thomas would not do anything about her complaint about Mr. Dillard's behavior because Mr. Dillard had put her (Heidi Thomas) where she was, and she didn't want to take any chances with her own job. Ms. Thomas also said to Ms. White that she only had to interact with Mr. Dillard for approximately one hour every few weeks, and questioned whether it was worth losing a job over.

In the context of Ms. White's learned helplessness and emotional passivity, the interaction that she had with Heidi Thomas, at that time, is probably as far as her strength would take her. She did not tell Heidi Thomas that she had been having sexual intercourse and performing oral sex on Mr. Dillard because Ms. White stated that she was too ashamed, embarrassed and disgusted with herself to reveal this to Ms. Thomas.

The issue of learned helplessness, despair and personal passivity is amply demonstrated by Rebecca White's suicide gesture, when she overdosed with Valium. For approximately nine months after she left the employ of Charlie's Supermarkets, her symptomatology relating to both traumatic stress and depressive

disorders continued. She became emotionally detached from interpersonal relationships, withdrew from people, both in her social and work lives, and reported great fear about returning to the workplace and encountering further sexual harassment. It was not until October 2004 when Ms. White was able to return to work, and even then, she reported that she was only strong enough to work as a part-time book-keeper. Previously, before her encounters with Scott Dillard, she demonstrated much greater strength in the work area.

### **Rebecca White's Psychotherapeutic Treatment With Janice Hall**

Rebecca White stated that she sought psychotherapy from a social worker, Janice Hall, in January 2004. She had previously had psychotherapy sessions with Janice Hall two years earlier, when she had experienced difficulty ending her engagement to her fiancé. The psychotherapy notes of Ms. Hall state that when Rebecca White resumed psychotherapy with her in January 2004, she presented with the issue that her relationship with a present boyfriend was at risk because of her sexual relationship with Scott Dillard. Only three months into psychotherapy with Janice Hall did Ms. White tell Ms. Hall that Scott Dillard was sexually harassing her. She saw Janice Hall for two more psychotherapy sessions after her employment with Charlie's Supermarkets ended. Later she made a suicide gesture and was treated at an emergency room where she had her stomach pumped.

It is my opinion that Rebecca White did not tell Janice Hall about the sexual harassment for the same reasons noted above concerning learned helplessness. She reported as much information to Ms. Hall as she had the emotional strength to report at that time. As she gained further strength through the emotional support of Ms. Hall, she was able to tell more. This experience is commonplace in all psychotherapy. It is, in my view, entirely unwarranted to criticize Rebecca White for not telling the "complete story" about what had happened with Scott Dillard when she resumed therapy with Janice Hall.

She told as much of the story as she had the strength and resources to tell at that time.

### **The Psychological Journal Article Of Stephen Reich, Ph.D., J.D., of October 2000 In Psychology Reports**

In 2000, I published an article in *Psychology Reports* which stated that it was my professional belief that a forensic psychological investigator should seek additional sources of evidence, if available, in addition to a psychological consultation and evaluation of an individual's allegations of sexual harassment and employment discrimination. Needless to say, I still stand behind that journal article.

In forming my professional conclusions concerning Rebecca White's litigation against Charlie's Supermarkets, I had the benefit of reading Janice Hall's psychotherapy notes in this case. Her psychotherapy notes describe emotional symptomatology which was completely consistent with and paralleled my own findings during my evaluation of Ms. Rebecca White. It is my opinion that psychotherapy notes, written after each session, represent the best available evidence of the psychotherapist's opinion about that case. I did not attempt to contact Janice Hall to speak with her further about Rebecca White and her treatment because her psychotherapy notes were full, complete, highly descriptive, and left nothing to the imagination. It is also my opinion that a personal conversation with a prior therapist, who is aware that there is ongoing litigation between her former patient and defendants, elicits anxiety, discomfort and apprehension in that former therapist. Therefore, a contemporary verbal report of that therapist about events which transpired three years prior thereto, is not nearly as objective and valid as the written psychotherapy notes which were transcribed immediately after the sessions took place.

### Primary Diagnosis

Post Traumatic Stress Disorder - DSM-IV 309.81, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, the American Psychiatric Association.

Rebecca White meets the following criteria for Post Traumatic Stress Disorder:

(A) The person has been exposed to a traumatic event in which both of the following were present:

1) the person experienced, and was confronted with an event or events that involved serious injury, or a threat to the physical integrity of self or others; and

2) the person's response involved intense fear, helplessness, or horror.

(B) The traumatic event is persistently re-experienced in the following ways:

1) recurrent and intrusive distressing recollections of the event, including images, thoughts or perceptions;

2) recurrent distressing dreams of the event;

3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, and dissociative flashback episodes, including those that occur on awakening);

4) intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event; and

5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

(C) Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by the following:

1) efforts to avoid thoughts, feelings, or conversations associated with the trauma;

2) efforts to avoid activities, places, or people that arouse recollections of the trauma;

3) inability to recall an important aspect of

the trauma;

4) markedly diminished interest or participation in significant activities

5) feeling of detachment or estrangement from others;

6) restricted range of affect; and

7) sense of a foreshortened future (e.g., does not expect to have a career, or a normal life span).

(D) Persistent symptoms of increased arousal (not present before the trauma), as indicated by the following:

1) difficulty falling or staying asleep

2) irritability or outbursts of anger

3) difficulty concentrating

4) hypervigilance; and

5) exaggerated startle response

(E) Duration of the disturbance (symptoms in Criteria B, C, and D) is more than 1 month.

(F) The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

The duration of symptoms is chronic (3 months or more).

### Secondary Diagnosis

Major Depressive Disorder, Recurrent - DSM-IV 296.3x, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, the American Psychiatric Association.

Rebecca White meets the following criteria for Major Depressive Disorder:

The following symptoms have been present during the same two-month period and represent a change from previous functioning:

1) Depressed mood most of the day, nearly every day.

2) Markedly diminished interest or pleasure in all or almost all activities of most of the day, nearly

every day.

- 3) Insomnia
- 4) Psychomotor agitation
- 5) Fatigue or loss of energy nearly every day
- 6) Feelings of worthlessness
- 7) Diminished ability to think or concentrate
- 8) Recurrent thoughts of death
- 9) Suicide gesture

### **Summary**

It is my professional opinion as a psychologist that as a direct result of her interactions with Scott Dillard and Charlie's Supermarkets, Rebecca White developed a Posttraumatic Stress Disorder and secondary depressive symptomatology. The symptomatology which developed as a result of the alleged sexual harassment, employment discrimination and hostile work environment at Charlie's Supermarkets is not a continuation of the symptomatology which resulted from multiple childhood traumas. It represents her response to a new and different set of psychological traumas. The symptoms which resulted from her employment at Charlie's Supermarkets included flash-

backs, nightmares, and other manifestations which are characteristically associated with a Post Traumatic Stress Disorder. Her depressive symptomatology included sleep disturbance, difficulty focusing and concentrating, persistent sadness, chronic anxiety, crying spells, diminished sexual libido, and suicidal ideation. She made a suicide gesture and overdosed with Valium, and needed to have her stomach pumped at an emergency room.

The psychological damage she incurred was so serious that she was completely out of the workforce for nine months, and even then was only able to begin to work part time when she re-entered the workforce. She re-entered the workforce at a level substantially below her demonstrated work history because she did not have the energy and self confidence to work at a more demanding position. She continues to fear sexual harassment and employment discrimination at a new job.

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