

How to Tell Other Sexual Harassment Stories

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- Tristin K. Green, [Was Sexual Harassment Law a Mistake? The Stories We Tell](#), 128 **Yale L.J. Forum** 152 (2018)
- Angela Onwuachi-Willig & Kristen Konrad Tiscione, *Rewrite of Meritor Savings Bank v. Vinson*, 477 US 57 (1986), in [Feminist Judgments: Rewritten Opinions of the United States Supreme Court](#), Kathryn M. Stanchi, Linda L. Berger & Bridget A. Crawford, eds., Cambridge University Press (2016).

Tristin Green and Angela Onwuachi-Willig are interested in the act of narration, and the power that lies in the choice to include or exclude. Green explores these themes in her recent essay, [Was Sexual Harassment Law a Mistake? The Stories We Tell](#). As Green recounts, the U.S. Supreme Court recognized hostile work environment as an actionable form of sex discrimination in [Meritor Savings Bank v. Vinson](#). In doing so, the Court seemed to reject the prior view of such harassment as mere “personal” advances of a man toward the singular woman to which he is attracted,” and to adopt a structural view, recognizing that “others in the organization and the organizational structure itself [can be] causes of ongoing hostile environments.”

However, Green excavates the *Meritor* record, as well as the records of four other major Supreme Court decisions on sexual and racial harassment, and uncovers substantial evidence of structural problems in those workplaces that the Court excluded from its factual recitations and legal reasoning. She finds the stories of the plaintiffs’ co-workers who were also harassed, but whose testimony barely figured in the Court’s telling, and evidence that men other than the individuals accused participated in the same or separate acts of harassment. She also notes the unacknowledged role of the organization in each of these stories. Many of the workplaces she examined were highly segregated by sex, with “leaders . . . [who] did little to nothing to learn about the culture or behaviors in their workplaces,” and in fact exacerbated cultural and structural problems by failing “to change things about which they were aware.”

As Green shows us, when stories like these are absent from the official narrative, the law’s conception of the true nature and causes of sexual harassment re-narrows, and returns to the earlier “personal advances” view. In adopting this limited view, courts shut down those who try to tell broader, structural stories, and miss opportunities to make real change.

Green pushes us to adopt a broader view, to engage with culture and structure. And in her feminist rewriting of *Meritor*, Angela Onwuachi-Willig does just that. [Writing as Justice Onwuachi-Willig](#), she takes the role of narrator, and places culture and structure, as well as history, squarely at the center of the story she tells.

For a reader accustomed to the Supreme Court’s own narrative choices in *Meritor*, and the similar choices of courts since then, Onwuachi-Willig’s deliberate inclusion of a different set of stories stands out. She describes Vinson taking a job as a bank teller, adding, almost casually, that Vinson then became “one of the more than 80 percent of women who worked as bank tellers nationwide.” This reference to the background occupational segregation in the banking industry jumps off the page, precisely because it is so different from the usual sexual harassment story-telling. So does her telling of the larger story of the power imbalance between Taylor, “a bank vice president, a church deacon, and the father of seven,” and Vinson, “a high-school dropout and divorcée,” who was married by age fourteen to an older man. Justice Onwuachi-Willig also tells the stories of the other women whom Taylor harassed, and the willful inaction of the men who ran Meritor Savings Bank. Finally, she adds race to the narrative, engaging with the stereotyping of African-American women as sexually available – even legally unrapeable – and African-American men as sexual aggressors.

[Onwuachi-Willig's story](#) is dramatically, powerfully different from the one told by the white, male-dominated *Meritor* Court, and accomplishes what Green asks us to do: to recognize harassment in its full context, and to stop telling stories of individual aggressors and individual victims. Drawing on this story, Onwuachi-Willig develops a different sort of sexual harassment law from what we are used to, including strict liability for the employers of harassers. Strict liability is an important device, because it gets at structure, holding the employer – the entity that regulates the workplace – accountable for the environment it creates.

Taken together, Green's and Onwuachi-Willig's re-tellings of sexual harassment stories produce a very different kind of sexual harassment law than what we have now. In this age of #MeToo and Time's Up, both are highly recommended reading to help us critique the stories we tell, and to begin to learn to tell – and understand – new ones.

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