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# LAWYER VIEWPOINT: MARIE NAPOLI ON THE LAW ON SEX ADDICTS AND WEINSTEIN

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By Marie Napoli | October 16, 2017 | Lawyer Viewpoint



Photo by Evan Sung Photography.

As an attorney who has been published on sexual harassment under Title VII,\* tried and settled many sexual harassment cases and helped develop the legal standard at the appellate level in New York State, I have been closely following the dramatic and infuriating unraveling of Hollywood mogul Harvey Weinstein. To date, close to 40 women have come forward to allege sexual assault by Weinstein — everything from groping to rape. Weinstein has now reportedly checked into a sex addiction facility in Arizona.

As a woman who has experienced sexual harassment in the workplace many times, I am horrified on a level that goes bone-deep. As a lawyer, I have been able to use the legal system on behalf of other women who have been sexually harassed — indeed, I think that many of

Weinstein's victims may well have legal recourse against him in civil court.

But in the churning wake of the Weinstein story, I have also been wondering something else: whether Title VII of the 1964 Civil Rights Act, created in response to ingrained notions of inequality based on sex in the workplace, offers enough protection against sexual harassment if the harasser is a sex addict. The answer is no.

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The second is hostile environment, defined as work environments where sexual speech or conduct by the perpetrator(s) is so severe and pervasive that it creates an intimidating or demeaning environment, or negatively affects a person's job performance. Unlike quid pro quo harassment, this type of harassment can be perpetrated by anyone in the workplace, whether it be a supervisor, subordinate, vendor, customer or contractor.

The key to both forms of sexual harassment is that the conduct is unwelcome, and the victim lets the harasser know as much.

The U.S. Supreme Court has held that sexual harassment in both its forms is actionable under Title VII. And the Supreme Court also held that to constitute sexual harassment, the alleged misconduct must be so grievous as to adversely affect the employee's working ability and to render the employee's work environment intolerable.

Furthermore, employers are held legally responsible for the harassment if they knew, or should have known, about the conduct, but failed to take prompt remedial action.

Did Harvey Weinstein and The Weinstein Co. know what the law demanded? I have no doubt that they did; the company had an HR department and no doubt it had guidelines aimed at preventing sexual harassment. But did that stop Weinstein? Clearly, it did not.

According to recent investigative reports in both The New York Times and The New Yorker, Weinstein used his powerful position to sexually harass the youngest, most vulnerable female employees as well as actresses who hoped to be cast in one of his movies. His power was so absolute that female staffers even went along with his games, acting as "honeypots" by making young women feel safe in Weinstein's presence, then ditching the target so their boss could indulge himself.

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It is inexplicable that the board would agree to this provision — which is why The Weinstein Company will almost certainly be forced to fold under the weight of the Title VII lawsuits it will undoubtedly face.

But Weinstein's own behavior, reprehensible though it is, is not so hard to understand. He was, and is, a sex addict, a group that makes up about six to eight percent of Americans, according to The National Council on Sexual Addiction Compulsivity, or between 18 and 24 million people.

There are those who believe sex addiction isn't a real disease, but it is. It affects women as well as men and is characterized by a persistent and escalating pattern of sexual behaviors like Weinstein's, acted out despite increasingly negative consequences. Its symptoms include an inability to stop, resist, or control the impulses to engage in sexual acts; a need to engage in sexual behaviors more often and over longer periods of time; and constantly obsessing over sex even when not engaged in it. Like any other serious addiction, the addict is unable to control his behavior. It is a destructive force, not only to himself but also to those around him.

Which is why, despite Title VII, despite his company's policies, and despite the recklessness of his acts, he kept sexually abusing woman after woman. And that's also why, in dealing with people like Weinstein, we simply can't expect the law to hold this behavior in check.

We must build a national awareness of sexual addiction, so that victims of sex addicts like Weinstein — not to mention fellow employees and friends — will recognize what they're dealing with. Many types of sexual addiction result in violating the law, such as obscene phone calls, exhibitionism, voyeurism, rape, incest and child molestation, but the addicts themselves will not be stopped by legislation alone. Sex addicts must be identified early on, and treated with therapy and other means, just as we do with other forms of addiction. Harvey Weinstein's decades-long behavior shows what happens when those around him don't see him for what he is: an addict.

\* See Marie E. Kaiser [Napoli], Anthony J. LaPorta, "Sexual Harassment of Women in the Workplace: He Said, She Said" *Journal of Civil Rights and Economic Development* Vol 7: Iss 2, Article 8.

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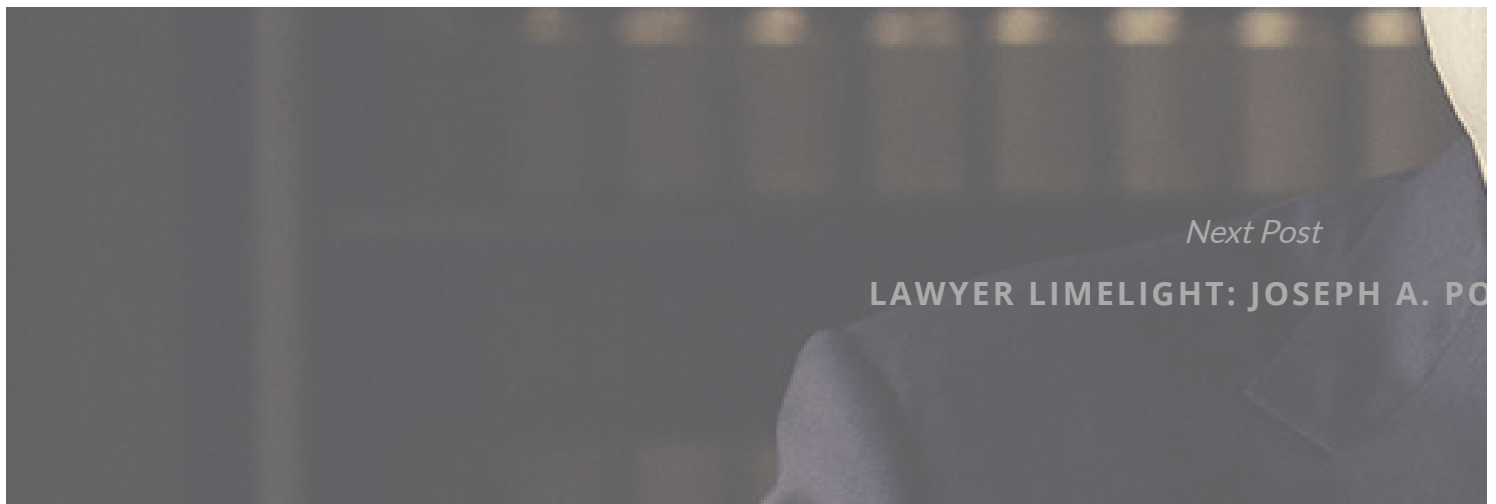
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