

## The Pros and Cons of Handling Harassment Accusations in the Media

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BY AMY OPPENHEIMER AND CHRISTINA RO-CONNOLLY

Many high-profile complaints of sexual harassment have been “investigated” by the media over the last few years. There are certainly upsides of media attention to sexual harassment, including attention on an important societal issue, the opportunity for targets of harassment to speak up and be heard, holding public figures accountable for their actions, and motivating employers to do more to prevent and respond to harassment.

However, there are downsides as well. First and foremost, it is questionable whether a media investigation can be fair. Second, often the media perpetuates misconceptions about what an investigation should consist of. Lastly, the privacy rights of those involved may be ignored in an effort to get headlines.

As professional investigators of workplace harassment and discrimination, we apply standards to our work to help ensure fairness. We also usually have more access to witnesses and documents than the media is given access to. Thus, a media investigation, however well-intended, is usually limited. This can lead to unintended negative consequences. Some of the more glaring issues include:

**Hearing only one account and/or one side of the allegations.** Often, one party may be more media-savvy or more outspoken than the other. The media may gravitate toward that vocal party to grab the story, which can lead to an imbalance of information being disseminated to the public.



Courtesy photos

Amy Oppenheimer, left, and Christina Ro-Connolly, right.

When this happens, a public figure may feel pressured to step down prematurely when a full and fair investigation may have exonerated them, at least to some extent.

In retrospect, many people believe this is what happened with former Sen. Al Franken. The initial allegations looked bad for him, so he was pressured to step down. Subsequently, information came to light that caused the public to see the allegations differently. Had the media and public sentiment allowed for a thorough investigation prior to determining the appropriate action, Franken’s resignation might have been avoided. Remember, employers are often limited in what they can disclose due to employee privacy rights, and some information

is not easily and quickly available to the media. When the public hears only one side of the story, it is easy to make erroneous conclusions about what actually occurred.

**Misunderstandings about the burden of proof.** In nearly all administrative investigations involving allegations of harassment, the burden of proof is a preponderance of the evidence, meaning, “more likely than not” or “fifty percent, plus a feather.” This is a much lower burden of proof than criminal proceedings, which require proof beyond a reasonable doubt. The public is often confused by this. For example, many New England Patriots fans questioned whether then-quarterback Tom Brady should be punished for the “Deflategate” incident when the burden of proof was based on this lower standard. However, this is the burden of proof used in nearly all civil cases, including lawsuits involving harassment. Yet due to the plethora of police procedurals on television, many people erroneously believe that the criminal standard is the typical one, leading to the misbelief that the accuser must provide a higher level of proof than what is actually required.

**Misunderstandings about determining credibility.** Investigators consider and weigh credibility factors when making their findings and are trained to do so. Investigative reporters, as well as the public, are not necessarily

well versed in this. For example, many people believe credibility can be assessed from a witness’ demeanor or character, which have been shown to be unreliable when determining credibility.

**Misconceptions about human behavior may also play a part.** That is, individuals with legitimate complaints may be unfairly criticized and considered lacking in credibility for things of little consequence—like not complaining right away or having a social relationship with the perpetrator. Without a nuanced understanding of how harassment plays out, the media and public tend to put too much emphasis on the wrong things.

Lack of privacy. Clearly, an investigation in the media has little regard for people’s privacy rights. This may also lead to an inability to gather complete information due to the “chilling effect” caused by having one’s private life exposed to the public. It is far more likely that a party or witness will be forthcoming with an investigator than the media. All interviewees to an investigation are admonished regarding the confidentiality of the process, and as discussed previously, employers are required to maintain employee privacy in ways the media is not. The media has done a lot to advance the issue of workplace harassment and has, at times, provided a forum for important discussions about it. Some of the investigative reporting has been thorough

and nuanced. However, some of it leans more toward sensationalism and does not further a fair process for determining what occurred and how to best address it. The public may be quick to make conclusions and decisions without an independent and fair process.

As workplace investigators, we are guardians of a process, separate from any agenda. And we often find the truth is more complicated than the media wants us to believe. This includes an opportunity for all parties and witnesses to be thoroughly interviewed, their information vetted and carefully considered, and reasoned findings that take into consideration appropriate credibility factors. Our investigations may not be sensational, but they are intended to deliver fairness.

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