"But is it a small price to pay for severely damaging our profit picture?" one of the members asked. Then he added, "I needn't remind you that our profit outlook directly affects what we can offer our current employees in terms of salary and fringe benefits. It directly affects our ability to revise our salary schedule." Finally, he asked Phyllis whether she'd accept the board's reducing everyone's current compensation to meet what Phyllis termed the board's "obligation to the past."

Despite its decided opposition to Phyllis's proposal, the board agreed to consider it and render a decision at its next meeting. As a final broadside, Phyllis hinted that, if the board didn't comply with the committee's request, the committee was prepared to pursue legal action.

DISCUSSION QUESTIONS

1. If you were a board member, how would you vote? Why?
2. What moral principles are involved in this case?
3. Do you think Phyllis Warren was unfair in taking advantage of the board's implied admission of salary discrimination on the basis of sex? Why or why not?
4. Do you think Phyllis was wrong in giving the board the impression that her proposal enjoyed broad support? Why or why not?
5. If the board rejects the committee's request, do you think the committee ought to sue? Give reasons.

CASE 11.4

Consenting to Sexual Harassment

IN THE CASE OF *VINSON V. TAYLOR*, HEARD before the federal district court for the District of Columbia, Mechelle Vinson alleged that Sidney Taylor, her supervisor at Capital City Federal Savings and Loan, had sexually harassed her.[71] But the facts of the case were contested.

In court Vinson testified that about a year after she began working at the bank, Taylor asked her to have sexual relations with him. She claimed that Taylor said she "owed" him because he had obtained the job for her. Although she turned down Taylor at first, she eventually became involved with him. She and Taylor engaged in sexual relations, she said, both during and after business hours, in the remaining three years she worked at the bank. The encounters included intercourse in a bank vault and in a storage area in the bank basement. Vinson also testified that Taylor often actually "assaulted or raped" her. She contended that she was forced to submit to Taylor or jeopardize her employment.

Taylor, for his part, denied the allegations. He testified that he had never had sex with Vinson. On the contrary, he alleged that Vinson had made advances toward him and that he had

declined them. He contended that Vinson had brought the charges against him to "get even" because of a work-related dispute.

In its ruling on the case, the court held that if Vinson and Taylor had engaged in a sexual relationship, that relationship was voluntary on the part of Vinson and was not employment related. The court also held that Capital City Federal Savings and Loan did not have "notice" of the alleged harassment and was therefore not liable. Although Taylor was Vinson's supervisor, the court reasoned that notice to him was not notice to the bank.

Vinson appealed the case, and the Court of Appeals held that the district court had erred in three ways. First, the district court had overlooked the fact that there are two possible kinds of sexual harassment. Writing for the majority, Chief Judge Spottswood Robinson distinguished cases in which the victim's continued employment or promotion is conditioned on giving in to sexual demands and those cases in which the victim must tolerate a "substantially discriminatory work environment." The lower court had failed to consider whether Vinson's case involved harassment of the second kind.

Second, the higher court also overruled the district court's finding that because Vinson voluntarily engaged in a sexual relationship with Taylor, she was not a victim of sexual harassment. Voluntariness on Vinson's part had "no bearing," the judge wrote, on "whether Taylor made Vinson's toleration of sexual harassment a condition of her employment." Third, the Court of Appeals held that any discriminatory activity by a supervisor is attributable to the employer, regardless of whether the employer had specific notice.

In his dissent to the decision by the Court of Appeals, Judge Robert Bork rejected the majority's claim that "voluntariness"

Warner Brothers/courtesy Everett Collection

In the movie *North Country*, Charlize Theron plays a character who has no choice but to take on a miner's job in order to survive as the mother of two. Confronted with unrelenting verbal and physical abuse at the hands of her male coworkers, she fights back and ultimately wins a sexual harassment lawsuit.

did not automatically rule out harassment. He argued that this position would have the result of depriving the accused person of any defense, because he could no longer establish that the supposed victim was really "a willing participant." Judge Bork contended further that an employer should not be held vicariously liable for a supervisor's acts that it didn't know about.

Eventually the case arrived at the U.S. Supreme Court, which upheld the majority verdict of the Court of Appeals, stating that:

> [T]he fact that sex-related conduct was "voluntary," in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII. The gravamen of any sexual harassment claim is that the alleged sexual advances were "unwelcome." . . . The correct inquiry is whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her actual participation in sexual intercourse was voluntary.

The Court, however, rejected the Court of Appeals's position that employers are strictly liable for the acts of their supervisors, regardless of the particular circumstances.[72]

DISCUSSION QUESTIONS

1. According to her own testimony, Vinson acquiesced to Taylor's sexual demands. In this sense her behavior was "voluntary." Does the voluntariness of her behavior mean that she had "consented" to Taylor's advances? Does it mean that they were "welcome"? Do you agree that Vinson's acquiescence shows there was no sexual harassment? Which court was right about this? Defend your position.
2. In your opinion, under what circumstances would acquiescence be a defense to charges of sexual harassment? When would it not be a defense? Can you formulate a general rule for deciding such cases?
3. Assuming the truth of Vinson's version of the case, do you think her employer, Capital City Federal Savings and Loan, should be held liable for sexual harassment it was not aware of? Should the employer have been aware of it? Does the fact that Taylor was a supervisor make a difference? In general, when should an employer be liable for harassment?
4. What steps do you think Vinson should have taken when Taylor first pressed her for sex? Should she be blamed for having given in to him? Assuming that there was sexual harassment despite her acquiescence, does her going along with Taylor make her partly responsible or mitigate Taylor's wrongdoing?
5. In court, Vinson's allegations were countered by Taylor's version of the facts. Will there always be a "your word against mine" problem in sexual harassment cases? What could Vinson have done to strengthen her case?