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Free Speech Faces Hostile Environment: An Aggressive Hunt for Sex Harassment Leaves Plenty of Wreckage

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February 11, 1996 | By Kenneth Lasson

In recent years there has been a noticeable upsurge in allegations of sexual harassment on campus, due in part of the large number of colleges and universities (many of them public) that have imposed sweeping speech and language codes -- which in turn reflect exceedingly broad interpretations of what the law now calls a "hostile environment."

At Pennsylvania State University, for example, an English instructor claimed she was being sexually harassed by the presence of Goya's famous painting "Naked Maja" in a university lecture hall. "Any picture of a nude female," she said, "encourages males to make remarks about body parts." Although the painting had been hanging on the same classroom wall for at least a decade, it was removed as the result of her complaint.

At the University of Michigan, a student taking American politics was chastised for writing a paper in which he conjured up a polling example featuring a fictitious chauvinist named "Dave Stud." A female teaching assistant found it to be contrary to the department's "Checklist for Non-sexist Writing," and threatened sanctions.

The University of Connecticut has banned all "inappropriate laughter" and "conspicuous exclusion of students from conversations." (What if a classmate has bad breath?) Harvard prohibits "unwelcome speech whose "effect might create an "offensive educational environment." (Who decides?)

Of greater concern, perhaps, is what happens to unwittingly incorrect professors who find themselves accused of sexual harassment.

Take the case of James Maas, who has been teaching at Cornell University for more than 30 years and whose Psychology 101 is perhaps the largest undergraduate course in the country (attracting about 1,000 students every semester). He has won numerous teaching awards. In 1994, Mr. Maas was called before Cornell's "Professional Ethics Committee" to defend himself against charges of sexual harassment. The allegations centered around his "overly friendly and affectionate behavior" -- which, it turns out, were hugs and occasional social kisses, most often in front of class or family.

A "confidential" investigation ensued. Mr. Maas strongly denied any wrongdoing. He was found guilty as charged, and reprimanded. During the entire spring semester of 1995, however, the Cornell Daily Sun ran stories and cartoons depicting him as a sexual aggressor and took the university to task for not firing him. The affair soon found its way into the New York Times, Time magazine, and the Chronicle of Higher Education, and was sent out over at least one wire service.

By this time Mr. Maas felt that his reputation had been grievously and unfairly damaged and he sued the university for \$1.5 million. His case is pending.

So is that of John Aist, a science professor at Cornell who was sanctioned for having the temerity to voice his opinion that homosexuality is a treatable disorder. Cornell, in fact, keeps a "locked box" of informal complaints lodged against faculty. Professors are not informed that such a file exists, much less told about potential grievances bubbling up against them. If a student decides to press formal charges against an alleged offender -- even years after the fact -- the box is opened and its contents examined.

Many professors, feeling the chill of PC (political correctness) blowing through the Ivory Tower, guard their every comment and gesture. Those who find themselves already caught in webs spun by overzealous students and administrators, ever on the lookout for hostile environments, quietly resign themselves to various forms of censure and fade back into academic anonymity. The few who dare to challenge the system face years of litigation which for the most part they are less prepared to undertake than the institutions seeking to sanction them.

The most notable example of a professor who stood his ground against sexual-harassment charges is J. Donald Silva, a tenured member of the English faculty at the University of New Hampshire. A student in his technical writing course had asked for an example of a "working definition." Mr. Silva offered a word-picture that he had used many times before. "Belly dancing," he said, is "like a plate of Jell-O with a vibrator underneath." Within days the professor stood accused of sexual harassment. Shortly thereafter he was suspended from his job, ordered to pay the university \$2,000 for a replacement teacher, and directed to undergo psychological counseling with a university-approved therapist.

Mr. Silva chose instead to file suit in federal court, arguing that dismissal of a tenured professor on the basis of statements made in class violates principles of academic freedom, federal statutes, and the First Amendment. "I am not sick," he said, "and I am not going to give up my right to trial."

The court minced few words in ordering that he be reinstated. New Hampshire, which already expended close to \$200,000 in legal fees, settled with Mr. Silva for another \$250,000.

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Although not one campus speech code has survived a test in court, and a few universities have rescinded or modified their regulations, many such rules continue to be promulgated. Their enforcers are frequently radical-feminist students and

professors, whose blundering approach can shoot down a lot more than idle or boorish racist and sexist comments.

The University of Minnesota's official definition of sexual harassment, for example, includes "callous insensitivity to the experience of women." The University of Ontario has a code of conduct which makes sexist humor and language grounds for complaint. At the University of Toronto a professor of chemical engineering was convicted of sexual harassment because of his "prolonged and intense staring" while swimming in the university pool.

While words can and do offend, they take on different meanings in different contexts; to PC guardians, however, the determinative test is whether the words have over offended anyone. Thus under the new conduct codes it becomes awkward to engage in virtually any confrontational conversation (however insensitive), campus humor (however sophomoric), or romance (however adolescent).

The current PC climate has also served to chill campus civility and chivalry. There once was a time when hugging and kissing -- the polite embrace or peck-on-the-cheek -- was as much a matter of civility as the tip of a gentleman's hat. Now any such behavior, especially when it happens on campus, could well stir up litigious visions of a hostile environment, if not outright charges of sexual harassment.

Antioch University's celebrated "sex code" requires that partners ask specific permission before engaging in any physical contact -- for example, "May I kiss you?" and "May I put my hand there?" (Amorous Antioch students are reportedly given to a shortcut buzz-code: "Want to implement the policy?") Even Antioch is more permissive than Wollongong University in Australia, which forbids not only student-teacher sex, but platonic love as well.

Perhaps the most infamous example of political correctness gone askew occurred at the University of Pennsylvania, when an Israeli-born freshman was threatened with expulsion for shouting, "Shut up, you water buffalo!" at a group of five black sorority sisters making loud noises outside his dorm window late at night. The particular epithet he used was the translation of the Hebrew word "beheimahs" (slang for "obnoxious people"). The university offered to drop proceedings against him if he would undergo a "re-education program for living in a diverse community environment."

A fraternity at the University of California was disciplined for violating the "high moral and social standards of the Greek community on campus" when it distributed a T-shirt showing a cartoon figure of a man holding beer and wearing a sombrero -- ostensibly offending Hispanics on campus. The fraternity defended itself by explaining that the T-shirt was to promote a South-of-the-Border party, and had in fact been designed by one of about 50 Hispanic members of the fraternity. It was nevertheless suspended for three years, the brothers forced to attend sensitivity-training sessions.

The fraternity went to court, citing both the First Amendment and a provision of the California Code prohibiting sanctions on the basis of speech. The court ordered the university to reinstate the fraternity -- and directed various administrators to undertake "First- Amendment sensitivity training."

The verdict was perfect, but it should have been a needless touche. In virtually every case, had the distinction been made clearly between offensive speech and conduct -- protecting the former, prosecuting the latter -- the legal entanglements would have been significantly diminished and, moreover, the goals of sensitivity and inclusiveness might well have been achieved.

After all is said and done, common sense goes a lot farther than speech or conduct codes to dissipate a hostile environment.

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Kenneth Lasson is a law professor at the University of Baltimore.

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