



Prof. Bruce Patton negotiates a feud between fellow members of the Committee For Sexual Harassment in the Drama Society's spring parody, "My Fair J.D."

HLS Takes Steps to Bring in Female Profs

By Greg Stohr

A woman and a man have been offered tenured faculty positions, and another woman is virtually assured of receiving a tenure-track offer soon, as the Law School continues its efforts to increase the number of women in its teaching ranks.

Anne-Marie Slaughter-Burley and Douglas Baird, both currently professors at the University of Chicago Law School, have not yet decided whether to accept, but Dean Clark '72 said both were seriously considering the offers.

Another woman is virtually certain to receive an offer for a junior faculty position after a unanimous vote by the faculty last Friday. The offer need only receive the approval of the university, a process Clark expects to be a formality.

The offer to Slaughter-Burley, made last fall, has been greeted

with acclaim throughout the HLS campus. As a visiting professor at HLS last spring, Slaughter-Burley taught two courses — The European Court of Justice and Foreign Affairs and the Constitution.

"She's a very popular teacher," said Clark, who added that Slaughter-Burley would likely also teach Civil Procedure. "The students loved her."

Robin Lenhardt '95, co-chair of the Coalition for Civil Rights, also praised the offer. "Students are really excited about Anne-Marie Burley," she said.

Baird, who likely would teach Bankruptcy and Secured Transactions law, received his offer last month. He taught both those courses as a visiting professor here in the fall.

But the hope that the two Chicago professors would accept the offers seemed to suffer a setback last week. Last Friday, the New York Times reported that

both are under consideration for the post of dean at Chicago.

Clark would not release the name of the third potential appointee until after the offer had received final approval. He said that she was an HLS graduate currently working on her economics doctorate and that she had a "spectacular" undergraduate record.

"It's someone that I care a lot about," Clark said. He added that she could potentially teach any of a number of courses, including Contracts, Antitrust, Employment Law and Corporations.

Diane Ring, a Washington, D.C., tax attorney, has already agreed to join the HLS faculty as an assistant professor this summer. An additional offer to Elizabeth Warren, a commercial law professor at the University of Pennsylvania, remains pending.

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Harassment Draft Proposes Hate Speech Ban

By April Rockstead

Although new draft sexual harassment guidelines released this week depart significantly from prior recommendations and proposals submitted to the Law School community, members of the committee that released them say the draft represents a refinement of initiatives to date as well as a "compromise" likely to win faculty acceptance.

Among other changes, the proposed guidelines — circulated for comments from faculty, staff, and students — include a "personal vilification" prohibition and adhere closer to EEOC guidelines regarding sexual harassment.

Prof. Richard Fallon, chair of the Committee on Sexual Harassment Guidelines, said the committee did not view its mission as limited to accepting or rejecting ideas suggested in a report released last academic year by a now-disbanded committee. The current committee was established this fall after the faculty voted down previously proposed guidelines last year.

"We read it, we learned, then we went forward with our own momentum," Fallon said of the earlier report.

That included submitting to the community a section including a "hate speech" provision that would specifically prohibit and provide procedures for sanctioning "harassment by personal vilification."

The provision would apply to "[a] speech or other expression by a member of the Law School community" that "is intended to insult or stigmatize another

member of the Law School community or a small group of individuals... on the basis of their race, color, religion, gender, sexual orientation, disability, age, or national origin" and that "is addressed directly to or targeted directly at" the alleged victim and "makes use of words or non-verbal symbols that are commonly understood to convey direct, visceral hatred or contempt for human beings on the basis of" membership in any of the listed protected categories.

The hate speech section would extend the guidelines' reach beyond just speech and conduct of a "sexual" nature to also prohibit "sexist" speech that harasses individuals on the basis of gender, Fallon said.

"The effort to do this does raise more difficulties in various ways than the prohibition against explicitly sexual harassment," he said, "partly because when anybody crosses the line from the 'sexual' to the 'sexist,' then many people's concerns about stifling free speech and educational inquiry are triggered."

The provision would pass constitutionality hurdles imposed by recent Supreme Court cases regarding hate speech provisions that are subject to the state action requirement of the First Amendment — including those cases that have stricken such codes, Fallon said.

"In *R.A.V. v. St. Paul*, what the court seems to be worried about is the singling out of a particular viewpoint rather than a general set of prohibitions to keep discrimination out of the

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With Nesson, an A for Evidence

Prof. favors a pass/fail/honors system

By Katrina Campbell

Prof. Charles Nesson '63 recently caused an uproar among faculty and glee among students: He gave every student but one in his winter term Evidence class an A!

In an environment where B's are standard fare but A's are quite rare, Nesson's act was sure to evoke a response. "The general faculty reaction is one of alarm," said Dean Clark '72.

"I have grave misgivings about it becoming a general practice," Clark said, adding that giving out all A's is not in keeping with the spirit of HLS.

In an interview with the RECORD, Nesson — who acknowledged that he is under fire from faculty members for his decision — talked about his reasoning and philosophy behind

giving out 149 A's and one B+.

Q: What kind of exam was it?

A: It was multiple choice, 25 questions taken from questions used to prepare students for the multistate [bar exam], plus an essay that was basically a feedback memo in which students responded to three questions — what was their biggest thought, what was their biggest confusion, what they wanted to say to me.

In your opinion, was it easy?

It was definitely an exam you had to study for.

How did you determine whether these students learned anything, or did that matter?

I built it around group activity. I had a grant from Court Television, which allowed me to obtain 20 Macintosh Quadra

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Times Changing for HLS Gay/Lesbian Community

But Many Say a Sense of Uneasiness Lingers

By Victoria Kuohung

First in a two-part series.

June 28, 1969. It is 1:00 am, and the first wave of police hit the Stonewall Inn, a gay bar in Greenwich Village. This raid, however, is different: For the first time, bar patrons and others in the neighborhood join forces 400-strong to fight the police. The rioting spreads over the next three days. Reported widely in the press, the Stonewall riots are hailed by gay activists as the birth of the gay and lesbian civil rights movement.

July, 1993. A gay HLS student asks a supervising associate in the major New York firm at which he is working whether its litigation department would be

hospitable to gays and lesbians. "I don't think it would be good for them here," the associate responds. At the end of the summer, reviewers who had consistently lauded the student for being "so smart" now inexplicably complain that he "lacks analytical abilities." The student receives no job offer from the firm.

The times they are a-changin'. Bob Dylan declared in 1963, and perhaps no other phrase now rings as true for lesbian and gay students at the Law School. A nearly invisible community before 1978, when the first gay student group (the Committee on Gay and Lesbian Legal Issues) was founded, students and alumni have since joined together to create a more supportive environment for gays who come to HLS. But

despite significant improvements, gay students still at times face an uneasy reception from the straight community, a discomfort that often translates into discrimination.

1993 witnessed several events that helped establish a more tolerant atmosphere for gay and lesbian concerns at the Law School: In April, the Committee on Gay, Bisexual and Lesbian Legal Issues (COGBLLI) was both renamed HLS Lambda and given a structural makeover to promote homosexual concerns more effectively on campus. Last year, too, a group of recent graduates lobbied the Harvard Law School Association to form the Gay, Lesbian & Bisexual Alumni Committee. This spring, Lambda will mark the

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Getting Rid of the Would-Bes

By Terri Gerstein '95

RECORD Columnist



My first time was with a co-worker in my job after college.

He was a balding 50-something-year-old with a drooping belly, a wife, and two adult daughters. I thought he was just being friendly, an impression he encouraged as he insistently paid for our first lunch: "Think of it as your father paying."

I'm pretty slow on the uptake, but he was persistent and before long, there was no mistaking. "Have you ever thought of posing for a magazine?" he asked me, adding, "You know, like Penthouse? I bet you'd look good."

Fortunately my personal Clarence Thomas was just a peer, so he couldn't fire me. Unfortunately, my boss didn't get it, asking, "What do you expect? You're young and pretty."

I bet every HLS woman has a story of her first time being sexually harassed. It's demeaning, uncomfortable, and humiliating, whether from a peer or supervisor. Clearly there is no place in Harvard Law School for sexual harassment of any kind.

Thankfully, on Monday, there they were in our Harkboxes: 25 pages of Draft Guidelines on Sexual (and other) Harassment. The committee that drafted the guidelines deserves a great deal of respect and appreciation for what is clearly the product of a lot of thought, discussion, and hard work. The committee has also gone out of its way to invite input from the HLS community on the draft guidelines. I think all of us should take them up on their offer, by writing responses to the committee, talking to members, or attending the March 21 meeting.

But in addressing sexual harassment, both in our academic and professional lives, we should be wary of an exclusively legalistic approach. Implicit in the existence of guidelines is the (accurate) assumption that such guidelines are needed to prevent people from doing something they otherwise would want to, and would do. Laws, rules, and guidelines often change people's conduct and sometimes (but definitely not always) change people's attitudes as well. As legal thinkers, sometimes we run the risk of focusing too much on legal change as the be-all and end-all for achieving social change. This tendency is understandable, since after all, the law is our craft. And, given our training, our special role in any movement or organization might be to work on legal aspects of a problem.

Along with formulating guidelines or laws comes the more amorphous yet equally important task of changing attitudes. In the ideal world, there is no harassment — not because the would-be perpetrator fears punishment, but rather because he no longer is a "would-be."

"So if I tell some classmate she looks pretty, is that harassment? That's asinine."

Yes, guys and gals, you can still (respectfully) tell someone that he or she looks nice. I get frustrated by the ridiculous misrepresentation of people concerned about sexual harassment, as though we secretly yearn for a sterile, frigid, robotlike workplace. In fact, harassment is really about power relations. Confession: I have taught college classes in several places, and I've had some Very Cute students. But with or without guidelines, I would never have dreamed of getting romantic with them, because of the inherent pressure and power imbalance involved in subjecting a student to my (most certainly unwanted) attentions. It would be unfair and wrong to use my position of authority that way. And that's what part of what the sexual harassment uproar is about — abuse of power.

Several years ago, I taught college in Mexico. One of my co-gringos, also a co-worker, was an Angry Young Man, who spent lots of time in the classroom berating his wealthy, pale-faced, aristocratic Mexican students for being wealthy, pale-faced, and aristocratic. (He spent lots of time in private berating himself for the same.) The students were less than charmed. As for me, his eternal vigilance for hints of -isms (rac, elit, Anti-Semit, et al.) initially won me over, but eventually bowled me over.

Imagine my surprise when I heard him and my other co-gringo co-worker discussing their female students. And in fact, these bright-eyed 18-year-old girl-women students knew how to make themselves gorgeous. They came to school each day looking like freshly wrapped birthday presents waiting to be...

Yes, they were beautiful, but damn! I never expected to walk into my office and hear my Angry Young Co-Gringo discussing the size, shape, and firmness of his student Marcela's breasts!

He returned to the United States months before I did. And shortly after his departure, I began to hear rumblings from the college's gossip factory.

"He asked Marcela to go to the movies with him. She was barely passing his class."

"He tried to kiss her, and, you know...."

No, I didn't know. I didn't know what to think.

When I got back to the United States, I avoided his phone calls, since I didn't want to have to hate him. Reluctantly, I returned his 11th call.

"Yeah, I did ask her out." His explanation? "There's no concept of sexual harassment in Mexico. It's a different culture."

I didn't know where to begin. I verged on incoherence. Here's what (I think) I said:

There is such a concept in Mexico — it's called "acoso sexual." And even if there were no such phrase in the Spanish language, it would still exist. Women would still feel it, even without institutional articulation or validation of their feelings. Too, too many of my students told me in confidence how uncomfortable certain professors made them feel.

Besides, where is your core of values, my Angry Young Ex-Friend? After criticizing Mexico for a year, your sudden embrace of its "culture" seems opportunistic at best. How do you want your sister, your mother, your future daughter to be treated at school or at work? Do you genuinely care about women's rights at all? Or only when it's required by the demands of the rules or the law or radical chic? Does sexual harassment exist only when you might get punished?

Members of the HLS community, does it?

• Letters (continued) •

Proposed Harassment Code Too Vague

The harassment definition proposed by the Sexual Harassment Committee is so vague that it might be unconstitutional if it were adopted at a state university. Since the Massachusetts Civil Rights Act applies First Amendment guarantees to private colleges in Massachusetts, it may also be illegal at Harvard. Although the policy promises to respect the First Amendment, its commentary on what constitutes protected speech is meager and inaccurate. Also troubling is the committee's proposal of a hate-speech code.

The harassment definition bans sexual speech that has the side effect, or the purpose, of creating a "hostile" or "demeaning" environment for listeners. This "hostile environment" test has been held unconstitutionally vague and restrictive. In *Doe v. University of Michigan* (1989) and *UWM Post, Inc. v. Board of Regents of Univ. of Wisconsin System* (1991), courts overturned campus codes that banned speech that creates a "hostile" or "demeaning" environment.

Under such speech codes, people have been convicted of racial or sexual harassment for criticizing affirmative action, feminism or homosexuality, complimenting a student on her blazer, displaying art books, writing a love note, asking a peer out on a date, or objecting to a roommate's posting of gay erotica.

To prevent such censorship, the Harassment Committee wisely exempts from its prohibition speech that is "reasonably" designed for academic or public debate, or protected by the First Amendment. However, it provides little notice to students, who are not constitutional law experts, about what speech is protected. It will often be unclear whether speech is "reasonably" designed to contribute to scholarly debate, for example, whether the sexual analogies that a professor uses in his lectures are strictly necessary. But is "unreasonable" usage of a sexual analogy sufficient reason to discipline a professor? The University of New Hampshire thought so, and is currently facing a First Amendment lawsuit. To let

students know what their rights are, the policy's free speech protections will have to be more fully explained.

Unfortunately, the policy underestimates the First Amendment's scope, wrongly suggesting that speech whose foreseeable effect is to create a demeaning environment is shielded from prohibition only if the speech "reasonably" relates to "legal or public education, academic inquiry, or reasoned debate on matters of public concern." In reality, even intellectually valueless speech that creates a demeaning environment is generally protected. In *Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University* (1993), a federal appeals court overturned a fraternity's punishment for a crude racist, sexist skit, holding that speech may never be restricted on the basis of viewpoint to prevent the creation of a "discriminatory" educational environment.

The policy needs to be modified to preserve free speech.

Hans Bader '94
March 15, 1994

WLA Benefits Women at Law School

We would like to respond to Elizabeth Brown's letter [RECORD, March 11], in which she calls for the formation of a pan-ethnic women's group in order to foster a sense of feminist community at HLS. Ms. Brown states that the Women's Law Association has done little to develop a sense of community among women at the Law School, and that she has "not heard from" WLA since September. As co-chairs of WLA, we have worked hard to implement activities that recognize the unique concerns and talents of HLS women. For example, WLA played an active role in the planning and implementation of "Celebration 40," which honored the 40th anniversary of women at the Law School. Celebration 40 involved a series of panel discussions between current and former HLS women; it featured prominent female attorneys and academics, addressing such topics as the atmosphere for women at HLS, strategies for advancing in various sectors of the legal profession, and recent developments in diverse areas of feminist scholarship. WLA has also co-spon-

sored several events with the Office of Student Life Counseling highlighting topics of concern to women, such as "Glass Ceilings in the Workplace," and "The Work-Family Conflict." We have sought to insure that the interests of women were represented by the Law School Council. WLA has vigorously opposed the termination of the Home Run Shuttle. Furthermore, when some members of the Law School Council called for the removal of the only woman from the Sexual Harassment Committee, WLA fought successfully to preserve her seat on the committee. Most recently, we have presented Ann Althouse, a University of Wisconsin law professor who delivered a gender-based critique of the Green and Neason Evidence notebook. Similarly, by sponsoring a series of discussions between HLS students and professors on topics of concern to women, WLA has attempted to develop a feminist community encompassing both students and faculty. Finally, WLA is currently planning its annual dinner, which will be held on March 22, 1994, highlighting several

women of color who are either law professors or practicing attorneys in the Boston area. They will deliver short presentations on topics of interest to them, ranging from a critique of transracial adoption to their experiences in large law firms.

All of these functions, as well as our meetings, have occurred since September and have been publicized by notices in the Advisor, and by flyers distributed to student Harkboxes. We regret that Ms. Brown was not aware of these activities. By presenting such events, WLA has tried to make HLS more sensitive to the concerns of women and to foster a feminist community at the Law School. We realize that WLA is not perfect. Nevertheless, it is much easier to criticize an organization from the periphery than it is to participate in its ongoing activities. We strongly recommend that Ms. Brown do the latter, in order to promote unity, rather than divisiveness, among the women of HLS.

Cynthia Chandler '95
Tamara Jones '95
WLA Co-Chairs
March 12, 1994

Faculty Posts Offered

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although Clark said he is not optimistic Warren will accept.

Even without Warren, the outstanding offers could increase the corps of female professors by as much as 50 percent.

Currently six of the 65 permanent faculty members are women, a set of numbers Clark says the Law School is working hard to change.

"We're clearly trying to add more women to the faculty," he said.

Clark said HLS was engaging in "affirmative action" to the extent it was working to increase the number of women considered and interviewed. He also said the Law School would be willing to hire a qualified woman, even if her area of expertise did not fill an immediate need, but he stopped short of saying the school would lower its qualification requirements for women.

"I guess what we're not ready to do is to have a different standard," he said.

Even those organizations that previ-

ously have been sharply critical of HLS hiring practices in the past now concede school is making progress toward hiring more women. Both Lenhardt and fellow CCR Co-chair Inga Bernstein say they are pleased with the recent trends. But both also say HLS is making less progress toward hiring more minorities.

"It seems as though they're making an effort to appoint women, and that is exciting," Bernstein said. "There appears to be far less progress — maybe even no progress — toward finding more people of color."

Clark said HLS was considering a number of minority candidates for permanent faculty positions. He also pointed to outstanding visiting professorship offers to African-American women Lani Guinier and Kimberle Crenshaw '84. Three other minorities — Yasuharu Nagashima, Sang Hyun Song, and Leon Higginbotham — are among the 14 people who have accepted visiting professorship offers for next year. That group also includes four women and one openly gay man.



Slaughter-Burley