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Harassment Policy Proposal Draws Fire

Faculty, free speech advocates deride proposal as 'speech code'

By [Jonas Blank](#)

The Diversity Town Hall Meeting held by the Law School's Committee on Healthy Diversity kicked up a furor Monday night when a Black Law Students Association-backed proposal for a new racial harassment policy drew fire both from professors in attendance and national news outlets that deemed the proposal a thinly-veiled version of a speech code. Though Dean Robert Clark said he is firmly opposed to curbs on free speech, he is keeping all options open until the Committee makes its final recommendations.



Media Credit: Ezra Rosser
Prof. Martha Field talks to students and faculty at Monday's town hall.

Formulating a policy

Prof. Martha Field, who chairs the Committee on Healthy Diversity and moderated Monday's town hall meeting, said the committee hopes to formulate a harassment policy that does not ignore free speech principles.

"The policy would ask students to be respectful of each other and be civil, if there is a way to delineate this issue with free speech," she said.

Field said the proposed policy would focus on ascertaining a specific intent to harm a person. She offered the example of a student who followed another student around campus barking a racial slur.

Field defended the Law School's right to maintain a harassment policy, despite the fact that such policies have generally been held unconstitutional at public universities and other government institutions. "We are looking to separate hurtful things from the mainstream of free speech," she said. "When the government can't do that... an institution like Harvard Law School can still tell students to respect each other."

An incident such as the recent events at the Business School, where the editor of the student newspaper was threatened with

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RESULTS

sanctions by administration officials over a cartoon calling Career Services employees "incompetent morons," would not be contemplated under the policy, Field said. Similarly, a performance like the Law School Parody would not fall under the policy's purview, as it has no specific intention of harassing anyone.

The proposed harassment policy sparked outrage both from national free speech groups and the editorial pages of several major newspapers.

"[The harassment policy] is a speech code by another name," said Harvey Silverglate '67, a Boston attorney who attended the meeting. Silverglate is a co-director of the Foundation for Individual Rights In Education, a group that seeks to protect First Amendment rights on college campuses.

"One does not need a code to outlaw true harassment," Silverglate added. "That is a



Media Credit: Ezra Rosser
Prof. Jon Hanson's suggestion for a second Diversity Committee with a broader mission prompted a response from Prof. Randall Kennedy (middle).

violation of civil and criminal law! [BLSA] wants a code because they want to outlaw points of view that offend them."

BLSA President Joshua Bloodworth, a 3L, defended the nascent proposal and its purpose. "[The policy] would be something that would allow the school to take disciplinary action against people who harass other members of the community along race, religion, sexual orientation, national origin, creed or disability lines," he said. "What it is not is a call for a speech code, which seems to be the prominent

misinterpretation that's going around."

Although BLSA supports the call for a harassment policy, Bloodworth noted that the organization has not formulated a formal plan of its own. Instead, BLSA is seeking a policy that reflects what Bloodworth called, "a community effort."

Dershowitz dominates the Town Hall

At the Town Hall meeting, Prof. Alan Dershowitz was extremely critical of students advocating a harassment policy. In one exchange, Dershowitz chastised a student who suggested that the Committee vote on the existence of the policy first, then decide its specifics.

"That's like asking someone to first vote for censorship, and then figure out later what is censored," he said, challenging the student to provide specific examples of incidents that would be covered.

That prompted a retort from Prof. Randall Kennedy, who said, "I don't think students should feel embarrassed to have to come back with a response," he said.

"I treat students as equal," Dershowitz responded. "All I was doing was challenging the student's views."

Dershowitz also challenged students' notions of diversity. While many called for increased diversity both within the student body and the faculty, Dershowitz argued that most students simply want, "more of themselves," rather than actual ideological diversity.

"The last thing people want is their views challenged," he said. "Real diversity is when black people say they want more racists, Jewish students say they want more anti-Semites or pro-Palestinians and gay people say they want more homophobes."

Two-L Jeri Golbert disagreed. "People who are asking for 'more of themselves' do so because their views are not being represented," she said. Golbert added that the Law School should implement mandatory diversity training. "If you are really committed, you should make it mandatory. So what if students complain?"

The Diversity Committee has other proposals besides a speech code to consider, including the creation of a faculty committee that could respond to racial incidents. "When something like last spring happens, we want to give the students someone to complain to," Field said.

Another proposal that BLSA hopes the Diversity Committee will adopt is the creation of an office of multicultural affairs. A variety of missions are contemplated, including providing social programming, handling racial harassment complaints and providing what Bloodworth called "institutional memory."

"Because students pass through here so quickly, and the school doesn't appear to be taking these issues seriously, there is no institutional memory. In addition to serving as a place for students to go when they have problems, the office would also provide some institutional memory."

Clark considers options

Dean Robert Clark said that at this early stage, he was still considering all options, though he expressed strong hesitation at the implementation of any form of speech code.

"I'm extremely cautious about getting behind a regulatory policy with disciplinary sanctions that might infringe on free speech and free expression," he said. "I'm close in agreement with Alan Dershowitz on that."

As he has in the past, Clark said his primary goal is finding a way for students to interact more openly and get along with each other. "My desire is to come out with something that will work, not a thing that serves as merely a symbolic or political victory for any group," he said. "I want to build a community that furthers academic values and doesn't hinder them." Clark will likely not receive the Committee's final recommendations until this spring.

Clark praised the Committee's current work, including the recent Diversity Festival and the Difficult Conversations workshops, which

help students understand how to communicate more respectfully across a range of topics, from breaking up with significant others to dealing with racial issues.

Clark also said he is considering a plan to provide a centralized location for student organizations to be headquartered, with shared common areas, that might improve interaction on campus. Such a proposal, he added, would not likely be implemented until the Law School's Allston plans are finalized.

As for the harassment policy, the most difficult question is likely to be one of drawing a line between mere speech and actual harassment. Clark said that the Law School's Sexual Harassment Guidelines, implemented in 1995, differs from most racial harassment policies because it includes an "action component" that typically involves a real or implied physical threat.

However, Bloodworth said that harassment does not necessarily have to involve physical threats. "This policy addresses harassment, not speech," he said. "Speaking for myself, I can definitely see how there is speech which could be considered harassing and could reach the level of harassment.... We do know that verbal harassment has in many cases led to physical harassment."

Today, Clark said, verbal incidents are typically subject to "informal sanctioning processes," which he argued are effective. "Why doesn't this happen more often here? Because people tell someone to stop, they tell them to 'back off.'" He added that physical threats at HLS are extremely rare, and are already easily punished. "That verges on conduct that would be tortious."

While Clark did not entirely reject a sexual harassment-style code to deal with racial incidents, he said he did not want to see a repeat of the Business School's problems, which centered around a set of "Community Standards" that establish no clear guidelines as to what constitutes acceptable speech.

"That could be the worst of all worlds – a statement of values that's vague and general," he said. "The question is prevention of these types of incidents, rather than sanctioning after the fact."

Any final form of a racial harassment policy would have to be approved by a vote of the entire HLS faculty, which could occur this spring at the earliest.

Additional reporting by Clinton Dick.

The RECORD initially reported on this controversy in our April 11 issue.

<http://www.hlrecord.org/news/320068.html>

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