

# *The Washington Times*

## **Taking the kangaroo out of campus courts**

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**By Harvey A. Silverglate and Josh Gewolb, SPECIAL TO THE WASHINGTON TIMES**

**Does Harvard's campus court discriminate against women? Last week the Education Department said it will investigate claims by extremist campus feminists that a recently enacted change in the school's disciplinary process denies civil rights to female students.**

**The initiation of this inquest shows just how difficult the struggle to bring due process to our campuses has become: Feminist ideologues seem to believe that by instituting a basic procedural protection the criminal justice system has accorded the accused for centuries, the World's Greatest University is denying women their civil rights.**

**Today's campus courts operate on principles more like those of Medieval England's Star Chamber than the present-day criminal justice system or even a typical administrative adjudicatory system.**

**Expulsion from college can wreak havoc on a young person's future, but students accused of serious criminal offenses are tried in tribunals more suited for deciding who started the food fight in the campus cafeteria than whether a very serious offense like rape or sexual assault has been committed. At Harvard, and on many campuses, students accused of even the gravest crimes are barred from the secret and unrecorded hearings at which their cases are decided. The accused are denied the right to cross-examine the witnesses against them, to compel investigators to interview witnesses supporting their version, and to have a lawyer's help in preparing a defense.**

**This fall, Harvard's disciplinary board will take a small step out of the Dark Ages.**

**When a student makes a complaint against another student, for sexual assault or any other disciplinary rule violation, the college will now require that the complainant submit a list of possible witnesses, or an account of the evidence they believe the board will be able to obtain, or other such corroboration.**

**The college will open a disciplinary case only if there is such a suggestion that "sufficient corroborating evidence" is available to sustain the charge.**

**The change is one of the best things to happen to a campus justice system in years, but it has drawn a firestorm of controversy - indicating, perhaps, why public-relations-obsessed campus administrators are usually reluctant to reform defective disciplinary systems.**

**Hundreds of students rallied on campus to protest the changes. A student group declared the rule sends the message that men "can commit assault freely without needing to worry about being punished."**

**Radical feminists want to stop the reform of the Harvard student courts before it influences other universities which might see that campus as a model.**

**Aided by a high-profile Boston lawyer who has been active in the victims' rights movement, an anonymous student filed a complaint against the new procedure with the U.S. Department of Education's Office of Civil Rights.**

**The complaint contends that Harvard's new rule violates the requirement of Title IX of the Education Amendments of 1972 that universities provide access to "prompt and equitable" grievance procedures for allegations of sexual harassment. Sexual assault, the argument goes, is an extreme form of harassment, and, with the disciplinary board's procedural changes, Harvard's grievance system is no longer equitable.**

**The complaint thus takes the position that a procedure common to virtually all systems of justice in this country becomes sex discrimination when applied to charges of sexual misconduct on a campus. For centuries, Anglo-American law has included protections such as grand jury inquiries and probable cause hearings to ensure that the full weight of the justice system is not brought to bear against either the demonstrably innocent or those as to whom, innocent or not, there is no corroboration of the accusation.**

**As the Massachusetts Supreme Judicial Court held in 1857, "The right of individual citizens to be secure from an ... accusation of crime and from the trouble, expense and anxiety of public trial, before probable cause is established by the presentment and indictment of a grand jury ... is justly regarded as one of the securities to the innocent against hasty, malicious, and oppressive" prosecutions. It is illogical and cruel even to initiate disciplinary proceedings in cases where conviction would almost certainly be impossible in any just or ethical sense.**

**It is true that Harvard's new rule will have a disproportionate impact on women, since more women than men bring complaints of sexual assault. But by this line of reasoning any and all changes to the law of rape or sexual misconduct law would constitute discrimination, because they have a disproportionate impact on women.**

**The real question is whether the new rule has a gender discriminatory purpose. As the Supreme Court held in 1976 in *Washington vs. Davis*, upholding a verbal skills qualifying test given to prospective police officers that excluded more blacks than whites, even a neutral practice will unavoidably have some disproportionate impact on some group. Disproportionate impact need not be evidence of discrimination.**

**To insist on a requirement of at least some corroboration before launching a full-scale investigation, much less putting a student on trial that could lead to a conviction and the wreckage of a career, hardly has a discriminatory purpose. It is simply an attempt to establish a basic protection of the criminal justice system in order to impose some measure of discipline and fairness on a system that sorely needs it.**

**Harvard's policy, moreover, does not single out sexual assault cases for special treatment; it applies to all allegations by one student against another, of whatever nature.**

**The zealots in the Office of Civil Rights appear to believe the claim that Harvard is denying women their civil rights, ludicrous on its face, deserves investigation.**

**Further consideration, however, will hopefully convince even the most fanatical elements in that office that the claim against Harvard is wholly without merit. Hopefully, the Department of Education's stamp of approval will open the door for greater due process in all disciplinary cases at colleges across the country, a desperately needed development that has been a long time coming.**

**Civil rights and due process, after all, should not be made to seem in conflict with each other. It is long overdue that we take the kangaroo out of campus courts.**

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