

# Sexual Harassment Policies Push The Envelope At Texas Universities

by  
**Marc Levin**

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Texas college students may need to consult the law before pursuing their romantic interests. Although few realize it, sexual harassment policies at Texas college campuses make it illegal, if not impossible, to get a date or forge a relationship.

For example, did you know that propositions or requests for dates are considered sexual harassment at the University of Texas (UT) at Austin? Making favorable comments about someone's wardrobe is also criminalized under UT's policy. At Texas A&M and Rice University, whistling even counts as sexual harassment.

Adding to the uncertainty about what exactly sexual harassment is, a recent study has dubiously claimed that sexual harassment of professors by students is rampant on college campuses. In light of the difficulty in defining sexual harassment, and to help students avoid disciplinary action, I decided to examine critically the sexual harassment policies of major Texas universities as well as the findings of this bizarre study.

## UNIVERSITY OF TEXAS AT AUSTIN

At UT, the official brochure entitled "Policy on Sexual Misconduct and Sexual Harassment of Students" provides the University's definition of sexual harassment and explains how students can file a complaint. The brochure also lists "examples of conduct that might be considered sexual harassment." The first example, which is "demanding sexual favors in exchange for a grade," is unquestionably a very serious form of sexual harassment.

On the other hand, the other examples listed are rather dubious. The UT brochure states that the following behaviors are all types of sexual harassment:

- ★ *unwelcome and persistent activity such as making propositions or requests for dates, in person or by letter, notes, phone calls, or email; making comments about a person's body, attire, appearance or sexual activity; making sexually suggestive jokes, remarks, innuendoes, or gestures;*
- ★ *inappropriate or excessive touching;*  
*or*

★ *frequent or repeated use of sexually suggestive objects, articles or topics unrelated to the subject matter of a course.*

It is truly amazing that asking a fellow student out on a date or making favorable comments about his or her clothes is now considered a form of sexual harassment on the 40 Acres.

It is equally ludicrous that off-color jokes are put on par with unwelcome touching and a professor demanding sex for a grade. In classifying asking someone out on a date and telling jokes as sexual harassment, the University cheapens the truly egregious forms of sexual harassment and makes the patronizing assumption that students are incapable of turning down a date and tuning out a dirty joke.

#### UNIVERSITY OF HOUSTON

The story is much the same at the University of Houston where an official brochure cites an example of sexual harassment as:

*A group of men meet regularly on campus to watch the women go by. As each woman passes, they make loud comments on her "style" and rate her sexual attributes on a scale of one to five.*

Rather than listing such conduct as an example of sexual harassment, UH should realize that this is precisely the kind of innocuous banter that should not be confused with legitimate cases of sexual harassment.

Furthermore, from a legal perspective, men talking about the sexual attributes of women is well within the speech protected by the First Amendment of the U.S.

Constitution, not to mention the even broader free speech guarantee in the Texas Constitution. By listing this preposterous "example of sexual harassment" in an official brochure, they are promoting frivolous complaints and lawsuits.

Another questionable example from the UH brochure alludes to "an instructor who used sex-stereotyped references and depictions in lectures and made jokes about sex." Would a professor who merely discussed the value of a traditional family where a

mother takes care of the children be guilty of a "sex-stereotyped reference?" Also, many benign jokes about the differences between men and women are commonplace. The UH brochure concludes on the politically correct note, "In the final analysis, we are all victims whether we suffer from harassment or not."

#### RICE UNIVERSITY & TEXAS A&M UNIVERSITY

I also examined the printed sexual harassment policies at Rice University and Texas A&M University. Rice and Texas A&M have very similar policies which, like those at UT and

*No matter how much UH administrators try, they cannot override the forces of human nature which cause male students to take notice of female students and vice versa.*

UH, include highly questionable examples of sexual harassment.

**F**or example, Rice considers “unwelcome suggestive or insulting sounds or whistles” to be an example of sexual harassment. We hereby advise all Rice students to refrain from whistling while on campus as this might be construed as sexual harassment by the campus sound police. “Insulting sounds or whistles” is also listed as an example of sexual harassment in Texas A&M’s published sexual harassment policy.

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*Woe be Shakespeare if he were a student today and attempting to write a sonnet for a female student who caught his eye in class.*

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Both Rice and A&M also consider “unwelcome sexual propositions, invitations, solicitations and flirtations” to be sexual harassment. If one student asks another student out on a date but is rejected, one could certainly say that the student who demurred would have received an unwelcome sexual proposition or invitation. In fact, the inclusion of the flirtation makes the policy even more sweeping so as seemingly to include a stare, a wink of an eye, or a love note. Woe be Shakespeare if he were a student today and attempting to write a sonnet for a female student who caught his eye in class.

Of course, it is reasonable to ask whether any students at Texas universities have actually been punished for some of the dubious behaviors defined as sexual harassment by these far-reaching policies. Unfortunately, due to federal laws that compel secrecy in student disciplinary

proceedings, there is simply no way to answer this question.

We do know that the sexual harassment obsession on college campuses can be very costly. The University of Massachusetts at Amherst, for example, pays \$1,250 to \$1,800 per day (each) to sexual harassment prevention trainers, \$180 per hour for consultation, and over \$10,000 for expenses such as hotel rooms and meals.

In addition to the increasing range of conduct and even conversation that is now considered sexual harassment, the scope of sexual harassment is also burgeoning in another direction. No longer can sexual harassment on campus be confined to a professor harassing a student or one student harassing another.

#### STUDENT HARASSMENT OF PROFESSORS

Instead, sexual harassment of professors by students is the latest fad. A study by Illinois State University researchers found that some 53 percent of professors claimed they had been sexually harassed by students, and even more shockingly, a whopping 63 percent of students reported having sexually harassed their professors.

In response to the survey that would have us believe that there is an epidemic of student sexual harassment inflicting professors, UT administrators wisely questioned whether students could even sexually harass their professors. Susan Bradshaw, UT Associate Vice President for Administration and Legal Affairs, maintained that sexual harassment only occurs when the offender has more power than the victim and suggested that a professor treat harassment by a student as a case of student misconduct.

Yet, UH seems to have already jumped on this politically correct bandwagon. Their brochure cites yet another “example of sexual harassment” as “a male student followed a female instructor home on the bus and repeatedly sent her cards and ‘love’ notes.”

**T**he focus on supposed student sexual harassment of faculty is ironic because sexual harassment is generally thought to involve a power disparity where the people with the power are forcing the individuals they supervise or evaluate to submit to their sexual advances.

Clearly, it is the professors, not the students, who are in positions of power. Thus, it would therefore be logically impossible for a student to force his or her professor to submit to his or her sexual advances without the use of physical force, which would of course appropriately be covered under sexual assault laws, not sexual harassment.

**G**iven this reasoning, one wonders why so many of the professors indicated they had been sexually harassed and, furthermore, why even a larger majority of students reported that they had sexually harassed one of their professors.

The answer lies in the overly broad definition of sexual harassment used in the ISU study. The researchers defined sexual harassment as “gender harassment, sexual bribery and unwanted sexual attention.”

Obviously, the term “gender harassment” is completely useless for defining sexual harassment as it merely restates the phrase in question.

“Sexual bribery” is also highly questionable in this context. This term actually suggests exactly the opposite of what sexual harassment is normally thought to be. Far from a person in a position of power

effectively forcing the person he or she supervises or evaluates to submit to sexual advances, sexual bribery in this context would presumably involve a student coming on to a professor, perhaps in the hopes of getting a better grade in return for providing sexual favors.

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**H**owever, since the student has no leverage against the professor, the professor is under no pressure to respond to the student’s advances. Thus, sexual bribery in this context involves nothing resembling coercion and therefore cannot properly be considered sexual harassment.

The final aspect of the definition used in the survey was “unwanted sexual attention.” Needless to say, this term is so vague and sweeping as to cover everything from an amorous glance to a wink of the eye.

It is remarkable that academicians would employ such a ridiculous definition of sexual harassment. More than likely, the dubious definition accounted for the unbelievably high numbers of professors claiming to have been sexually harassed by

students and students claiming to have inflicted such on a professor.

### A BETTER APPROACH FROM THE EEOC

The authors of the study would have been far better off using the definition of sexual harassment which appears on the Equal Employment Opportunity Commission website and which is part of Title VII of the Civil Rights Act of 1964.

This definition is:

*Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.*

The EEOC definition wisely speaks of a linkage of conduct with employment, or in the case of students, evaluation. Although the use of the word "or" opens the door to actions not affecting an individual's employment status, strong language such as unreasonably interfering, intimidating, and hostile suggests that mere flirtation or idle banter would not rise to the level of sexual harassment. Thus, it seems that many colleges and universities have ventured well beyond federal law to define as sexual harassment speech and conduct that has little or no impact on the learning environment.

There is a political irony in the fact that it is the left that is attempting to push the

boundaries of sexual harassment well beyond situations involving a power disparity in favor of the alleged harasser. After all, many on the left have argued that blacks cannot be racist since they do not have power in society. It is hypocritical to emphasize the importance of power disparity in defining racism but not recognize its significance in defining sexual harassment.

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### THE SOLUTION: DIVORCING SEX FROM HARASSMENT

Ultimately, the only complete solution to the quandary of defining sexual harassment is dropping the adjective. Quite simply, any kind of harassment, as distinguished from annoyances, should be against the law.

Adding the word sexual before harassment should not, on its own, criminalize a wide range of speech and conduct (much of which is constitutionally protected) that would not otherwise be considered harassment. Society should define and prohibit coercion of all forms, but avoid creating separate categories for offenses relating to race, gender, or other inherited

characteristics. Until sex is divorced from harassment, students at Texas universities will continue to be subject to overly broad, politically correct sexual harassment policies that, at the very least, create a risk of persecution and expulsion for harmless behavior.

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*Marc Levin is Editor-In-Chief of the Austin Review, the Houston Review and the Texas Education Review. His e-mail address is [MRMARCLV@aol.com](mailto:MRMARCLV@aol.com)*

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