WORKSHOP SESSION

COLLISION ON CAMPUS

Reconciling Sex and Race Harassment Policies with Free Speech and Academic Freedom
A Case Study

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Stetson University College of Law:

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COLLISION ON CAMPUS

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A Case Study

by
Thomas J. Flygare
and
Lee B. Liggett

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STATE COLLEGE
Confidential

This is the official confidential personnel file of:

Dr. James Jones
Department of English

Review of this file is limited to persons authorized by the Dean of Liberal Arts.

WARNING: Do not read this file unless you have written authorization from the Dean.
We received 112 applications for the opening in the English Department. After carefully evaluating all of the candidates, the Department has recommended to me the appointment of Dr. James Jones to the position. He has four years of teaching experience at Covered-With-Ivy College. The Department believes that he should receive those years as credit towards his tenure decision at State College.

There is apparently some difference of opinion at Covered-With-Ivy College about Dr. Jones' role on that campus. There has been some feedback indicating that he was a brilliant and provocative teacher, but apparently there were some student complaints about his conduct. We have not been able to get much more information about this. Dr. Jones has informed us that all of the complaints have been cleared up. Perhaps you have contacts in that part of the country or you can suggest how we might follow-up on this. I think we should clarify this before we make an offer to Dr. Jones.
In response to your Memorandum of May 17, this is to authorize the English Department to appoint Dr. James Jones as Assistant Professor beginning in the 1992-93 academic year at a salary of $38,000. He will be reviewed for tenure by the end of his third year here, 1994-95.

I made inquiries of colleagues at Covered-With-Ivy College concerning Dr. Jones. The reports were, technically, favorable and I received no direct information that would seem to derail your proposed offer.

I must say, however, that I found both verbal reports a bit eerie in their similarity and both reporters guarded in their comments. Well, the bottom line is that I received no negative information. I guess this is what happens in a litigious society.
I am afraid that I have some unfortunate news. As you will recall, as a result of your memo to me dated May 17, 1992, regarding Dr. Jones' "reputation" at Covered-With-Ivy College, I did contact two persons on the faculty there. Both contacts seemed to be positive about Jones' capabilities, but both seemed to me to be rather guarded in their comments.

I saw one of those contacts, my dear friend Omar Schmedlapp, at a conference last week. He revealed the "real story" behind Jones' situation and departure from Ivy, but insisted that I not reveal the source of this information as Jones' departure resulted from a legal settlement which, among other things, both sides agreed to confidentiality of the facts of the situations and particulars of the settlement agreement. Omar would only tell me that one issue involved a matter of sexual harassment and that there seemed to be an alarming number of women at Ivy over a several year period involved. There was an internal hearing, the results of which he was not sure.

A few days after returning from the conference, I received the enclosed anonymous letter.

Please stop by at your earliest convenience so that we may discuss the matter more fully.
December 7, 1992

Vice President Liggett  
State College  
Anytown, USA

Dear Vice President Liggett:

I have struggled until now with the issue of whether to write or not. I did not learn of Dr. Jones appointment at your college until after that appointment had been made public and thereby, I presumed, irreversible until the determination as to whether tenure should be bestowed upon him.

At the time of this incident I was a graduate assistant in the English Department at Covered-With-Ivy College. One afternoon several years ago Dr. Jones summoned me to his office ostensibly to discuss the grading of several student papers for which I was responsible. After entering his office and closing the door at his request, I was informed in no uncertain terms that if I did not have sex with him my progress to completion of my degree program would be in jeopardy. I felt humiliated and did not sleep for several days. I reported what happened to an Associate Dean of the College.

A secret internal investigation of some sort was conducted. I heard that about a dozen women with stories of inappropriate sexual conduct on behalf of Dr. Jones were uncovered. He was suspended from the College and ordered to seek psychiatric care. Dr. Jones then sued the College to get his job back. This is when the College entered into some kind of settlement agreement with Dr. Jones. I think it is wrong to keep these incidents covered up, that is why I am contacting you. I have not written to anyone else at State College at this time, but I will do so if no action are taken to protect the women at your college from this evil man.

Sincerely,

A Victim
A prominent faculty member has visited with me about Dr. Jones of the English Department. Although there is nothing concrete at the moment, she believes Dr. Jones is generally disrespectful of female staff and students. Please look into this and let me know.
I spoke with Dr. Jones and showed him your memo. I also told him that I had heard many second-hand complaints about his apparent sexist attitudes.

He says he often presents unconventional ideas in an effort to stimulate his classes, but nothing disrespectful was intended. He apologizes if anyone was offended.
State College
MEMORANDUM

TO: VICE PRESIDENT LIGGETT
FROM: DEAN FLYGARE
DATE: APRIL 24, 1993
RE: DR. JONES - ANNUAL EVALUATION

Dr. Jones had several papers in progress at the time he began here in the fall. He has delivered one to a regional academic group and is making final revisions to another. At my suggestion, he has applied for a grant from the National Institute on Humanities.

His teaching is important to him, and he has taken seriously the comments in your February 6 memorandum. The student evaluations from first semester were generally in the very good to excellent range with a few very low evaluations mixed in.

Dr. Jones is making adequate progress for a favorable tenure consideration in 1994-95.
A delegation of female students from Dr. Jones' classes came to see me this afternoon. They report a pattern of comments in and out of class suggesting that Dr. Jones has an outmoded idea about the role of the sexes in modern society. He has been reported as stating that he has no problem with women working, just so long as his supper is on the table at 6:00 p.m. sharp every night. He has also reportedly stated that he prefers a bottle of beer to a woman because at least the beer is supposed to be frigid.

Such comments are offensive and degrading. Please reinforce the College's sexual harassment policy with Dr. Jones. I want to specifically bring to your attention that State College defines sexual harassment as "... verbal or physical conduct that a reasonable person, with the same characteristics as a targeted student or group of students, would find discriminatorily alters or interferes with his or her educational experience."
I discussed your November 6 memo with Dr. Jones. He said the "supper" statement was used as an example of regional colloquiums. The "frigid" statement is an old Hemingway or Bogart line often used to illustrate the importance of diction. The use of "cold" in the sentence, for example, might have the same meaning but would be far less memorable to the reader.

Dr. Jones believes the above are examples of teaching methods falling within the academic freedom policy described in the Faculty Handbook. The Faculty Handbook states as follows:

"Academic freedom is fundamental for the protection of the rights of the faculty member in teaching and of the student to freedom in learning. The faculty member is entitled to freedom in the classroom in discussing his/her subject but he/she should be careful not to introduce into his/her teaching controversial matter which has no relation to his/her subject."
Dr. Jones continues to show productivity as a scholar. He has published several papers this year and has been invited to present the results of his Humanities Project to a major academic group early next year. This work reflects favorably upon the College. His colleagues consider him to be an excellent (or, above average) classroom teacher. Dr. Jones has also willingly accepted "voluntary" service on several department and college committees.

As you know, there were some misunderstandings earlier this year about his teaching methods. Dr. Jones believes his female students now understand the difference between "offensive" and "stimulating" classroom discussion. His student evaluations continue to be generally in the very good range.

Dr. Jones has continued to make progress towards tenure consideration next year.
1994-95 is the year we agreed to evaluate Dr. Jones for tenure. As we start the year, please remind him directly that both of us have received numerous complaints in the past two years about his sexist attitude and comments. Any more complaints along this line may negatively affect his application for tenure.
TO: VICE PRESIDENT LIGGETT
FROM: DEAN FLYGARE
DATE: OCTOBER 15, 1994
RE: DR. JONES

A number of students have recently been complaining about Dr. Jones of the English Department. Apparently, a male student had used the term "verbal communication" to describe a message left on his answering machine. After directing the student to use the term "oral communication" in such settings, Dr. Jones asked whether the student had ever had "verbal sex" with his girlfriend. Jones urged his students to think about this question whenever they were tempted to use the term "verbal" to describe "oral" communication.

I am also aware that the student newspaper is about to break a big story about Dr. Jones' problems at Covered-With-Ivy College. Apparently the story will say that he was charged there with various types of offensive physical contact with women students and that proceedings to dismiss him were suspended when he got the job here.

Dr. Jones is teaching the only sections of a course required for graduation from a popular program. I am tempted to remove him from the classes and mandate counseling. Would you support this?
In response to your Memorandum of October 15, just keep track of the complaints against Dr. Jones. As I wrote to you at the beginning of the year, these are best addressed in the tenure process.
Although the English Department has recommended Dr. Jones for tenure, I do not concur. He has not demonstrated the kind of distinction in his field to warrant the award of tenure at State College. His publications, while adequate in number, lack the depth and sophistication expected here: The overall evaluations of his teaching are above-average, but some students express strong dissatisfaction. His record, in short, does not indicate the academic strength and leadership to meet the high standards for tenure traditionally applied at this institution. Accordingly, I recommend that tenure be denied and that 1995-96 be his terminal year at State College.

cc: Dr. Jones
Enclosed is a letter from the College's attorney stating that you have been sued personally, along with me and the College, by Dr. Jones relative to our decision about his tenure. The suit alleges that Dr. Jones was denied tenure as a result of unfounded complaints of sexual harassment stemming from his teaching style. He asserts that this violates his free speech rights under the U.S. Constitution and his academic freedom guarantee in the Faculty Handbook. He claims that the College's sexual harassment policy is unconstitutionally vague and overbroad.

Please prepare responses to the various allegations in this lawsuit, and I will forward those to the attorney.
State College
MEMORANDUM

TO: DEAN FLYGARE
FROM: VICE PRESIDENT LIGGETT
DATE: FEBRUARY 10, 1996
RE: DR. JONES

Enclosed is a letter from the U.S. Department of Education, Office for Civil Rights, stating that a Title IX complaint has been filed by a group of State College students alleging that the College has failed to take prompt and appropriate steps to address the numerous sexual harassment complaints about Dr. Jones’ classroom conduct. As you can see, we are being criticized for hiring Dr. Jones without investigating his record at Covered-With-Ivy College, for ignoring complaints about his sexist conduct here, for allowing him to teach the only sections of certain required courses, and for assigning him to classes during the current academic year after making the decision to deny him tenure.

Please prepare appropriate responses to the issues raised by this Complaint.
CASE REFERENCES


Dambrot v. Central Michigan University, 55 F.3d 1177 (6th Cir. 1995).


Tindle v. Caudell, 56 F.3d 966 (8th Cir. 1995).

Brown v. Polk County, 37 F.3d 404 (8th Cir. 1994).


Martin v. Parrish, 805 F.2d 583 (5th Cir. 1986).