

## Silenced Justice

I don't consider myself a victim; I am much stronger than that. Victims don't fight back, they don't survive. Victims are the women we don't hear about, the ones who suffer such intolerable aggression that their voices are muted, sometimes permanently. Victims we mourn for, we march for, we pray for; victims we speak for because they cannot speak for themselves.

I was no victim; I was different: the wrongs done to me were not of sufficient magnitude to silence my voice. So when the Dean of Student Affairs, Dean Anderson, called on the "alleged victim" to identify herself, I surprised myself when I responded almost eagerly: "Present, Dean."

I had discussed my sexual harassment action with Dean Anderson on numerous occasions, and he fully understood my reluctance to go forward. We discussed the situation alone, with Professor Keaton, and with Dean Wilkins, the Dean of the law school, with little results. He knew that I never wanted it to go this far, and I therefore took his mischaracterization as an attempt, albeit misguided, to put me at ease in this extremely uncomfortable situation.

Dean Anderson was a notoriously fair administrator at the law school—something of an anomaly. Although he was a product of the "old school," he rejected the highly competitive atmosphere and adversarial Socratic techniques employed by the faculty. He was the only individual—administrator or faculty—whom students generally felt comfortable approaching with personal issues; perhaps that's why he wasn't permitted to teach anymore. The law school community was deeply ambivalent about Dean Anderson: he was at the same time highly revered and highly ridiculed for his "soft" approach to law.

On this occasion, Dean Anderson was compelled—and it was clear that it was not of his own volition—to assemble a select committee of students and faculty to resolve my situation through a hearing. Dean Anderson was to chair the committee under the direction and supervision of Dean Wilkins, who would not have involved himself except for the unusual amount of public attention this case brought. According to Dean Wilkins' mandates, the hearing was to be

adversarial in nature, with the right to cross-examination and the right to confront the accuser—the minimum requirements for the attainment of justice. The hearing would be closed to the public in order to protect Professor Keaton and the law school from having this case tried in the press. Of course, the hearing would be held in the law school's moot court room.

The moot court room itself was traditional and distinguished—but not antiquated—and unfriendly. On this day, mid-morning sunlight warmed the defendant's table through stained-glass windows, which were placed a little too high on the wall, but the balance of the room was cold and drafty. A single simple chandelier hung in the center of the two-story ceiling and lit the room poorly with the feeble help of reading lamps on the litigant tables. Rich cherry panelling covered the walls and framed the portraits of wealthy and famous alumni—who graced the room and presided over every hearing—spaced precisely at even intervals around the room. Sanguine carpet with awkward criss-crossing deep-green veins covered the floor and appeared vaguely too casual.

In the center of the room, jutting out of the back wall, and distinctly elevated, stood the bench. This enormous and ubiquitous fixture dwarfed the witness stand, jury box, and litigant tables; it dominated the room with such arrogance that the room seemed built around it. The mammoth cherry block was, in fact, as old as the room itself. It survived numerous room renovations and remodelling efforts, and outlived countless visiting judges. The relentless persistence of the bench was something of a legend at the law school. Stories circulated about its resilient ability to withstand almost two centuries of refinishing, reshaping, recarving, and other abuse—some efforts of enhancement, and other efforts of frustrated litigants or bored students. Indeed, there was something very comforting about the ageless bench: it seemed to say that some standards are absolute, some things last forever. But the bench was primarily known for its sheer size. Some visiting judges even complained to Dean Wilkins that the bench was too big: it swallowed them to the extent that student-litigators, they claimed, could not properly see them behind it. Dean Wilkins at one time attempted to replace it with a smaller piece of furniture. He abandoned the project, however, when contributors protested the removal of this shrine.

The witness stand emanated from the left side of the bench. It looked like an afterthought, an appendage placed hastily, out of necessity, beside the massive block. Three walls formed the back and sides, leaving an open front, which exposed a solitary chair behind a

snaking microphone. The jury box sat farther left of the bench, not far from the witness stand, enclosed by a waist-high barrier. It contained fourteen identical empty seats for the jurors and alternates, and was more suited for spectators—as it was often used in this moot court room—than for jurors. Opposite the bench stood a podium, between the litigant tables but set just a little closer to the bench, allowing the plaintiff and defendant to observe each other around it. The litigant tables were large and awkward, probably because they were replaced every few years and never quite matched the rest of the room. Their size gave comfort to anxious attorneys and parties, who had enough space to spread out notes for the entire trial. Finally, in the back of the room sat rows of spectator benches, separated from the courtroom by a gate, which matched the barrier in front of the jury box. These rows intimidated the most skilled student orators when filled; today the empty benches served as a silent reminder that this hearing was important enough to close it to the public.

Dean Anderson sat directly opposite me behind a makeshift bench—a table brought in from the student lounge to accommodate the full select committee. He wore his characteristic tweed jacket over a casual blue shirt with khaki slacks and a burgundy tie. Dean Wilkins sat to his immediate left, sporting a double-breasted pinstripe suit, sharply pressed bleached white shirt, and red tie. Three students and four faculty members sat scattered at the table on either side of them. One student and one professor were female, approximately reflecting the gender composition of this school. Besides Dean Anderson and Dean Wilkins, I only recognized one other committee member, a first-year Constitutional Law professor. I remember performing well in the course; maybe it would help me today.

Dean Wilkins had insisted that Professor Keaton and I select representatives to present our case. I resisted this formality at first, but later I realized that I couldn't possibly take on Professor Keaton myself, not after all that we had been through. I therefore asked a close friend—a student in whom I had confided throughout the development of this action—for assistance. Megan was the first to guess that my relationship with Professor Keaton went beyond an ordinary student-faculty relationship, or even a close friendship; in fact, she was the one who pointed it out to me. When Megan first suggested that the relationship might have blurred into the unacceptable range, I responded with skepticism. Her repeated presentations of overwhelming evidence, however, convinced me first to question my skepticism, and later to recognize the truth of her arguments. Subsequent to her discovery and my realization, we discussed the

situation and possible solutions often and at length. I came to rely on her nonjudgmental and sensitive ear, and her sound and frank advice. Megan never encouraged me to file a formal complaint, however, and I think she was a little surprised and confused when I first asked her to represent me.

Megan had an independent working relationship with Professor Keaton, and I think she was concerned about possible adverse ramifications. My decision to approach her was very difficult, and if I had to do it over again, I don't know that I would put her in this situation. At the time, however, I felt that I had no place else to turn: word about my initial confrontations with Professor Keaton leaked throughout campus, and I began to feel a backlash in the form of lack of colleague support. In addition, I felt a special bond with Megan, possibly as a result of her willingness to discuss this problem with me, but more likely a result of gender consciousness and identification in an atmosphere generally hostile toward women.

In any event, Megan agreed to represent me despite—or possibly because of—her concerns of retribution, and she attacked the case with surprising vigor. She was determined to win this, her first case, and she prepared with the expertise of a veteran attorney in a landmark trial: we spent countless hours collecting evidence, developing strategy, and preparing testimony. Megan labored tirelessly over the form of her presentation, and she concluded that a highly formal tone would appeal best to this panel. She had spent the last week writing and practicing her opening statement, which she would present momentarily.

"You may proceed," Dean Anderson continued, nodding toward Megan.

Megan collected her leather-bound folder and her meticulous notes, and moved toward the podium. As she rose, I glanced at Professor Keaton sitting sharply at the respondent's table. He had been one of my favorite law professors. He was young, charming, very intelligent, and popular with his students. He was also up for tenure consideration this year, which made this complaint much more difficult and controversial.

Professor Keaton began teaching about twelve years ago, right out of law school, and he immediately made his mark in the business law community as a scholar and practitioner. He skipped between law schools and private practice, however, and he only recently settled here. Teaching at a leading law school founded on advocacy for the business client, he stood head and shoulders above his nearest rival in business law jurisprudence. His future was virtually assured here,

and by all accounts he was destined to become an important and influential voice in legal and public policy debates. My claim stood between him and his potential future, and many in the law school let me know it.

Megan interrupted my thoughts: "Dean Anderson, Dean Wilkins, distinguished members of the panel, the purpose of this hearing today is to determine whether the respondent violated The Faculty Code of Behavior and Ethics, Section 112, and the interpretive memorandum, by sexually harassing Sarah Schmidt. We intend to show, through direct testimony and supporting evidence, that the respondent inappropriately propositioned and manipulated Sarah with the intent of establishing a personal romantic relationship, thereby creating a hostile educational environment."

The Faculty Code of Behavior and Ethics, Section 112, was a relatively new, and untested, section of the Faculty Code. Modelled on Title VII of the Civil Rights Act, it read:

a. A member of the law school faculty, staff, or administration shall not limit, segregate, or classify enrolled law students or applicants to the law school in any way which would deprive or tend to deprive any individual of educational opportunities, or otherwise adversely affect his or her status as a student, because of such individual's race, color, religion, national origin, or sex.

b. A member of the law school faculty, staff, or administration shall not discriminate against any student or applicant to the law school with respect to educational or professional opportunities because of such individual's race, color, religion, national origin, or sex.

When the administration imposed this section on the faculty a few years prior to my claim, it was met with little resistance. The faculty realized that such a rule would quell ABA concerns about low minority enrollment, and would pacify students voicing concerns about discrimination in grades. Of course they also realized that no student would dare to use this section because of the lack of privacy and protection, and the resulting potential harm to the student's career. Thus, the faculty bet that this potentially restricting rule would backfire on its supporters. The bet was good: the ABA relaxed its monitoring of minority enrollment, student dissent dropped, and no student claims were brought under the section.

Just over a year after the rule had been in place, however, Dean Anderson issued an interpretive memorandum in response to a nationwide rise in sexual harassment claims by students against professors. The memorandum loosely followed faculty rules of other schools, and mirrored established Title VII caselaw on hostile working

environments. In short, the memo stated that faculty members may not engage in behavior which would tend to create a "hostile educational environment" for any student because of that student's race, color, religion, national origin, or sex. Among the items specifically prohibited, Dean Anderson listed "nonconsensual relationships, including, but not limited to, nonconsensual sexual relationships," "inappropriate propositioning," and "other inappropriate, manipulative, or nonconsensual behavior by any professor, administrator, or staff member."

Although the memo, which was only *prima facie* evidence of the rules, did not carry the weight of the Faculty Code, the faculty responded with vehemence. The arguments against the memo were predictable; they were the same arguments our professors dutifully drilled into us against the hostile working environment doctrine of Title VII: "at best, vague parameters chill First Amendment rights; at worst, free speech and free association protections will be completely dismantled"; "scorned females [females—always females] will falsely allege violations for retribution, retaliation, or merely entertainment"; and "lack of direction or guidance will prevent pedagogical-maximizing relationships between professors and students."

I remained deliberately ignorant of the law school in-fighting over Dean Anderson's memo until discussions circulated about formally reversing it. By that time, I had met with Dean Anderson on several occasions regarding my relationship with Professor Keaton. In hindsight I realize that Dean Anderson may have encouraged my claim as a way to keep his memo alive, or to kill it forever.

"First, Sarah, the victim, will testify regarding the history of her relationship with Professor Keaton. She will describe how she met Professor Keaton, how their close friendship evolved, and how the relationship subsequently turned sour. Sarah will relate specific events—calculated acts of Professor Keaton—that will clearly indicate that the respondent created an environment which intimidated and manipulated Sarah, and interfered with her educational performance.

These events, ranging from discouragement of professional opportunities to blatant sexual propositions, reflect the wide range of techniques Professor Keaton used to interfere with Sarah's education. For example, Sarah will testify that the respondent advised her strongly against accepting summer employment in a distant location, despite the respondent's knowledge that this opportunity would open many doors for her. Professor Keaton, of course, will claim that his personal experiences governed his advice. However, viewing this

event in context, you will have no choice but to conclude that Professor Keaton's advice was calculated to keep Sarah close to him.

Sarah will further testify that on several occasions Professor Keaton inappropriately touched her, held her hand, and attempted to kiss her against her will. Some of these events occurred in Professor Keaton's office, where Sarah was powerless to reject his advances. At the time, Sarah was a student of Professor Keaton, and she had reason to fear retribution in the form of lowered grades and diminished personal attention if she rejected the respondent's advances.

Finally, Sarah will testify that Professor Keaton attempted to foil her present claim by telephoning her, writing letters, and otherwise personally contacting her, claiming that his career would be ruined if the claims came to light. Many of these personal contacts—informal, chance meetings at the cafeteria, for example—would begin amicably enough, with Professor Keaton mildly suggesting alternative interpretations of his behavior. Whenever Sarah would persist with her interpretation, however, Professor Keaton inevitably would threaten, plead, or otherwise attempt to coerce Sarah into dropping the claim.

Of course, Sarah will relate many other specific incidents implicating Professor Keaton to you. Rather than listening to my feeble attempts to describe the incidents, however, I prefer that Sarah tell you about them herself through her direct testimony."

I encouraged Megan to drop these last few sentences; I thought they detracted from our overall presentation and interrupted her flow. We should not prep the panel, I argued; our presentation would be much more subtle and effective (and accurate) if I simply testified to additional events without stating that I would testify to additional events. Megan disagreed: this transition would paint a picture in the minds of the panelists of relentless and repeated events early in our presentation, in the crucial opening statement. To me, the sentences still seemed out of place today, even after hearing Megan rehearse them numerous times.

"Sarah's testimony will be buttressed by a letter Professor Keaton wrote to her, which documents his manipulation and encouragement of a nonconsensual relationship," she continued. "The language of this letter is clearly inappropriate for any professor relating to any student: as you will see—as you have seen—the letter lays an enormous burden on Sarah in the form of guilt and responsibility. Professor Keaton wrote to Sarah that he relied on her companionship, and that he needed her in a time of great personal crisis. He also implied that their relationship was the only personal connection he

could depend on, and that he could not lose her. Unfortunately for Sarah, she received this letter prior to leaving for summer employment on the west coast—employment which Professor Keaton had highly discouraged. The content of the letter, and Professor Keaton's discouragement, led Sarah to question the propriety of her decision, and to delay her departure.

In addition to the manipulative nature of this letter, Professor Keaton also made several inappropriate romantic and sexual suggestions. For example, Professor Keaton refers to his love for Sarah, and his desire to touch and kiss her. Sarah will testify that she never reciprocated Professor Keaton's feelings or advances, and that she told him more than once that she considered his suggestions inappropriate.

This letter—only one of many written to Sarah by the respondent while she was his student—will buttress Sarah's direct testimony and confirm that Professor Keaton created a hostile educational environment in violation of Section 112 and Dean Anderson's interpretive memorandum."

Professor Keaton objected pre-hearing to the introduction of this letter—a kind of informal *in limine* motion. The panel ruled in our favor, however, and permitted the introduction of the letter. Megan made a tactical decision to use it as her second argument in her opening; the panel already read the letter in deciding Professor Keaton's objection, she reasoned, and therefore the panel's reaction to hearing about it would be weak. The letter was Megan's most powerful evidence, but its shock value—and therefore its opening statement value—quickly dissipated, and it was relegated to her second argument.

"Finally, we will present testimony by an acquaintance of both Sarah and Professor Keaton, an individual who is also familiar with the relationship between them. This person—Sarah's fellow student under Professor Keaton during the periods in question—will testify to the respondent's inappropriate advances toward Sarah. She will testify to preferential treatment afforded to Sarah in the early phases of the relationship, and harassment and coercion in the later phases of the relationship."

This person, my close friend, was reluctant to testify today for the same reasons Megan was initially reluctant to act as my representative. In addition, we all vaguely believed that the panel would devalue her testimony because of our friendship, and we therefore concluded that it would add little to our case compared to the harm to her. In the



end, however, she agreed to testify, she said, out of support for me and to prevent these events from happening to others.

Megan concluded: "The evidence that you will receive today will show conclusively that Professor Keaton violated The Faculty Code of Behavior and Ethics, Section 112, and Dean Anderson's interpretive memorandum, by creating a hostile educational environment for Sarah. Sarah herself will testify to Professor Keaton's illicit behavior, and we will show you a letter from Professor Keaton which documents his manipulative feelings and attitudes toward Sarah. You will also hear from an eyewitness who will tell you from a detached, objective standpoint that Professor Keaton's behavior toward Sarah was inappropriate. This evidence, taken as a whole and in context, will prove that Professor Keaton not only manipulated Sarah psychologically, but also attempted nonconsensual sexual advances. After reviewing this evidence, you will have no choice but to conclude that Professor Keaton created an objectively hostile educational environment for Sarah, and that he should be punished accordingly. Thank you."

Megan collected her notes, closed her notebook definitively, and returned sharply to her seat. She seemed to have gained confidence from her opening, and deservedly so: her oral presentation was well-rehearsed, articulate, and persuasive.

As she sat down next to me, I saw Professor Keaton's representative rise and approach the podium. Dean Wilkins responded with a post-hoc nod, serving more to greet a colleague than to recognize a litigant. I remember seeing Professor Keaton's representative around the law school, but I did not know him. What did he teach? Where did he come from? Megan did not seem to know, either. He stood at the podium casually but with confidence, as though he were about to address a group of friends. He spoke extemporaneously, without notes, and although his presentation was less polished than Megan's, he somehow seemed more persuasive.

"Distinguished members, we have heard an eloquent indictment of our colleague Professor Keaton by a, no doubt, well-researched, well-rehearsed advocate. Although her oral presentation was flawless, we suggest, respectfully, that her interpretation of the facts is skewed. Contrary to Sarah's claims, Professor Keaton at no time threatened her education by creating a hostile educational environment. Rather, his generous mentorship of Sarah enhanced her education, and opened opportunities for her. Yes, he chose Sarah to mentor because of her sex; but he made this decision to promote women in the field of business law, not to discriminate against them. Professor Keaton

should not be victimized for his extraordinary attempts to assist students; he should be rewarded. As we review the evidence in this case, our position will become more clear. For example, the evidence will indicate that the relationship between Professor Keaton and Sarah was close, but not inappropriate, and that at all times both parties fully consented. Of course Professor Keaton encouraged the relationship to develop: he was attempting to assist Sarah professionally. However, he never pressured Sarah into pursuing a relationship that she did not want.

With regard to Sarah's allegations of inappropriate sexual advances, unfortunately she simply misunderstood Professor Keaton's intentions. Professor Keaton, of course, would never participate in sexual, physical, or romantic relations with students, with or without consent; any specific instances of physical contact, the evidence will show, were mutual, of a friendly, non-sexual type. Sarah's imputation of sexual motives in this case, which perhaps reflect her own latent sexual desires, should not act to the detriment of Professor Keaton.

In isolation, the 'incidents' to which Sarah objects are simply innocuous. More importantly, however, the pattern established by these 'incidents' reflects a mutual mentor relationship between professor and student, not the hostile educational environment that Sarah's counsel portrays. The well-intentioned, benign attempts of educators to mentor promising young students should not be punished or chilled by students' misinterpretations; and Professor Keaton should not be punished for Sarah's misinterpretations in this case."

He sat down.

The panel members took notes, just like they did during Megan's presentation, and they responded no differently to this opening than to Megan's. I was surprised, but pleased. Megan, of course, recorded the highlights of the argument so that she could tailor her direct examination questions to respond to Professor Keaton's interpretation. Professor Keaton sat still throughout the presentation, but gave a sly smile as his representative returned to his seat.

Dean Anderson broke the awkward silence: "Before we continue, I would like to remind the parties that the nature of this hearing demands less formal, less adversarial presentations than might otherwise be appropriate. However, to protect the rights of both the complainant and the respondent, we will proceed generally according to the rules of evidence. The format will follow the rules in the final administrative memorandum that you all received prior to the hearing. The complainant will present her case first. The respon-

dent, of course, has a right to cross-examine complainant's witnesses. The respondent will then present his defense, and the complainant may cross-examine. The panel has already ruled that a letter written by Professor Keaton to Sarah is admissible. We expect no further non-testimonial evidence. Are there any questions?"

Of course there were no questions: we had agreed to the format of this hearing weeks ago. Dean Anderson had circulated memoranda detailing the rules; the parties made comments and suggestions; and the final rules had been issued about two weeks prior to the hearing. The formalities were more for the comfort of the administration; neither party objected strongly to any initial administration suggestions.

"If there are no questions, the complainant may present her case."

Megan stood behind the table. "Thank you, Dean. Our first witness will be Sarah, the complainant," she responded.

As Megan collected her notes and moved toward the podium, I stood and approached the witness stand. In the stand I sat slightly behind the panel, but the panel members turned in their chairs so they could see me. I was directly across from Professor Keaton.

Megan and I had rehearsed our direct examination a couple of times, but we had not memorized questions or answers. We anticipated surprises from Professor Keaton and we wanted to remain flexible enough to incorporate responses to arguments that he would present in his opening statement. We agreed on the general order, however: we would proceed chronologically. We both thought that a chronological presentation would appeal best to the panel, avoid confusion, and better allow me to tell the story naturally. We also agreed on the first couple of questions; knowing what was to come would help me relax a little on the stand.

"Please state your name, and your year in law school," Megan began.

"My name is Sarah Schmidt, and I am a third year law student," I replied.

"So you anticipate graduating next June?"

"Yes."

"Sarah, please tell us when and how you first met Professor Keaton."

"I first met Professor Keaton in second year Corporations class, fall semester of my second year. The class was required, and I was assigned to his section."

"How many students were in the class?"

"Approximately seventy."

"And approximately how many of these were female?" We expected an objection to this question, and Megan had her response prepared. Professor Keaton and his representative, however, sat quietly, coolly, behind their table.

"Approximately fifteen to twenty were female."

"Did you have any personal interaction with Professor Keaton?"

"Yes."

"Please tell us about the first time you met with Professor Keaton."

"I first met Professor Keaton individually about three weeks into the class. I had a question about the fiduciary duties and financial responsibilities partners had to one another in a limited liability company. It was an issue I dealt with in my summer job, and I wanted to learn more about it. I remember I made an appointment to go to his office hours to discuss it.

We met and discussed various aspects of limited liability companies. He answered my question, and suggested additional readings. The meeting lasted approximately a half an hour."

"Did you meet with Professor Keaton during office hours again?"

"Yes. I made several subsequent appointments with Professor Keaton at various times throughout the course, whenever I had a question or issue that I wanted to discuss further—further than we discussed in class."

"How did Professor Keaton behave during your subsequent meetings?"

"The first couple of meetings went very well. We found that we had similar professional interests, and often spent time discussing issues related to, but not covered in, the class. I found him very knowledgeable and personable. He often suggested outside readings to supplement class materials, which I found very helpful.

As a professor, he seemed unusually available to me, to his students generally. He had an open door policy, but he recommended making appointments because of the backup of students that usually occurred during his office hours. He also was willing to talk about subjects and issues only tangentially related to his class, which helped me better develop my general knowledge of the field." I stopped—shut up; I knew I was rambling.

"Is it fair, then, to describe your relationship at this time with Professor Keaton as a traditional student-professor relationship?" Megan prompted me, attempting to bring me back to focus.

"Yes, that's a fair characterization. He seemed to give me the same attention that he gave other students—no more, no less."

"Did Professor Keaton's behavior toward you—your relationship with him—change?" I noted the double question, and wondered how to respond.

"His behavior toward me did change as the semester progressed, and I continued meeting with him. As a result, our relationship changed, as well. He became more friendly, more personal. He first insisted that I call him by his first name, which I initially found somewhat awkward; it was a . . ."—I lost my word—"he asked all students to call him by his first name," I recovered. "He seemed to take an interest in my professional development: he asked about my classes and my summer job prospects. We discussed these issues at length, in fact. We also talked a lot—theorized—about business law and corporations: how they could be improved, for example.

As the relationship developed, we spent time together outside school. For example, we ate meals together several times, on and off campus, and we sometimes went to the university's botanical gardens for a walk.

We began to discuss more personal issues, too. He inquired about my friends, and my boyfriend. We talked about my personal relationships, and he suggested changes that he thought would better suit my career." I was having difficulty organizing my thoughts, a result of anxiety, nervousness, and guilt. I thought I could sit in front of Professor Keaton and relate my story to the panel with confidence. Was I wrong? In addition, I could not look Professor Keaton in the face—an aspect of my testimony that Megan and I had both agreed would be important.

I began to fear that I was skipping things—forgetting important aspects of my story. Megan could help me with that, but what could she do about my anxiety, my lack of organization?

"To the best of your knowledge, did Professor Keaton behave similarly towards other students?"

"We object, Dean," Professor Keaton's representative stood. "Sarah only knows about Professor Keaton's behavior toward other students through her discussions with other students. This is a form of hearsay."

"Sustained," Dean Anderson replied. "Megan, please rephrase your question."

Megan tried again: "How did Professor Keaton behave toward other students?"

"Same objection, Dean," Megan's adversary said, this time remaining in his seat.

"Sarah, do you have any personal, first-hand knowledge of Professor Keaton's relationships with other students?" Dean Anderson inquired. He seemed to enjoy playing judge.

"No, not really," I replied reluctantly.

"You plan to call an additional witness, correct?" the Dean asked Megan.

"Yes, Dean, one additional witness," Megan stated.

"Well, then, can't you elicit this information directly from her? I assume she had personal relations with Professor Keaton around this time."

"Yes, Dean, of course, but Sarah's knowledge of Professor Keaton's behavior towards other students is necessary to establish that Sarah subjectively believed that she was being treated differently," Megan said, incorrectly.

"Sarah's subjective belief is irrelevant in this case. In order to establish a violation, you must show that a hostile environment would have been created for a reasonable person—an objective standard," Dean Wilkins interjected. He was pleased with himself.

"I'll move on," Megan stated deferentially. She really had no choice: Dean Wilkins' statement definitively ended the argument. I glanced at Megan, and I think we both wondered to ourselves if I was not a reasonable person.

"How did you respond to Professor Keaton's inquiries about your personal relationships?" Megan continued.

"I listened to his advice, thought about it, but generally did not act on it," I said.

"Why?"

"Because I thought it was bad advice, or, more accurately, his advice did not apply well to my situation. It would have . . . destroyed some valuable personal relationships." I responded reluctantly. I had not told Professor Keaton this, and I was uncomfortable with saying it now.

"Is it fair to say that you did not seek his advice on personal matters?"

"I asked him about professional matters—job possibilities, my resume, professional contacts, things like that. I never asked his advice, or initiated discussions, about my personal relationships." I felt somehow that Professor Keaton always had an ulterior motive with his advice; his advice was insincere, and he knew it was destructive.

"Is there a point in the relationship at which you began to feel uncomfortable, or that the relationship was inappropriate?" Megan continued.

"Yes. As I implied, I think Professor Keaton's questions and comments about my personal relationships generally were quite inappropriate, although at the time I took them as experienced advice.

Similarly, his frequent invitations—at least once or twice a week—to have dinner or go for walks together made me extremely uncomfortable, although they were innocent enough. I was primarily concerned with other students' reactions to the personal time we spent together—that they would see this as favoritism. But I also felt an obligation not to reject Professor Keaton's invitations, for fear of retribution, personal or professional."

I had sensed that he relied increasingly on my companionship, and he seemed truly devastated, even retaliatory, when I rejected an invitation, although I don't know why. One time, for example, he asked me to dinner for a night on which I had already planned to have dinner with my boyfriend. He immediately ended the conversation, which presumably would have continued over dinner, and retreated to his office where he refused to see me. He didn't talk to me outside of class for over a week. He said that he was busy preparing for a conference.

On another occasion, I canceled an appointment with him in order to attend an informal lecture on campus. He heard through other students that I had attended. He became jealous—jealous?—or hurt, and again refused to talk to me outside of class for about a week. He later apologized.

Now that I think about it, he may have persisted in his invitations, and seemed devastated when I rejected them, because he relied on me to listen to his personal problems. His wife had recently left him and took their daughter, with whom he was very close, to Texas, where she was born. His wife filed for full custody, and, of course, Professor Keaton would not receive extensive visitation with his daughter if she remained in Texas. Although this arrangement was not yet finalized (Professor Keaton also filed for full custody) he felt a tremendous loss.

I could not have been a very strong support for him. I rarely asked him about these issues, for example, and I was constantly preoccupied with my classes and activities. Nevertheless, he repeatedly talked about his feelings regarding the separation and custody dispute, and his sense of loss. In hindsight, I don't know that he had anybody else to talk to. The thought, the pressure, of being his main support-system overwhelmed me, but it may have accounted for some of his behavior.

I continued: "If there was a turning point in the relationship, I think I probably would identify it as the time I organized a local roundtable for the Business Law Society. I was responsible for contacting various legal scholars and practitioners in the area of junk bonds in order to coordinate a one-day roundtable on the topic. Of course I invited all of our business professors, including Professor Keaton, to participate. To contact other potential participants, I assembled a list which I derived from the mailing list of a local business periodical. After we confirmed the participants, we printed flyers advertising the roundtable. About a week after we posted the flyers, Professor Keaton called me at home, at approximately 10:00 p.m., and reprimanded me"—scolded me—"for not contacting him, an expert in the field, to get names of potential participants, rather than relying on the mailing list. Ultimately, the roundtable was enormously successful, and Professor Keaton himself congratulated me on a job well done." My sentences seemed to be flowing, and I was becoming more comfortable testifying, ironically, since we were getting into more sensitive areas.

"When did this happen?" Megan inquired.

"Late in the fall semester, about three weeks before finals."

"Why was it a turning point?"

"Because subsequent events—events the following spring semester—followed a similar pattern. For example, as I stated, I frequently asked Professor Keaton for professional advice. Of course, I consulted others about career advice, as well. Another professor, whom I knew from a first year class, suggested that I take a job during the summer after my second year with an L.A. firm that specializes in business litigation. This professor had contacts in the firm, and was prepared to help me get the job."

This job would allow me to work directly with partners, gaining experience in all aspects of the firm, litigating major cases in California. According to the professor, and all I had read about it, this job would give me the most flexibility and responsibility, and would allow me to establish important professional contacts in an area of the country where I eventually hoped to settle.

"Professor Keaton, however, strongly recommended seeking employment with a New York firm. He felt that law students interested generally in business law should establish contacts with firms on the east coast, particularly New York, regardless of the actual type of work to be performed. But he was unable to help me in the way that the other professor could, and therefore any employment was less sure." He may have recommended New York employment



because it was closer to the law school, and therefore I would be closer to him.

"When I told Professor Keaton about the advice of his colleague, he became visibly upset. He told me that following this advice would be a professional mistake, that the L.A. firm had a weak reputation in the field. Despite the somewhat better quality experience I would get in L.A., it would ultimately have a detrimental effect on my career, he said. But he didn't give me solid reasons . . . .

He continued to lobby zealously for the New York firm over the next couple of weeks. When I finally told him that I was going to L.A. for the summer, he ignored me and refused to talk to me."

"Did Professor Keaton initiate any physical contact with you?" Megan asked.

"Well . . . yes." I took a moment. The physical contact between us, always initiated by Professor Keaton, wasn't illegal, or even inappropriate, necessarily. And it never made me feel terribly uncomfortable; it was more awkward than anything. I took a pause to figure out how to explain this to the panel.

"Professor Keaton initiated physical contact with me around the time he started asking about my personal relationships. At first he would touch my shoulder, knee, or hand in a gesture of friendship. Later he would initiate hugs or extended handshakes. He also kissed my hand on several occasions."

What made these contacts awkward was partly the contexts, or lack of contexts, in which they occurred. He didn't quite seem to know when or how to shake hands, for example. And he always held my hand just a little too long, which produced the possibly unintended effect of a romantic gesture. His casual touches were either too soft or too hard, and always came at the wrong time. I sensed that he simply lacked socialization in these areas.

"How did you respond?"

"I tried to let him know nonverbally that I felt awkward. For example, I often moved away when he attempted to touch me, or I withheld my hand if he attempted to take it. When these proved ineffective, I attempted to tell him how I felt." My verbal attempts were even less successful than my nonverbal attempts, but not because of him. I simply could not tell him no. Whenever I tried, I thought about his potential reaction: would he become angry or seek some form of retribution as he had in the past? In my position, I could not afford to upset him.

So, I squeaked out little "please don'ts" to supplement my definitive nonverbals. He inevitably would make a joke about my nonacquiescence, however, and continue as if I had not protested.

"What happened last spring?" Megan changed the subject, having sensed that my weak responses were less than convincing.

"Last spring semester I took a white-collar crime elective with Professor Keaton. Despite my awkward feelings about our personal relationship, I did not want to cheat myself out of an excellent class with a knowledgeable instructor. Our relationship progressed through spring semester much like I have just described, but certain events—certain things Professor Keaton did—increased my discomfort with the relationship." In fact, it was these events, specifically, which led to this claim.

"Professor Keaton began calling me more frequently at home. He called at unusual and often inconvenient hours mostly to discuss issues from class. He called several times a week, sometimes more than once a day. My boyfriend became annoyed and concerned, and asked me to ask him to stop.

This, unfortunately, backfired. Professor Keaton seemed to see my boyfriend as driving a wedge between us, and he began to act more . . . covertly. For example, Professor Keaton would invite me to dinner, and then plan how to conceal our meeting from my boyfriend." He seemed to enjoy planning these clandestine meetings, outside of the knowledge of others, as if he were planning a rendezvous with his "other woman." "He also began insulting my boyfriend and our relationship. I was forced to separate these two relationships entirely.

Professor Keaton also called me at work (I worked at a local firm during the school year), although we both knew that this was inconvenient. I once received a phone call at work from an outraged Professor Keaton around the middle of spring term. He had just received his student evaluations from his fall term Corporations class, and he recognized my writing on my evaluation form. Despite my attempts to put off the conversation until a more appropriate time—I had a meeting with clients in about five minutes—he persisted."

I knew what he was upset about: I wrote on my evaluation form that I was concerned about personal relationships between Professor Keaton and some of his students, particularly me. I didn't elaborate much, but I did explain that I was concerned about potential favoritism. In fact, I received a "4.0" in the class, and subsequent events made me wonder whether I actually had earned the grade, or whether Professor Keaton was somehow rewarding me for my

companionship. I was aware of the potential effects my comments could have when read by other faculty members and the deans, but I felt strongly that I needed to inform Professor Keaton of my feelings, and I didn't know how else to do it.

"He told me that he was hurt by the comments on my evaluation form, and that he didn't understand them. He said that he had no idea that our relationship affected me this way. I tried to explain to him that I was concerned about bias in grading and the extra time he spent with me—not necessarily our personal relationship, but the ramifications of it. I think I finally convinced him at least that this discussion could better occur at a later time, and he seemed suddenly to realize that his confrontation of me, particularly with his accusative tone, was inappropriate. We never discussed the matter further."

"During this period, did you correspond by mail with Professor Keaton?" Megan asked.

"Professor Keaton sent me several letters and left notes and cards—greeting cards—in my mailbox at school."

"Is this one of those letters?" Megan approached me with a copy of the letter to which she referred in her opening. She also gave a copy to Professor Keaton's representative and Dean Anderson.

I pretended to review the letter and responded: "Yes."

"Please read the letter aloud." Megan requested.

I didn't want to do this; it was difficult and uncomfortable for me to directly confront Professor Keaton with his letter. Written correspondence, I knew, has an unusual power because of its timelessness and accuracy, and its ability to capture its audience while avoiding awkward personal confrontations. The writer can deliberate and think about the message rather than speaking extemporaneously, especially when it's handwritten, which Professor Keaton's letters always were. For these reasons—the same reasons I was uncomfortable directly confronting Professor Keaton about his letters—I did not want to use it here. Megan persuaded me that it was our strongest piece of evidence, however, and that we could not win the case without it. This particular letter—Professor Keaton's most recent, and one of his most suggestive—was written in late spring semester when he was attending a conference in Washington.

I read:

Dear Sarah,

Seattle is beautiful. It is cool and hazy now, but the mountains to the east and the ocean to the west comfort me, and somehow bring my life into perspective. I wish you could be here with me—that would complete the experience.

I've been thinking a lot about my daughter. I haven't told you, but the custody order came down, and the court granted full custody to my former wife. I have visitation, but that means little when she lives in Texas. I'm going to visit her after the conference, but I'll only get to spend one day with her before I have to come back east to teach next week. I don't know when I'll get to see her after that.

I appreciate your support throughout this ordeal. It's very difficult to lose someone so close, and I feel like you have helped to fill that void in my life. I realize, however, that I have occasionally overstepped professional and personal boundaries by relying on you, and I apologize. I'm discovering that professors have feelings, too, and that sometimes their only outlet is their students—a student—you. Anyway, you've been incredibly supportive and flexible, and I thank you for that.

Our dinner last week before I left was very special. I felt, for the first time, that we transcended traditional constraints on professor-student relationships, and elevated our relationship to a truly personal level. For some reason, the stilted nature of our previous interactions was absent—possibly because of your highly personal disclosures about your intimate relationship—and we related as friends, close friends, but not professor and student. I felt closer to you than I ever have, and the evening could only have been improved with a kiss. Unfortunately, my courage to initiate such contact dissipated. I will nevertheless remember the evening as an important point in our evolving relationship, and I anticipate many more evenings like it.

I'm off to a panel discussion now. I'm presenting my forthcoming paper on mergers and acquisitions, the one you proofread earlier this term. I have a commitment to publish, but I'm a little nervous about presenting it today: reactions to presentations at this conference have so far been less than kind. I look forward to seeing you upon my return; I'd like to have dinner with you next week. After Texas, I'm sure I will need to talk with you. I just don't know how I'll react to seeing her, and having to leave her indefinitely; your company will be comforting. Thank you again for your companionship and support. I love you, and remain ever truly yours,

S. Keaton.

I forgot how unusual, how vacillating, his letters were. He spoke of friendship, but wrote that he loved me; he talked casually about the conference, but said that he would have liked to kiss me. The letter didn't flow: he seemed to write the letter, and then go back and fill it in with suggestive comments. Or maybe he wrote a suggestive letter and filled it in with benign conversation. I never knew how to

interpret this letter, and reading it again now left me as confused as ever.

"Did Professor Keaton write other letters—other correspondence—to you?" Megan continued with the questioning.

"Yes."

"Approximately how many?"

"He wrote about once a week."

"Were the other letters similar in content?"

Professor Keaton's representative rose and objected: "Dean, there are no other letters before the panel, and Sarah's testimony regarding the content of alleged additional letters constitutes hearsay."

"Sustained. I will not allow the complainant to testify as to the content of letters that are not before the panel," Dean Anderson ruled. "Do you have any other questions?" the Dean asked Megan.

"No, Dean. I have no further questions for Sarah," Megan concluded.

I never got to tell the panel that other letters were exactly like this one, some worse, or that the others were not available today because I destroyed them to protect Professor Keaton. I knew, from attorneys in my office, that these letters could lead to Professor Keaton's dismissal for sexual harassment, and I initially wanted no proof, no temptation, to implicate him. I found the letter used today when cleaning out my school bag; I missed it when I destroyed the others. When I saw no options but to bring this formal complaint, I decided to save it for the purpose of the hearing.

Megan returned to her seat behind our table, and Professor Keaton's representative moved behind the podium to begin his cross-examination.

"You may proceed," the Dean nodded to the podium.

"Sarah, isn't it true that the letter you just read is full of references to 'friendship,' and 'companionship'?" Professor Keaton's representative asked.

"Yes." Megan and I agreed that I would give short answers to the cross-examination questions, without further explanations. If something needed clarification, Megan would ask about it on redirect.

"Isn't it also true that your interactions with Professor Keaton—the interactions you described earlier—were not of a sexual type, but reflected a friendship?"

"My interactions with Professor Keaton were of a type that I described. Whether they constitute sexual interactions, or a violation of the rules, is for the panel to decide, I believe." I could not help myself: Professor Keaton's consistent defense had been that there was

no sexual contact, no sexual relations, no sexual innuendo; I felt that his behavior reflected sexual desires, at least more than friendship. Anyway, characterizations such as "sexual," or "friendly," were deceptively simple, particularly in this case. The violation, as I saw it, was more in Professor Keaton's suggestions and behavior, than in our actual relationship. Of course my interactions with Professor Keaton were not sexual—I would not permit that. His behavior, his letters, however, from my perspective, were not friendly.

"Prior to your meetings with Dean Anderson, prior to your filing of this claim, did you ever tell Professor Keaton how you felt about his behavior?"

"No." I tried to recover: "Well, not exactly. I rejected his attempts to touch me; I didn't respond to his letters or phone calls . . . I avoided him, actively, and I tried to let him know it."

"But you never told him, verbally, how you felt?"

"No." I couldn't explain why. It may have been because of my discomfort with the thought of directly confronting Professor Keaton. Maybe it was because I didn't want to hurt him, professionally or personally. More probably it was because I didn't want him to hurt me. I didn't know why, I couldn't say why, and I became increasingly uncomfortable in the awkward silence that followed my short answer. I sensed that the panel, the Deans, the respondent, even Megan didn't believe me: why would I not have said anything? I looked to Megan for support; it didn't help. I just wanted this whole issue to go away: I wanted to get off the stand; I wanted the hearing to be over; and I wanted to forget that this mess ever happened.

"That's all, Dean," he concluded. I was surprised and relieved.

"Megan, you may redirect," the Dean stated.

She began: "Sarah, why didn't you approach Professor Keaton about his behavior?"

She asked exactly the question I did not want to answer.

"I . . . couldn't."

"Why?"

"I was uncomfortable, unsure, with my feelings. And I didn't know how he would react."

Megan seemed to finally sense my discomfort, and concluded: "That's all."

I returned to my seat behind the large litigant table. I now could rest, relax, and breathe. I knew our case was almost over.

Megan called our second witness, Michelle, a mutual friend.

"Please state your name and your year in law school." Megan inquired.

"My name is Michelle Johnson, and I am a third year law student."

"What is your relationship to Sarah?"

"Sarah is a close friend whom I met in my first year legal research seminar. We have remained friends consistently throughout law school."

"And what is your relationship to Professor Keaton?"

"He and I are friends, possibly good friends, but our relationship has always been professional. He spent time helping me with a paper in the fall term, and he supervised an internship placement for me during spring term. We spent a lot of time together working on these projects, and we became closer friends."

"Are you familiar with Sarah's relationship with Professor Keaton?"

"Yes. We both had Professor Keaton for our second year Corporations class. I saw some of their interactions, and I talked with Sarah about it."

"Please tell the panel what you observed of the relationship between Sarah and Professor Keaton."

"Professor Keaton seemed to take an immediate interest in Sarah as a student. I knew that she frequently visited his office and had lengthy discussions about the class, both from personal observations and from Sarah relating stories to me.

After a while, I noticed that they began doing other things, non-law activities such as taking walks or going to dinner. I thought this was innocent enough, and Sarah didn't really say much about it."

"Did Professor Keaton ever talk to you about Sarah?"

"Yes; well, we all knew each other, and Professor Keaton knew that Sarah was my friend."

"What did he say?"

"He would ask about Sarah, how she's doing, things like that. We never talked much about her, except once or twice."

"What happened on these occasions?"

"Once was after Professor Keaton called Sarah regarding the business roundtable. He sensed that she was upset by his reaction, and he asked me about it.

I, of course, told him that she seemed a little upset, that she was confused by his harsh reaction.

I didn't ask, but he told me that he thought he might have gone too far that time, that he might have alienated Sarah. He said that was not his intention at all, and he hoped it wouldn't ruin their relationship. He said he wanted to be close with her, and he was afraid he blew it."

"Did he say anything else?" Megan asked.

This was rehearsed. Megan and Michelle planned the direct, and planned this question so that Michelle's response would not be hidden within a larger answer.

"He told me that he loved her." Michelle responded.

"To the best of your knowledge, did Professor Keaton behave toward any other students the way he behaved toward Sarah?"

"No."

"That's all," Megan concluded, and took her seat.

Professor Keaton's representative seemed aloof throughout the whole direct examination. He did not object, take notes, or whisper to Professor Keaton. Now he stood slowly and began his cross.

"Just one question, Michelle. Isn't it possible that Professor Keaton's comment—the one that you just repeated—could have been intended as a sign of concern, a show of support, or a similar friendly gesture?"

"Yes," she replied honestly. It was true: it could have meant nothing.

He took his seat, and Michelle was excused.

"Do you have any further evidence?" Dean Anderson asked Megan.

"No, Dean," she replied.

\* \* \* \*

Shortly after the hearing, my transfer came through, and I enrolled for my last term in law school back on the west coast. This allowed me to be closer to my family, and where I wanted to locate permanently. I'm not disappointed in my decision, but the transfer certainly will have an adverse effect on my career. Firms are skeptical of my leaving such a reputable institution for a second-tier school; I sense that they think I couldn't handle it. Additionally, I had to establish faculty and professional contacts here that I had set in place at my old school; it was like starting over again in first year.

I maintain contact with my closest friends from the east, Megan and Michelle, but I stay in touch with few others. There were many bitter feelings when I left, before I left, that I do not think will soon dissipate. Sometimes I miss it, but generally the old law school seems to be getting along fine without me.

I read recently that Professor Keaton is taking a sabbatical to remarry, and defend one of the big three auto companies in a class action suit. Apparently the electrical system in one of the less expensive models is grounded incorrectly, which somehow sends electrical shocks throughout the chassis. Several victims have been



seriously injured already, but the company refuses to recall the car. The article stated that Professor Keaton was the newest member of the defense, and would lead the litigation team. I'm sure, as always, he will perform brilliantly.

S.D. SCHWINN

