WHEN I PROTESTED THEY SAID I WASN'T COLLEGIAL!

"Here's the catch 22: of course I'm avoiding my chairman because he's been harassing me for 7 years! He then uses that avoidance to claim that I'm 'arrogant, asocial and uncollegial.' My department - and he himself 3 years earlier - certified me as collegial when they gave me tenure. But he's changed his mind. Why? Because I won't respond to him. So he masks his personal, psychological problem in professional terms, using that universal favorite, uncollegiality."

Kay Austen

Sadly, Kay Austen's experience of being accused of uncollegiality when standing up for herself is similar to that of other women faculty who have written to us the past several years.

It took twelve years, but Kay fought her case to a successful conclusion. United States District Court Judge Samuel P. King ruled that she was wrongfully terminated as a tenured professor in an exceptionally strongly worded 40 page opinion.
Repeatedly terming the chairman's testimony as "not credible," Judge King accused the chairman of "acting in the triple capacity of prosecutor, judge, and executioner." He concluded: "Professor Summersgill remained Kay Austen's implacable enemy, giving her no quarter in her attempt to get out from under his heavy hand by exchange or sick leave, recommending her for termination, doing his (successful) best to defeat her workers' compensation claim... and even to the present time (i.e., ten years later) remaining unrepentant." Unable to conceal his pathology, the chairman became Kay's star witness at trial.

Here is an article specially written for The Strategist on collegiality

Collegiality: A Criterion for Contract Renewal or Promotion and Tenure?

By Prof. Sharon Leder and Prof. Ines Shaw

Women teachers, scholars, and activists coming up for tenure and promotion or contract renewal should be aware that the courts have consistently been upholding the use of collegiality as a criterion in faculty evaluations, even when plaintiffs argue that collegiality is used as a pretext for discrimination. As members of the Academic Discrimination Advisory Board of the National Women's Studies Association, we oppose this trend in the courts based on our combined thirty years plus of experience reviewing discrimination cases and our support of the union movement which has promoted academic freedom and free speech for faculty and attempted to achieve equity for employees by eliminating subjective methods of evaluation.

Mary Ann Connell, general counsel for the University of Mississippi, and Frederick G. Savage, deputy general counsel at John Hopkins University, summarize views on collegiality as a criterion for tenure in "Does Collegiality Count?" (Academe November-December 2001). Connell and Savage report that the courts find universities justified in using collegiality as a criterion for tenure even though employee contracts and university policies do not identify collegiality as a discrete measure of faculty performance. Moreover, when plaintiffs claim that charges of lack of collegiality against them are smoke screens hiding discriminatory behavior based on gender, race, or national origin, the courts have maintained that evidence proving discrimination is absent.

Defenders of collegiality as a criterion in faculty evaluations and the courts that support this position maintain that even if collegiality is not a separate category of evaluation, it is still a valid consideration for tenure because collegiality is an inherent part of research, teaching, and service. This is how the Maryland Court of Special Appeals ruled, when it overturned the lower court's finding in favor of Assistant Professor Peri Iz who sued the University of Maryland business school for breach of contract (1993). Iz won a three-week jury trial by arguing she should be evaluated for tenure "solely upon the three stated criteria (teaching, research, and service)” and not on the department chair's description of her as "inflexible, defensive, and unwilling to take constructive advice” and another colleague's worry about her "attitude and collegiality” (38-39). However, the appeals court disagreed, contending "that the concept of collegiality was inherently included in teaching, research, and service and was therefore an appropriate consideration” (39).

We take exception to several issues raised by the Iz case. First we find fault with the equation of
personality and other personal characteristics with collegiality. Second, if Iz demonstrated adequacy in her teaching, research, and service, then, according to its own logic, the court should have found that she displayed an adequate measure of collegiality as well. Why were the department chair’s and one faculty colleague’s negative view of her as a person taken as definitive? Could these estimates of her personality have anything to do with her way of uniquely expressing herself in the field of business? The appeal court’s negative decision in the Iz case raises the question of the extent to which collegiality is misused as pretext for subjective dislike or gender or other kinds of discrimination.

In cases where plaintiffs argue that collegiality is a cover for discrimination, the courts have denied evidence of discrimination, according to Connell and Savage (Babbar vs. Ebadi, Stein vs. Kent State, Jawa vs. Fayetteville University, 39). However, we must take into consideration some of the obvious difficulties that faculty have in proving evidence of discrimination when subjected to some negative evaluations. Such faculty are at a great disadvantage in not being privy to the documentation and information they would need to prove their cases, whereas all the advantages of obtaining information about the evaluation process are stacked in favor of the university. Often, the faculty member suspects that his/her records have been manipulated, but the faculty member does not have the whole machinery of information gathering at her/his disposition the way the university or college does. Moreover, even when other faculty, staff, or administrators are aware of discriminatory behavior, they are not willing to report it because they fear retaliation and feel they must protect their own jobs.

Beyond the obvious difficulties facing such faculty members, there are also the increasingly conservative views of the courts as to what constitutes evidence of discrimination. A decade ago, the EEOC supported and won Rosalie Tung’s case against the University of Pennsylvania Wharton School of Business when Tung blew the whistle on statements against her as an Asian. When Connell and Savage report that the court found no evidence of discrimination in Sunil Babbar’s tenure denial case against Kansas State University, we must question the court’s ability to recognize the blatant anti-Arab stereotyping of the university’s characterization of Habbar as a “two-faced” person who “will say one thing and do another” (39). Lack of awareness of differences in cultural and rhetorical patterns of communication is a common source of stereotyping and discriminatory behavior.

Furthermore, our experience reviewing discrimination cases since the early 1970s indicates that universities tend to label as “non-collegial” those individuals who exercise their academic freedom and free speech to expose inequity and unfair practices toward women and minorities. For example, after she was denied tenure, Cynthia Fisher exposed gender discrimination against married women with children in the hard sciences at Vassar College. She won reinstatement after Judge Constance Baker Motley ruled in her favor. Unfortunately, Judge Motley’s decision was overturned in two rounds of appeals. In the second appeal, the judges ruled that Fisher’s tenure denial was valid, in part, on grounds of non-collegiality--she was not liked by her department colleagues. Would her colleagues have found her to be collegial had she not spoken freely about the inequities at her college? Consequently, when plaintiffs charge that collegiality is misused because it is a pretext for subjective dislike or discrimination, we must not dismiss these charges so readily.

As to Connell and Savage’s assertion that the “courts... are frequently the final arbiters of what is "fair" in our society” (38), let us remember that the courts unanimously thought that blacks and women were weak-minded, did not understand political and legal concepts of social justice, were not capable of enough logical thinking to vote, and provided a host of other "logical" and "reasonable" arguments to maintain discriminatory policies and behaviors. Re-stating such facts may be distasteful to some, but is a
necessary reminder that social justice is the ultimate goal here. What can be done?

It is imperative that fair-minded faculty and administrators become aware of the misuse of collegiality by postsecondary institutions to eliminate faculty members whose fall out of grace with specific administrators or colleagues is often largely substantiated by claims merely based on personality and personal styles. These subjective judgments are often upheld by covering up evidence of procedural errors and violations of the faculty member's civil rights and academic freedom.

It is equally imperative that the courts base their judgments on non-biased evidence and the institutional written expectations and standards for faculty. It does not take a legal mind to see that something is askew with the vague concept of collegiality as it is defined by the Maryland Court of Special Appeals in the Iz case. To that court, collegiality is "impliedly embodied within the criteria that are specified" (39). As a malleable criterion, "implied" collegiality is open to all kinds of interpretations and allows personal and private agendas in evaluation systems that claim to be based on objective, stated criteria.

We cannot assert categorically that this current tendency to value collegiality will be reverted simply by engaging in critical analysis of the process by which the concept of collegiality is manipulated, but, as academics, we are compelled to enter this discussion as a way of combating this legal trend. We recommend that

- Faculty learn about specific cases of contract non-renewal, especially those affecting faculty at their institutions, but not only those limited to their own campuses.
- Faculty may also want to form reading and discussion groups with the goal of monitoring and changing the system on their own campuses.

References to reading materials can be found in past issues of The Strategist and at http://www.nwsa.org/adfl.htm.
Tenure Denial Subject of NWSA Annual Meeting Panel

SEE YOU IN LAS VEGAS FOR NWSA ANNUAL MEETING JUNE 13-16
Promotion and Tenure Denial and Other Conflicts: Strategies and Avenues Open to Faculty

Prof. Sharon Leder, Nassau Community College
Prof. Ines Shaw, Nassau Community College

Every year many women faculty going through their third-year review or applying for promotion and/or tenure are told their contract will not be renewed. Women faculty who are also doing an excellent or adequate job, whether it is acknowledged and praised or not by peers/chair/dean, and who are chairing departments or programs, become the targets of unrelenting bullying and face an unexpected, escalating conflict with a colleague and/or administrator that threatens their career. What to do?

The Academic Discrimination Advisory Board sponsors sessions that help women’s studies faculty identify and deal with various academic issues. At the business meeting, we identify the issues of most concern to participants and focus the sessions for the following year on them. For the 2002 NWSA conference, the Advisory Board on Academic Discrimination is sponsoring a double session that will present and discuss strategies and avenues open to women faculty in situations of denial and conflict. These sessions will benefit those experiencing a denial or conflict; those who haven’t experienced either but would like to feel confident if these situations arise; and those who would like to support colleagues who go through these experiences.

In Part I, panelists who teach women’s studies will share the various ways in which they have approached denials and conflicts and identify what these situations have in common.

Part II is a roundtable discussion focused on collegiality and bullying, two issues that are critical in situations of denial and conflict. Collegiality involves conforming to a department’s overt and covert norms and sanctioned social behaviors. Bullying typically arises from a whimsical personal dislike that escalates into misuse and abuse of authority and violations of procedures and academic freedom. Key questions are “To what extent should you conform to departmental overt and covert norms and socially-sanctioned behaviors while simultaneously preserving your integrity; personal, political, and ethnic identities; values; and pedagogical philosophy? How can you deal with bullying? How to face such unexpected turns of events, unfair targeting, and possible undesirable outcomes?”

Panelists:

Prof. Gail Gottfried, Visiting Associate Professor, UCLA
Prof. Barbara Bono, Dept. of English, University of New York at Buffalo
Martha S. West, Commission on the Status of Women in the Professions, AAUW
FEMINIST FIKAS HEAL CHILLY ACADEMIC CLIMATE
A Book Review by Cathy Kessel


In 1938, Virginia Woolf asked “Shall we join the procession of educated men? Where is it leading us?” In her book Three Guineas, Woolf discussed whether or not women should enter the professions, and be educated for those professions in a university. She concluded that if women were to enter the academy and remain “civilized beings, human beings, that is, that wish to prevent war,” the academy would have to change profoundly.

Sixty years later some feminist literary critics and philosophers claim that feminism is now a part of the academy. Has the academy undergone that profound change? Or did feminists sell out to get in?

Much has changed since Woolf’s time. In the U.S., women are now 36 percent of overall faculty. Princeton University now has a female president. Presidents of several major universities have met and pledged to investigate and change the adverse circumstances of female professors as MIT has done (see Spring 2001 Newsletter).

However, some things stay the same. Faculty women tend to accumulate at lower ranks and at less prestigious institutions. Averaged over all fields, 58 percent of all instructors are female and 21 percent of full professors are female.¹ A recent report says, “Less than ten percent of full professors in the sciences today are women, despite the fact that women have been earning more than one-quarter of the Ph.D.s in science for 30 years.”² And, we don’t have a lot of confidence that universities will act on their pledges of improvement. Even MIT—although it has improved circumstances for women in some areas—has no female full professor in its math department. Moreover, a chilly climate for women appears to have contributed to the recent suicide of an MIT undergraduate.³

Women are filtered out at every level of academic. The educational environment (including classroom, curriculum, and campus culture) that is part of the filter is one of the themes of Martin’s book. A second theme is estrangement from their own experiences, from occupations traditionally considered “women’s occupations,” and from other women. One example that might be of particular interest to WAGE members is the separation of feminist scholars and scholarship from their activist roots.

Martin describes how feminist scholars have criticized feminist activists and early consciousness-raising groups as essentialist, that is, assuming that women have an “immutable, eternal essence or nature.” Feminist scholars are also separated from women outside their specialties, in particular from feminist activists outside the academy, by esoteric language and the separation of theory from practice. In Martin’s view, these are part of the price that women pay to enter the academy.

Another part of the price of admission to the academy is enduring the chilly climate for women, both for students and faculty. Martin’s discussion of chilly climate mentions some examples of unconscious bias, but it might also have mentioned the considerable literature on unconscious bias summarized by Virginia Valian in Why So Slow? (One example of unconscious bias was exposed by Susan Ervin-Tripp’s analysis of letters written to solicit tenure recommendations for Jenny Harrison.) Instances of unconscious bias may be one of the more easily remedied phenomena of the sort discussed in the final section on transformation. Moreover, unconscious bias from well-meaning parties may help to make possible biased actions from those actively opposed to the presence of women. For example, those who don’t find it surprising for women to fail to continue as students or faculty, will not think to ask if there is an individual or an institutional cause—as WAGE members have seen.
I think that the most important and interesting contribution that Martin’s book makes is her identification of an entity she calls “the education–gender system.” We can view male-oriented curricula, male-dominated faculty, the filtering of women, antipathy toward feminist scholarship, academic estrangement from women and their occupations and experiences, harassment of female scholars, chilly classroom climate, and the rest as separate phenomena or we can think of them as parts of one interconnected system, the education–gender system. Considering them in this way suggests that they are not independent of each other. For example, Martin points out that the chilly climate for women inhibits asking the “wrong” questions, which affects the way teaching as well as research is done.

Martin takes an “immigrant interpretation” of women’s situation in the academy, thinking of women as strangers in a promised land—a land with customs predicated on estrangement from women. In the final section of the book she discusses how these customs could be transformed. This is a very difficult task, and her suggestions for how it may be done concern individual and collective action rather than institutional remedies. She doesn’t give a reason for doing so, but one reason may be that colleges and universities have done studies, documented cases of inequity, bias, or harassment, and sometimes even suggested remedies. Sometimes these result in movement toward equity, but often it seems they rest on the shelf or in the file cabinet. Reports of serious faculty offenses like harassment or plagiarism can remain for years in an administrator’s office collecting dust. Sometimes the dust is disturbed and the file is read—if those aware of previous offenses are also aware of later ones. It’s frightening to hear of individual cases like UCLA professor Malcolm Nicoll’s harassment of his graduate student Diane Reischneider. It’s nightmarish to hear that the same person has harassed before and nothing was done to prevent it from happening again.

One of Martin’s suggestions that might help prevent such recurrences is the creation of feminist flakas on campus. Fika is a Swedish word for an activity involving “coffee, cake, and conversation,” which sounds something like morning and afternoon tea for students, faculty, and staff. At this spring’s WAGE meeting Susan Ervin-Tripp said that there used to be more communication between women in the faculty and on the staff. Such communication seems essential for both parties. Moreover, students and post-docs can profit from the memories of faculty and staff. Newcomers can be warned about those harassers and plagiarizers whose files are collecting dust. All can compare notes on how they are treated—which is how some legal actions against UC concerning gender or racial bias have started.

Martin describes a feminist flka as creating an atmosphere that is safe for discussions of chilly climate incidents, great and small—not as “wallowing in victimhood,” but as a possible source of collective knowledge and action. Certainly it seems as if individual reports are often discounted or disbelieved, so one wonders what would happen if the report of an individual was followed by a collective action such as a meeting of her supporters with the appropriate administrator. (As we know, meeting with an administrator doesn’t always result in changes. The Women’s Association at Lawrence Livermore National Lab pursued this strategy for years. However its work did not go to waste—the salary data collected by the Women’s Association is now fueling Singleton, et al. v. UC Regents.)

Deborah Tannen’s book The Argument Culture complements Martin’s book in certain ways. Among other things, it provides an account of the litigation system that may be the next step for women after the chilly climate of academe described by Martin. The main theme of Tannen’s book is the argument culture that “urges us to approach the world... in an adversarial frame of mind.” According to the argument culture, “the best way to settle disputes is litigation” and the best kind of litigation is adversarial rather than truth seeking. In class and in academic research one builds a reputation by attacking previous work rather than understanding and refining it. News stories should present two polarized viewpoints—whether or not there is in fact substantial agreement or if one view has a small group of supporters.

Those who have had cases against UC are all too familiar with the “scorched-earth” tactics of UC lawyers, who use every opportunity to harass the opposing side (think of the Ryans’ case—which included a nine-hour deposition so harrowing that it was followed by attempted suicide). Tannen sees such tactics as an outcome of the increased emphasis, due to the argument culture, on “zeal in advocacy” as “the fundamental principle of the law of lawyering.” These phrases occur in a 1983 code of professional conduct. Similar phrases occur as early as 1908, but now it seems that lawyers are interpreting zeal as meaning they should be loyal to their clients and win at all costs, including moral costs. Tannen does point out that the District of Columbia Bar and the New York State Court of Appeals have become aware that these tactics are undesirable and have
developed codes to curb them. My brief Web search suggested that lawyers are now talking about professional conduct and that some frown upon scorched earth tactics.

The U.S. system of litigation compounds the problem by a structure focused on winning rather than seeking a version of events that is as accurate as possible. Other systems of justice, for example, those in France, may afford more accurate interpretations of events.

Unfortunately Taumen’s book doesn’t suggest remedies for these particular problems. Concern in the legal profession is certainly a welcome sign, but many of us probably wish it would occur to UC


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