

Prosecute sex crimes fairly - in church and on campus

By Harvey A. Silverglate and Josh Gewolb

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In the wake of the sexual panic gripping Massachusetts, the sexual assault victims' advocacy group Jane Doe Inc. issued a call last month for new laws to fight sexual abuse. Internally, the Catholic Church has been dealing with the application of canon law to accused priests who claim innocence.

However, the courts and the church are not the only institutions beset by an escalating number of contentious sexual misconduct allegations: As many cases of rape and sexual assault reached Harvard's campus administrative system last year as in the previous five years combined.

But while the priest sex abuse scandal prompted an investigative fever, perhaps even to excess, the mounting reports of sex crimes at Harvard actually have provoked a dean to call for an end to sexual assault investigations. In a little-noticed letter issued Jan. 23, Dean Harry Lewis recommended that Harvard's disciplinary body, the Administrative Board, review the likelihood of conviction in rape cases before mounting full-scale investigations, to see if the probes likely will be worth the board's time. Since the panel convicted only one of seven students accused of sexual crimes last year, it looks like it will refuse to investigate most charges.

Lewis is right to recognize that there is something wrong with how Harvard handles sex crimes. But he misunderstands the source of the problem - and how best to fix it.

Sexual misconduct cases pitting one person's word against another's are very tough to solve. But, contrary to the dean's suggestion, campus judicial boards usually have no fewer investigative tools available to them than criminal courts: In date rape cases, sex is almost always admitted, so forensic evidence is unnecessary.

Yet campus judicial boards at Harvard and elsewhere have tied their own hands with inadequate procedures for hearing testimony and reviewing evidence. When a disciplinary case arises, as 154 did last year, the board usually appoints a three-member subcommittee to investigate. The investigation is not guided by any binding rules. Parties may suggest that the subcommittee call witnesses, but it is not required to do so.

Trials are conducted in secret, without cross-examination of witnesses or presentation of evidence.

No records are kept of the proceedings. Often months after hearing testimony, the subcommittee presents its findings to the full board which ultimately decides the case, ignoring the basic principle that the body hearing evidence should rule.

The ballooning number of sexual assault investigations have finally forced Harvard to face the inadequacy of its disciplinary process. But instead of reworking its judicial system so it can actually reach reliable verdicts, Harvard plans to ignore sex crime accusations while leaving the rest of its cases to a process whose deficiency it has effectively admitted.

Lewis' proposal is bad for both complainants and accused. Rape victims should have the same redress open to them as victims of other crimes. Accused students are entitled to an impartial board, not one that has been told that the case has been handpicked because it can be "resolved" - a code word for a sure conviction.

The changes Lewis recommends, though misguided, would be lawful. Last fall, the Massachusetts Supreme Judicial Court ruled in *Schaer v. Brandeis* that colleges do not have to offer due process in their disciplinary proceedings; their only obligation is to follow their published procedures, which Lewis proposes to revise.

However, as the priest sexual abuse scandal indicates, full investigations are needed to identify real sex offenders - and due process is necessary to protect the wrongly accused. Because of their stated mission of pursuing truth, private colleges have an especially strong obligation to establish just and rational disciplinary systems. A spate of serious charges demands better judicial proceedings, not an end to investigation.