was not upheld

By **HARVEY SILVERGLATE**

The brouhaha at Swarthmore College involving two first-year students, Alexis Clinansmith versus Ewart Yearwood, has convincingly proven two truths:

First truth: The leaders of higher education are no longer educators. The governance of our colleges and universities has been largely taken over by administrators who have emulated the credo of administrators everywhere: No trouble on my watch — no matter what principle has to be trampled.

Second truth: On college campuses, when certain kinds of accusations are made by members of one or another "protected" group, even innocence is not deemed an adequate defense. The mere allegation is so threatening to the school's image, that it is accepted as true and innocent students are punished just to avoid the school's being labeled "insensitive" to the protected group. Accusations, however, are *not* facts until established by evidence presented in a fair procedure.

When Clinansmith brought to a dean a claim that Yearwood's overly zealous courtship was frightening her, the administration took the path of least resistance and ordered the young man to keep away from her — a so-called "active-avoidance order."

His side of the story, *his* evidence and *his* witnesses had not yet been heard! The order was not issued to *both* students urging them to keep away from each other. Instead, since the woman's allegation was one of the politically correct charges *de jour* — namely, sexual harassment and intimidation — the man was presumed guilty.

Inevitably, the two ran into each other again. After all, they lived in the same dorm, and Swarthmore has only one dining hall. This time Clinansmith lodged formal charges against Yearwood before a dean's committee, which held about 15 hours of hearings at which witnesses for both sides were heard and the matter was deliberated.

The charges of sexual harassment and intimidation were *not upheld* by this student-faculty committee. In most courts in America, that is known as acquittal.

One would have thought that, since the committee was unconvinced that Yearwood had harassed or intimidated Clinansmith, there would be no reason to punish him for failing to stay away from her.

Nevertheless, Yearwood was found guilty of violating the active-avoidance order. His punishment: Even though Yearwood was *not* found to have harassed or intimidated Clinansmith either before or after the avoidance order, he was sentenced to be suspended for the spring semester, and the avoidance order was strengthened for the balance of the fall semester.

Undeterred, Clinansmith accused Yearwood of another violation within hours of the first verdict. Eating a meal in the dining hall, Yearwood had been within 15 feet of Clinansmith, or, put another way, she was within 15 feet of him. Nonetheless, a second dean's committee not only met and acquitted Yearwood of this charge, but it even noted that "the active-avoidance directive did not provide enough guidance to cover public areas."

For The Inquirer / JOHN OVERMYER

Astonishing! Yearwood was *not* guilty of harassment, was being punished for violating an avoidance order imposed without a hearing and later declared overly vague by Swarthmore itself, and found not guilty of a subsequent active-avoidance charge, but was still to be suspended for a semester! Confused? That is what passes for fairness at Swarthmore College.

Yearwood appealed to Swarthmore's President Alfred H. Bloom for justice. Bloom knew that he could not justly uphold Yearwood's suspension for violating a one-sided, vague avoidance order that had been imposed without a hearing and was in any event impossible to obey. By this time Yearwood had gotten a lawyer and was talking about a lawsuit because the suspension appeared to be without basis.

Seeing this, the principled thing for Bloom to have done would have been to rescind Yearwood's suspension. Bloom, however, apparently feared the anger of those who might call him "insensitive" to women if he did not suspend Yearwood.

Instead, Bloom decided that, while the Dean's Committee was correct in finding *no sexual harassment*, it was wrong in concluding that there was no *intimidation*. Bloom's written decision did not explain how the young man could have intimidated the young woman without harassing her.

The justification for Yearwood's suspension was so weak, even with Bloom's absurd notion of intimidation without harassment, that the college felt the need both to hire a public relations firm in order to put a favorable spin on the story, and to finance Yearwood's spring semester at another school.

All this happened because Swarthmore's administration lacked both the principled courage to allow Yearwood to remain in school and the integrity to face down anyone who might have cried "Swarthmore is sexist!" by replying, as it should have, that "the charges against Yearwood were not proven at the hearing and so there is obviously no basis to suspend him."

Bloom attempted to emulate King Solomon by threatening to cut the baby in half. He ended up, however, taking a page not from the Bible, but from the nighmarish novels of Kafka and Orwell.

Harvey Silverglate, a Boston lawyer, represents Ewart Yearwood.

By **BARBARA MATHER**

Intimidation is not the same as incompetent wooing.

When the players are in their first year of college as in the recent highly publicized Swarthmore College matter, the desire of many to stamp the process used by the college to resolve a charge of intimidation with some brand of political or legal incorrectness tends to lose sight of the college's goal: to enforce the standards of the community and to get both students back on track as soon as possible.

The college faced a situation in which a young woman was frightened when a young man kept pursuing her. She reasonably asked the dean's office for help.

In response, the young man's dorm adviser counseled him about the situation, and he promised to leave her alone. For whatever reason — attraction or resentment — he continued his pursuit. Her fear increased.

The dean's office warned him directly that his behavior was unacceptable and he should avoid her. He accepted an "active-avoidance" agreement. At all times the college was counseling both students, trying to preserve their future at the college.

Despite warnings and the agreement, the man persisted. Would you expect your daughter to forget about it? He had already told the woman that he had been thrown out of prep school for harassment.

She went to the deans, and they appropriately convened a disciplinary committee. The committee of two faculty, two staff and two students heard witnesses, deliberated and decided he had violated the active-avoidance agreement. They unanimously recommended that he be suspended for the spring semester, put on probation and under an active-avoidance directive for the rest of the fall semester and put under an active-avoidance order for a semester after his return.

The president of the college spent hours talking to the students and witnesses, both to decide the appeals filed by both students and to fashion a remedy that would protect her from intimidation, which he judged