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| **CASE STUDY LIBRARY** |

**Case Study 2. Power and Picnics Don’t Mix**

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| *Case Study 2 addresses:**“incident(s) involving people who bring money and prestige to an institution, e.g., a person that becomes “too big to fail.”*  A male tenured professor and society board member has brought in significant research funding and greatly enhanced the prestige of a university as an-up-and-coming program for women interested in computer science careers. He also writes and publishes historic-romance graphic novels, under a pen name, in his free time. The professor pressures his Black female graduate assistant/advisee to read one of his books, which has a racist and sexualized title and content, and discuss it at a picnic lunch. Despite the student raising her concerns with another faculty member in the department, when she meets her advisor for the picnic, he attempts to kiss and grope her. |

**Case Study 2. Volume III**

1. Facts and Scopes of Issues
2. Facilitator Guide: Reflections
3. ***Facilitator Guide: Analysis***

**Overview – Facilitator Guide: Analysis**

This guide, which identifies and analyzes key issues raised by Case Study 4’s facts and associated pause and process questions, is for review by facilitators to prepare for group discussion. It may also be used during facilitation. Each of its color-coded segments corresponds with the same color-coded segment of Case Study 4, Volume I (Facts and Scopes of Issues) and Volume II (Facilitation Guide-Reflections). Review suggested “Actions” for discussion ideas and steps societies and institutions can take to enhance their policies and practices to create more inclusive and equitable climate and culture within their organizations and fields more broadly.

Identity-based harassment and bias can have disparate and devastating impact on individuals who are early in their careers[[1]](#footnote-1) or have less social capital in a field (disproportionately, but not always, women, women of color, members of the LGBTQ+ community, or people who identify as members of other marginalized groups in STEMM). Our analysis and discussion of this case study examines points throughout the experiences detailed to shine a light on – and create understanding and empathy for -- the various perspectives involved. Power differentials are often at play in instances of sexual harassment, assault, and intersecting racial and gender-based harassment. However, peers and those in earlier stages of education or career can also cause harm.[[2]](#footnote-2)

It is important to consider the case study from two perspectives (1) What happened, and what was done well or could have been done better in relation to these facts? and (2) In light of the effective policies and practices addressed in Supplemental Volume 4, what actions can be taken beyond the case at hand to advance a more inclusive, equitable and ethical climate and culture in the institution, society, and field?

**Introduction**

**1**

1. **From the Maria’s, Dr. Little’s, the University’s and AACS’ perspectives,** did the University’s or AACS’ policies or practices help them to understand conduct norms expected of faculty and society leaders in their relationships with students?
2. Is it acceptable for a faculty advisor to invite his advisee to lunch?
3. **From the University’s and/or AACS’s perspectives**, should it be a violation of its a code of ethics for a professor and society leader to write and publish romance novels, as an avocation, that contain erotic and racially derogatory and stereotyping content?

**RESPONSE:**

* We do not know from this case study of the existence, or content, of any University or society conduct policies. However, based on the title and content of the book and what transpired between Professor Little and his student, Professor Little completely lacked understanding of, or ignored, a faculty member’s responsibility for maintaining a relationship of trust with students and associated acceptable behavior—particularly, but not exclusively, when a faculty member is in an evaluative or mentoring role with a student. Also, there was no evidence of the University or society providing guidance regarding the appropriate boundaries of faculty/student relationships—or any member of the academic community’s responsibilities regarding sexual and racial harassment. Academic communities bring together people in a range of roles, stages of career, influence, and experiences in the field and society-at-large. What is “obviously” unprofessional behavior or a breach of academic and community responsibility to some may not be understood as such by all. That—or Dr. Little’s belief that he “earned” the privilege to ignore standards that apply to less “productive” faculty—is borne out by the facts of this case. Despite Maria’s understandable discomfort and reluctance, as a student and a Black woman, the professor continued to pressure her to read and discuss a novel he authored, unrelated to any of the academic work they are doing, and that had a racist and sexualized title and content. Sexually provocative and racist conversations and treatment have no role in professional and learning settings (where unrelated to the substance of the work)—and certainly have no role in a faculty or other evaluator/mentor-student relationship. Moreover, the ethical problems of the situation were exacerbated by racial and positional power dynamics between Dr. Little and Maria. The power differential between them was extreme given his status as a White man and in his leadership role at both the University and AACS, his role as the student’s advisor, and his influence over her career.
* It is certainly appropriate for a faculty advisor to invite a student, even an advisee, to lunch. Here, however, the suggested lunch location was isolated and understood by the community to be a place with romantic overtones. Professor Little’s offer to bring alcohol (with its known potential to reduce inhibitions and negatively impact boundaries of professional behavior), as well as the suggestion that they discuss at lunch the racist and sexualized book, served to turn what might have been an acceptable invitation into a proposition that constituted sexual and racial harassment.
* It is unclear what, if any, policy the University or society had regarding faculty’s private work (whenever undertaken, as faculty typically are not subject to strict “work hours”). Professor Little should be allowed to pursue an avocation without violating conduct codes—provided that the avocation does not adversely affect his ability to fulfill his roles and responsibilities as a faculty member and student advisor. Those duties should include creating a welcoming learning environment for all students and maintaining relationships of integrity and trust with students, free of sexual and racial harassment. Generally, faculty have more freedom in their private lives to engage in activities and express opinions publicly that are at odds with the positions of their university or society, than department chairs, society leaders, and other administrators have in their private lives. (That is because leaders and administrators’ job duties include responsibility for leading implementation of university and society mission and policies.) Here the faculty member was a society leader, which elevates his responsibility. And, in any event, a faculty member must not violate their relationship of trust with students, particularly those with whom they regularly engage, supervise or mentor.

This case might have posed a difficult question about whether the professor could carry out his responsibilities to students at the University and AACS while publishing books with racist sexualized content in his private life. A pseudonym may have weighed in favor of Dr. Little’s freedom in his private life had it effectively masked his identity. However, he both displayed a racist and sexualized book, with an explicit cover, unrelated to his University work in the workplace (which amounted to racial and sexual harassment and should violate policy in any event) **and** he failed to maintain his anonymity and to keep such work separate from his responsibilities and roles as a faculty member and society leader. No one -- particularly those in direct subordinate positions or positions of lesser power -- should be exposed to such content in a work or learning environment when it is unnecessary to the University or society program, let alone be made to feel compelled to purchase, read, or comment on it.

***First Amendment Considerations***

Private entities, such as the society, are not subject to the First Amendment of the U.S. Constitution (although some states have laws that apply similar principles on public and private entities). Public universities are subject to the First Amendment. As employees of a public university, faculty do not give up all of their First Amendment speech rights. However, the Supreme Court has held that public employers can significantly regulate employee speech (at work and even outside the workplace) to get the business of the public employer done. This is in stark contrast to the much greater restrictions on the government’s regulation of the general public’s speech rights.

There is a balancing test for public employee speech on matters of "public concern," such as certain political speech. But even then, the First Amendment has been interpreted to recognize that employee speech cannot be allowed to overburden the public entity’s ability to accomplish its business. A public employee's job duties and whom they must work with and be trusted by are considered in the balance. Regulation that is reasonable for faculty speech on matters of public concern under the First Amendment is influenced by the education policies of academic freedom and responsibility (which complement but are distinct from First Amendment rights and apply to both public and private universities).

In this case, there was no academic freedom interest and—because the faculty member made known his private-life speech (whether or not his books are “matters of public concern”) in a way that caused sexual and racial harassment—the adverse impact on the faculty member’s ability to fulfill his duties to students he directly supervises and mentors was substantial. Consequently, it is unlikely that any First Amendment—or academic freedom—interest would be legitimately recognized.

**ACTIONS TO PREVENT OR REMEDY:**

* It should be clear to anyone, that a faculty member’s sexual advances, and providing racist sexualized content to a student she supervises and mentors, unrelated to University work , are unethical and breach the academic responsibility of professors. The case demonstrates the need for effective policy, regardless of what “should be clear.” Policies and associated conduct norms should be tied to ***specific*** aims of inclusion, diversity, ethical conduct, and excellence—backed by a range of real- world examples of behavior that is expected, inclusionary and ethical vs. harmful, exclusionary and, therefore, unprofessional and unethical. To be effective, the examples should be developed with input by people of many identities and stages of career to help individuals (particularly those in the dominant roles) to “walk in others’ shoes” and elevate understanding of why the conduct is unethical and harmful. Clear definitions of key terms (with examples) are also important to create clear boundaries.
* Offering **specific examples of “Dos and Don’ts”** will make expectations more concrete, understandable and easier to practice for people, in all roles, including by addressing: boundaries between acceptable promotion of research and faculty work, versus requirements to be sensitive to the potential impact of non-university and avocational activities on university duties and to take appropriate precautions (e.g., in this case, maintaining anonymity and keeping the books out of the workplace); expectations for socializing between faculty and students in all settings; and specific ground rules for faculty/student relationships. It may be useful, given the inherent power differential and potential for misunderstandings and abuse, to **prohibit romantic relationships between faculty and students**. At a minimum, relationships between a faculty member and those students for whom the faculty member is in an evaluative, supervisory, mentoring, or similar role should be prohibited. Some institutions require a faculty member (or other employee) to disclosure the intent to initiate such a relationship to a designated authority, to enable protective measures for the student. If anyone needs to make an adjustment (including a change in work), good policies place the burden on the faculty member, not the student.
* Guidance, and perhaps even **bright line rules** allowing alcohol only at registered university or society events (with proper protocols) and prohibiting faculty and staff otherwise providing alcohol to students or serving alcohol in any setting where they are present may be the preferred route. This may be particularly important in connection with serving alcohol to those in a subordinate relationship due to alcohol’s potential impact on behavior, exacerbating the harmful effects on these students of the power imbalance.
* **Inclusive conduct norms and expectations must be socialized** known, owned, shared, and accessible. Simply having policies available (which is not even clear in this case) makes knowledge and ownership extremely unlikely. While robust policies are needed to assure authority to enforce them, highlights (with links to full policies) should be shared in accessible formats such as summaries of key elements, and of specific aims and expectations and included in student, staff, faculty, trainee (e.g., post-doc and resident) handbooks; made part of each group’s orientation; and can be practiced through role-play using case studies. **This is not a “one and done” endeavor**. Members of the community need to be introduced, reintroduced, and provided multiple opportunities to engage with conduct policy and explore their real-world application.

**REVIEW**:

* [**Section 4 Elements**](https://societiesconsortium.com/wp-content/uploads/2022/09/Case-Study-Library.-Section-4.pdf)to learn more about effective practices to elevate and infuse equity principles
* Visit the **Consortium LinkedIn Platform (CLIP**) -- A members-only space for collaboration and thought-partnership for members of the **Societies** Consortium
* Societies Consortium Roadmap Towards Excellence and Integrity in STEMM (**Roadmap**)/Stage 1 -- “First Steps: Starting Somewhere” (access **Roadmap** from Consortium’s **Homepage**/Latest News/May 28, 2020 entry), including Ethics/Conduct Short Form Policies/Dos and Don’ts ((click on documents linked in gray box to access)
* Societies Consortium 5-Step Slide Guide (**5-Step Guide**), with more detailed guidance on first steps to creating and socializing basic inclusive conduct expectations (access **5-Step Guide** through **Roadmap**/Stage 1 (click on **5-Slide Guide** link in gray box))
* **Societies Consortium Model Ethics/Conduct-Harassment Policy** (access under **Library**/Model Policies, or through **Roadmap**/Stage 2: “Choose Your Adventure: Policy Development”/Meetings & Conduct Ethics Policies (click on link to documents in gray box))
* Societies Consortium Model Glossary of Terms (**Model Glossary**) (access under **Library**/Model policies)

**2**

**The Picnic**

1. **From Maria’s, the University’s and AACS’ perspectives,** did Maria experience sexual and racial harassment?
2. **From Maria’s, the University’s and AACS’ perspectives**, was Maria in a position to object to Dr. Little’s advances?
3. **Given Maria’s position as an early career professional**, how could the behavior he encountered impact his career trajectories? What special concerns and challenges arise when implementing policies in incidents involving early career professionals and such professionals of color?

**RESPONSE**:

* Maria clearly experienced sexual and racial harassment. She made many attempts to convey her discomfort with Professor Little’s advances and took steps to protect herself. These included avoiding a discussion of his novel; avoiding his invitation to lunch; reaching out for help to another professor; only later accepting the invitation after she talked with an ally who promised that the situation had been handled; suggesting an alternate, more public space for lunch with Dr. Little; and politely declining his sexual advances. These were all difficult steps given the racial and positional power differential involved and Maria’s dependence on Dr. Little as her advisor and his control over her recommendation, major influence on the department’s research agenda, and ultimate impact on her career. Despite Maria’s and Dr. Charles’ respective requests to senior allies for assistance, Maria was the only one to suggest to Dr. Little that a relationship was inappropriate, but she was in the least powerful position to stop him. Not surprisingly, despite her efforts, Maria found herself in a position where she was asked to discuss racist sexualized content, unrelated to her academic program and work, with her faculty advisor and to fend off sexual advances. Ultimately, Maria felt compelled to seek a new advisor and face the possibility of negative consequences.
* The difficulty Maria faced was exacerbated by the failure of more senior members of the University community to fulfill their duty to confront Dr. Little and prevent his abusive actions, leaving Maria very much on her own. Dr. Charles was understandably reluctant to confront Dr. Little due to the power dynamics of their own professional relationship. He appropriately sought to engage the chair, who *was* in a position to protect Maria. But the chair’s informal and light-touch conversation with Dr. Little was wholly inadequate to address the situation. The chair used vague, conciliatory language, failed to set out clear expectations for Dr. Little going forward (beyond a suggestion that he not bring his “private” hobby to work), and failed to make clear the adverse consequences to Dr. Little if he did not comply. The chair did not address the full extent of his unprofessional behavior—constituting sexual and racial harassment---when he pressured Maria to read his romance novel with its racist title and content, suggested a romantic picnic, or otherwise suggested that they engage in a relationship. Even before the lunch, Dr. Little’s conduct should have constituted a breach of conduct requirements and warranted a serious response.
* Also, while the chair’s avoidance in confronting Dr. Little’s unacceptable behavior may have had short-term benefits – it allowed the University to retain the benefits of Dr. Little’s innovation grant – in the long term, it is likely to damage the University’s reputation and its program. With or without clear policies, current members of the community, and future applicants, are likely (not unreasonably) to have the impression that the chair will tolerate sexual and racial harassment by star faculty, which contributes to a hostile climate in the department for those of less powerful positions and identities. Talented people may disengage from the department, decide not to apply, or leave the field all together – all of which result in inequity for individuals and diminished excellence and integrity of the program and field.

**ACTIONS TO PREVENT OR REMEDY:**

* **Courageous and consistent leadership action – backed by clearly articulated policies that reflect mission and aims of integrity and inclusion for excellence – can have a significant positive impact.** Such action includes **consistently** establishing funding priorities and making honors, research support, and hiring decisions under an overall policy that defines excellence and integrity as an inextricable combination of high-quality work and ethical, inclusive, and equitable conduct (with specific examples). Courageous leadership also entails role modeling expected conduct—especially in difficult situations. Such policy-backed action is important if the aim is to create a welcoming climate where all talent can thrive.
* Broad community understanding and ownership of such policies and leaders’ **consistent application** of the policies to everyone—regardless of position—are critical. One-off actions that advance short-term benefits and favor power over core principles of integrity and excellence (as occurred in this case) can create long-term harm to people, a program, an entity, and a field. Early-career professional are often uncertain about the conduct norms that an institution or society expects. They may understandably assume that behavior that occurs—particularly behavior of faculty and society leaders—even when in violation of express society aims or policies, is, in fact, accepted as the norm (at least for those in power). The perception (by people in the full range of roles in a community) that the rules don’t apply to everyone is exacerbated when the perpetrator is a “star” member of the community and leaders fail to effectively respond to their misconduct.
* Encouraging courageous leadership and community ownership of ethical and inclusive policies may require ongoing orientation and training to build and reinforce understanding of conduct expectations, the rationales behind them, and empathy for those in vulnerable positions (the ability to walk in others’ shoes). To do so, consider engaging case studies in small group discussions, providing safe means (anonymized, if desired) for those who are harmed and willing to tell their stories, providing specific examples of positive/expected and harmful/prohibited conduct, and elevating research regarding the negative impact of harassment and bias.
* **Special considerations concerning impact on early career professionals, including that:**
  + Students and early career professionals are highly dependent on the good will of professors, advisors, and mentors as they seek to advance in academics and careers.
  + Accessing limited, competitive research opportunities are necessary to succeed, and are often largely controlled by one professor who can enhance or derail a student’s or early career professional’s prospects.
  + While the limited number of opportunities speaks to the importance of faculty, post-doc, resident, and student mentorship and sponsorship, it also creates significant potential for abuse of power and requires high ethical standards, including clear boundaries between professional and personal and degrees of influence. Leaders or “stars” can have an outsized impact—positive or negative.
* **Input by people of many identities and stages of career in policy development and identification of harmful conduct is important.** It is critical for members of dominant groups to listen to, learn from, serve the needs of, and include in leadership roles, students and early career professionals, especially women, members of the LGBTQ+ community, and people of color. Without the voices of those who are harmed, the causes of harm can’t be identified, let alone prevented or addressed.
* **Mentoring and funding strategies that diminish the outsize influence and power** **of any one faculty member can minimize opportunities for abusive conduct.** Consider providing committee-based mentoring and advising (rather than solo mentors) and a centralized fund for research experiences and training also administered by a committee.
* **Provide easily accessible support services focused on gender and racial equity and options for raising concerns (e.g., anonymously, with confidential ombudspersons or advisors, with allies)**. Highlighting such resources and options in orientation and informational materials and in prominent places on campus and at society activities can help those in vulnerable positions when they experience harmful behavior and demonstrates a commitment to inclusion, equity, and wellbeing for everyone.
* **It is also important for institutions and societies to equip students and early career professionals with know-how on taking self-protective actions in the moment—**without diminishing the responsibility of institutions, societies and everyone in their communities to prevent and respond well to harassment, including by adopting and consistently implementing policies, elevating understanding, and holding everyone accountable. Maria did an admirable job of trying to protect herself in this case, though it is unclear whether she had been guided by the University or AACS on how. Due to the dereliction of duty by leaders, Maria’s actions didn’t suffice—but would have if the right policies and leaders were in place.

**REVIEW:**

* **Societies Consortium Fourth Annual Members Convening**/Panel discussion -- Transformative Leadership: Centering Ethics, Equity, Diversity, and Inclusion in a STEMM Society’s Mission, Vision, Goals, and Actions for Excellence and Integrity in the Fields (access through **Library**/Societies Consortium Guiding Documents/Societies Consortium Annual All Member Convening Documents/4th Annual All Member Convening Sept. 20-21, 2022)
* **Societies Consortium 3/24/22 Hot Topic Webinar:** Engaging student and early career members in society leadership (access under **Library**/Practical Implementation Tools)
* [**Section 4 Elements**](https://societiesconsortium.com/wp-content/uploads/2022/09/Case-Study-Library.-Section-4.pdf) to learn more about effective practices for communicating policies and expected norms
* **Roadmap**/Stage 1/Communicate inclusive conduct expectations
* Societies Consortium Compendium of Existing Resources (**Compendium**) (access **Compendium** under Consortium’s **Library**/Practical Implementation Tools)/Understanding the Compendium/click on to access: Sexual Harassment of Women, Climate, Culture, and Consequences in Academic Sciences, Engineering and Medicine (**NASEM June 2018 Report**)
* **Compendium**/Mentoring, including **National Academies of Science, Engineering and Medicine (NASEM), The Science of Effective Mentorship in STEMM**
* [**Section 6. National Support Resources**](https://societiesconsortium.com/wp-content/uploads/2022/09/Case-Study-Library.-Section-6.pdf)

1. Did the University have well-understood and adequate reporting policies? Were Maria’s attempts to “report” what was happening to him effective?

**RESPONSE:**

* It is unclear whether the University had developed or made easily accessible policies and procedures for reporting conduct concerns—but that appears unlikely. Each target of harassment has their own needs that must be ascertained and met as much as possible. Maria may have hoped that by relying on informally raising her concerns, she could avoid embarrassing or offending Dr. Little. Her greatest need may have been to be assured that his unacceptable behavior would be stopped. She may not have wanted to pursue a formal process with a “finding of responsibility” for a policy violation. She may have wanted to be able to seek another advisor, without risking Dr. Little’s ire, or even to enable him to re-establish his relationship with her as his advisee within healthy boundaries. These could be appropriate goals—if they were authentically Maria’s and she was not coerced. Due to the Chair’s and University’s failures, however, any such goals could not be realized.
* While Maria did not “formally” report the incident, this should not be necessary to cause the University to take steps to protect her, as well as other members of the community. Maria sought out an ally, Professor Charles, who further reported the problem to the department chair, who was clearly in a position to take action on behalf of the University. That no one took sufficient action to protect Maria – and potentially other students – demonstrates a failure of the University to have clear conduct policies and response procedures—or to apply them consistently to “star” members of the community. (It also is a violation of Title IX for a University that receives federal funding.) This in turn sends the message that sexual and racial harassment is tolerated, at least when the perpetrator is a “star.” That such a perception exists is further reinforced by the decision of other students not to come forward with their own accounts of unwanted sexual advances by Dr. Little. As discussed above, this perception is reasonable in the circumstances and is likely to both encourage bad behavior and result in some talent disengaging from the department, deciding not to apply, or leaving the field all together – all of which result in the diminished excellence of the program and field.

**ACTIONS TO PREVENT OR REMEDY:**

* As this case demonstrates, it is essential to establish a range of well-known ***and*** safe reporting and resolution options (anonymous, informal, and formal) and to provide for confidential guidance (e.g., by an ombudsperson) on the pros and cons of each option so that targets can make decisions that are best for them. Training people who can serve as allies (including both peers and faculty members) would support efforts to encourage ***effective*** reporting – early in the process – that can prevent an escalation of the problem and lead to change. Effective reporting policies must also prohibit retaliation—and that prohibition must be consistently applied.
* **In addition to reporting options, it is critical to change any reality and perception** **(whether or not the perception is accurate) that a society or institution tolerates harassment or won’t enforce policies when leaders or distinguished researchers are the perpetrators.** The benefits for targets of reporting must outweigh the perceived risks, considering the experience of people in a range of roles with the existing power structure. Creating accurate and positive perceptions requires an institution or society to adopt and consistently apply adequate conduct policies and norms against all members of its community, as well as reporting back to its community about the kinds and frequency of misconduct and the kinds of response (without specific details to protect privacy). Doing so helps the community internalize that prohibitions against unprofessional and unethical conduct are seriously enforced against everyone. With that confidence, people, are more likely to report concerns which may, in turn, prevent problematic conduct from escalating into more troubling behavior.

**REVIEW**:

* **[Section 4 Elements](https://societiesconsortium.com/wp-content/uploads/2022/09/Case-Study-Library.-Section-4.pdf)**to learn more about effective practices for communicating policies ***and*** reporting options
* **Roadmap**/Stage 1Communicate inclusive conduct expectations ***and*** reporting options
* **5-Step Guide**, with more detailed guidance on first steps to creating and socializing basic inclusive conduct expectations ***and*** reporting options
* **Compendium**/Ombuds Programs
* **Compendium**/N**ational Academies June 2018 Report**), Chapter 6, Ombuds Offices
* **Compendium**/Training A. Advocate & Ally Training
* **Societies Consortium Model Reporting Out Template** -- Reporting Out on Conduct Concerns and accompanying Design Guide (access under **Library**/Practical Implementation Tools)

**3**

**The Fallout from the Incident**

1. **From Dr. Little’s, the University’s and AACS’ perspectives,** did policies and conduct codes help them determine if a student, faculty or society member was acting at odds with the institutions’ respective policies and aims?
2. **From the perspectives of students, faculty, AACS, and the field,** how well did the University respond to the incident once it was made known to them. Was their response likely to prevent recurrence?

**RESPONSE**:

* We do not know the content or aims, of the University’s or AACS’ conduct policies, if any. We do not know if there was a policy against romantic relationships between faculty and students (or even between faculty in evaluative or mentoring roles with a student). That the University undertook an investigation would indicate that allegations made by Maria regarding Dr. Little’s groping and unwanted sexual advances, if proven, were recognized as a violation of Title IX, even if no institutional conduct policy was in place. (The department chair’s inadequate response, including failure to notify the Title IX coordinator who could have advised Maria of her options, immediately upon hearing of Maria’s concerns from Professor Charles, and the chair’s instructing Professor Charles not to notify anyone else (which would include the Title IX coordinator), also are likely violations.) The failure of the University to investigate and address the racial harassment, where facts evidencing that harassment were undisputed (in the title of the book exposed on Dr. Little’s desk and given to Maria) is a violation of Title VI (prohibiting racial discrimination by recipients of federal funding). In any event, meeting baseline legal requirements is not enough if the goal is to create an ethical, inclusive and equitable climate where all talent can thrive. Some of the conduct that would violate any good policy was undisputed (see below), and should have enabled the University to make a finding. Moreover, without an ultimate finding under its Title IX investigation and in light of the reluctance of other students to come forward with allegations, as well as the complete lack of attention to the racial harassment, it is unlikely that the University’s eventual investigation, begun under pressure of publicity, would prevent future incidents by other powerful faculty.
* It is unclear whether the University had a policy against faculty-student romantic relationships (or at least when the faculty member is in an evaluative or mentoring role with a student). It appears from the lack of findings in the investigation, however, that any policy failed to make clear that power differentials can make “consent” impossible—even when a faculty member does not overtly pressure a student (with consent even less possible when the faculty member advises or supervises the student). In light of Dr. Little’s evaluative and mentoring role for Maria, her allegation that Dr. Little pressured her would be credible under any good policy, based on Dr. Little’s own admission (not of “pressuring” Maria, per se, but of wanting a romantic relationship with her and giving his sexualized book to her to review even “just if she was interested”). Here, the University deemed Dr. Little to have merely exercised “bad judgment”—indicating that any policy was inadequate both as a deterrent and as a foundation for taking action to resolve abusive situations. Merely suggesting that a faculty member resign is unacceptable—some faculty members would ignore such a suggestion. In this case, Dr. Little agreed to leave but was allowed to complete his research on the innovation grant first and then went on to another institution where he could continue his harmful behavior.
* The result of the lengthy (though limited and ineffectual) investigation arguably did more harm than good. It resulted in harm to Dr. Charles who was removed from his co-principal investigator role on the innovation grant—which could be determined to be illegal and highly inappropriate retaliation against Dr. Charles for trying to address Dr. Little’s harassment of Maria. It failed to address Maria’s needs and adversely affected her prospects for a strong recommendation from an influential advisor. In this highly publicized situation, Dr. Little’s ability to complete his research without consequences before leaving for another position communicated a harmful message to the everyone involved, as well as the entire community, that “stars” will be protected, and targets of misconduct will suffer the consequences.

**ACTIONS TO PREVENT OR REMEDY**:

* Policy standards, guidance, training, and enforcement that **satisfy, but exceed, bare legal requirements** are necessary to create professional, ethical, inclusive, and equitable conduct, climate, and culture.
* Such standards are also essential where an institution wants to investigate and have the ability to impose consequences on conduct, whether or not it violates exiting law, if it violates the institution’s aims and associated norms and expectations for ethical and inclusive conduct. To do so, **at a minimum the institution must have:** **well understood aims and conduct expectations; some degree of process (even if informal) with identified decision makers; and authority (from the governing board) to impose consequences that can be taken in response to a violation of specific conduct expectations.**
* **Another benefit of such standards is that they may provide for interim safety and non-disruption measures**. The title and cover imagine on Dr. Little’s book, which was visible on his desk and which he admits he offered to Maria, is evidence of facial racial and sexual harassment in a workplace and learning setting. Also, there were serious allegations of unwanted sexual advances and longstanding broad (though unsubstantiated) rumors of similar issues involving other students. In this case, an interim safety and non-disruption measure (e.g., putting Dr. Little on leave) would have been appropriate to assure protection of Maria and other students, as well as Professor Charles, while fact-finding proceeded, without prejudging the outcome. That might also have encouraged other students to come forward. However, a policy is needed to authorize those measures.
* An effective interim measures policy and process identifies the institution’s goals and priorities to treat everyone ethically—while disrupting longstanding barriers and creating an inclusive climate. Such a policy articulates the latter interest as benefiting many and the field and, therefore, being weighed more heavily than any individual’s interest when the two must be balanced. The policy makes clear that interim measures do not reflect a prejudgment about anyone; all judgments are made only after fact-finding is completed and the involved parties have an opportunity to be heard. However, interim measures are imposed prophylactically, when there is a “credible question” about a violation, to advance an inclusive climate, safety and non-disruption. (And the accused and target are provided an opportunity to be heard on the interim measures before they are imposed, if feasible, or as soon as possible after.) The policy clearly defines “credible questions” of violations to include reasonable indications of a violation of a policy or law, such as undisputed reported facts or facts that, if proven, would constitute a violation. Broad and persistent rumors (not just a stray rumor) of a violation may bolster a credible question. .
* The University could learn from this incident and develop the needed policies, conduct norms, reporting options, and associated ongoing orientation and guidance; take strong actions to socialize the policies and conduct norms across all segments of the community (with relatable examples of conduct that is inclusive and expected, as well as conduct that is harmful and prohibited, to make the policies and norms real); and demonstrate through consistent action and anonymized reports to the community that ***all*** members of the community will be held accountable for violations.
* Despite Dr. Little’s resignation, more actions may be needed to repair the specific harms experienced by Maria, Dr. Charles, and the entire community, all of whom were left with the perception that targets of harassment, and those that raise concerns, do so at their own peril, while perpetrators, particularly “star” faculty, will be protected.
* **Community building can be an important tool to stem the harm caused not only to individuals but to the larger community**. Community building does not require a formal investigation or a formal “finding of responsibility” for a violation. It entails facilitated conversations or other processes, in which affected parties agree to participate without coercion, and through which an accused reaches a better understanding, and owns the nature and impact, of conduct that one or more people have experienced as harmful, as well as alternative ways to engage that would avoid that harm. Community building results in actions that stop harmful conduct, secure reliable assurance that such conduct will not recur (sometimes with an agreement to a monitoring process and restrictions on activities), restore confidence by the organization, the target, and others affected that the harm has been resolved and safety restored, and can help to repair professional relationships. Community building can also be useful in situations like the one in this case study where Dr. Little resigned and was not available to participate. Community building recognizes that in some circumstances, even with an investigation, concerns may persist or may not be fully resolved. The focus turns from formal findings of responsibility for violations to building inclusive and equitable community values and conduct norms.
* If the University had appropriate policies and practices in place, an investigation would have timely proceeded and addressed both racial and sexual harassment, providing a greater likelihood of reaching a determination (which did not occur). And the University would have better supported the needs of Maria and Dr. Charles. The University could have arranged a different, capable and ethical mentor for Maria so she could continue her work in the computer science department with an opportunity earn favorable recommendations.
* Alternatively, potentially even early in the events of this case, the parties involved might have agreed to a community building process, with Professor Little coming to understand and own the harm he caused; learning how to fulfill his duties as a faculty member in trusting relationships with students and committing not to repeat the harmful conduct; agreeing to supervision, monitoring and student check-ins by a faculty member of suitable stature and ethics to protect students while Dr. Little demonstrated the needed lessons learned; agreeing to another professor of suitable stature co-mentoring Maria to restore her opportunity to earn a favorable recommendation (and co-mentoring any other mentees); and enabling Dr. Charles to continue in a co-principal investigator role on the grant.

See 11 and 12 below as well.

**REVIEW:**

* **Societies Consortium Model Investigations, Resolutions and Consequences Policy Guide**, particularly Part G.3.IB.b, which includes detailed requirements and specific policy language for taking effective and ethical interim safety measures (access under **Library**/Model Policies, or **Roadmap**/Stage 2/Investigation/Resolution Resources )
* **Model Glossary**/Credible question (of professional and ethical conduct) – which includes both a definition of “credible,” and factors to consider to determine if a credible question exists.
* **Societies Consortium First Annal Members Convening**/Important Characteristics of Community and Restorative Actions (access under **Library**/Societies Consortium Guiding Documents/Societies Consortium Annual All Member Convening Documents/1st Annual All Member Convening Sept. 16,2019)
* **Model Glossary**/Restorative Actions
* **Compendium**/Community Building and Restorative Action Resources and Initiative

1. **From the University’s and AACS’ perspective,** if no one is formally reporting concerns about their experiences, can they assume nothing problematic is occurring? How could the University and AACS assess experiences without relying on reporting alone?

**RESPONSE**:

* **A lack of reports does not support a university or society board’s or leadership’s conclusion of a lack of problems.** As in this case, lack of reporting can be due to unavailability or inaccessibility of reporting options or fears of retaliation or more subtle, though damaging, harm to one’s career trajectory. Such fears are exacerbated by a perception (reasonable in this case) that reports will not result in serious action to protect the target. These inadequacies in policy and practice often result in the decision not to report because reporting is not worth the associated risks to career and relationships.

**ACTIONS TO RESPOND OR REMEDY:**

* **Permitting anonymous reporting, providing confidential advisors to guide targets and witnesses on the pros and cons of various reporting and resolution options, and conducting climate and experience surveys of members and meeting participants can be effective** ways for boards to elevate understanding among themselves, society leaders, and members about the actual occurrence of, and harm caused by, exclusionary, unprofessional, and inequitable conduct.
* But encouraging, and implementing effective, reporting by and on behalf of targets is not enough. **Each report should have a response, although the kind of response will depend on the university’s or society’s policies and scope of authority, as well as the availability of information.** If a university or society has a good process, takes effective action, and issues anonymized reports back to its community about the general kinds and frequency of misconduct and the general kinds of response , the community may internalize that prohibitions against unprofessional and unethical conduct are seriously enforced. With that confidence, reports are more likely.

**REVIEW:**

* **Compendium**/Data & Self-Assessment resources;
* **Compendium**/Surveys
* **Societies Consortium Model Reporting Out Template** -- Reporting Out on Conduct Concerns and accompanying Design Guide
* **Societies Consortium 1/28/21 Hot topic Webinar:** Data rich self-assessment processes as context for prioritizing equity and inclusion (access under **Library**/Practical Implementation Tools)

**4**

**AACS’ Response**

1. **From AACS’ perspective,** did its policies and conduct codes help it determine if a student, faculty or society member was acting at odds with the society’s policies and aims?
2. **From the perspectives of students, faculty, AACS, and the field,** how well did AACS respond to the incident once it was made known to them. Was its process fair and equitable? Is it likely to prevent recurrence?

**RESPONSE:**

* The case study does not provide information regarding AACS’s mission, its conduct policies and resolution processes, or its expected conduct norms—if any. The elements, and importance of having, effective policies are discussed in the Analysis for Pause & Process Questions 1-3 (general) and 8 and 9 (interim measures and community building), above, as relates to the University. These analyses apply to AACS as well. As a private society, however, AACS’ policies and processes should provide “fundamental fairness” but need not satisfy legal “due process” as a public institution must. Policies that treat all involved parties ethically require satisfaction of additional considerations, though.
* Even if policies existed to authorize its actions, there is a number of concerns about AACS’ actions in this case—from the perspectives of fairness and ethics.
* AACS called on its entire board to make decisions pertaining to concerns about Professor Little’s conduct and how the concerns would be resolved—raising questions of whether the confidentiality and integrity of the fact-finding and resolution processes could be protected and eliminating the entire board as a potential appeal-deciding authority.
* Allowing Dr. Little to be heard is appropriate. However, the board allowed Dr. Little to attend and participate in its initial deliberations, presenting a conflict even if he did not vote on decisions. And the board allowed Dr. Little to maintain his leadership position as a member of the board during the University investigation—on his response alone, without giving Maria an opportunity to be heard.
* AACS did not take, and may not even have considered, interim safety and non-disruption measures to advance an inclusive climate for society members and activities during the pendency of the University’s investigation. Considering both Dr. Little’s leadership position and the seriousness of the credible allegations of sexual and racial harassment (which are serious even had there not also been allegations of unwanted sexual contact), a suspension from board service and society activities, pending the outcome of the investigation and any additional process by the society, would have been appropriate and certainly should have been considered. The factors discussed in Actions to Prevent or Remedy for Questions 8 and 9, above, in relation to the University, would also apply to AACS.
  + AACS seems to have relied on the University’s investigation, which is fine if it had a policy that allowed such reliance and if the investigation had addressed the racial harassment as well as sexual harassment. However, when the University did not make a finding of responsibility against Dr. Little, AACS’s board—without any additional factfinding of its own or giving Dr. Little or Maria a post University-investigation opportunity to be heard—imposed a substantial punishment, termination of membership. AACS may have more latitude than a public institution to take punitive actions based on credible allegations, but it is still important to ensure basic fairness (and avoid credible claims of defamation or other professional harms). With credible allegations and appropriate policies, suspension from board service and activities can be justified as interim measures. But an indefinite termination of membership as a final resolution based on unproven though credible allegations raises a question of fundamental fairness and ethics.
  + AACS informed its members publicly that Dr. Little would no longer be a member (an ambiguous statement) and cited Dr. Little’s “outstanding service” to AACS. Dr. Little’s membership was terminated, and if the reason was an unresolved concern about Dr. Little’s conduct—and an unwillingness or inability to engage in a supplementary investigation to try to reach a resolution—AACS created a harmful impression that Dr. Little is an honored member of the society. Due to deficiencies in its process that led to that outcome, it would have been difficult for AACS to publicly state that Dr. Little’s membership was terminated. But AACS compounded the problems with its misleading statement.

**ACTIONS TO PREVENT OR REMEDY:**

* Formal investigations, findings of responsibility, and punitive consequences (at least alone) do not provide the most effective resolution in all (or many) cases. Here, Dr. Little’s membership in AACS was terminated and he resigned from the University. However, he went on to another university; he might challenge the termination, join another society, or still register to attend some of AACS’s meetings. Also, Maria’s and Professor Charles’ needs were not fully met, as their careers and relationships were adversely affected. To effectively minimize the likelihood of continuing harmful conduct, a more effective response might have been to pursue a restorative, community building process, if Dr. Little and Maria and/or Professor Charles were willing, without coercion.
  + Through community building activities (e.g., facilitated discussions with the accused and a target—whether together or separately, depending on their needs and uncoerced consent—and sometimes involving others who are affected), a person who has caused others to experience harm can come to better understand, and own, the nature and harmful impact of their conduct, can learn alternative behaviors that would avoid such harm, can commit to stopping the harmful behavior, and can agree to safeguards to assure that lessons are learned and harmful conduct is not repeated. The target and others affected can regain a sense of inclusion and safety. Relationships can also begin to be repaired.
  + It is possible that Dr. Little would have agreed to a temporary suspension from the society, with monitoring. A restorative process might have the potential to reduce the adverse impacts on Maria and Dr. Charles and enable Dr. Little to eventually demonstrate lessons learned, regain trust, and become a community member in good standing at some point in the future. That could be beneficial for the individuals, organizations, and field.
* To satisfy “fundamental fairness” and ethics in situations where it may be imposing punitive consequences (in addition to or instead of community building), AACS should adopt and make accessible policies that are clear regarding the conduct expectations against which a violation will be determined, the process for making that determination, and the society’s authorized actions in response. ***See also*** [**Section 4 Elements**](https://societiesconsortium.com/wp-content/uploads/2022/09/Case-Study-Library.-Section-4.pdf) , for a more complete discussion of the elements of an ethical process.
  + While not necessarily required for private entities if the policy is clear that there is no right to these measures (for some legitimate reason), ethical policies generally include reasonable notice of the allegations and, after that notice, some opportunity for the accused to be heard (e.g., in a conversation or written statement) prior to decision-making and the imposition of any consequences.
  + An ethical policy also addresses fairness to the target, including an opportunity to be heard. A target should not be compelled or coerced to come forward, but if they agree to participate, care is needed to minimize any adverse impact on them. A strictly and consistently enforced, well-known non-retaliation policy is essential. Other safeguards may include, e.g., hearing from the accused and target at separate times and places—with each having the ability to ask follow-up questions of the other filtered through and asked by the society—or possibly enabling each party to give a written statement and written answers to the other’s follow up questions.
  + A society may conduct its own fact finding alone, rely on another institution’s fact finding (as AACS did here), or rely on both. It may also retain discretion to find that another institution’s fact-finding is insufficient. It is also a good practice, though not a requirement, to have a separate fact-finder and decision-maker. In any event, a society’s policy should make clear how it will address fact-finding and decision-making.
  + All board members have a fiduciary duty to conduct a fair process, identify and manage or eliminate conflicts of interest, and maintain appropriate confidentiality. Depending on the size and training of the board, confidentiality for integrity of the process is more challenging when a large body is involved (rather than an ethics or executive committee). Also, while an appeal right may not be required of a private entity if their policy makes clear that an initial decision is final, ethical policy generally provides for appeals on limited grounds (e.g., new evidence, material conflict of interest or breach of process, no evidence to support the original decision). If the full board is the initial decisionmaker, who will decide an appeal? It is good practice (and arguably necessary for fairness) for an appeal to be decided by a body that did not make the original decision.
  + Ethical policies authorize interim measures based on credible questions when warranted by safety, non-disruption, or mission-driven interests, before a decision of responsibility is made. Such policies include:
    - a clear definition of “credible questions;”
    - clear statements that action based on “credible” but unproven allegations is not a judgment on any individual—rather the society is weighing most heavily the field’s priority efforts to break down longstanding barriers to inclusion and taking prophylactic action for safety and non-disruption for the community’s benefit and field’s excellence; and
    - an opportunity for the accused and target to be heard prior to or promptly after interim measures are imposed.
* Whether as an interim measure or a final consequence, it is important for policies that provide for revocation of membership to be clear that membership is a privilege, not a right—and that the society retains the discretion to revoke or suspend membership if it determines that a member’s conduct may have a negative impact on the society’s or the field’s mission, reputation, activities, or community. Some explanation of whether there is any process through which a person whose membership is revoked or suspended can reapply for membership and on what conditions is also good policy (but unclear here), although this is not necessarily required of a private society.
* If AACS had a sufficient policy and followed it, the policy would have been clear that it has discretion to publicly disclose the outcome of an investigation when it determines that would be in the best interests of advancing an ethical, inclusive and equitable community—and, at least, to describe its policies and the actions it typically takes in various types of situations. An effective policy also includes periodic anonymized reporting out to the community on the aggregate types and frequency of, and kinds of responses to, conduct that violates an ethics or conduct policy, without identifying individuals involved.

**ALSO REVIEW:**

* **Model Glossary**/Credible question (of professional and ethical conduct) – which includes both a definition of “credible,” and factors to consider to determine if a credible question exists.
* **Societies Consortium First Annal Members Convening**/Important Characteristics of Community and Restorative Actions
* **Model Glossary**/Restorative Actions
* **Compendium**/Community Building and Restorative Action Resources and Initiative
* **Societies Consortium Model Reporting Out Template** -- Reporting Out on Conduct Concerns and accompanying Design Guide

1. “Early career” can include post-doctoral scholars, residents, non-tenure track faculty/researchers, untenured tenure-track faculty (e.g., assistant professor), and other professionals with less power. Graduate and undergraduate students are also included, although their positions are distinct. Within this group, there are differences in the experience and agency of each role in relation to the others that may influence the effect on them of others’ misconduct and the response. [↑](#footnote-ref-1)
2. In discussing these power differentials, the analysis uses terms such as “a mid-career professional.” This is a person who has past entry-level and, for faculty, typically has been tenured (i.e., tenured associate professors). A “late-career professional” is generally a person who has been promoted to top tenured faculty ranks and/or has gained honors or other substantial renown and influence in a field (e.g., tenured full professors, distinguished professors, endowed professors, emeritus professors and researchers with world renown and top honors). [↑](#footnote-ref-2)