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In a careful decision with far-ranging implications for women, Federal Magistrate Arthur Latimer on December 21 held that the lawsuit against Yale University for sex discrimination based on sexual harassment, pending since July, 1977 in New Haven, may go forward to a trial on the merits. Using reasoning developed in the context of employment discrimination, he held that sexual harassment, if proven, can constitute sex discrimination in federally funded educational programs. This is the first time that such a ruling has been made, according to Anne Simon, attorney for the plaintiffs. Magistrate Latimer also granted the right to sue in federal court, rather than relying exclusively on recourse to the Department of Health, Education and Welfare, and characterized more explicitly than ever before the requisites for such a suit.

Connecting sexual harassment in education with sexual harassment at work, Magistrate Latimer stated ". . . it is perfectly reasonable to maintain that academic advancement conditioned upon submission to sexual demands constitutes sex discrimination in education, just as questions of job retention or promotion tied to sexual demands from supervisors have become increasingly recognized as potential violations of Title VII's ban against sex discrimination in employment. . . ." He held institutions responsible when victims complain to officials who fail to act.

Noting that the adequacy of HEW's enforcement of Title IX, the statute on which the suit is based, had been questioned, Latimer

disagreed with recent rulings that plaintiffs may not seek private redress in federal court. He found it "obviously significant that the enforcing agency urges recognition of private suit rights," as HEW did in this case. Relying on the extensive acceptance of the right to sue privately in federal court under Title VI of the Civil Rights Act of 1964, the magistrate expressed concern that without a similar right under Title IX, which prohibits sex discrimination in education, there will be "substantially different enforcement rights to victims of sex discrimination than to those subjected to discrimination in federally-assisted programs 'on the grounds of race, color, or national origin'. . . ."

In the allegations of plaintiff Pamela Price, Magistrate Latimer found all the elements he held necessary for such a suit. Ms. Price alleges that she received a grade in a course that was not the result of her academic work, but rather a retaliation for her refusal of her male professor's sexual demands. She complained extensively to Yale officials, but not to HEW. According to the magistrate, absence of a "realistic possibility of a meaningful remedy" supported her access to federal court. Since she is now applying to law schools, the urgency of her case underlined the need for an adequate grievance procedure at Yale, the relief the lawsuit seeks. The ruling clears the way for a hearing on her request for an injunction that would temporarily suspend the operation of the grade.

Five plaintiffs were found not to meet Magistrate Latimer's criteria. Four of them were characterized as not being, at the

time the suit was filed, directly and personally victimized by the alleged discrimination. The magistrate held that one student, who had graduated when the suit was filed, would not benefit from the relief sought in the case, and thus her claim was moot. Other plaintiffs' claims were found not to allege a "personal exclusion from a federally funded educational program or activity or. . . personal denial of full participation in the benefits of such a program or activity in any measurable sense." In considering the contours of the claims, Magistrate Latimer also pointed to what he said was a "critical distinction" between the situation of Ms. Price and other plaintiffs dismissed from the suit, based on the extent to which complaints to university officials had been made.

Commenting on the importance of the ruling and the next steps to be taken, Ms. Simon said, "I am still studying Magistrate Latimer's thoughtful decision. It is an excellent example of the way women's real situation can be taken seriously. Because I think that some of the dismissed plaintiffs present claims that are important aspects of the problem of sexual harassment, I am actively contemplating the possibilities for appealing some of the dismissals."

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Note: A statement by Ms. Price is available on request