

Touro College Jacob D. Fuchsberg Law Center

From the Selected Works of Louise Harmon

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The Harvest

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THE HARVEST

LOUISE HARMON*

I had heard about Joseph Posillico's philandering during my first year at the law school. A few of us were invited out for drinks one night after the graveyard shift. The invitation was a gesture to the two new faculty members, and the one visitor, to make us feel welcome. It was no quirk of fate that we all three happened to be present in the law school at 10:00 p.m. on a Thursday night. Our bottom of the totem pole position assured us the worst possible schedules.

Personally, I don't like bars; I find them dark and dank, and the smoke bothers my sinuses, but I went along to appear collegial. In the beginning of a job, you can't afford to say no to these kinds of invitations, usually offered in a burst of spurious spontaneity. Why don't you join us for a drink, someone will say heartily over his shoulder as you are gathering up your books, putting on your jacket, dreaming of your pink fleece bathrobe and The Antique Roadshow. So you smile and lie, and say sure, I'd love to. You have to go, at least at first, until you have proven yourself to be a good sport. The main thing is that you don't want anyone to think that you think you are superior to them. Some white wine must be sipped, stale peanuts eaten, some jokes laughed at. It's not really sucking up. No one with real clout ever goes out for drinks. It's more like sucking sideways.

I got trapped at a corner table in the dim twilight of the Artful Dodger with Greg Archer (the Third), a young man who teaches Secured Transactions and Tax. Several years below me in chronological age, and several years above me in seniority, Greg Archer (the Third) took it upon himself to educate me. He leaned on his left elbow and faced me, creating a private space in which he could hold forth in low, conspiratorial tones. I specialize in dirt, he told me, personal and professional.

At first, I was put off. I don't much like dirt, but I'll have to admit that what he had to say was quite interesting, and maybe useful someday. I suppose it is in the nature of dirt that you never know when it will come in handy. Sometimes it never does, unless you are willing to count the value of psychological insight, which I always am. I like to know things about people, their history, what makes them tick. Some might accuse me of being nosy, but I think of myself as being curious, interested. And the kind of information that Greg Archer (the Third) had to impart was definitely worth storing for future reference: Who on the faculty could be not be trusted, who told every confidence to the

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Dean, who was crazy, who drank, who copied exam questions from the Bar Review materials, who had his research assistants write his law review articles, who philandered.

I just wanted to give you the lay of the land, he said, folding a cocktail napkin with his right hand like a piece of origami. I said nothing, but raised one eyebrow, a trick that I had learned from my mother. Sometimes I find that silence, combined with a lifted eyebrow, makes people nervous, as if they believed my response revealed a tacit judgment (which it often does). But not Greg Archer (the Third). He was too self-assured, too confident of his place in the world to contemplate—or to care about—the judgment of a new female member of the faculty. He laughed, and tossed the pleated napkin onto the table. Joseph Posillico, that's the lay of the land. He's always chasing after one skirt or another.

Joseph Posillico? What kind of skirts, I asked: students or staff or faculty? These issues of hierarchy have always interested me. There was a junior partner in my law firm who couldn't keep his hands off the women who worked in the building: women from maintenance, secretaries, administrators, paralegals, associates, partners—he went after them all. It got him into a lot of trouble since the ethic of the firm was that only lower level women were fair game. There were some unwritten rules about appropriate harasses, who could be pawed and petted and propositioned, and he broke them. Anyone below administrators was a target, and paralegals could go either way, depending on how powerful they were. (Some of the queen bee paralegals could not be touched, but there were others, the filers of forms, the real estate closing drones who were acceptable prey.) One rule was clear, however: women attorneys could never be touched, consensually or otherwise, even if they were only associates. He never hit on me.

Any kind of skirt, Greg Archer (the Third) answered. Then he paused and reconsidered, and like any good lawyer, he discriminated. No, I take that back. I've never heard of an instance of Posillico hitting on a faculty member or anyone on the staff. It's mostly students, I guess, and there's a profile.

A profile?

You know what I mean. He always goes after the same sort of woman. You could say he's got a specialty.

So what's the profile?

Well, he likes them older than the average student, pretty but past their prime. And desperate. That seems to be a prerequisite. Sometimes they're trapped in unhappy marriages, or reeling out of them, but he's got a kind of sixth sense about when a woman might be vulnerable. My

first year, I had an office next to his, and I'd see these older women going in and out of his office in tears, blowzy bleached blondes, with too much make up, skirts too short, fat knees that shouldn't see the light of day. I used to think of them as bruised fruit.

I was taken aback by the expression 'bruised fruit,' and wondered for a few fleeting seconds how Greg Archer (the Third) would assess my knees. Ridiculous, I concluded, looking at his smooth face, his moussed dark hair and dazzling white teeth. This young man would never consider the possibility that I had knees. My silence taken as assent, he continued. Have you ever seen Posillico's office? It's amazing. He's got an Oriental rug, and a couple of small lamps that create this sort of orange, hazy glow, and a maroon couch made of fake suede. And on the radiator, which of course doesn't work, he's got a little boom box that he plays music on all the time.

What kind of music?

Piano. Chopin, I think. You know, sad romantic music.

I wondered what kind of music Greg Archer (the Third) would use for a similar scene of seduction—in his own apartment, of course, and not with a student. He was far too cautious to take any risks with students. Coltrane, I would be willing to put money on it: anarchic, discordant, designed to derail. My own choice would have been Verdi, or perhaps Puccini. Something operatic, tragic, music for hopeless love.

And truth to tell, at the time we were having this conversation, before all of this started, I'm sure I would have preferred Joseph Posillico. At least from what I had seen, he was far more appealing to me than Greg Archer (the Third), with his aggressively ivy league clothes, gross grain suspenders, silly bow tie, and youthful imitation of a middle-aged man. And then, of course, Posillico was Italian. I'm a sucker for anything Italian. I'm not saying that Joseph Posillico was attractive to me or anything, but like the women he pursued, I could tell he had been good looking when he was younger.

Not much later, I found that out for a fact. I sat next to him at my second faculty meeting, and we were making innocuous pre-meeting chitchat, when he mentioned his daughter's performance in a high school play. I asked to see a picture of his children. (I don't have any children of my own to show off, but like I said, I am a curious person. And a request to see family pictures gives us something to talk about; it effaces the thick walls between us, creating a place where light can be detected, like the sun on the other side of an alabaster window—the windows in San Vitale.) And so Joseph pulled a wallet from his back pocket and pried out of it a tattered color photograph of his family,

sitting in front of a brick fireplace with quilted Christmas stockings dangling in the background.

It's a few years old, he said, but that's my son Steven, and my daughter, Anne Marie. She's about fourteen there.

And this is your wife? I pointed to the woman on the other side of the mantle, the other bookend. She had a prettiness of her own, for a middle-aged woman. Strawberry blonde, round rosy face, wearing a red sweater that had what looked like a sequined Santa face stretched tightly across her ample bosom. I felt certain that she had made the quilted Christmas stockings herself, probably from kits purchased at a craft store. My Aunt Carol used to make them.

Yes, that's Angela. He put the picture back in the wallet, and then without prompting, he asked, do you want to see a picture of me in college? On spring break?

Sure. I didn't think it was so odd then. We were, after all, just getting acquainted, looking at photographs of his family, but later the oddness of the gesture struck me. Who carries around pictures of themselves twenty five years ago? And who shows them to a new colleague at a faculty meeting? But when he brought out the photograph, I took it from his hands and studied it carefully. The color was faded, and the background was hard to make out, but there was Joseph Posillico, in another time and place, leaning out of a car window, no shirt on, tan, long wavy hair the color of spun gold, his teeth bared in an irrepressible smile that said: I'm incredibly handsome, aren't I? And I'll have to say, he was. There was a sensuousness to his mouth that was disarming. I shot a look over at Joseph Posillico's face, and noticed that his mouth still spelled promise. He had rather remarkable lips, large, supple, full, and I thought of Guinevere and Lancelot, their eyes locking as she read from a book: *la bocca mi baciò tutto tremante*. Those lips didn't match the rest of his face, which bore little resemblance to the young man in the photograph. Like most of his colleagues around the table, it was a drawn, gray face, and there was a grizzle of stubble on his flaccid cheeks that gave evidence of a man who had given up. As Greg Archer (the Third) so succinctly put it, Joseph Posillico wouldn't get the time of day from these women if he weren't a law professor.

I would have known nothing more of Joseph Posillico or his philandering, had the Dean of Students not appointed me Counsel in a sexual harassment complaint. I was chosen, or so the Dean of Students told me, because I was a woman of impeccable integrity, and therefore would have credibility. (One implication being, I suppose, that I am a prude, a chronic virgin, beyond approach and above reproach, and the other being that my male colleagues as potential harassers were at risk

of being tainted—those who lack clean hands should not be delegated the task of cleaning up the kitchen. Also I was not aligned with the more radical feminists at the law school, Pat Robbins and her crew, so presumably I would not have any doctrinal axes to grind—no gender hatred to exorcise.) My appointment prompted me to obtain a Faculty Handbook and look up my responsibilities under the law school's Sexual Harassment Policy. The Counsel "shall investigate the matter. Such investigation shall include gathering relevant evidence, interviewing the person who made the complaint, the person or persons who are alleged to have violated this Policy, and any other person who may have relevant information." It was with a heavy heart that I opened the file. I was not surprised to see that Joseph Posillico was the alleged offender, nor that Christine Malverne was the complainant. As Greg Archer (the Third) had put it: there's a profile.

I thought it would be a good idea to interview the complainant first, so I left a message in Christine Malverne's mail box, asking her to come and talk to me on Thursday at 3:00 p.m. (She had been a student in my Trusts and Estates class that semester, so I knew who she was. I like to use a seating chart with photographs, so that I know the names of all my students. There's a pedagogical purpose behind the practice: it helps me keep them in a state of perpetual dread of being called on. Sometimes I find that it's hard to be imposing in the classroom when you're a woman, and only five feet two.) She missed the appointment, although she left me a voice mail that her son was running a fever at school; she had to go and get him. (I find women with small children are often unreliable.) We were finally able to meet early the following week, and she told me her version of the story.

Christine Malverne was nervous, sitting across my desk, and kept fiddling with the covers on her books as she pressed them up against her chest. I assessed her beauty: She was a big woman, about my age, maybe 35 years old, and while I wouldn't call her attractive, she had an interesting face that alternated between exotic and equine. This time she wasn't a blonde, but a redhead, and she wore big gold hoop earrings and several gold chains, including one that had a script *Chris* hanging from it that kept catching on her clavicle. Her finger nails, like so many of our female students, were inappropriately long, and bright red, and she chewed gum. I was certain that her white tank top was several sizes too small and accentuated her breasts and cleavage, although I could hardly see through her armor of books. I wondered to myself, as I often have, how these women expect to get professional jobs, looking the way they do. I try to set an example in my own dress and demeanor, but it seems to do no good.

Well, now—shall we get down to business? Much to my surprise, I was finding this meeting incredibly awkward. Perhaps it was because I had never prosecuted a sexual harassment claim before. After all, the matter was by nature rather delicate, and I wanted to set the right tone: professional, dispassionate, straight forward, factual. But Christine Malverne just sat there on the other side of the desk, staring at me, chewing, chewing. She looked so real, so big, and her gum went snap snap across the chasm of silence that grew larger and larger between us. I couldn't seem to find a way to initiate the conversation. Well, Christine, I said, wading into murky waters, do you want to tell me what happened?

Well, Christine took a deep breath, Professor Posillico was my Property teacher last semester. That's how I got to know him. I was having a lot of trouble with future interests, and one day after class he offered to give me a little extra time in his office. She laughed and sounded a bit like a neighing horse. She had finally put her books down in her lap, and was fiddling with the *Chris* chain around her neck, and yes, her white tank top was too tight. I'd heard about Posillico from the second and third years, how he has a bad reputation for hitting on older women students. I guess I didn't believe it. She paused, and then seemed at a loss for words. Did you go to his office?

Yeah, I did. Christine laughed nervously. Again she lapsed into silence, and I had to prod. Did he do anything in his office to you of a sexual nature?

Uh, well, not really, not the first few times, not during the semester. I mean, you know, I just went there for help on future interests. I couldn't figure out the difference between a contingent remainder and oh well, I can't remember, an unvested remainder of complete divestment or something, and he was very helpful. He got out a piece of paper and sort of drew me a chart. I still don't really get it, but I'm not sure anyone does. Christine paused and gave me a shy smile, as if she recognized that she had said a foolish thing to a woman who taught Trusts and Estates. I tried to smile back, but it must have looked strained. I do take these things seriously. It's a vested remainder subject to complete divestment, and I do get it. Judging from having taught his students in Trusts and Estates, Posillico might not.

She continued. I went to his office a couple of more times during the semester for help, and then one day, during intersession, I was in the building, and I knocked on his door to see if he was there, and he was. He asked me to come in, and I did, and then he shut the door.

The other times, the door had been open?

Yeah, I think so. You know, I didn't really think about it, but I did notice it when that one day he deliberately shut it. He told me it was easier to hear the music that way.

Then what happened?

Christine looked acutely uncomfortable, and did not look me in the eye. Well, he asked me to sit down on the sofa, so I'd be more comfortable, he said, and then he asked me how things were going, and when I started to talk about the Property exam, he said, no, no, I mean how things are going for you, here at the law school, in your life. Then I started to tell him about my husband, and how he doesn't want me to be in law school because I was making really good money before in real estate, and now we're in major debt, plus I keep having to pay baby-sitters for my son. I kept telling him that there'll be a lot more money when I get the law degree, but he doesn't believe me. He hasn't been real supportive about this whole thing. She crossed her arms, and looked as if she might start crying. Her lower lip quivered slightly. The skin on her neck was blotchy, and the circles under her eyes seemed to darken. It made me think of the expression "bruised fruit," and my heart suddenly went out to her.

So what did Professor Posillico do?

Well, he was real nice, and then I started crying—I cry real easy, don't ever take me to a sad movie, I'm like a real gusher—and then he got up from his chair and came over and sat by me on the sofa, and he brought out his handkerchief. It was real clean, ironed, folded and everything. You don't see handkerchiefs much these days. My father used to always carry one.

Christine stopped abruptly after this spate of words, and an image flashed across my mind: Angela Posillico ironing her husband's handkerchiefs with loving care, with the same loving care that she lavished on those quilted Christmas stockings.

Anyhow, Christine continued, catching her second wind, Well, I blew my nose and wiped my tears, and then Professor Posillico must have moved over on the sofa, because suddenly he put his arm around me, you know, to comfort me, at least that's what I thought. And then he kissed me.

What did you do? I got another flash: Joseph Posillico's sensuous mouth.

Christine did not answer at first, and then she took a deep breath. Well, I'm sort of embarrassed to tell you this, but I figure it's the best thing, to be straight with you, since you're the Prosecutor and all. (I nodded in assent.) Well, I kissed him back. I didn't really think I would. I'm married, you know, and even though my husband and I aren't

exactly getting along, I've been faithful to him. I don't know what got into me, really.

Then what happened? (To myself, I marveled. They worked: the small lamps with the orangey glow, the maroon sofa, the Chopin—they worked.)

Her voice was barely audible. Well, we made out for a while on the sofa, and then he started to put his hand up my skirt, and I got scared. Like I said, I'm basically a good girl. It's one thing to let your professor kiss you, but I wasn't ready for anything heavier than that. I know I shouldn't have kissed him back, but he was being so kind to me, and maybe I was mad at my husband, I don't know. But I knew I didn't want him to get his hands in my pants, if you know what I mean.

I didn't, but nodded anyway, just to get the rest of the story out on the table.

So, anyhow, I pushed him away, and I got up from the couch and grabbed my books, and ran out of his office.

What did he do?

He followed me at first, saying, wait, Christine, wait, but I was out of there, and then I ran out of the building and got in my car and went home. I don't know how I didn't have an accident, I was so upset. Of course, Mark, that's my husband, he was there when I got home, and he could see that something was wrong, but I didn't tell him what happened. I couldn't. I was so ashamed. He still doesn't know. Then Christine Malverne began to cry, and instead of looking like a 35-year-old woman, she looked like a lost twelve-year-old. I said nothing, but handed her the box of Kleenex that I keep in my office drawer for tears shed over botched exams. I really hate it, she blurted out, between heaving sobs, what he did to me. I know I was partly to blame, but he was my teacher, and I trusted him. He shouldn't have tried to take advantage of me like that. And the worst of it is, I got a D in Property.

Oh no, a D in Property, I thought to myself in dismay. This is not good. Property is a four-credit course, and a D in Property is going to put a student in academic jeopardy. Students who get Ds in Property sometimes flunk out of law school. A D in Property is not good.

Christine nodded and looked up at me with a ferocity that alarmed me. Her sadness had turned to anger in a heartbeat. I know I got the D because I wouldn't go all the way with him. I'm sure of it. He's done it before to other women students who wouldn't sleep with him. I know that now.

Have you seen Professor Posillico since then? I was curious to know what his *modus operandi* was when his target was a moving one. Surely

he had a programmed response. They couldn't all want him to get his hands in their pants, as Christine so succinctly put it.

Yeah, I've seen him a couple of times in the hallway, and he won't even look at me. It's like I wasn't even there. She began to regain her composure.

Have you gone to discuss your poor performance on his exam with him?

No, I won't set foot in that office again. But I'm sure it wasn't a D paper. I might not have understood future interests, but I knew that other stuff, even the Rule Against Perpetuities. That's why I filed this claim. To have someone else look at that exam and tell me it wasn't worth a D. I don't even care if they won't change the grade, even though it did ruin my GPA. I just want someone to say, Christine, you didn't deserve a D in Property. That son of a bitch gave you a D because you wouldn't sleep with him.

I thanked Christine Malverne, and told her that I would be back in touch with her after I had completed my investigation. She nodded, gathered her books, and left my office, her face brooding, and her shoulders rounded in a posture of defeat—of despair. I then wrote Joseph Posillico a memorandum, identifying myself as the appointed Counsel in this case, informing him of Ms. Malverne's complaint, giving him an opportunity to discuss the matter with me before I prepared the Charge, and advising him of his right to refuse to speak with me. I also stated my opinion: based on my interview with Ms. Malverne, there appeared to me to be sufficient evidence to support a Charge of sexual harassment, namely his physical assault on her in his office during the intersession and his proposition of a sexual nature, enumerated prohibited conduct in Section 3 of the Sexual Harassment Policy.

Joseph Posillico immediately responded with his own memorandum. Under the Policy, he had the right to refuse to speak to the Counsel, and he was hereby exercising that right. No inference as to the truth of Ms. Malverne's allegations should be drawn from his refusal to speak. Not only that, he continued, his relationship with Ms. Malverne, as fleeting and inconsequential as it was, constituted a Consensual Relationship Outside the Instructional Context, referring me to Section 4 of the law school's Policy on Consensual Relationships. Because of the serious nature of her complaint, and the likelihood that his reputation and good name would be tarnished by a prosecution of her claim, he was hereby requesting an informal meeting with the Dean to see if we could quickly and discretely dispose of this matter. The Dean was then cc/ed.

Before I had a chance to find a copy of the law school's Policy on Consensual Relationships, a policy I had frankly never heard of, I got

a call from the Dean's administrative assistant. Could I meet the next day at 10:00 in the morning with the Dean and Joseph Posillico for an informal meeting to discuss the Malverne matter? I wondered ever so briefly why it was called the Malverne matter, and not the Posillico matter. Generally we don't describe criminal cases by the name of the victim or complaining witness, but by the defendant's last name. The deeper implications of my question eluded me at the time: who was on trial here?

It was an awkward position I found myself in. I had before me a Sexual Harassment Policy that provided for a procedure entailing a formal written charge to a committee, a hearing, counsel if necessary, production of witnesses, a disposition, a record, a sanction—the full panoply of due process rights was supposed to be afforded the defendant, as well as a fair and impartial hearing of the complainant's grievance. I saw nothing in the Policy that provided for disposing of the complaint via an informal meeting with the Dean. Yet, I saw nothing in the Policy that prohibited such an informal meeting either, and I was new at the law school. True, I had made a lateral move, with tenure, but I still had not built much of a relationship with Dean Striker, and there were several requests that I planned to make of him: a promise that I would never teach the graveyard shift during the same semester that I taught an eight o'clock morning class, a corner office with big windows if there were indeed a couple of early retirements in the making, and a seminar in estate planning. True, these were not wickedly wild requests with lots at stake, and in retrospect, perhaps I should not have acquiesced to the informal meeting with no struggle whatsoever, but I wanted to advocate for myself on solid footing. Refusing the Dean's request to meet informally might have made me appear suspect, not a team player.

Before the informal meeting with Posillico and the Dean, I looked up the Policy on Consensual Relationships and found that it followed the Sexual Harassment Policy in the Faculty Handbook; the faculty adopted both on the same day. I don't know how I missed it in the first place—I am usually much more careful about reviewing the relevant statute—but I did not know to look for it. Indeed, the very possibility of such a policy had never entered my mind. In my prior law school, all sexual relations with students, regardless of whether the student was enrolled in your class, were proscribed, on the theory that there was an innate imbalance of power between all students and all faculty, and that as long as a student was living in our community, he or she ought to feel safe from predation by any faculty member.

Ironically, this law school's Policy on Consensual Relationships began with lip service to the ideals of professionalism and how faculty members should not abuse their power over students. "Faculty members exercise power over students, whether in giving them praise or criticism, evaluating them, making recommendations for their further studies or their future employment, or conferring any other benefits on them. Trust and respect are diminished when those in positions of authority abuse their power." The Policy then went on to proscribe consensual relationships in the Instructional Context: "No faculty member shall have an amorous relationship (consensual or otherwise) with a student who is enrolled in a course being taught by the faculty member or whose academic work (including work as a research assistant or teaching assistant) is being supervised by the faculty member." Notwithstanding a recusal requirement if any decisions were to be made about the student in question, "nothing contained herein is intended to prohibit, or to make punishable as a violation of this policy, a consensual relationship between a student and a faculty member where there is no present instructional or supervisory relationship."

I've been around a number of work settings in my day, legal and educational, enough to know when I was in the presence of a compromise. These two policies, the hands off Sexual Harassment Policy and the hands on Consensual Relations Policy shared a history, and I wanted to know what it was before I went in to talk to the Dean and Posillico. My first thought was to call the king of dirt, Greg Archer (the Third), but he was uncharacteristically terse on the phone. His specialty, or so he explained, was personal dirt, not institutional history. What he did relate was somewhat enlightening. The two policies were passed at the same time, he said, a couple of years before he had joined the law school. He had heard that there was a big battle over the Sexual Harassment Policy, with the ardent feminists taking an absolutist position: no sex with any student whatsoever, and the more libertarian men taking a similar hard line: no regulation of any sexual behavior whatsoever. The feminists, and I have to assume here that this meant Pat Robbins et al, took the position of my former law school: the power imbalance was so great, that any relations with any student was suspect, regardless of whether the student was enrolled in the professor's class. The libertarian men argued that the law school had no business interfering with the personal conduct of its students or its employees. These were adult women, not children, and John Stuart Mill's harm principle applied: no regulation of personal conduct so long as it did not directly hurt anyone. The compromise was the augmenta-

tion of the Sexual Harassment Policy of the Consensual Relations Policy.

Of course I was dying to know what position Joseph Posillico had taken in this debate, but Greg Archer (the Third) did not flesh out his story with any flesh, and I could not ask, for fear of revealing why I might be interested in either of the two policies. (I can be very discrete at times.) I actually could not imagine Posillico being active in the discussion at all, even though I suspect he would have voted for absolute sexual freedom, provided there had been a secret ballot. But he is not the sort of man to take a stand on much of anything, at least not in a public forum. In faculty meetings, he sits in the corner and goes through his mail, ripping envelopes loudly, clearing his throat, getting up frequently to go to the bathroom—all this I learned from sitting next to him a couple of times—but he is not inclined to speak or take a position. He is more dynamic in other settings, or so I have been led to believe.

I wore my navy blue suit the next day, the one with the brass buttons, and a plain white silk blouse, for the meeting with the Dean and Posillico. It was a professional outfit, feminine but businesslike, and that was the image I wanted to portray, although I cheated on the shoes a bit, wearing my navy heels with the open toe. (I did wear stockings with opaque reinforced toes, however, so that no one would see that my toenails were painted a delicate fuschia. Even in the winter, even if no one else sees them, I like my feet to look nice.) At ten o'clock, the two men were already waiting for me in the Dean's office, and I wondered for a minute whether the "Malverne matter" had been discussed before my arrival.

Won't you come in, Eve. The Dean gestured to the empty chair next to Posillico who nodded in my direction with the ritual politeness of an adversary. I responded in kind, and noted to myself that Posillico did not look that good. His face was the color of the inside of a pizza carton, and he looked constrained by his tan corduroy jacket that was two sizes too small. I sat down, crossed my legs, and folded my hands in my lap. I certainly was not going to initiate the conversation.

Well, now, Eve. You've been appointed as Counsel in Ms. Malverne's Sexual Harassment claim against Joseph. It all seemed so cozy: Eve, Joseph. Only the complainant—the outsider—had a last name. I nodded curtly and stared at my hands, saying nothing. I wanted to see what direction the Dean was headed. I glanced up at him for a second and suddenly realized that Dean Striker bore a striking resemblance to my Uncle Louis, my mother's brother who ran an insurance company in Kansas City. I had never noticed it before; they both bore the same sleek, weasely look, smooth skinned, slicked back hair, sharp little black eyes.

The Dean continued. You can imagine how serious such a claim is, I am certain, and the attendant risk of harm to the alleged perpetrator's reputation. I nodded again and braced myself. This was going to be a lawyer talk meeting, I could tell. After we both got your memo, Joseph called me yesterday quite concerned, and suggested that we have this little informal meeting to see if we could iron things out. The Dean smiled and opened his palms out in supplication, as if he were trying to arbitrate a dispute between two fractious siblings. I let him go on.

Joseph has admitted to me that he may have been a tad indiscreet with this young woman, but that she was more than willing, and indeed that she led him on. He also indicates that Ms. Malverne is a little bit unstable, and we're both wondering what she has told you.

Well, I'd like to say first that there's no evidence that the complainant is unstable. (I wanted to get that on the record, although I'll have to admit I was going out on a limb. Christine did seem rather labile, and I wouldn't want to have to vouch personally for her mental health.) I continued: The complainant says that he kissed her while she was crying in his office, sitting on the sofa, and that he tried to move his hand up her skirt. And she claims that he gave her a D in Property because she was not willing to go to bed with him.

Oh, no. Posillico suddenly came to life and scooted to the edge of his chair. That part isn't true about the hand up her skirt. We did kiss once. I already told the Dean about that, and I deeply regret it. It showed poor judgment, I know, but it was a moment of weakness on my part. I know I shouldn't have, but it was clearly a consensual relationship under our policy. It was more than consensual. She initiated it.

His face was no longer gray, but pink, and now the collar of his blue shirt looked too tight too. The Dean raised his eyebrows at Posillico as if he wanted him to go on. Well, he said, the part about giving her a D in Property is true, but believe me, she earned that D fair and square, every 62 points of it. I'd brought a copy of her exam with me today in case you cared to take a look at it. He bent over and reached into his briefcase that leaned up against the chair and handed me a Xerox copy of a bluebook. I took it from him without looking at it, laying it in my lap.

Now it was my turn to speak: I don't think it's relevant that the relationship may have been consensual. It was clearly an amorous relationship, and Christine Malverne was a student enrolled in your Property class. Even if she had initiated the kiss, and I am not saying that she did—that isn't her story by the way—she was in an Instructional Context. That means any sexual behavior with her is proscribed, regardless of her state of mind. (I was pleased with myself. I had done

my homework, and my legal argument just poured out of my mouth, like hot syrup at IHOP.)

No, she wasn't.

Wasn't what, Joseph? The Dean interjected himself into the conversation, partly to defuse the tension, I suspect.

She wasn't in my Property Class any more. Joseph Posillico pulled himself up in his chair, and stroked the nap of the corduroy on his left arm. I had already turned in my grades in Property. It was intersession, and Christine Malverne and I were not in an Instructional Context when the alleged behavior took place. I had already turned in my grades.

The Dean opened the file drawer at his left knee and thumbed through the files, pulling out one that read in black magic marker HARASSMENT FILE. He put on a pair of half glasses and poured over the Consensual Relationship Policy, running his finger slowly over the text. Posillico and I both sat in silence while he read, but inwardly, I blanched, remembering now that Christine had said that her encounter with Posillico had happened during intersession, a fact that had not seemed relevant to me when I heard it. This was probably because it had never occurred to me that Posillico could possibly have finished grading over 90 Property exams before the intersession was over. Most of us take a month or more to grade our fall semester bluebooks, turning our grades in during the first or second weeks of the spring semester. This is particularly true of the Property teachers because theirs is always the last exam given, usually right before the holidays. For the first time, I wondered when Posillico had handed his Property grades in.

I think, Eve, that Joseph cannot be guilty of sexual harassment under our policy, if what he says is correct. If his Property grades were already in, and if she consented to the kiss, then I think our policy does not proscribe that behavior. It may discourage it. The Dean took off his glasses and rubbed his eyes. And I have to say, Joseph, he continued, that I think you showed poor judgment here, even if the girl started it, and even if she has a history of mental instability, but . . . He tapped the policy with his index finger, and the entire folder shuddered. I don't think there's anything criminal about a consensual kiss. Posillico nodded vigorously in assent. Indeed, now the Dean was nodding as well, but at a slower pace, and the two men looked like a couple of those bobbing head dolls that some people used to put in the back windows of their cars. Up and down their heads went, in a syncopated dance of male bonding, a dance of exclusion, of certainty in their position, and I knew what was going to happen: This case was going nowhere.

But what about the hand up the skirt, I stuttered. I'll have to admit, I was flustered, and my legal arguments were leaking like water

pouring through the holes of a colander. All I could think of was Christine Malverne crying in my office, her splotchy skin, the dark circles under her eyes, her look of desperation. Even with her emotions too close to the surface for comfort, I had instinctively believed her version of the story. It had never occurred to me that it was inaccurate, and after having sat through the informal chat with the Dean and Posillico, I was even more certain she had told the truth. Doesn't that constitute an assault, I protested?

My argument is this, Posillico said, settling back into his chair again, and crossing his legs. He had calmed down and turned gray again. He knew that he was safe. First of all, I deny that I put my hand up her skirt. We kissed, that's all, and she started it. I've heard she's having trouble at home, and is looking for a way out. Second of all, let's say in the alternative, shall we, for argument's sake, that I did put my hand up her skirt. That's usually the next step in these kinds of situations. We all know there's a kind of natural progression to these things, and a guy can't possibly know that the next step's not consensual until he tries it and the woman says no. Then if she says no, and he goes on, well, then you've got yourself an assault. But it's not an assault until that moment. There's a presumption of consent that can be inferred from her prior consent to the earlier stages of the operation. She says yes to the kiss, and then from there, you move forward, step by step, obtaining consent for each new step as you go along. So what you've got to prove—and I doubt seriously you can do that since it's her word against mine, and the woman has got some real problems—is that I persisted in putting my hand up her skirt after she said no, assuming *arguendo*, that I had done so?

I was dumbfounded. As far as I knew, Christine Malverne had gotten off the sofa, gathered up her books, and left his office in tears. He didn't continue to put his hand up her skirt because the person wearing the skirt got up and left; he couldn't continue. The depth of his legal analysis also dumbfounded me. This was sexual harassment as only a lawyer could do it. Posillico should be teaching Criminal Law. Property was a waste of his talents.

The Dean got up from his desk and darted like a small mammal in pursuit towards the door, a sign that he was ready to finish our informal meeting. Well, Eve, I suggest that you consider all this and do what you think is the right thing. We all know that you'll conduct yourself in a professional manner. Thank you very much, both of you, for coming in this morning to have a little chat. He gave us both a damp handshake and ushered us out.

I picked up the copy of Christine Malverne's Property exam, and left Dean Striker's office; Posillico was right behind me. We didn't speak to

each other, but went our separate ways: He to his office, and I to the Registrar.

When I first went into practice, I learned early on the virtues of ingratiating yourself with secretaries. They provided the grease of the operation, the lubrication needed to make the cogs of the law firm turn. And they knew everything. Later on I discovered the same thing about the law school. Get to know the secretary to the Dean. Get to know the secretary to the Admissions Office. Get to know the secretary to the Registrar. Not only are they helpful, but they are also a wealth of information—if you genuinely treat them well, that is. I have learned to exploit the gratitude that the women below me in the hierarchy feel towards me. Actually, it is not exploitation, but a form of exchange. I embrace the simple fact that she is a human being, and she, in return, yields information.

Karen, I said softly to the young woman who assists the Registrar. She looked up at me from her computer and gave me her slow, lopsided smile. Behind her retro granny glasses was a pair of intelligent, green gray eyes. Could you do me an off-the-record favor?

Sure, she said without missing a beat. I like Karen. She is from the Midwest too.

I'm curious to know when Joseph Posillico turned in his Property grades for last semester.

Karen typed something on the keyboard and then waited for the screen to light up a long list of student numbers and accompanying grades. On the bottom of the third page of the list was a line for the faculty member's name, and the date of submission: December 29th.

It was the first thing on a Monday morning, she volunteered. I remember because he was waiting outside the office for me to unlock the door at nine. Well, it was a little after. I'm always a little late in the morning because I pick up bagels for the office. You know, she continued, Posillico was the first faculty member to turn in his grades which is pretty amazing when you consider his exam was only given the week before. He's always like that. We used to kid around that he just threw the bluebooks down the stairs and gave As to the ones at the bottom, and Bs to the second step, and Cs and Ds to the exams that didn't fly.

Thanks, Karen. I appreciate it. Karen gave me a wink and said, No problem, and I went back to my office. Without turning on the lights, so no one would know I was in my office, I sat down at my desk, and made a phone call to Christine Malverne. Much to my surprise, she answered the phone. She sounded breathless and surprised, and in the background I could hear the voice of an obstreperous male child.

Christine, this is Professor Thomas. The other day when I interviewed you, I forgot to ask you something. Do you remember the date

of the incident? I know that you said it was during intersession, but I don't think you said exactly when it happened.

Sure, I remember, she answered without hesitation. Well, wait a minute. I know it was on a Monday morning. Just a second, let me check my calendar. She paused for a second, presumably to dig into her purse for a datebook, and then she said, Oh yes, here it is. I remember now. It was on December 29th, about eleven in the morning.

I thanked her and told her that she would be notified of the next step in the proceedings by letter. Then I hung up the phone and read her Property exam in the dusky light of my under windowed office, and while it was devoid of any markings by Posillico, no point numbers in the margins, no evidence of a disappointed (or responsible) grader, it was truly, truly a D paper. Her definitions and rules were sloppy and imprecise, her legal analysis misdirected, and she had totally forgotten to answer the second part of the last question. But despite its overall poor quality, I could not categorically say: this is a person who should not be in law school. Let's put it this way: I had seen far worse, and I had seen exams as bad as this written by people who later on figured out the game and now successfully practice law. The writer was intelligent, if confused. She used the language well, there were periodic flashes of insight, and oddly enough, she was right: she did understand the Rule against Perpetuities. But Posillico too was right: on this Property exam, Christine Malverne had earned her grade, all 62 points of it.

I sat at my desk in the dark for a long time and thought over the situation. I knew that I had to dismiss the complaint. Everyone who would hear the case was a lawyer, and any lawyer who read the policy and heard the evidence would come to the same conclusion as Dean Striker: when Posillico had made that first move towards Christine Malverne on the couch, she had not rejected him, which made the conduct arguably consensual, at least for the initial stages of the encounter. And her apparent consent was relevant because of the timing of the incident: she was no longer in an Instructional Context with Posillico because his grades had already been turned in, even though they were so hot, the computer in the Registrar's office was still smoking. As is true of most legislative compromises, it served to exculpate. Still, she had earned that D fair and square, and could be solicited for an amorous relationship.

Sitting there in the dark, I got madder and madder about what Joseph Posillico had done to Christine Malverne, and probably to innumerable, unnamed women throughout the years who had had the misfortune to walk the halls of the law school during intersession. It was a dangerous time to be about, for I had no doubt that he had made a habit of it, at least twice a year, of rushing through those bluebooks,

turning in his grades to the Registrar, heading right up to his office, fluffing up the pillows, plugging in his boom box, and the hazy orange light, and opening the office door to see which newly exed, perhaps soon to be axed, woman student would wander in—to discover what piece of bruised fruit had fallen from the tree, waiting for his soft fingers to scoop her off the ground and into his basket.

Soon after the complaint was dismissed, Christine Malverne withdrew from the law school. I noticed that she had been missing in my Trusts and Estates class, and had inquired about her in the Registrar's office. The official line was that she was having financial trouble, Karen said, but her GPA was really weak, and she was having some emotional problems as well. Greg Archer (the Third) told me in the faculty lounge one day that Joseph Posillico had run into some trouble last semester with a sexual harassment claim, but that the girl was a nut job and had to leave the law school. I did not reveal to him that I was the Counsel in the case or that I knew the truth of the matter. To tell Greg Archer (the Third) what really had happened to Christine Malverne would have done no good—for her, or for me either. Both of us would have become known as nut jobs in the faculty lounge; perhaps both of us would have had to leave the law school.

And so I have kept silent about the Malverne matter, as I have come to think of it, although there have been times that I considered telling the whole story to Pat Robbins. She would have had something to say—and to do—about Joseph Posillico's philandering. But that is a line I have decided not to cross, at least not for now. There is too much at risk for me to form that alliance. But my silence has brought me no peace. Christine Malverne haunts me, in my thoughts and in my sleep. Her gold chains, the one with *Chris* dangling from it, her tears, her mottled skin, her future in real estate, her debt, her sullen husband, her demanding child, her shattered trust, her rage, her sad, sad horsy face. Somehow, at some point in the proceedings, I feel that I let her down, but in going over and over it in my mind, I still can't find the critical juncture where I took a wrong turn, where I made the wrong decision. *Chè la diritta via era smarrita.*

Next week I have a lunch date with Angela Posillico. I called her out of the blue. It turns out that we both love opera.