



Santa's
Campus
Sampler
... back page

Almanac

Tuesday, December 13, 1983

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IN BRIEF

Archivist: Francis James Dallett is taking early retirement to do research and writing, including a book-in-progress on the French in Philadelphia between 1793 and 1843. He will serve as consultant during the national search for a successor, which began this month. The former Princeton archivist, who also directed the Athenaeum of Philadelphia, was praised by President Sheldon Hackney for making "the memory of the University" one of the six major ones in the country. He was also cited for his guide to pre-1820 resources of the Archives, and for staging such special exhibitions as the 12-college Bicentennial exhibit of 1976; the 1980-81 "Century of Black Presence" on campus; and 1982's "The Penn Family."

Summer Grants: Grants-in-aid up to \$1500 and research fellowships up to \$3000 are available for standing faculty (with preference to assistant professors) via the Committee on Faculty Grants and Awards. Deadline is *February 1* for applications, available from the Office of Research Administration, 409 Franklin Building; call Kirstin Chalfen for information.

Research Funding Library: The new walk-in hours are Mondays, Wednesdays, and Fridays, 2-4 p.m. in the Office of the Vice Provost for Research, 106 College Hall/CO.

Papers Invited: For a national conference in spring, the Center for Urban Ethnography and the Graduate School of Education invite papers and work-in-progress on "what the study of the small group teaches us about teaching." Coordinator Kathy Neustadt has announced. Details: from Ms. Neustadt, Ext. 6998.

Further Delay: Full coverage of the November 17 Senate meeting has again been delayed to allow for the ATO report and surrounding exchanges. So has *January on Campus*. *Almanac* will publish a small issue on December 20 with the calendar and any news and comment essential to University issues; the next full-size issue will be January 10.

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After the ATO Report: Discussions to Come

In the wake of the Senate *ad hoc* committee review of the Alpha Tau Omega case and the response of President Sheldon Hackney and Provost Thomas Ehrlich, city and campus daily newspapers made a running story of the faculty report's objections to administrative handling of the case (pages 3-6) and of the administrators' criticism of the report's accuracy (page 7).

By Monday, however, Senate Chair June Axinn had invited the President and Provost to meet with the Senate Executive Committee and the *ad hoc* review group, and both leaders had accepted the invitation for January 11. In addition, the President and Provost issued the statement below. Concern for the woman student had taken a leading place in campus commentary, as had the role of the Spritzer

committee (page 6).

"The administration has acknowledged its difficulties and its responsibilities, and particularly has emphasized how upset they are about the young woman's welfare," Dr. Axinn said. "They are ready to help, and I know I speak for SEC when I say we are ready to answer their call for help from the faculty. We've invited them to join us in talking about the basis of the problems that have shown up in the report and the aftermath, and they've accepted. A key point is to make clear that the faculty has a role in setting and enforcing standards in an educational institution."

NOTE: Readers of the text on pages 3-6 will recognize that the *Inquirer* December 8 mistakenly attributes to the *ad hoc* report some details not contained in it.

From the President and Provost

December 10, 1983

'The Need Now is to Look Forward'

The events of last week made it again painfully clear how terribly traumatic the ATO incident has been, not only for the individuals involved but for the entire Penn community. No matter has absorbed more of our emotional energy or caused us more personal pain. We profoundly regret that we were unable to find a way to spare the University community the protracted anguish to which it has been subjected.

We are particularly distressed that our compassion for the young woman involved was not as evident as it should have been, and we renew our assurances that the University has a continuing interest in her welfare and stands ready to help her in further ways that may be needed.

Viewing the ATO matter in retrospect, we readily acknowledge that there are some things we would have done differently, though we believe none would have had a material effect on the outcome. During the crisis concerning threats in DuBois House, we consulted regularly with an ad hoc group of concerned individuals from throughout campus. We could have benefitted from a similar group of advisers in the ATO matter. In general, we should have spoken more openly and more often about the incident itself, the enormously complex difficulties in handling it, and the reasons for our judgments—whatever other problems that course might have caused. We particularly wish we had been able to find a way to describe more fully the terms of the settlements and why we concluded they were the best obtainable outcomes.

We continue to believe that we made the correct decisions on the two essential choices we faced: To follow the unanimous advice of the faculty panel chaired by Professor Spritzer to use existing judicial procedures, and subsequently to reach settlements that contained significant but less than optimal sanctions rather than incur the very substantial risk of achieving no sanctions at all. We recognize that different individuals might have made different choices; in these and other judgments, reasonable people may differ. We, of course, take full responsibility for the handling of the case.

The need now is to look forward. As we have stressed, we must create a community in which dehumanizing incidents are least likely to occur. We must also establish better procedures to handle such serious situations if they do occur.

We have already begun talking with the Chair of the Faculty Senate and other members of the Committee on Consultation about how best to enlist the aid of the faculty and students in these essential tasks. We will discuss them with the Faculty Senate Executive Committee on January 11, and with other groups that are willing to help. We need that help.

—Sheldon Hackney

—Thomas Ehrlich

Speaking Out

Rights of Passage

Poor accessibility and inadequate safety have been longstanding problems for all University users of the Nursing Education Building (NEB). Recently, these issues have been compounded by the School of Medicine commitment to house a cyclotron underneath the breezeway of the Robert Wood Johnson Pavilion—the only access route from campus to the NEB.

Geographically, the School of Nursing is located on the perimeter of campus behind the Johnson Pavilion and the Biomedical Library. It is adjacent to the vacant lot of the former Philadelphia General Hospital. To gain access to the University campus, users of the NEB must pass through the poorly lighted loading dock of the Johnson Pavilion, also the home of decaying trash dumpsters that play host to several rodent families. Efforts to clean up the area have been met with frustration. The dumpster-delivery area has been termed "essential" to the operations of the School of Medicine.

In a continued effort to enhance accessibility, improve lighting and safety in an isolated area yet maintain essential operations for the School of Medicine, the School of Nursing sought help from an independent contractor. An architectural design to improve conditions to meet the needs of all concerned was devised. That was two years ago. The area continues as a haven for rodents and an eyesore for all who travel there.

On October 12, 1983, it was announced at the University Council Meeting that there are indeed plans for the Robert Wood Johnson breezeway. A research grant has allocated funds to the School of Medicine to build a cyclotron. According to Dr. Leon Rosenson, Director of Research Planning and Analysis for the School of Medicine, the best location for the cyclotron is beneath the breezeway. The School of Medicine reports that the "essential" dumpster-delivery area will be torn up for construction of the cyclotron. Members of the student body of the School of Nursing have voiced concern about the potential harm and continued isolation of the NEB. However, they have been told by the Medical School planners that the environment will be returned to its original condition on completion of the cyclotron project—a response which seems ludicrous and inadequate.

We seek support from the University community in improving these deplorable conditions. We do not want the area returned to its original unappealing and unsafe state. As we prepare for the celebration our 50th Anniversary, the School of Nursing's request for decent access deserves not only consideration but action!

—Patricia A. Ragan
Graduate Student Organization, Nursing

The Tuition-Away Choice

Given lengthy discussions over the past year concerning faculty-child tuition benefits, one might think that all of the significant issues have been covered. Nonetheless, continuing discussions and experience make it clear that a number of crucial issues remain.

One might assume, for example, that faculty favoring the new plan (i.e. 40% of Penn's tuition elsewhere) do so because they assume that it will provide their children with a broader choice. As the plan works out in practice, however, they may be in for a rude awakening.

SPEAKING OUT welcomes the contributions of readers. Almanac's normal Tuesday deadlines for unsolicited material is extended to THURSDAY noon for short, timely letters on University issues. Advance notice of intent to submit is always appreciated.—Ed.

Consider this scenario! A faculty-child is accepted at another Ivy League school or other college providing need-based aid. The accepting college provides the admitted student with 50% of its tuition based on need. Adding in this year's \$1000 tuition benefit from Penn, one might reasonably assume aid (over the four years) roughly equivalent to that provided if the child went to Penn—thereby allowing the child to choose schools relatively free of financial considerations.

Reasonable, you might say—but unfortunately not so. Penn tuition benefit checks are made out to *both* the student and the school. This causes no problems when a state or non-need based school is involved. This is not the case with the other Ivies, however. In the latter case, when the student signs the check over to the school, the school automatically deducts that amount from its offered scholarship rather than from the "parent's share" of the money due.

In effect, the "faculty tuition benefit" that the faculty member thought would help relieve the parent's expense actually relieves the other school's scholarship commitment. Consequently, if the faculty member's financial status indicates a need for aid (and almost *all* Penn faculty will qualify for at least some aid at \$14,000/ year Ivy League and similar institutions), he does NOT fully benefit from his "benefit" from Penn. Inversely, if the faculty member does NOT need any aid at all, then the faculty parent does fully benefit from the Penn tuition "benefit." This peculiar arrangement undoubtedly has already cost faculty members thousands of dollars this fall alone.

Upon checking the situation further, I learned that this external benefit is treated by the University as a direct grant which is to be reported as scholarship in applying to other Ivy schools. This arrangement apparently is common practice among some need-based schools.

Faculty members should be aware of this practice in making plans for their children's education. For many, the 40% benefit may turn out not to be a benefit at all—and, as anyone who has had the experience knows, "need-based" aid rarely, if ever, meets the true needs of families, most especially those of middle income families to which most faculty belong.

Hopefully, the University in cooperation with relevant faculty groups and other concerned faculty, will begin work immediately to establish more equitable procedures. Among the possibilities that might be considered: (a) Make tuition benefit checks payable directly to faculty members as reimbursement for tuition payments as is done with Major Medical. (b) Even if this or some alternative procedure might somehow be misconstrued as to make the benefit taxable (it seems doubtful that the IRS would make distinctions based on methods of payment), most faculty presumably would prefer the option of selecting a taxable benefit as opposed to no benefit at all.

Since the above (or comparable) changes presumably can be made at no cost to the University, let us hope that no effort will be spared in seeking ways to avoid depriving faculty of this hard-earned benefit—most especially in cases where the benefit is most needed.

—Joseph M. Scandura, Director,
Structural Learning Systems and CBI, GSE

Update

DECEMBER ON CAMPUS

MUSIC

13 *Tuesday Recital Series: Keith Chapman, organist, Grand Court Organ, John Wanamaker's, Philadelphia: noon-12:30 p.m., Irvine Auditorium (The American Guild of Organists, Philadelphia Chapter; Curtis Organ Restoration).*

20 *Tuesday Recital Series: Mark Bani, organist, Trinity Lutheran Church, Lansdale; noon-12:30 p.m., Irvine Auditorium (The American Guild of Organists, Philadelphia Chapter; Curtis Organ Restoration).*

TALKS

13 *An Analysis of the Impact of Reaganomics on Health Care: Dr. Louis Sullivan, president and dean, Morehouse School of Medicine: 5:15 p.m., Dunlop Auditorium A, Medical Education Building (First Annual Elizabeth and Duane G. Sonneborn Lecture, School of Medicine).*

14 *Management of Renal and Ureteral Calculi (Kidney Stones): Dr. Keith N. Van Arsdale, professor of urology: noon-2 p.m., Club Room, Faculty Club (Faculty Club).*

Domestic and Foreign Policy Issues: Rev. Jesse Jackson, Democratic presidential candidate and civil rights leader: 4 p.m., Irvine Auditorium (Penn Political Union, Alpha Phi Alpha, Connaissance, Black Student League).

Additions, changes and cancellations for the weekly *On Campus Update* must be received by noon Tuesday prior to the Tuesday of publication. The deadline for the February pullout calendar is noon, January 17. Address: 3601 Locust Walk C8 (second floor of the CA).

Holiday R-I-D-E: The student-operated escort service will not be available from December 23 through January 2 or January 7 and 8. Regular hours will be in effect through December 22 and will resume on January 16. (Regular hours are Monday-Thursday 4:30 p.m.-2 a.m., Friday and Saturday 4:30 p.m.-4 a.m., and Sunday from 4:30 p.m.-2 a.m.) The service provided from January 3-6 and 9-15 will be limited to 6 p.m.-1 a.m.

Almanac

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SENATE

Statement by the Senate Executive Committee December 7, 1983

The Senate Executive Committee commends the Committee to Review the Administrative Actions Pertaining to the ATO Incident for the successful efforts that have been made to carry out their difficult charge by producing this excellent and remarkable document. SEC moved that:

- 1. The entire report be made public.*

2. Based on its review of the document, SEC recommends that the University promptly fulfill its moral responsibility to the victim by meeting the medical, legal and educational expenses incurred by her as a consequence of this incident.

Further consideration of the report will take place at the next meeting of the Senate Executive Committee.

Report to the Senate Executive Committee from the Committee to Review the Administrative Actions Pertaining to The ATO Incident

December 5, 1983

Regina Austin, Jean Crockett, Michael B. Katz (chair), Robert E. A. Palmer

Introduction

On February 22, 1983, an undergraduate woman reported to members of the Administration that she had been raped by several male students after an ATO Fraternity party early on the morning of February 18, 1983. University officials investigated the complaint and decided to proceed against both the Fraternity and the individuals. As a result of a hearing before the Fraternity-Sorority Advisory Review Board on March 23, the Acting Vice-Provost for University Life decided to suspend recognition of the Fraternity. The Fraternity subsequently challenged this decision in court, and the case is still unresolved. The case against the male students was processed through the University Student Judicial System and in May resulted in negotiated settlements without a hearing. The settlements require that their specific terms, including the sanctions, be kept secret. It is the administrative actions with regard to the cases against the individual male students that have been our chief concern.

The Executive Committee of the Faculty Senate charged us with reviewing the administrative procedures followed after the incident at the ATO Fraternity House in February, 1983. We were further charged with evaluating the support provided the complainant by the University and assessing the propriety of the sanctions imposed. We were given complete freedom to establish our own procedures.

In total, between October 6 and November 29, 1983, we interviewed 25 persons, some more than once. Our interviews and related discussions occupied approximately 47 hours. In addition, we each spoke individually with many other people, read documents, had many conversations with each other, and met together at length to prepare this report.

We chose to proceed by interviewing individuals one at a time. One of our early tasks was reaching an agreement with the Administration about the nature of their cooperation with us. The Administration was concerned with the impact of our inquiry and report on the case involving the Fraternity that was pending in the Court of Common Pleas and with the privacy of the complainant and the confidentiality of the settlements. Under the agreement reached, members of the Administration at their own request could bring a representative of the General Counsel's Office to their interviews with us. Most chose to do so.

Throughout our inquiry, confidentiality has been an issue in three respects. First, because of the terms of the settlements, the Administration has been unable to tell us certain things we were charged with ascertaining, especially the exact sanctions levied upon the respondents and the exact nature of the evidence against them. Second, out of concern for the complainant, many of the details of the case should remain

confidential. Third, a number of people spoke to us in confidence, and we feel bound to respect their trust.

Therefore, we do not document the sources of all our assertions. Nonetheless, we believe we have sufficient evidence to support each factual statement in this report. Each statement in this report is supported by more than one and most by several sources. We trust we have been thorough and believe that our report deserves the confidence of all constituencies in the University.

In some respects our knowledge is incomplete because there were facts that were not or could not be revealed, because of conflicts between statements, and because of scanty evidence. With a few exceptions, we do not feel confident about making definitive statements concerning intent or motivation. We have tried to present the Administration's viewpoint fairly, even where it differs from our own.

In the remainder of this report, we explicate the key aspects of the case. In each instance we try to summarize what happened, the available choices, the explanations offered for administrative decisions, and our own evaluations. We conclude with some brief guidelines for the future.

By way of preface, one of our hardest tasks has been determining where and how decisions were made and how they were communicated. As we have interviewed people and read documents, including those relating to the proceedings against the fraternity, we have concluded that no one was clearly in charge of the various aspects of this case. No one had clear responsibility for checking details and no one weighed the implications of decisions made in one aspect for other aspects of the case.

1. Initial administrative involvement in the judicial process

Members of the Administration, including the Acting Vice-Provost for University Life, first became aware of the incident at the ATO Fraternity when the complainant reported it on Tuesday, February 22. The Judicial Inquiry Officer (hereafter, JIO) and detectives from Public Safety interviewed the complainant on Wednesday, February 23. On Thursday, February 24, the Assistant Director of Fraternity and Sorority Affairs wrote a letter to the prospective respondents directing them to appear at Public Safety the next morning to be interviewed by the Philadelphia Police. (At this time, there was no Director of Fraternity and Sorority Affairs in the University, and the duties of the office were divided among members of the staff of the Vice-Provost for University Life.) The JIO also requested the prospective respondents and witnesses to arrange for interviews with her. These instructions were hand-delivered to the prospective respondents and witnesses.

ered to the president of the ATO Fraternity, who went to the JIO. The JIO handed him a sign-up sheet and instructed him to have the prospective respondents and witnesses arrange for appointments starting at 9AM the following morning.

The Provost was informed of the incident by the Acting Vice-Provost for University Life, probably on February 23. The Provost told him to inform the President or the President's office. The President reports that he had not received the message left by the Acting Vice-Provost by the evening of February 24 when members of the ATO Fraternity decided to visit him at his house. When they arrived, the President was hosting a dinner party, and the Fraternity members were advised to return later. They did so and met with the President, at which time they expressed reservations about the University's judicial procedures and reluctance to cooperate with them. The Fraternity members expressed distrust of the JIO based on a former incident. Also, they were disturbed by the number of females involved in the investigation of the case and in the administration of the judicial system. It is not clear exactly what the President said—conversations are difficult to reconstruct in detail after a lapse of nine months—but he did advise the Fraternity members to see George Koval, the Acting Vice-Provost for University Life. The Fraternity members took this as excusing them from seeing the JIO.

When the Fraternity members returned from their second visit to the President about 10PM, the Assistant Director of Fraternity and Sorority Affairs and the Director of the Student Health Service, Dr. Sam Fager, were at the ATO house. The Assistant Director of Fraternity and Sorority Affairs had requested Dr. Fager to visit the house because he felt that the prospective respondents would be under stress. The Fraternity members who had talked to the President described their visit to these two visitors.

The JIO was not informed that the prospective respondents and witnesses would not meet with her as scheduled, and she waited for them in her office. The respondents' attorney did call Public Safety to postpone the Police interviews. The Acting Vice-Provost for University Life, after checking with the President, who then was out of town, arranged a meeting with the respondents and their attorney for February 28, after which date the JIO began interviewing some Fraternity members.

The President insists that he told the prospective respondents that they should follow the University's judicial procedures. However, it does seem that they took away the impression that they might by-pass the JIO, the administrative officer charged with dealing with the alleged offenses.

2. The Committee on Consultation and the Special Faculty Committee

On Friday, March 4, the JIO submitted a hand-written report summarizing her investigation of the case. Between that date and March 10 she was away on account of a death in her family. On Thursday, the 10th of March, in consultation with other members of the Administration, she edited her report and made a few minor changes. There was essentially no action with respect to the individual cases between March 4 and March 23. The reasons given us are Spring Break and the decision to move ahead first with the hearing against the Fraternity as a whole on March 23.

On March 23, the President and Provost met with the University Council's Committee on Consultation to discuss how to proceed against the individual respondents. (Because the past-chair of the Senate was out of town, the members included the then-chair and chair-elect and the heads of the undergraduate and graduate student assemblies.)

Two broad options were under consideration at the time. One was to follow the judicial procedures already in effect under the Charter of the University Judicial System and to prepare for hearings before a student panel. The other was to create a special panel of faculty to hear the case. Arguments in favor of the latter included the following: (1) the existing procedures, which specified an all-student panel, had not been designed for cases involving personal violence or possible felonies; (2) hearings before a student panel might be open if the respondents so re-

quested; (3) students might be reluctant to testify before or sit as judges on all-student panels; (4) the gravity of the situation called for the involvement of faculty; (5) lawyers for the respondents—as a previous incident had shown—could turn the hearings into a shambles; (6) the number of defendants might be large; (7) the JIO was not an attorney and the Judicial Administrator was not experienced in formal litigation.

The case for using the existing procedures essentially had two parts. One is that the acceptance of procedures by the University, no matter how inadequate for the circumstances, represents a commitment of the institution. Violation, as one person put it to us, could have precipitated a major "constitutional crisis" on the campus. The other reason is that any failure to follow established procedures would be vulnerable to attack in the courts.

The Committee on Consultation advised the President to appoint a panel of faculty to hear the case. Together with the President and Provost, they nominated members for the panel who would be expert in various areas relevant to the case, including law, medicine, and nursing. On the following weekend, after further consideration, the President informed at least the chair of the Senate and the President of the Graduate Student Assembly that he would charge the faculty committee only with recommending procedures and with advising the JIO. Professor Ralph Spritzer, chair of the committee, also understood this to be his task. Professor Murray Gerstenhaber, chair of the Senate, informed the President by letter that he felt this charge was inconsistent with the advice of the Committee on Consultation.

The President convened the members of the Special Faculty Committee together with members of his administration on March 29 to discuss the case and the Committee's charge. At that time, the chair of the Special Faculty Committee asserted that in his opinion there was little choice but to follow the established procedures. Subsequently, the Special Faculty Committee met with the JIO, reviewed the available evidence, and, after three meetings, reported on April 7. The Special Faculty Committee's unanimous recommendation was that the existing judicial procedures should be followed. It also concluded that there was sufficient evidence of serious misconduct to warrant further proceedings. The Administration accepted the Committee's recommendation and decided to prepare for hearings before a student panel as specified in the Charter. Members of the Special Faculty Committee agreed that Professor Spritzer would be their spokesperson. However, after speaking with Professor Spritzer, we have an inadequate understanding of the basis of the committee's decisions.

Your Committee is aware of the difficulties of reaching a decision about the procedures to be followed in this case. However, we are persuaded by the case against employing the existing judicial procedures. They are wholly inadequate to deal with cases that involve personal violence, serious sexual misconduct, or possible felonies. They are not designed to deal with confidential or sensitive information concerning individuals. Indeed, months before the ATO incident, the inadequacies of the existing procedures had prompted the President to form a special commission, under the direction of the Ombudsman, to review them. On April 28, 1982, the JIO in consultation with the Advisory Committee on the Judiciary had submitted a report proposing substantial modifications for cases involving potential felonies or life-threatening situations.

We believe that effective leadership from the Administration, with the support of responsible representatives of the major campus constituencies, could have averted an internal crisis if a panel of faculty had been appointed to hear the case. While there certainly would have been a risk of litigation, we are not convinced that the respondents would have challenged such a procedure in a court of law because to do so would have meant revealing their identities and the incriminating evidence against them. We note—to skip ahead—that 5 of the 6 final respondents asked for closed hearings within the University. In any event, an effort should have been made to reach an agreement with the respondents concerning an alternative tribunal capable of hearing and passing upon all of the evidence germane to a just resolution of the cases.

CONTINUED PAST INSERT ►

ALMANAC, December 13, 1983

3. The preparation of the cases

Given the complexity of the situation and the potential problems with hearings where respondents would be represented by lawyers, the President decided to appoint a Special Counsel to assist the JIO in the preparation of the charges and the presentation of the case. He asked Suzanne Reilly, a Lecturer in the Law School's Legal Assistance Clinic and an experienced litigator, to serve in this role. For similar reasons, he asked Stephen Burbank, Associate Dean of the Law School, to serve as Judicial Administrator for the case.

In the next two weeks, the JIO and her Special Counsel interviewed prospective witnesses, gathered evidence, and held meetings with the respondents and their attorneys. Sometime in early March (a precise date is not remembered), a decision had been reached at the highest level of the Administration that a single person, an assistant to the Vice-Provost for University Life, would thereafter serve as *sole* intermediary between the University and the complainant in matters relating to the case. The decision had these effects: (1) after the initial interview the JIO had no contact with the complainant in the course of investigating the case and preparing for the judicial hearing. (2) The Special Counsel to the JIO had no contact with the complainant, was under the incorrect impression that she was not available, and prepared her cases under the assumption that the complainant was neither an available nor a reliable witness. These assumptions appear to have colored the Special Counsel's view of the strength of the cases against the respondents. (3) The JIO and Special Counsel did not inform the complainant of the progress and preparation of the cases or of her possible role as a witness.

Hearings originally were scheduled for May 3; only one respondent requested an open hearing. On April 29, at a meeting of members of the Administration, the Special Counsel discussed the difficulties with the hearings, especially the open hearing, and raised the possibility of using the provisions of the Charter that permit informal settlements of cases without hearings. Reasons against going through with the hearings were: the inadequacy of the evidence and the consequent possibility of exoneration of the respondents by a student panel; uncertainty about the availability of the complainant as a witness; the potentially damaging effect of testifying and cross-examination on the complainant; and the refusal of a number of student witnesses to appear before a student panel. The decision was made to authorize the Special Counsel and the JIO to negotiate informal settlements, and potential components of settlements were discussed. The issue of the confidentiality of the sanctions was raised but considered to be of minor importance.

Subsequently, the Special Counsel carried out negotiations with the respondents' lawyers by telephone and worked out a series of agreements. One of the conditions specified by all of the lawyers was complete confidentiality of the terms of the settlement. One respondent's lawyer changed his mind, and preparations were resumed to go forward with a hearing on May 7. However, he and his client agreed to settle at the last minute. There is no indication that the JIO participated in these negotiations or that she concurred in the outcome. The Special Counsel signed the settlement agreements. The outcome of cases against the respondents was reported to the University community in an Extraordinary Report by the Judicial Administrator, published in the *Almanac* on May 17, 1983.

We feel it relevant to note that the disclosure of the identity of one of the respondents would have been embarrassing to the University. We have been assured by the President and Provost that this factor had no bearing on decisions about how to proceed in the case, and we know of no evidence to the contrary.

Your Committee has three major concerns about the process of settlement. (We turn to the specifics of the settlements shortly.) First, members of the Administration acted on erroneous or incomplete evidence. We have been told by a number of people that they "understood" various things about the complainant: that she was unwilling to testify; that she could not be reached; that she was unavailable in April after the charges had been transmitted to the respondents; that she had failed to make accurate photographic identifications in her February 23 interview with Public Safety. None of these impressions appears to have

been correct on the basis of the evidence available to us. We have been told that efforts were made early in March to obtain evidence from the Philadelphia Police about their investigation and that the Police refused to disclose anything about the case. Apparently, no one in the Administration tried to get further information from the Police around the time that preparation for the hearings was underway. Consequently, no one working on the case inside the University was aware that the complainant had a long interview with the Philadelphia Police on April 22, at which time she again identified participants in the incident from photographs.

We believe that the University did not use all available means to obtain relevant information from the Police, and, according to our understanding, Public Safety was utilized less in this case than in most others, despite their investigative capacities and established working relations with the office of the District Attorney in such matters. Finally, as noted above, all contact with the complainant was supposed to be channeled through one member of the Vice-Provost for University Life's office. As a consequence, the JIO believed she was not to contact the complainant and had to prepare the case without consulting her. This was unprecedented in the JIO's experience.

The second aspect of the settlement process on which we should comment is the role of the Special Counsel. In effect, the Special Counsel proposed, negotiated, drafted, and signed the settlements. The JIO had almost no role in this part of the case. This is at variance with the Charter, which clearly specifies that the JIO is charged with all of these duties. The JIO was initially interrupted by the failure of the prospective respondents to appear for their interviews with her after the meeting with the President, hampered by no or second-hand communication with the complainant, and virtually superseded by a Special Counsel. It was explained to us that the JIO and Special Counsel were considered interchangeable. We are not sure that this understanding was shared by all parties at the time. The Special Counsel is supervising the activities specified by the settlements, although this, too, is a task assigned in the Charter to the JIO. Whether a violation of the Charter has occurred—and whether the Extraordinary Report by the Judicial Administrator is accurate—depends upon one's interpretation of whether the Special Counsel is permitted to act, in effect, as the JIO.

Third, the purported conduct of the complainant prior to February 17-18 appears to have been a consideration in decisions regarding the case. While allegations derogatory to the complainant have been made by ATO members, these must be regarded as unproven. We wish to emphasize that whatever the complainant's history, it was irrelevant to a principled assessment of the conduct of the respondents. Nor, given what we know about the available evidence, are we clear as to why the complainant would have had to testify at hearings (although, of course, she should have been asked), and we see no reason why she could not have been accorded the same protection as that accorded victims of sexual assault when they appear in court against the accused. Her history should have been no more admissible before a University tribunal than in a court of law.

4. The nature of the settlements

The specific terms of the settlements are confidential. Therefore, we have had to rely on information that derives from either those who designed and supervised the settlements or those whose knowledge of the settlements is second-hand. We understand the major elements of the settlements to include reading and writing assignments, discussions, and community service. We understand, as well, that the "educational" component is supposed to be the equivalent of about one course per semester and the service component the equivalent to the usual undergraduate part-time job. We have been told that the settlements represent an attempt to devise sanctions in keeping with the educational mission of the University. Their intent is educative: to make the respondents understand why their actions were wrong and to foster their development as mature and responsible adults. We have been told that the settlements are very "creative" and assured that we would respect their intent and content if we could be told their details.

The settlements are not being supervised by academic faculty in the

schools in which the respondents are or were enrolled, although we have been told that faculty in these schools were involved in their design. Sanctions of the type imposed in this case previously have been employed only in matters involving charges of much lesser gravity. According to the Charter, informal settlement of cases precludes expulsion and suspension as sanctions. Therefore, these no longer were options once a decision had been reached to settle without a hearing.

We do not know if a charge of rape could have been successfully prosecuted in a court of law. For purposes of internal discipline, however, the charge was violation of the student code of conduct, which calls for mature and responsible behavior. On the basis of the information available to us, we believe that the respondents' behavior was reprehensible and not to be tolerated on this campus.

We are not persuaded of the appropriateness and adequacy of the sanctions. We think that they represent an amalgam of education with punishment that detracts from, rather than enhances, the mission of the University. The respondents deserved serious and public punishment. The Administration failed to give an unequivocal signal to the University community that similar behavior is not to be tolerated on this campus. We are concerned that the apparent leniency of the sanctions has undermined the purpose and effect of the effort to remove ATO from the campus and the Administration's statements on sexual misconduct.

The confidential nature of the settlements has left the Administration unable to counter effectively the suspicion that the respondents have been treated too leniently. And, as we note below, the confidentiality and presumed leniency of the settlements may have had a very harmful effect on the complainant. In serious cases, some public description of the sanctions should be permitted under any settlement in which the Administration enters on behalf of the University.

5. The University and the complainant

The complainant has received continuing emotional support from some staff members of the University. They have kept in close contact with her and assisted her in obtaining appropriate medical care both inside and outside the University. However, at no point in the entire peri-

od did the President initiate contact with the complainant or her family.

The University has given the complainant no financial help with her heavy medical expenses. When she returned to Philadelphia in late April or early May without housing, employment, or other sources of funds, no assistance was offered her.

Furthermore, she was not offered an opportunity to testify at the hearing scheduled for May 3. When she expressed her anger at this, she was requested to testify at the postponed hearing on May 7, less than 24 hours before it was scheduled.

Under the terms of the Judicial Charter, the JIO is to inform the complainant of the resolution of the complaint. On May 29, the complainant attended a meeting at which the Special Counsel for the JIO informed her that settlements had been reached but because of the confidentiality requirement of the settlement agreements was not able to tell her the nature of the sanctions. Your Committee understands that the complainant was deeply distressed by the outcome of the judicial process and that there was an immediate adverse effect on her emotional well-being.

Throughout our report we have indicated other instances where the complainant was shown scant respect. The complainant was not accorded the dignity and compassion she deserved and the financial assistance she required. We recommend that the University promptly consider its financial responsibility to the complainant.

Conclusion

The Senate Executive Committee has asked us to provide "information about the ways the University did—and might in the future—respond to behavior that seemed to flout the idea of a civilized community." We offer four guidelines for the future. With respect to each of them, we have found the response of the Administration in the current case to be inadequate. First, the investigation of the incident should be complete and accurate. Second, there should be a hearing before a tribunal capable of rendering a decision fair to all parties concerned. Third, the resolution of the incident should transmit a clear message as to what conduct is and is not acceptable on this campus. Fourth, the entire process should show great sensitivity to the stake that the complainant has in the outcome.

Following is a response to the ad hoc committee report above:

The Spritzer Panel's Role

As noted in the report of the *ad hoc* Faculty Senate Committee reviewing the administrative actions pertaining to the ATO incident, on March 29, 1983, President Hackney convened a panel of senior faculty (chaired by the undersigned) to advise the administration. The panel was requested to perform two functions: (1) to advise the President with respect to the procedure to be followed in dealing with those allegedly involved in the incident; (2) to give assistance and advice to the University's Judicial Inquiry Officer if we found basis for proceeding against one or more individuals. As to the second, we unanimously concluded that there was sufficient evidence of serious misconduct to warrant specified charges and recommended that they be pursued "with all diligence." The *ad hoc* committee apparently approves this part of our report.

As to procedure, we unanimously reported that the Administration would be obliged to present charges to the University Court. As the report explained, this was based upon the explicit language of the Charter of the University Student Judicial System which provides that, except for Honor Code violations and parking offenses, the University Court established by that Charter "shall have exclusive original jurisdiction in *all* cases arising under regulations of the University involving students" (emphasis added).

Despite this unqualified language, despite the fact that the *ad hoc* committee was provided copies of the report issued by the committee that I chaired, and despite my calling to the attention of the *ad hoc* committee the Charter's mandate that the procedures there set forth

provide the exclusive mechanism for hearing a disciplinary charge, the *ad hoc* committee states that its members were left with an "inadequate understanding of the basis" of the committee's view. I am left with a total lack of understanding of their lack of comprehension. Does the *ad hoc* committee fail to appreciate that a University is bound by its own bylaws? The point was only recently underscored by Judge Lois Forer's decision setting aside the University's action against the ATO fraternity for failure to follow prescribed University procedures.

The *ad hoc* committee believes, as well it might, that there are shortcomings in existing student judicial procedures. I share that view and I have participated in recommendations to make changes. That does not alter the conclusion that existing procedures govern until such time as they are changed by lawful process.

Belying its asserted lack of understanding, the *ad hoc* committee concludes the second section of its report by acknowledging that a failure to follow prescribed procedures would have created "a risk of litigation." It responds to this by suggesting that respondents would have refrained from going to court if tried by an *ad hoc* University tribunal. If I were persuaded of that—and I am not—my conclusion would remain unaltered. I would not consider it either wise or consistent with my obligations as a lawyer and counselor to advise the University to violate its established procedures in the hope or expectation that a challenge might not be forthcoming.

—Ralph S. Spritzer, Professor of Law

ADDITIONAL STATEMENTS ON THE ATO REPORT: OPPOSITE PAGE ▶

December 7, 1983

Response to the ad hoc Faculty Senate Committee

It is clear that the *ad hoc* Faculty Senate Committee believes now that, had it been responsible for directing the proceedings in the ATO case, it would have made different decisions at many steps along the way. We continue to disagree fundamentally with judgments of the *ad hoc* committee, and we believe the report of the committee contains numerous erroneous and misleading statements of fact.

The key conclusion of the *ad hoc* Senate Committee, however, is that the administration erred in not appointing a special panel to hear the individual cases. Instead, the administration decided to follow the established procedures set out in the Charter of the University Student Judicial System.

The administration's decision was based on the unanimous judgment of a panel of senior faculty members, chaired by Professor Ralph Spritzer of the Law School and including Professors Malcolm Campbell, Anna-Marie Chirico, Walter Wales and Rosalyn Watts. This panel was chosen with the advice of the Committee on Consultation (consisting of present, past and future chairs of the Faculty Senate, chair of the UA and chair of the GAPSA).

We asked the Spritzer panel to advise the administration about whether and how to proceed, and we explicitly included among the options the panel should consider, the possibility of establishing special procedures for this case.

After a careful review with the Judicial Inquiry Officer of the evidence and information available, the Spritzer panel advised us that there was cause to proceed against the individuals and that, in the *unanimous* view of the panel, the administration had no choice but to use the established procedures as set forth in the Charter.

In view of this panel's clear and unanimous conclusion, we remain convinced that it would have been most unwise to disregard the advice of the panel. The fact that the faculty members on the *ad hoc* Senate Committee more than seven months later concluded that they would have given different advice, does not alter our firm conviction in this matter.

The terms of the Charter were carefully followed in accordance with the panel's counsel. The allegation by the *ad hoc* Senate Committee that the role of the Special Counsel to the Judicial Inquiry Officer was at variance with the Charter is one example among many of the erroneous charges by the Committee. In fact, the Special Counsel was appointed with the full approval of the Judicial Inquiry

Officer. Further, she did a superb job in a most difficult set of circumstances.

The *ad hoc* Senate Committee indicates no steps that should have been taken after the administration decided to follow the advice of the Spritzer panel that would have led to an outcome preferable to the settlements actually concluded. The *ad hoc* Senate Committee objects to those settlements as insufficiently punitive. In our judgment, those settlements were—in the circumstances—the best that could have been obtained. As expressed in our statement printed in *Almanac*, September 6, 1983, "In our judgment, the settlements reached with the fraternity members were in keeping with the University's basic educational purposes, recognizing also the limits of our judicial system in handling the case." As we stated, we made that judgment having weighed "the likely outcome of a hearing before a student judicial panel, considering the complexities and uncertainties of the circumstances surrounding the incident and the nature of available testimony and evidence, some of an extremely sensitive and personal nature." The Senate Committee has produced no evidence and no arguments that challenge that judgment.

Among the many errors and omissions by the *ad hoc* Senate Committee, we particularly regret its failure to acknowledge the University's support for the complainant. At this stage, however, we see no point in an extended review of our other disagreements with the Committee's statement of facts and judgments.

We do underscore our continued hope that there is emerging a campus consensus on two key conclusions. First, we need strong support for the values that will not only prevent similar episodes from occurring but that will also strengthen the ties of mutual respect and understanding that bind our community. That is the basis for the Task Force on Conduct and Misconduct, whose work is now underway. Second, as we urged well before the ATO incident occurred, the Charter of the University Student Judicial System needs to be strengthened. The administration has proposed a number of revisions, and the Keene Commission has now issued its report. We hope that campus-wide discussion of these documents will lead to constructive changes in the Charter as soon as possible.

Sheldon Hackney Thomas E. Ulrich

More Than A Contract

Our painful differences over how the ATO matter was handled reflect deeper divisions over a university's relationship to its students. One extreme, towards which some institutions lately have turned, is that a university stands only in a contractual relationship with those who pay its fees, supplying instructional services and treating breaches of all sorts in accordance with the contract. Another view is that while a university no longer stands *in loco parentis*, it still has a duty to protect its students, and to discipline those who cause injury to others or impair its educational purpose. In that view, a university may, in accordance with its regulations, delegate the handling of certain infractions to a student judiciary, but the faculty and administration must act directly when a student seriously threatens the welfare of another.

As Senate chair last semester, I conveyed the latter view to the administration when the Spritzer committee was named, for in the opinion of all the Senate leaders, an alleged gang rape lay outside the jurisdiction of an exclusively student judiciary. An incident which could have serious consequences for the perpetrators and certainly did have an overwhelming emotional impact on the victim was best considered, we believed, by a faculty panel sensitive to both the psychological needs of the victim and the legal rights of the accused.

It was our position, expressed to the administration, that the Spritzer committee should serve as a tribunal and not merely an advisory body. That view may not, however, have been transmitted to the committee.

Perhaps the University community's divisions also stem in part from a lack of consensus on the gravity of what happened; my views of last March would have been, I think, unanimously seconded in an incident of attempted murder or incitement to suicide. In any case, a court has now held that the withdrawal of ATO recognition must be reheard, with full protection of its rights.

None of this, of course, helps either the image of the University or the victim, nor can the former be repaired without our aiding the latter. That, not exculpation, is now our highest priority. For if we acquire the image of merely instructing our students then we shall be sought out only by students who want no more of us than a contract of instruction, and that would sever the thread of loyalty that supports us as a center of excellence.

—Murray Gerstenhaber, Senate Past Chair

More to Come: Additional comments have been offered by Former Senate Chair Robert F. Lucid. Since his letter involves right-of-reply for the 1982-83 Committee on Consultation, it has been held with Dr. Lucid's consent and will appear in the December 20 issue.—Ed.

A Campus Sampler of Gifts for All Ages

Whether holiday gift-givers are shopping for presents to give 'new arrivals' or old friends, there are gifts for all ages right here on campus.

Pleasing presents for infants, toddlers and children can be found at the University Museum's Pyramid Shop, a great place to find interesting and mostly inexpensive stocking stuffers from many countries around the world. Their mobiles—choice of fish, birds, planes or skiers (\$1.50)—would please even the youngest infant or older child. Chinese chimes (\$2) are another eye-catcher.

For young musicians the shop has brass bells (50¢), flutes (\$2.15) and maracas (\$1.10). Remember pick-up sticks? A set of 36 is only \$1.10. Another real bargain is chopsticks for 18¢ a pair—maybe the perfect gift for a finicky eater. Dollhouse collectors will appreciate "fixing up the house for the holidays" with a rug (61¢). The shop also carries some gifts too big for stockings, such as colorful kites (\$4-\$6.50) and large posters for the creative child to color.

Many more gifts for children of all ages can be found at The Museum Shop; it is a good way to bring the wonders of the world home. Why not start or add to an international collection of ornaments for that special child? Wooden animals from India (\$2.50), hand-crafted bread dough figures from Ecuador (\$2.50) and wooden carousel animals from the U.S. (\$5.75) are among the glittering collection. For a year-round gift there is the UNICEF wall calendar (\$3.50) illustrated with art by children from around the world.

For the chocolate lover with a taste for the past, pick up a miniature chocolate mummy (\$1.50). Hand stitched appliquéd landscapes from Colombia (\$15) would brighten any child's room. For a whistler's enjoyment select a soapstone whistle resembling a rabbit, dove, or fish (\$2.50). A comfortable yet classy gift is the Museum t-shirt blazoning the name of the Museum in several languages including Greek, Arabic and Chinese (\$6).

It isn't too soon to dress a future Ivy Leaguer in some Penn paraphernalia. The Book Store has a vast array of tot-to-teen sized clothing in its University Shop. What is there for the infant who has everything? Penn bibs (\$4.50), Penn baby bottles, glass (\$4.50), also available with the Wharton logo—for future execs, booties for members of the Class of ?? (\$7.50) and boxed gift sets of knit booties, hat and jacket (\$15).

Toddlers and children of all sizes will love looking collegiate in an assortment of t-shirts (\$4-6) and jogging suits (\$18). Why not treat "Santa" and get him/her a matching set? Youngsters who have mastered the art of eating will feel special to have their very own porcelain

cup, bowl and plate decorated with a pink or blue rocking horse (\$15.95). Baby's first Christmas? The new soft sculptured numerals, 1, 2, 3 etc. note any special year (\$4). What, a Book Store without books? Indeed not... there are board books for infants and toddlers, Dr. Seuss for preschoolers and activity books for various ages.

What child doesn't have a sweet tooth? A stop at Houston Hall's Candy Shop is the yummy way to fill a stocking with goodies. A new device is the decorated tin—Can A Gift, small (\$1.99) or large (\$2.99) which can be filled with toys, candy, socks, belts, jewelry or whatever surprise needs to be hidden.

Holidays mean cards and the Card Shop, also in Houston Hall's basement arcade, has a supply of greeting cards for everyone on the list. Need a stocking to stuff some of those goodies into? They come in several sizes and prices (\$2.79-6.99). Know a child with a sense of humor? The Card Shop has an assortment of Cathy and Garfield posters (\$1.75). Gum holders complete with a wrapped piece of Bazooka gum (\$3) will guard a child's valued possession.

For the Rest of Us

Gifts for one another come in exotic and diverse modes—nowhere better realized than in the Museum Shop. Look beyond the striking wallhangings from Kashmir and Peru, the Panamanian molas and figured appliquéd work from Colombia (priced from \$15), the Japanese batik on silk vests (\$120), Oriental ceramics, and African reproductions to a myriad of small treasures tucked into every corner.

Those for whom jewelry provides an unending fascination will find a range of styles: noveau (art deco) brass and glass reproductions in pins, earrings, and necklaces (from \$10), vermeil pins, necklaces done in multiple strands of bugle beads (also inexpensive), amber pendants (starting at \$14) and necklaces, Egyptian talisman pendants on silk cords and chains, scarabs and ceramic and coral stick pins (\$6.50 and \$7.50).

Most of the imported jewelry is made of semi-precious stones, some set in silver. In necklaces, earrings, bracelets, and pins, there are combinations of rose quartz and garnet; black jade, sodalite, and bone; amethyst and rose quartz. Carnelian from China is combined with either black onyx beads, light or dark jade or cloisonné. There are individual pieces in coral amber, lapis, moonstone, garnet, turquoise, ruby, and jasper.

This year The Museum Shop has a merry assortment of ornaments for the Christmas tree or home decorating. Mexican handicraft is versatile, as are

the hand-crafted wheat straw figures from China. Some ornaments are unabashedly "Christmas"—camels elaborately embroidered and beaded (\$10), for example. Others lend themselves to a variety of uses: as mantel or table arrangements or as part of decorative displays. The Noah bells from India (small sizes \$2.50 and \$5, very large \$25) cry out for crisp holiday ribbons.

Hand-crafted items for the home include Hmong appliquéd work (sold in squares, to assemble into throw cushions, bordered and hung, or whatever), woven placemats from Guatemala (\$7 apiece), carved napkin rings (\$3), and Eskimo soapstone art from Canada.

Personal gift-giving should take into account an assortment of box games adapted to adult or young adult interests: *Passing Through the Netherworld* (\$20) and *The Royal Game of Sumer* (\$7) have an archaeological flavor. Wall calendars displaying the Indian arts and Japanese landscapes are unusual finds (\$8-\$9). Colorful scarves, fringed and gold-threaded, are not to be overlooked; they can be wrapped and slung around neck or hip (a steal at \$8).

Food is becoming bigger at Christmas, and the formula is that less is sometimes more. The Book Store now carries an abundance of imported foods: comestibles shown nesting in containers—cunning baskets, miniature crates and other marvels of merchandising—filled with packing straw, and wrapped and beribboned like Easter bonnets.

Consider furnishing an unsullied fish basket with Blanchard & Blanchard bottled dressing and fruited conserves, a short salami, and one or two of those gourmet mustards. Crabtree & Evelyn offers a line of English honey, sauces and preserves. Visions of sugarplums are made manifest in panetone, fruitcake, continental wafers, short bread, plum pudding, chocolates and other delectables. Next week's cookbook sale (20% off) may, however, inspire you to bake and box your own goodies in some of those attractive tins (\$3.50, \$4.50 and up). (The Book Store is also dropping the price on calendars through December 17.)

Roses, the flower shop in Houston Hall, still advertises its daily specials on roses and carnations (free delivery on campus) and a 10% student discount on plants. Christmas wreaths range from the 8" size for \$6.60 to the 15" for \$13.50. Miniature decorated trees are \$5.99; Christmas cactuses \$4.15. The 4 1/2" poinsettias are priced at \$4.65. All provide the grace notes for the happy holiday we would wish everyone!

—M.F.M. and L.M.F.